

# Fond du Lac Band of Lake Superior Chippewa

## Family Medical Leave Policy



**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA  
FAMILY MEDICAL LEAVE POLICY**

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**PURPOSE:** The purpose of the Fond du Lac Family Medical Leave (FDL-FML) Policy is to provide a safety net for the employees of the Fond du Lac Band by establishing standardized guidelines for a leave of absence based on employee and family-related medical necessity. The FDL-FML Policy applies in circumstances where a serious medical condition affecting employees or their immediate family lasts for more than a few days. Minor illnesses are addressed by the sick leave policy or paid leave policy for employees.

The Fond du Lac Family Medical Leave Policy is adopted pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as retained under the Treaty of LaPointe, 10 Stat, 1109, and as recognized under the Indian Reorganized Act, 25 U.S.C. § 476, and is intended to be interpreted and applied consistently with both federal Family Medical Leave Act, 28 U.S.C. § 2601 et seq., and with the laws and policies of the Fond du Lac Band.

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**I. DEFINITIONS**

- a. Continuing Treatment means a serious health condition involving continuing treatment by a health care provider including any one or more of the following:
  - 1. A period of incapacity (i.e., inability to work or attend school or perform other regular daily activities due to serious health conditions, treatment therefore or recovery there from) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
    - i. Treatment two or more times by a health care provider; or
    - ii. Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider;
  - 2. Any period of incapacity due to pregnancy or for prenatal care;
  - 3. Any period of incapacity or treatment for incapacity due to a chronic serious health condition. A chronic serious health condition is on which:
    - i. Requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under the direction of a health care professional; or

- ii. Continues over an extended period of time including recurring episode; or
    - iii. May cause episodic rather than continuing period of incapacity.
  - 4. A period of incapacity, which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care professional; or
  - 5. Any period of absence to receive multiple treatment (including a period of recovery from treatments) by a health care provider or by a health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention.
- b. Eligible Employee means a current employee who
- 1. Within the past seven years, has worked for the Fond du Lac Band for twelve months; and
  - 2. During the previous twelve months prior to the date of the event has worked more than 1,250 hours (excluding holiday, vacation, PTO, and sick leave).
- c. Employee means an employee for the Fond du Lac Band, including an employee of any program, enterprise, construction or other subdivision of the band.
- d. Employer means the Fond du Lac Band of Lake Superior of Chippewa. For the purpose of the administering this policy. “Employer” shall mean the Division Director with supervisory responsibility over the employee utilizing FDL-FML under this policy.
- e. Health Care Provider means doctor of medicine or osteopathy authorized to practice medicine or surgery under applicable law in the jurisdiction in which the doctor practices;
- 1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice under applicable law in the jurisdiction in which the doctor practices and performing within the scope of their practice under applicable law;

2. Nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under applicable law in the jurisdiction in which the scope of their practice as defined under applicable law;
  3. Any health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.
- f. Group Health means any plan of, or contributed to by, an employer (including self-insured plan) to provide health care (directly or otherwise) to the employer's employee, or families of such employee.
  - g. Incapable of Self Care means the individual requires active assistance or supervision to provide daily self-care in the activity of daily living.
  - h. Incapacity means the inability of an eligible employee or eligible family member to perform the duties required in a job or to attend school.
  - i. Intermittent Leave means leave taken in separate periods of time due to a single illness or injury, rather than one continuous period of time. May include leave for periods of an hour or more over several weeks.
  - j. Parent means a biological, adopted, foster parent, stepparent, legal ward, or a person standing in as a parent of a child.
  - k. Physical or Mental Disability means physical or mental impairment the substantially limits one or more of the major life activities of an individual.
  - l. Reduced Leave Schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday of an employee.
  - m. Serious Health Condition means an illness, injury impairment, or physical or mental condition that involves:
    1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or
    2. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:
      - i. A period of incapacity of more than three consecutive calendar days, including subsequent treatment or period of incapacity relating to the same condition, that also involves:

- a) Treatment two or more times by a health care provider, by a nurse or a physician's assistant under the direct supervision of a health care provider or by a provider of health care services; or
  - b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
- 3. A period of incapacity due to pregnancy and or prenatal care;
- 4. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - i. Requires periodic visits from treatment by a health care provider, or by a nurse or physician's assistant under the direction of a health care provider;
  - ii. Continues over an extended period of time; and
  - iii. May cause episodic rather than continuing period of incapacity.
- 5. A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider;
- 6. Any period of absence to receive multiple treatments (including a period of recovery from treatments) by a health care provider or by a health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention.

Treatment for the purpose of this definition includes examination to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical examination, eye examinations, or dental examinations. Under paragraph 2(i) of this definition, a regimen of continuing treatment includes, for example, a course of prescribed medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes the taking of over the counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not by itself, sufficient to constitute a regime of continuing treatment for the purpose of the FDL-FML Policy;

Conditions for which cosmetic treatment are administered (such as treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, the flu, ear aches, upset stomach, ulcers, headaches, other than migraine, routine dental or orthodontia problems, periodontal disease, etc. are examples of conditions that do not meet the definition of a serious health condition and do not qualify for leave under the FDL-FML Policy. Restorative dental or plastic surgery after an injury or removal of cancerous growth is a serious health condition providing that all the other conditions of the program are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of the section are met; or

7. Substance abuse may be a serious health condition. An individual wishing to use leave under the FDL-FML Policy to complete treatment must meet the qualifications of the policy. Leave under the FDL-FML Policy may only be taken on referral by a health care provider for in-patient treatment of substance abuse at a health care services facility. An employee may not self refer into a substance abuse program. Absence due to an employee’s substance abuse does not qualify for leave under the FDL-FML Policy.
- n. Son or Daughter means a biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in as a parent. A child is under the age of 18. A child over the age of 18 who is incapable of self-care because of medical or physical disability.
- o. Spouse means a husband or wife as defined or recognized by state or tribal law, or a documented domestic partnership of at least five years.
- p. Year means the period of time beginning on an employee’s first day of work and ending twelve months from that date.

## **II. LEAVE REQUIREMENTS**

### a. Employee Eligibility

In order to qualify for leave under the FDL-FML Policy, an employee must:

1. Be a current employee who, within the past seven years, has worked for the Fond du Lac Band for twelve months;
2. Have actually worked at least 1,250 hours (excluding holiday, vacation, PTO, and sick leave) during the previous 12 months prior to the date of the event; and

3. Submit a fully completed application within 15 days following the event.

b. Leave Entitlement

The eligible employee will be granted up to a total of 12 workweeks of unpaid leave in a rolling 12-month period for one or more of the following reasons:

1. For the birth of a son or daughter, and to care for the newborn child. Leave to care for a newborn child or a newly placed child must conclude within 12 months after the birth or placement;
2. For the placement with the employee of a child for adoption or foster care, and care for the newly placed child;
3. To care for an immediate family member (spouse, child, or parent – but not “parent-in-law”) with a serious health condition; or
4. When an employee is unable to work because of a serious health condition.

Spouses who both work for the Band are limited to a combined total of 12 workweeks during a 12 month period for the birth of a child or to care for a child after birth, placement for adoption or foster care, or to care for an immediate family member with a serious health condition.

c. Intermittent/Reduced Schedule Leave

The FDL-FML Policy permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances:

1. Intermittent/reduced schedule leave may be taken when medically necessary to care for a serious ill family member, or because of the employee’s serious health condition.
  2. Intermittent/reduced leave may be taken to care for a newborn or newly adopted or foster care child only with the employer’s approval.
- d. Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged to FDL-FML. Employees may not be required to take more leave than necessary to address the circumstances that caused the need for the leave. Leave must be taken in increments of one hour or more. Leave time will not be given for less than one hour.

e. Employee notice requirements

When requesting leave for FDL-FML the employee must specifically reference the qualifying reason or state “FML” leave otherwise it will not be counted as FDL-FML.

- f. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer’s operation, subject to approval of the employee’s health care provider. In such cases the employer may transfer the employee temporally to an alternative job with equivalent pay and benefits to accommodate recurring periods of leave better than the employee’s regular job.

g. Accrued Leave Time

1. Employees who have accrued paid leave, vacation and/or sick leave will not be required to use the time while they are on leave under the FDL-FML Policy; unless on disability. Employees using paid leave, sick time and/or vacation time will receive the same benefits that any employee paid leave sick time, and/or vacation time would be given. This includes any deduction from pay to cover the cost of individual or family medical insurance premiums. Employees applying accrued paid leave towards FDL-FML leave under this Policy shall be entitled to use up to twelve (12) weeks of unpaid leave in addition to the use of such accrued leave.
2. Employees who do not have accrued leave or sick time may take unpaid leave under the FDL-FML Policy. During the time of these employees will not receive addition benefits. This includes tips. Individuals who are taking unpaid leave under the FDL-FML Policy who have opted for family medical insurance coverage will be responsible for the cost of all employee-paid premiums during the time they are away from work.
3. Employees who have short-term disability will be required to use the short-term disability concurrently with leave under the FDL-FML Policy.
4. Leave used under any workers compensation policy will be counted simultaneously with leave under the FDL-FML Policy. Benefits will term after 12 weeks of FDL-FML Leave.

### **III. CERTIFICATION**

Except in the case of the birth of a son or daughter, and to care for the newborn child, or for the placement with the employee of a child for adoption or foster care, and care for the newly placed child, leave under the FDL-FML Policy will only be allowed for a serious health condition of the employee or the employee’s immediate family. The condition of the

employee be supported by certification issued by a health care provider. The employee must provide the employer with the certification within 15 calendar days of the start of the leave.

#### **IV. MAINTENANCE OF BENEFITS**

- a. An employee meeting the qualification for the FDL-FML Policy will retain his/her health care coverage for the 12 weeks on the same level as it was if the employee continued to work.
  1. An employee taking unpaid leave under the FDL-FML Policy and who is paying any premiums for medical coverage under the Fond du Lac Employee Medical Benefit Plan must make arrangement to pay the health insurance premiums for coverage. Such payments may be in any arrangement voluntarily agreed to by the employer and the employee.
  2. If an employee fails to make arrangements to pay the coverage premiums under the Fond du Lac Employee Medical Benefit Plan while on leave, the coverage portion of the employee's insurance will end and the employee will have to meet the standard insurance requirements to regain his/her insurance status. The employer is not responsible for making coverage payments if the employee fails to make arrangement.
  3. If the employee fails to return to work at the end of the leave period, the employers obligation for individual and/or family coverage under the Fond du Lac Employee Medical Benefit Plan ends.
  4. The employee will be responsible for the cost to maintain medical coverage at the current COBRA rates after 12 weeks of continuous FDL-FML Leave or denial of FDL-FML.
- b. Employees who take leave time while under the FDL-FML Policy will receive tips. Employees who take unpaid leave under the FDL-FML Policy will not receive tips.
- c. Accrued Leave Employees who take accrued leave while on leave under the FDL-FML Policy will continue to accrue leave and or sick time at the same rate they would if they were taking any other paid leave time. Employees who take unpaid leave under the FDL-FML Policy will not accrue leave and or sick time while they are on leave under the FDL-FML Policy.
- d. Job Restoration upon returning from the period of 12 weeks leave under the FDL-FML Policy, and employee must be restored to his/her original job, or to an "equivalent" job, which is identical to the original job in terms of pay, benefits, and shift.

## V. NOTICE

### a. Employee Notice

It is the Employer's responsibility to determine whether a leave of absence constitutes FDL-FML under this policy.

Eligible employees seeking to use leave under the FDL-FML Policy are required to provide:

1. Thirty days advance notice of the need to take leave under the FDL-FML Policy when the need is foreseeable.
2. Notice "as soon as practicable" when they need to take leave under the FDL-FML Policy and the need is unforeseeable. Verbal notice must be given to the supervisor within two business days of learning the need to take leave under the FDL-FML Policy.
3. Sufficient information for the supervisor to understand that the employee needs to qualify for the FDL-FML Policy under what criteria they qualify (i.e. birth, illness, etc.).
4. If the employer was not made aware of that the employee was absent for FDL-FML reasons, and the employee wants the leave to count toward FDL-FML, the employee has two business days to inform in writing the Supervisor, Division Director, FML Specialist that the leave was taken for a FDL-FML qualifying reason.
5. Medical Certificate
  - i. Certification/recertification forms must be "complete" (not missing one or more applicable entries) and sufficient (not vague, ambiguous, or nonresponsive).
  - ii. If the certification/recertification is returned but is incomplete or nonresponsive, the FML Specialist must use the Designation Form or provide written notice of what specific information is still required.
  - iii. If medical certification/recertification is complete and sufficient, the FML specialist may contact the employee's health care provider to authenticate the form or to clarify information in the form.

- iv. Authentication means verification that the information was provided or authorized by the employee's health care provider.
- v. Clarification means understanding the handwriting or the meaning of something written but not asking for more information beyond that required form.

b. Employer Notices

The Fond du Lac Band as an employer is responsible for giving its employee's adequate notice and information on the FDL-FML Policy. This will include information given to the employees at the "new employee orientation," and notice to current employees through additions to the handbooks and departmental meeting.

## VI. MILITARY FAMILY LEAVE ENTITLEMENTS

a. Military Caregiver Leave

An eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness is qualified for up to a total of **26 workweeks of unpaid** 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 is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A "serious injury or illness" is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. 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. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FML-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.)

b. Qualifying Exigency Leave

An eligible employee is qualified for up to a total of **12 workweeks of unpaid** leave during the a 12-month period for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

c. Qualifying exigencies include:

1. Issue arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of **seven** days from the date of notification;
2. Military events and related activities, such as 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 active duty or call to active duty status of a covered military member;
3. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
4. Making or updating financial and legal arrangements to address a covered military member's absence;
5. Attending 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 active duty or call to active duty status of the covered military member;
6. Taking up to **five** days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment; and
7. Attending to certain post-deployment activities, including attending 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 active duty status, and addressing issues arising from the death of a covered military member.

Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered servicemember with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

FDL-FML leave may be taken intermittently whenever **medically necessary** to care for a covered servicemember with a serious injury or

illness. FDL-FML leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

d. Notice Requirements

1. Employee Notice

Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FDL-FML leave for planned medical treatment for a serious injury or illness of a covered servicemember. If leave is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need for military family leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer's usual and customary notice requirements.

The employee must provide "sufficient information" to make the employer aware of the need for FDL-FML leave and the anticipated timing and duration of the leave. Depending on the situation, such information may include, as applicable:

- i. that the requested leave is for a particular qualifying exigency related to the active duty or call to active duty status of a covered military member and the anticipated duration of the leave;
- ii. that the leave is for a qualifying family member who is a covered servicemember with a serious injury or illness and the anticipated duration of the leave.

When an employee seeks leave due to a qualifying reason for which the employer has previously provided the employee FDL-FML leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FDL-FML leave.

2. Employer Notice

The Fond du Lac Band as an employer is responsible for giving its employee's adequate notice and information on the FDL-FML Policy, including information about military family leave entitlements. This will

include information given to the employees at the “new employee orientation,” and notice to current employees through additions to the handbooks and departmental meeting.

e. Certification Requirements

An employee’s request for military family leave must be supported by an appropriate certification.

1. Leave for a qualifying exigency must be supported by a copy of the covered military member’s active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.
2. Leave to care for a covered servicemember with a serious injury or illness must be supported by a certification completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember’s family.

The FML Specialist may authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, the FML Specialist may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.

## **VII. ENFORCEMENT**

- a. Any employee of the Fond du Lac Band who has been adversely affected by a violation of this policy may bring his/her complaint to the Executive Director.
- b. Any complaint brought under this policy shall contain:
  1. The name and address of the complaint;
  2. The name of the supervisor and the division in which the employee is employed;
  3. The section of the policy that was allegedly violated;
  4. A description of the events and facts that support the complainant’s claim;  
and
  5. A request for remedies.
- c. After reviewing the complaint, the Executive Director will bring the complaint before the Fond du Lac Reservation Business Committee in executive session.

- d. If the Reservation Business Committee finds that there has been a violation of the policy, the RBC may order the following remedies:
  - 1. That the supervisor must cease and desist from engaging in a violation of this policy;
  - 2. Back pay; and/or
  - 3. Any other relief that the RBC deems reasonably necessary to remedy the violation of the policy.
- e. No interest will be paid on back wages.
- f. Any complaint must be brought forward within one year of the alleged violation of this policy.

Approved and adopted by the Fond du Lac Reservation Business Committee pursuant to Resolution #1120/05 on April 19, 2005; amended by Resolution #2124/07 on July 24, 2007; Resolution #1380/09 on August 27, 2009; Resolution #1137/12 on May 2, 2012; and Resolution #1054/15 on March 4, 2015.