



# **Snohomish County**

## *Family and Medical Leave Act Guide*

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## Snohomish County Family and Medical Leave Act Guide

**The Family and Medical Leave Act of 1993, as amended by U.S. Congress in 2008 and 2009** (29 U.S.C. §2601 et seq.; DOL Regulations at 29 C.F.R. Part 825):

⇒ *This guide is intended to summarize key provisions of the Family and Medical Leave Act; however, this is only an outline and does not include all provisions of the FMLA that may pertain to your specific situation. If you need further information, the FMLA regulations, 29 CFR Part 825 are available on the [Department of Labor website](#).*

### **1. Basic leave entitlements** (§§825.100 and 825.112)

The Family and Medical Leave Act (FMLA) of 1993, as amended, (FMLA or Act) allows “eligible” employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has accrued it, for up to a total of 12 workweeks, in a 12-month period for any of the following (except (f) below, for which an employee may take up to a total of 26 workweeks in a *single* 12-month period):

- (a) For birth of a son or daughter, and to care for the newborn child;
- (b) For placement of a son or daughter with the employee for adoption or foster care;
- (c) To care for the employee’s spouse, son, daughter, or parent with a serious health condition;
- (d) Because of a serious health condition that makes the employee unable to perform the essential functions of the employee’s job;
- (e) Because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces; and
- (f) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

### **2. Employees who are eligible to take FMLA leave** (§825.110)

Most Snohomish County regular employees who meet the following criteria are eligible for FMLA leave:

- the employee must have been employed at Snohomish County for at least 12 months (the 12 months need not be consecutive).
- the employee must have worked for Snohomish County at least 1,250 hours over the previous 12 months (1250 hours of service is determined according to principles of Fair Labor Standards Act (FLSA) for determining compensable hours – count only actual work hours – do not include leave hours).

- an employee who held a temporary position and is hired into a regular position may be eligible for FMLA leave, provided the employee meets the requirements stated above.

Please note: Certain executive and professional employees are not covered by the Act (for example: Elected Officials, Department Heads).

### **3. Twelve workweeks and increments of FMLA for intermittent or reduced schedule leave** (§825.205)

- The employee's 12-week leave entitlement is based upon the employee's regular work schedule: a 40-hour workweek entitles the employee to 12 40-hour workweeks of leave; a 35-hour workweek entitles the employee to 12 35-hour workweeks. When the employee's regular schedule varies from week to week, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period is used to calculate the employee's normal workweek.
- Therefore, an employee who works a 40-hour week and takes off 8 hours for FMLA uses one-fifth of a week of FMLA. These fractions may be converted to their hourly equivalent.

### **4. FMLA leave and use of paid and unpaid leave** (§825.207)

The Act was designed to provide unpaid leave for qualifying conditions. However, it allows the employer to require the employee to substitute accrued paid leave for FMLA leave. Snohomish County requires the employee to use the following:

- (a) must exhaust accrued sick leave, vacation leave, floating holidays and compensatory time when taking FMLA leave for his or her own serious health condition, unless the applicable labor agreement requires otherwise;
- (b) must exhaust accrued vacation leave, floating holiday and compensatory time when taking FMLA leave to care for a new child or for a qualifying exigency;
- (c) must use his or her choice of accrued vacation leave, compensatory time, sick leave, or floating holidays when taking FMLA leave for a family member's serious health condition or for care of a covered servicemember. All accrued leave must be exhausted unless the applicable labor agreement requires otherwise.

Once the required leave has been exhausted the remainder of the FMLA leave entitlement will be unpaid. Employee must satisfy any procedural requirements of paid leave policies when using paid leave.

### **5. The 12-month period** (§825.200(b))

At Snohomish County the 12-month period is determined as follows:

The 12-month period shall be measured forward from the date the employee's first FMLA leave begins. Under this method, an employee would be entitled to up to 12-weeks of leave during the year beginning on the first date FMLA is taken; the next 12-

month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.

**6. Leave for pregnancy or birth or the placement of a child for adoption or foster care** (§§825.120, 825.121 and 825.122)

- Both the mother and the father may take leave for the birth of their child and care for a healthy newborn child (bonding time), or for placement with the employee of a son or daughter for adoption or foster care. This leave entitlement expires at the end of the 12-month period beginning on the date of the birth or placement. Leave must be concluded within this one-year period.
- Both the mother and father may take FMLA leave for absences from work that are required before the placement of a child for adoption or foster care (for example: counseling sessions, court appearances, consultations with attorney or doctor).
- The mother may take FMLA leave for incapacity due to pregnancy, for prenatal care or for her own serious health condition following the child's birth.
- State action is required in the case of foster care (i.e., the placement of the child is made by, or with the agreement of, the State).

**7. Leave limited for a husband and wife who are both employed by Snohomish County** (§§825.120, 825.121, and 825.122)

A husband and wife who are both eligible for FMLA leave and work for Snohomish County are limited to a combined total of 12 weeks of leave during a 12-month period if the leave is taken:

- for the birth of the employee's son or daughter, or to care for the healthy child after birth; or
- for the placement of a child with the employee for adoption or foster care, or to care for the child after placement; or
- to care for the employee's parent with a serious health condition.

Each spouse is entitled to the difference between the amount of leave he or she has taken individually, for the reasons listed above, and his or her 12-week entitlement for other qualifying reasons i.e., employee's own serious illness, or the serious illness of a child or spouse. See also #16 regarding leave limitations for husband and wife caring for covered servicemember.

**8. FMLA leave taken intermittently or on a reduced leave schedule**  
(§§825.202, 825.203, 825.204 and 825.205)

- Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.
- Intermittent or reduced schedule leave may be taken for the employee's own serious health condition or to care for a parent, child, spouse or a covered servicemember when medically or psychologically necessary.
- Intermittent or reduced schedule leave may be taken due to a qualifying exigency (see #15 below).
- Intermittent or reduced schedule leave may be taken after the birth or placement of a child for adoption or foster care only if the Snohomish County supervisor agrees.
- If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to disrupt County operations.
- An employee on FMLA intermittent or reduced schedule leave that is foreseeable based on planned medical treatment may be transferred temporarily to an available alternative position with equivalent benefits and pay for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. This temporary transfer must be made in compliance with any applicable labor agreements, state and federal laws.
- Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to begin or end work mid-way through a shift, such as where a crew is already dispatched, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement.
- If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement as unpaid FMLA leave. In such a case, the employee is using intermittent or reduced schedule leave. This is not applicable to voluntary overtime.

**9. Counting a holiday as FMLA Leave** (§825.200)

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as FMLA leave has no effect; the week is

counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work on the holiday.

**10. Serious health condition entitling an employee to FMLA leave** (§§825.113, 825.114 and 825.115)

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either:

- **Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with or consequent to such inpatient care; or
- **Continuing treatment by a health care provider, which includes:**
  - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
    - Treatment two or more times by a health care provider, or a nurse under *direct* supervision of a health care provider, or by a provider of health care services under orders of or upon referral by a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity, absent extenuating circumstances ) or
    - one treatment by a health care provider (i.e., an in-person visit) within 7 days of the first day of incapacity with continuing treatment (e.g., prescription medication, physical therapy); or
  - (2) Any period of incapacity due to pregnancy, or for prenatal care; or
  - (3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity; or
  - (4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
  - (5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three consecutive days if not treated.

*NOTE: Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of serious health condition and do not qualify for FMLA leave. Therefore, if an employee is absent for more than three consecutive days for short-term medical reasons such as a cold/flu and the employee has not received treatment from a health care provider, then the employee is not required to provide an FMLA Certification of Health Care Provider.*

#### **11. Unable to perform the essential functions of the job** (§825.123)

In the “*Certification of Health Care Provider*”, the health care provider provides information about whether the employee is unable to work at all or specifies which of the essential functions of the employee’s position the employee is unable to perform within the meaning of the Americans with Disabilities Act (ADA). To assist the health care provider in making this determination, a copy of the employee’s job description should be attached to the certification form.

#### **12. Health care providers** (§825.125)

Health care providers must be authorized to practice by the State in which the provider practices and must be performing within the scope of his/her practice. The following list is not inclusive:

- Doctors of medicine or osteopathy
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors
- Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants
- Christian Science practitioners

#### **13. Definitions of spouse, parent, son or daughter** (§825.122)

- “Spouse” means a husband or wife as defined under Washington State law.
- “Parent” means a biological, foster, step or adoptive father or mother or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter as defined below. This term does not include a parent “in-law”.
- “Son or daughter” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under the age of 18, or 18 years of age or older and “incapable of self care because of a mental or physical disability.”

*Note:* The FMLA allows the employer to require that the employee provide documentation of the family relationship. This may take the form of a birth certificate, a court document, or a simple statement from the employee.

**14. Definitions of son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, parent of a covered servicemember and next of kin of a covered servicemember** (§825.122)

- “Son or daughter on covered active duty or call to covered active duty status” means the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.
- “Son or daughter of a covered servicemember” means the servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.
- “Parent of a covered servicemember” means a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include a parent “in law.”
- “Next of kin of a covered servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

NOTE: See #15 for the definition of “covered active duty”. See #16 for the definition of “covered servicemember.”

**15. Qualifying Exigency Leave** (§825.126)

Eligible employees may take up to a total of 12 workweeks of FMLA leave for any qualifying exigency while the employee’s spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

For a member of a regular component of the Armed Forces, “covered active duty” means duty during the deployment of the servicemember with the Armed Forces to a foreign country. For a member of the reserve component of the Armed Forces, “covered active duty” means duty during the deployment of the servicemember to a foreign country under a call or order to active duty under a provision of the law referred to in section 101 (a)(13)(B) of title 10, United States Code.

Qualifying exigencies include:

- Short Notice Deployment – To address issues arising from a covered military member’s call or order that is given 7 or less calendar days before deployment.

Leave for this purpose may be used for a period of 7 calendar days from the date of the notification;

- Military events and related activities – To attend official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active\_duty or call to covered active duty status of a covered military member;
- Childcare and related activities arising from the covered active duty or call to covered active duty status of a covered military member – To arrange for alternative childcare, provide childcare on a non-routine, urgent need basis, to enroll or transfer a child in a new school or day care facility, and to attend certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the covered active duty or call to covered active duty of the covered military member;
- Financial and legal arrangements – To make or update financial or legal arrangements to address a covered military member’s absence;
- Counseling – To attend counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the covered active duty or call to covered active duty status of the covered military member;
- Rest and Recuperation – To spend\_up to five days with a covered military member who is on short-term temporary rest and recuperation leave during deployment;
- Post-deployment activities – To attend arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member’s covered active duty status, and to address issues arising from the death of a covered military member;
- Additional activities – To address any other event that the employee and employer agree is a qualifying exigency and agree to both the timing and duration of such leave.

#### **16. Military Caregiver Leave (leave to care for a covered servicemember)**

(§825.127)

- An eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to a total of **26 workweeks** of leave during a “single 12-month period” to care for the servicemember.
- A covered servicemember is a current member of the Armed Forces (including a member of the National Guard or Reserves) who, for a serious injury or illness, is

undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. A “serious injury or illness” for such a servicemember is one that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

- A covered servicemember is also a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and was a member of the Armed Forces, National Guard or Reserves at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy. A “serious injury or illness” for such a servicemember is one that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.
- The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by Snohomish County for other types of FMLA leave.
- An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember).
- A husband and wife who are both eligible for FMLA leave and work for Snohomish County are limited to a combined total of 26 work weeks of leave during the single 12-month period to care for a covered servicemember.

**17. Health plans maintained by the employer during FMLA leave** (§§825.209, 825.210, 825.212 and 825.213)

During any period of paid or unpaid FMLA leave Snohomish County will maintain the employee’s coverage under the health plans at the same level as would be maintained were the employee able to work. If there is a monthly employee contribution to any health plan premium, the employee must continue to pay his or her portion during FMLA leave. If the employee is receiving a pay check while on FMLA (using accrued sick leave, vacation leave, floating holidays or compensatory time), deductions for the medical premium and voluntary supplemental benefits, if any, are taken from the employee’s pay check in the same manner as when the employee is at work. If the employee has exhausted accrued leave and is on unpaid FMLA leave, the employee is responsible for paying the employee’s portion of the medical premium and for paying all voluntary supplemental benefits.

- The health plans currently maintained by Snohomish County for employees on FMLA leave are medical, dental, vision, group term life insurance, and long-term disability.
- Payments of supplemental voluntary benefit plans are solely the employee's responsibility.
- Prior to going on unpaid leave, the employee must make arrangements with the Finance Department at 425-388-3401 (ask for the benefits coordinator) to schedule payments of his/her share of the premium and/or voluntary supplemental benefits.
- An employee who chooses to waive medical benefits and/or voluntary supplemental benefits coverage while on FMLA must complete the Waiver of Health Care Coverage form available on the HR G-drive and send it to the Human Resources Department. Upon return to work, the employee must complete benefit enrollment forms and notify Human Resources to reinstate medical benefits.
- If payment for the employee's portion of the health plan premiums is more than 30 days late, Snohomish County may cease providing health care insurance coverage during unpaid FMLA leave.
- Snohomish County may recover its share of health plan premiums from the employee if the employee fails to return to work 30 calendar days after the end of the FMLA leave entitlement, unless the employee does not return because of:
  - (1) Continuation, recurrence or onset of a serious health condition of the employee or the employee's family member or a serious injury or illness of a covered servicemember which would otherwise entitle the employee to leave under FMLA; or
  - (2) other circumstances beyond the employee's ability to control.

**18. Employee's reinstatement rights upon returning to work** (§§825.214, 825.215, and 825.216)

- On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when FMLA leave commenced, or to an equivalent position. However an employee has no greater right to reinstatement, or to other benefits and conditions of employment, than if the employee had been continuously employed during leave.
- If an employee is unable to perform an essential function of the position because of a physical or mental condition, the employee has no right to restoration to another position under the FMLA. However, other laws may apply. Please consult with the Human Resources Department.

**19. Hourly deductions from the salary of a FLSA-exempt employee for unpaid intermittent FMLA leave** (§825.206)

The FMLA provides that deductions may be made from the salary of an employee who is exempt under the Fair Labor Standards Act (FLSA-exempt) for the hours taken as intermittent or reduced schedule FMLA leave within a workweek without affecting the exempt status of the employee. The procedure to make such salary deductions is as follows:

- (1) FLSA-exempt employee is temporarily assigned non-exempt status. Payroll staff makes this notation on payroll records.
- (2) While on reduced schedule or intermittent leave, employee records the number of hours worked each day on payroll records.
- (3) During the FMLA leave, the employee will be required to exhaust applicable leave, dependent upon the reason for FMLA leave, as stated in this guide.
- (4) Payroll staff follows procedures to determine the appropriate hourly rate.
- (5) When FMLA leave has concluded, employee is reassigned to FLSA-exempt status. Payroll staff makes this notation on payroll records.

**20. Workers' Compensation and the FMLA** (§§825.207, 825.216, 825.220, and 825.702)

A serious health condition may result from an injury or illness on or off the job. If the injury or illness occurred on the job, the employee may be eligible for both FMLA leave and Workers' Compensation. The Workers' Compensation absence will be counted against the employee's FMLA leave entitlement. The following will apply:

- The Workers' Compensation absence is a paid leave under the provisions of State law. At Snohomish County, the employee may substitute appropriate accrued leave for hours not paid by Workers' Compensation while on concurrent FMLA leave.
- The health care provider may certify that the employee is able to return to a "light duty" job, but unable to return to employee's original position. In this case, if the employee declines the offer of a "light duty" job, it may cause some Workers' Compensation benefits to cease. However, even if the employee declines a "light duty" job he/she will remain on FMLA leave. While on FMLA leave, the employee will be required to exhaust applicable leaves as stated in this guide. If at the end of the 12-week FMLA entitlement the employee is still unable to return to his or her original or equivalent position, the employee will lose reinstatement rights under the FMLA.
- If the employee voluntarily accepts a "light duty" job while recovering from a serious health condition, he/she will retain the right to restoration to the same or equivalent

job that he/she left while performing light duty (i.e., the right to restoration is held in abeyance) or until the end of the applicable 12-month FMLA leave year (whichever comes first).

- As the employer, Snohomish County authorizes the Risk Management Division of the Finance Department to have direct contact with the Workers' Compensation health care provider to clarify or authenticate medical certification.

**21. FMLA interaction with other laws** (§§825.701 and 825.702)

Under some conditions the Washington pregnancy disability leave and Washington family leave laws may provide additional leave entitlements to the FMLA. *Please call Human Resources for guidance on this issue and refer to Washington State Department of Labor website at <http://www.lni.wa.gov/WorkplaceRights>*

- The FMLA does not supersede any state or local law that provides greater family or medical leave rights than FMLA. If leave qualifies for FMLA leave and leave under state law, the leave used counts against the employee's entitlement under both laws.
- The FMLA does not modify or affect federal or state laws on discrimination or Americans with Disabilities Act.

**22. Supervisor Checklist: Notification and forms required FROM SNOHOMISH COUNTY to the EMPLOYEE** (§§825.300, 825.301, 825.304 and 825.307)

- FMLA Poster* – post in conspicuous places in work areas where it can easily be seen by employees and applicants for employment. To print a copy go to <http://www.dol.gov/whd/fmla/finalrule/FMLAPoster.pdf>
- Notice of Eligibility and Rights and Responsibilities* (DOL Form WH-381) – Provide to employee within 5 business days (absent extenuating circumstances) when employee requests leave or employer acquires knowledge that leave may be for FMLA-qualifying reason. Provide whether employee is eligible or not eligible. Provide again for subsequent need for FMLA leave for new qualifying reason during the applicable 12-month period only if employee's eligibility status has changed.
- Designation Notice* (DOL Form WH-382) – Provide to employee (when Snohomish County receives the applicable certification that determines whether or not leave is for FMLA-qualifying reason or receives the written employee request to care for newborn or newly adopted or foster child). This form must be provided within 5 business days absent extenuating circumstances. Provide this form for each FMLA-qualifying reason within the 12-month FMLA year. The supervisor must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA entitlement in the Designation Notice. If the amount of leave is unknown (e.g. due to intermittent leave) then the supervisor must provide written notice, upon request by the employee, no more than once in a 30-day period (if

leave was used during that period) of the amount of leave counted against the employee's FMLA entitlement.

- Provide applicable FMLA Certification at time of employee notice of need for leave or at the time the employer has knowledge that leave may be for FMLA-qualifying reason or within 5 business days thereafter.
  - *Certification of Health Care Provider for Employee Serious Health Condition (WH-380E)*
  - *Certification of Health Care Provider for Family Member Serious Health Condition (WH-380F)*
  - *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (WH-385)*
  - *Certification of Qualified Exigency for Military Family Leave (WH-384)*

Require return of certification to Snohomish County within 15 calendar days.

- Require written request for leave, instead of a FMLA Certification, from the employee if FMLA leave is for care of a healthy newborn child or for placement of a son or daughter for adoption or foster care. The written request must include reasons for the leave, the anticipated start date and the anticipated duration of leave. Documentation of the birth, adoption or foster care may be requested.
- May retroactively designate leave as FMLA leave with required notice to the employee only if failure to timely designate leave does not cause harm to the employee or if Snohomish County and employee mutually agree to retroactive designation.
- If applicable certification (or written request along with appropriate documentation in the case of FMLA leave for adoption or placement for foster care) is incomplete or insufficient, notify employee in writing of the deficiency what information is needed, and the consequence of failure to provide requested information. Allow 7 calendar days to cure the deficiency. If not cured, may deny FMLA leave.
- Require a *Release for Work Authorization* form prior to employee's return to work if FMLA leave is for the employee's own serious health condition. A *Release for Work Authorization* form may not always be required for an employee returning from intermittent leave. Please consult with the Human Resources Department if you need assistance determining the requirement.
- Send copies of *Notice of Eligibility (WH-381)* and *Designation Notice (WH-382)* to Human Resources M/S 503. Retain copies for department.
- Send all original medical certifications forms and notices to Human Resources M/S 503. Do not make copies.

Note: FMLA restricts communications with the employee's Health Care Provider. Snohomish County may contact a health care provider only for purposes of clarification and authentication of medical certification through a health care provider, Human Resources, an administrator, or management official – not the direct supervisors – and when seeking clarification, only with a valid HIPAA release from the employee. Please work with Human Resources Department prior to contacting a Health Care Provider.

**23. Employee Checklist: Notification and forms required FROM the EMPLOYEE to SNOHOMISH COUNTY** (§§825.302, 825.303 and 825.304)

- Must provide notice to his/her Snohomish County supervisor at least 30 days prior to the date FMLA leave commences for leave that is foreseeable, or as soon as practicable. If the leave is not foreseeable, notice must be given as soon as practicable, usually same day or next business day. Notice must be at least verbal and with sufficient information to make Snohomish County supervisor aware the employee needs FMLA-qualifying leave.
- Must provide required leave request form including reason for leave, duration of leave and anticipated start of leave.
- Must consult with the Snohomish County supervisor when planning medical treatment and make a reasonable effort to schedule the leave so as not to unduly disrupt Snohomish County operations, subject to approval by the health care provider.
- Must provide reasons of why the intermittent or reduced leave schedule is necessary, the schedule for treatment, and attempt to work out reasonable schedule without undue disruption of operation.
- Retain a copy of and read the *Eligibility and Designation* forms, *FMLA Guide* and other related forms provided by the supervisor regarding FMLA.
- Return completed certification (or recertification), and release for work authorization as requested by Snohomish County. Certifications must be complete and sufficient. In the case of FMLA leave for the care of a healthy newborn child, or placement of a child for adoption or foster care, must submit a written request to the Snohomish County supervisor detailing reason for leave, estimated time needed, and include the applicable birth certificate or the documentation from Court and/or State in place of completed certification.
- Respond to Snohomish County Supervisor's or Manager's questions designed to determine whether the leave requested is for a FMLA-qualifying reason.

Note: If the employee fails to provide the required notice with no reasonable excuse, Snohomish County may waive the requirement for notice or may delay the authorization and use of FMLA leave. Furthermore, an employee's failure to comply with requests for FMLA certification that is complete and sufficient and other information may result in denial of FMLA and unauthorized leave. If an employee fails to provide a requested return to work form the employer may delay the employee's restoration to work until the employee submits the requested form.

#### **24. Records must be kept to comply with FMLA** (§825.500)

Snohomish County is required to make and keep pertinent FMLA records at least 3 years. The supervisor should ensure the following records are kept:

- Dates, and hours if less than a full day, of FMLA leave should be designated in the eligible employee's records (e.g. timesheet, database, or spreadsheet) specifically as FMLA leave.
- Copies of all employee requests, notices, leave forms, notice of eligibility, designation notice forms, and records of disputes given to or received from the employee.
- The *Certification of Health Care Provider* forms, recertifications, Certification for Serious Injury or Illness of Covered Servicemember, Certification of Qualifying Exigency and any other medical documents should be sent to Human Resources Department, M/S 503, to be placed in confidential medical files. Send the original and do not copy.

### Family and Medical Leave Act Forms

The following are the links to the U.S. Department of Labor (DOL) FMLA forms used by Snohomish County. Please read each form carefully to ensure accurate completion. See Sections #22 and #23 of this guide for more information.

Form Name and Link	When to Use This Form	Tips for Using the Form
<a href="#">WH-381 Notice of Eligibility and Rights &amp; Responsibilities (PDF)</a>	<p>When the employee requests leave or the County has knowledge that the leave may be for FMLA qualifying reason</p>	<ul style="list-style-type: none"> <li>• Provide to employee whether the employee is eligible or not</li> <li>• Attach applicable DOL FMLA Certification form (with employer's portion completed)</li> <li>• Fill in all required areas of the form including the date certification is due to be returned to supervisor</li> <li>• Fill in the supervisor's name for the contact person for employee questions</li> <li>• Fill in the "Finance Benefits Coordinator at 425-388-3401" for the employee to contact to make arrangements to continue to make the employee's share of the premium payments</li> <li>• Employees are required to use paid leave as stated in this guide</li> <li>• Regarding the FMLA 12-month period, select the option of "the 12-month period measured forward"</li> <li>• Provide the employee with the original copy. Keep a copy for your file and send a copy to the HR Personnel file</li> </ul>
<a href="#">WH-382 Designation Notice (PDF)</a>	<p>When the employee provides the applicable certification that determines whether or not leave is for FMLA-qualifying reason, and</p> <p>When the employee provides written request to care for newborn, newly adopted child, or foster child</p>	<ul style="list-style-type: none"> <li>• Employees are required to use paid leave as stated in this guide</li> <li>• Employees are required to present a fitness for duty certificate (attach Release for Work Authorization Form)</li> <li>• Attach employee's job description</li> <li>• Provide the employee with the original copy. Keep a copy for your file and send a copy to the HR Personnel file</li> </ul>
<a href="#">WH-380-E Certification of Health Care Provider</a>	<p>For each eligible employee placed</p>	<ul style="list-style-type: none"> <li>• Form must be returned within 15 calendar days to the supervisor</li> </ul>

<a href="#"><u>for Employee's Serious Health Condition (PDF)</u></a>	<p>on or requesting FMLA leave</p> <p>Section 1 to be completed by the employer</p>	<ul style="list-style-type: none"> <li>• Attach employee's job description</li> </ul>
<a href="#"><u>WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition (PDF)</u></a>	<p>For each eligible employee's covered family member;</p> <p>Section 1 to be completed by the employer</p>	<ul style="list-style-type: none"> <li>• Form must be returned within 15 calendar days to the supervisor</li> </ul>
<a href="#"><u>WH-384 Certification of Qualifying Exigency For Military Family Leave (PDF)</u></a>	<p>For eligible employees with a covered family member seeking leave for a qualifying exigency;</p> <p>Section 1 to be completed by the employer</p>	<ul style="list-style-type: none"> <li>• Form must be returned within 15 calendar days to the supervisor</li> <li>• A copy of the Military orders or other documentation from the military is required</li> </ul>
<a href="#"><u>WH-385 Certification for Serious Injury or Illness of Covered Servicemember</u></a>	<p>For each eligible employee's covered family member</p>	<ul style="list-style-type: none"> <li>• Form must be returned within 15 calendar days to the supervisor</li> <li>• Form must be completed by healthcare provider who meets the requirements listed in Section 2 of the form</li> </ul>

Note: As of June, 2011--The Department of Labor is still in process of revising the forms regarding Qualifying Exigency Leave and leave for a Serious Injury or Illness of a Covered Servicemember.

# NON-INDUSTRIAL INJURY/ILLNESS RELEASE FOR WORK AUTHORIZATION



Snohomish County ! 3000 Rockefeller Ave. M/S 503 ! Everett, WA 98201-4046 ! (425) 388-3411

**This form must be completed to enable the Employee to return to work  
Supervisor/Manager: Please attach employee job description**

Dear Physician:

Snohomish County may be able to modify the employee's job to meet his/her medical or physical limitations. When necessary, transitional work assignments may also be available. Please be specific as to the employee's restrictions so we may take the appropriate action. THANK YOU.

Employee's Name	Job Title/Department	Date of Injury/Illness
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### PHYSICIAN'S RESTRICTIONS AND RECOMMENDATIONS

<b>Is the employee authorized to return to work?</b>	<b>Date authorized to return:</b>		
_____ Yes, with no restrictions.			
_____ Yes, with the following medical or physical restrictions:	_____		
_____	_____		
_____	_____		
Anticipated date restrictions may be removed? _____			
_____ No, Anticipated date when employee may be released: _____			
Is further treatment necessary?    Yes <input type="checkbox"/> No <input type="checkbox"/>			
Name of treating physician (Please print)	Signature of treating physician	Date	
Mailing Address	City	State	Telephone Number
Employee Signature	Date	Supervisor's Signature	Date