

**Cottonwood, Inc.  
Policies and Procedures**

**SECTION:** Personnel

**POLICY NO:** 03-043

**SUBJECT:** Family & Medical Leave Act

**PAGE(S):** 1 of 6

**EFFECTIVE DATE:** August 5, 1993

**Policy:**

If requested, Cottonwood, Inc., shall grant up to 12 work weeks of family and medical leave during a 12 month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The FMLA leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances as specified in this policy.

**Spouse, Parent, and Child Definitions** Spouse is defined in accordance with applicable state law, including common law marriages where recognized by the state. DOL interprets from the legislative history that unmarried domestic partners are not intended to qualify for family leave to care for their partner.

Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. Persons who are "in loco parentis" includes those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. The term does not include "parents-in-law."

Son or daughter means a biological, adopted, or foster child, a stepchild, legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability." In determining "mental" or "physical disability" and "incapable of self-care," FMLA regulations adopt the applicable ADA definitions.

**Procedures:**

1. To use leave as described in this policy, the employee must request it.
2. **Procedure for Requesting Leave:** Except where leave is unforeseeable, all employees requesting leave under this policy must submit their request in writing to their immediate supervisor with a copy to the Human Resources Director. When an employee plans to take leave under this policy, the employee must give the company 30 days' notice. If it is not possible to give 30 days' notice, the employee must give as much notice as is possible. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to Cottonwood, Inc.'s operations.

3. Eligibility: In order to qualify to take family and medical leave under this policy, the employee must meet both of the following conditions:

- (a) The employee must have worked for the employer at least 12 months, or 52 weeks.
- (b) The employee must have worked at least 1250 hours during the previous 12-month period.

4. Type of Leave Covered: In order to qualify as FMLA leave under this policy, the employee must be taking the leave for one of the reasons listed below:

- (a) the birth of the employee's child and in order to care for that child during the first 12 months of life;
- (b) the placement of a child for adoption or foster care during the first 12 months the child is in the employee's home;
- (c) to care for a spouse, child, or parent with a serious health condition; or
- (d) the serious health condition of the employee which makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. A health care provider is defined as; a doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, and Christian Science practitioner.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Examples of a serious health condition include: heart attacks or other serious heart conditions, most cancers, strokes, appendicitis, pneumonia, and ongoing pregnancy and prenatal care. Generally, a chronic or long term health condition which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.

Employees with questions about what illnesses are covered under this FMLA policy or under the Cottonwood, Inc.'s sick leave policy are encouraged to consult with the Human Resource Director.

Cottonwood, Inc. will require an employee to provide a doctor's certification of the serious health condition. The certification process is outlined in Procedure 10.

5. Length of Leave: An eligible employee can take up to 12 workweeks of leave under this policy during a 12-month period based on the date of their eligibility. Each time an employee takes FMLA leave, the Human Resources Director will compute the amount of leave the employee has taken under this policy and subtract it from the 12 workweeks of available leave, and the balance remaining is the amount the employee is entitled to take during the remainder of that 12-month period. The method used by Cottonwood, Inc. for calculating the "twelve month period" in which the 12 work weeks leave entitlement

occurs is the "rolling" 12 month period, measured backward from the date an employee uses any FMLA leave.

Part-time employees will be eligible for a prorated leave based on their scheduled hours. For example, one week of FMLA leave for a half-time employee would equal 20 hours of leave.

If both legal parents work for Cottonwood, Inc. and each wishes to take leave for the birth of a child, adoption or placement of a child in their home for foster care, the parents may only take a total of 12 work weeks of leave.

If both spouses work for Cottonwood, Inc. and they each take leave due to serious illness of themselves, their spouse, or their child, their collective leave that year may be 24 work weeks (12 work weeks for each spouse).

Kansas law requires that a woman disabled by pregnancy be entitled to a job protected leave until she recovers from this disability. In certain situations, a pregnancy disability leave may exceed 12 work weeks.

6. Employee Status and Benefits During Leave: While an employee is on leave, Cottonwood, Inc. will continue the employee's insurance benefits during the leave period at the same level and under the same conditions as if the employee has continued to work. If the employee does not return at the end of the leave period, the employee's notification of his/her intent not to return will be the COBRA qualifying event.

If the employee chooses not to return to work for reasons other than a continued serious health condition, Cottonwood, Inc. will require the employee to reimburse the amount it paid for the employee's health insurance premiums during the leave period.

If the employee currently pays a portion of the health insurance premium, the employee will continue to be responsible for these premiums while on FMLA leave. While on paid leave, Cottonwood, Inc. will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the Human Resources Director by the 20th day of the preceding month. If the payment is late, the employee's health care coverage may be discontinued for the duration of the leave.

Vacation & Sick Leave continue to accrue while on FMLA leave.

7. Employee Status After Leave: An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

Cottonwood, Inc. may choose to exempt certain highly compensated employees from this requirement and not return them to the same or similar position. Under the FMLA, "key" employees are employees who are salaried and whose year-to-date earnings place the employee in the top 10% of salaried employees. These "key" employees may be denied the right to return to the same or equivalent job if Cottonwood, Inc. can show that returning the employee to the same or similar position would cause substantial and

grievous economic harm to Cottonwood, Inc.. If such a decision is made, the employee's supervisor will communicate it to the employee early in the FMLA leave to give the employee the opportunity to forego the leave or return from leave.

8. Use of Paid and Unpaid Leave: If the employee is taking leave to care for covered family members and has accrued vacation leave the employee **must** use all vacation leave first and **may** use accumulated sick leave as FMLA leave under this policy.

An employee who is taking leave because of the employee's own serious health condition, including a disability resulting from pregnancy, must use all accrued sick leave then vacation leave prior to being eligible for unpaid leave. For example, if an employee has earned one week of vacation leave and one week of sick leave, the employee would be able to take two weeks paid and 10 weeks unpaid FMLA leave under this policy.

An employee taking leave to care for a newborn child must use all accrued paid vacation, may use sick leave, and then will be eligible for unpaid leave, if necessary, for the remainder of the FMLA leave. However, for the duration of the hospital stay or for recovery, as in the case of a caesarian birth, either spouse may use sick leave first before taking vacation leave.

An employee who has used up all of his/her vacation benefit as described in the paragraph above regarding newborns, and will not accrue additional vacation benefit for several weeks, but has sufficient sick leave benefit remaining, may convert up to a maximum of 6 days of sick leave for up to a maximum of three days of vacation benefit.

9. Intermittent Leave or a Reduced Work Schedule: The employee may take FMLA leave in 12 consecutive work weeks, may use the leave intermittently (take a day periodically, when needed over a calendar year), or may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks over a 12 month period.

For the birth, adoption or foster care of a child, the Department Director and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced schedule.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Department Director before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. Cottonwood, Inc. will require certification of the medical necessity, discussed in Procedure 10.

Cottonwood, Inc. may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

10. Certification of the Serious Health Condition: Cottonwood, Inc. will require certification of the serious health condition. The employee should try to respond to such a request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification

must be provided by using the Medical Certification Form obtained from the Human Resources Director.

Certification of the serious health condition shall include: the date when the condition began, its expected duration, diagnosis, and a brief statement of treatment. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. The employee's job description may be provided to the health care provider to help determine the employee's inability to work. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

Cottonwood, Inc. has the right to ask for a second opinion if it has reason to doubt the certification. Cottonwood, Inc. will pay for the employee to get a certification from a second doctor, which Cottonwood, Inc. will select.

If necessary to resolve a conflict between the original certification and the second opinion, Cottonwood, Inc. will require the opinion of a third doctor. Cottonwood, Inc. and the employee will jointly select the third doctor, and Cottonwood, Inc. will pay for the opinion. The third opinion will be considered final.

While on leave, employees are requested to report periodically to their supervisor regarding the status of the medical condition, and their intent to return to work. Medical certification from the health care provider may be required every 30 calendar days while on leave.

If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice.

11. Return from Leave: An employee returning from FMLA leave necessitated by their own serious health condition must present a statement from the health care provider that the employee is able to resume the job.

12. Failure to Return from Leave: An employee who fails to return to work at the expiration of the FMLA leave will be considered to have voluntarily resigned.

The Department of Labor issued new regulations under the FMLA on November 17, 2008. The regulations take effect on January 16 2009. Section 585 (a) of the National Defense Authorization ACT (NDAA) amended the FMLA to provide two new leave entitlements:

1. Military Caregiver Leave (also known as Covered Servicemember Leave):

- A. Eligible employees who are family members of covered servicemembers will be able to take up to 26 work weeks of leave in a “single 12-month period” to care for a covered servicemember with a serious illness or injury incurred in the line of duty while on active duty, and unable to perform duties of “his or her office, grade, rank, or rating,” is undergoing medical treatment, recuperation or therapy, and requires inpatient treatment two or more times within 30 days.
- B. Covered servicemembers include current members of regular Armed Forces, current members of National Guard, or Federal Reserve, and all members of these services who are on the temporary disabled retired list. This leave is not available for relatives of servicemembers who are on the permanent disabled list.
- C. Eligible employees include spouse, son, daughter, parent, or next of kin of covered servicemember (parent does not include in-laws).
- D. Leave may be continuous, intermittent, or on a reduced schedule.

2. Qualifying Exigency Leave:

- A. Applies only to families of National Guard, Reservists, and Retired Military (from regular Armed Forces or Reserves). (Does not include current members of regular Armed Forces or State militia calls to active duty unless they are called up on support of a U.S. operation).
- B. Eligible employees includes spouse, son, daughter, or parent.
- C. Call to active duty includes current active duty, call to active duty, notice of call to active duty, or retention on active duty during a war or during a national emergency declared by the President or Congress.
- D. Qualifying Exigency is defined as:
  - 1. short-notice deployment (7 days notice or less).
  - 2. military events and related activities (ceremonies, briefings, etc.).
  - 3. childcare and school activities.
  - 4. financial and legal arrangements.
  - 5. counseling.
  - 6. “Rest and Relaxation” (limited to 5 days).
  - 7. post-deployment activities (including debriefings or funeral-related matters).
  - 8. other events agreed to by employer/employee.
- E. Qualifying exigency leave counts against the employee’s 12 week per 12 month total allotment of FMLA leave.

Both of these new categories of leave are subject to procedures #2,3,6,7,8,9,10 and 12. Any time taken under these two new categories is counted toward the employee’s total allotment of FMLA leave.