

# Big Bend Community Based Care Policy & Procedure

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**Series:** 1100: Human Resources

**Policy Name:** Family Medical Leave Act (FMLA) and Return to Work

**Policy Number:** 1127

**Origination Date:** 02/17/2009

**Revised:** Board Meeting of 12/13/2018

**Regulation:** CFOP 60-1

## Referenced Documents:

1100-1127 x 1, U.S. Dept. of Labor Form WH-380, Certification of Health Care Provider

1100-1127 x 2, U.S. Dept. of Labor Form WH-381, Employer Response to Employee

1100-1127 x 3, Request for Family and Medical Leave

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## Policy

It is the policy of Big Bend Community Based Care, Inc. (BBCBC), to grant leave to eligible employees in accordance with Family and Medical Leave Act of 1993 (FMLA) regardless of the size of the BBCBC work group. The Policy will be executed as described in the following procedures, with the exception of the geographical limit of seventy-five (75) miles. For the purposes of BBCBC the geographic limitation will not be considered as a factor, only the length of employment and hours worked.

## Procedure

### A. [Generally.]

1. Employees with at least twelve (12) months of service who have worked one thousand two hundred fifty (1,250) hours over the preceding twelve (12) months, and who work at a work site at which BBCBC employs fifty (50) or more employees within seventy-five (75) miles of that location may take up to twelve (12) weeks of unpaid leave in accordance with the Family and Medical Leave Act of 1993, as amended, (FMLA) for the following reasons:
  - a. Birth and/or care of a child of the employee, and to care for the newborn child;
  - b. Placement of a child into the employee's home by adoption or by foster care arrangement;
  - c. Care of the employee's spouse, child or parent who has a serious health condition; and
  - d. Inability of the employee to perform the functions of the employee's position due to a serious health condition.
  - e. **Family Leave Due to a Call to Active Duty.** This benefit provides twelve (12) weeks of FMLA leave due to a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces. Leave may be used for any "qualifying exigency" arising out of the service member's current tour of active duty or because the service member is notified of an impending call to duty in support of a contingency operation.



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- c. If the employee does not return from leave, BBCBC may recover premiums for maintaining group health coverage paid during the leave unless the employee's failure to return to work was due to medical or other circumstances beyond the control of the employee.
9. Upon return from a family or medical leave, an employee will be returned to the same or an equivalent position with the same pay and benefits with two (2) exceptions:
- a. **Exception 1:** If an employee fails to provide a required fitness-for-duty medical certification, the agency may delay the employee's return until such certification is provided.
  - b. **Exception 2:** Reinstatement may be denied to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the agency's operations.
  - c. For the purpose of this policy, a key employee is defined as a salaried employee eligible for leave under this policy whose pay is among the top ten percent (10%) of all BBCBC employees within a seventy-five (75) miles radius of the employee's work site.

## **B. FMLA Certification and Leave Request Procedure:**

- 1. To request leave for a serious health condition of either the employee or immediate family member, (i.e., spouse, child, parent) the employee will be required to submit certification from a medical doctor (or other appropriate health care provider) on the Certification of Health Care Provider form stating:
  - a. The medical facts which support the certification that the leave is for a serious health condition as defined under the Family and Medical Leave Act of 1993;
  - b. The approximate date on which the serious health condition began;
  - c. The probable duration of the condition.
- 2. For a serious health condition of the employee, the certification from the medical doctor should contain:
  - a. Whether the employee is able to perform work of any kind;
  - b. Whether the employee is able to perform any one (1) or more of the essential functions of the employee's position (based on a job description that will be provided by BBCBC to the health care provider);
  - c. Whether the employee must be absent from work for treatment;
  - d. Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis as a result of the condition and the probable duration of such schedule;
  - e. If the condition is pregnancy or a chronic condition, whether the employee is incapacitated and the likely duration and frequency of episodes of incapacity;
  - f. If additional treatments will be required:
    - i. The probable number of such treatments;
    - ii. Whether the treatments will be intermittent or require a reduced schedule and an estimate of the probable number of treatments, the interval between such treatments and the period required for recovery, if any;

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- iii. If any of the treatments will be provided by another health care provider and the nature of the treatments.
3. For a serious health condition of an employee's family member, the care the employee will provide, an estimate of the time period, and:
  - a. A statement that the employee is needed to assist the patient for basic medical or personal needs or safety or transportation or a statement that the employee's presence to provide psychological comfort to the patient would be beneficial to the patient or assist in the patient's recovery;
  - b. If the leave needs to be intermittent or on a reduced leave schedule and the probable duration of the need.
4. When leave for a serious medical condition is foreseeable, employees must provide such a medical certification within fifteen (15) calendar days of their leave request unless it is not practicable under the particular circumstances to do so despite their diligent good faith efforts.
  - a. The CEO or designee will provide the employee with a copy of the employee's job description and the "Certification of Healthcare Provider" Wage and Hour Form WH-380, which the employee should give to his/her physician for completion.
  - b. If the employee fails to provide the certification within fifteen (15) calendar days, the leave may be delayed until a reasonable period after the required certification is provided.
  - c. When such a leave is not foreseeable, the employee must provide certification as soon as reasonably possible under the circumstances requiring the leave. Failure to provide a medical certification within a reasonable time under the circumstances may result in a delay of the continuation of the employee's leave.
  - d. If the employee never produces the required certification, the leave will not be Family and Medical Leave and the employee will not be entitled to Family and Medical Leave protection.
5. An employee's FMLA 12-week leave entitlement will run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition under the FMLA.
6. BBCBC will allow an injured employee on worker's compensation to draw from available PTO to cover the difference in the amount between the worker's compensation indemnity benefit and the employee's full compensation. **The employee must specifically request this in writing to BBCBC.**
7. Employees returning to work from FMLA leave due to a work related injury or illness shall be returned to work in accordance with the agency's Return to Work Policy and in compliance with the return to work requirements of the FMLA.
8. When it is determined that the employee's need for leave qualifies as FMLA leave, the CEO or designee shall designate the leave as FMLA leave by providing written notification to the employee and also notify the employee of the following:
  - a. That the leave will be counted against the employee's annual FMLA leave entitlement;
  - b. Any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

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- c. The employee's right to substitute paid leave and BBCBC's requirement of the substitution of sick and vacation leave, and the conditions related to this substitution;
  - d. Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);
  - e. Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;
  - f. The employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;
  - g. The employee's right to restoration to the same or equivalent job upon return from leave;
  - h. The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.
9. The CEO or designee should then:
- a. Complete the "Employee Response to Employee Request for Family and Medical Leave" Wage and Hour Form WH-381 and mail this form and the "Your Rights Under the Family and Medical Leave Act of 1993" form to the employee via certified mail to the employee's address of record within two (2) business days. A copy shall be retained in the employee's medical file.
  - b. If the FMLA notification to the employee cannot be provided with the specified two (2) business days, then the CEO or designee should complete the "Employee Response to Employee Request for Family and Medical Leave" and the "Your Rights Under the Family and Medical Leave Act of 1993" form to the employee as soon as possible. In this circumstance, the effective date for the FMLA leave will be the date the FMLA notice was sent to the employee via certified mail.
  - c. The CEO or designee will record the commencement date of the FMLA leave and the probable duration.
  - d. File FMLA documents including the FMLA notification, the completed medical certification, and certified mail receipts and other provider documentation in the employee's medical file.
10. Employees who take leave due to their own serious health condition will be required to provide a fitness-for-duty certification from their health care provider stating that they are able to perform the essential functions of their job, with or without reasonable accommodation prior to returning to work.
11. Employee's returning to work from FMLA leave due to a work related injury or illness shall be returned to work in accordance with the return to work rights afforded them under the FMLA.