

# ADMINISTRATIVE PROCEDURES



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*C. Dulubau*  
County Administrator

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SUBJECT: **FAMILY AND MEDICAL LEAVE ACT (FMLA) LEAVE**

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DEPARTMENT RESPONSIBLE: **Human Resources**

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## I. STATEMENT OF PURPOSE

The purpose of this procedure is to establish the means by which an employee may request a leave of absence under the provisions of the Family and Medical Leave Act ("FMLA") of 1993 (29 USC § 2601 et. seq.), as amended periodically, and subsequent revisions to the related regulations (29 CFR § 825 et. seq.). The procedure sets forth the manner by which County departments (with the exception of the judicial departments) shall comply with the requirements and purposes of the FMLA and relevant regulations.

## II. FAMILY AND MEDICAL LEAVE ACT LEAVE

A. It is the policy of Pima County to comply with the provisions of the FMLA and relevant regulations and to provide eligible employees up to twelve (12) weeks (480 hours maximum for a 40 hour per week employee) of leave within a 12-month period for qualifying family and medical reasons or up to twenty-six (26) weeks (1040 hours maximum for a 40 hour per week employee) of leave within a 12-month period for military caregiving.

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B. Eligibility

1. To be eligible for FMLA leave, the employee must:
  - a. Be an employee of Pima County including, but not limited to, an exempt employee, a non-exempt employee, an employee of an elected official, and/or a temporary employee.
  - b. Have worked for Pima County for at least twelve (12) months, whether or not such time was continuous, and not had a continuous break in service of more than seven (7) years.
  - c. Have worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of leave.
2. For purposes of calculating the 1,250 hour requirement, the number of qualifying hours is determined according to the principles established by the Fair Labor Standards Act (“FLSA”) (29 USC § 2601 et. seq.) and the applicable regulations (29 CFR § 785 et. seq.) for determining compensable hours of work. The calculation of qualifying hours does not include vacation, sick leave, bereavement leave, holiday benefits, compensatory time used, unpaid leave hours or periods of layoff. Overtime, holiday worked and military hours (paid and unpaid) are included.
3. Pima County has elected not to recognize the “key employees” exception for the purposes of FMLA eligibility and reinstatement as outlined in 29 CFR § 825.217.

C. FMLA-Qualifying Events (Qualifying Reasons for Leave)

Eligible employees are entitled to FMLA under this section, for one or more of the following reasons. Each request will be considered on a case-by-case basis to determine if the event qualifies.

1. The employee’s own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.
2. Caregiving of the employee’s spouse, son, daughter, parent or domestic partner with a serious health condition.
3. Birth of a son or daughter and to care for the newborn child.
4. Placement with the employee of a son or daughter for adoption or foster care.
5. A military qualifying exigency while the employee’s spouse, son, daughter, parent or domestic partner (the “military member”) is on covered active duty or has been notified of an impending call or order to covered active duty status. (See section XI Definitions)
6. Caregiving of a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, domestic partner or next of kin of the covered service member (“military caregiving”). (See section XI Definitions)

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D. Amount of Leave

1. An eligible employee may be entitled to up to twelve (12) weeks of unpaid leave as his/her FMLA entitlement for FMLA-qualifying events #1 - 5 (as listed in II.C) within a specified 12-month FMLA period.

If leave is for military caregiving (as in II.C.6), an eligible employee may be entitled to up to twenty-six (26) weeks of unpaid leave as his/her FMLA entitlement within a specified 12-month FMLA period.

- a. When an employee's normal work schedule is less than eighty (80) hours per pay period (including but not limited to a part-time schedule or variable hours), the FMLA entitlement will be prorated. Example: An employee working thirty (30) hours per week/sixty (60) hours per pay period may be granted an FMLA entitlement of up to 360 hours (30 hours X 12 weeks) or up to 780 hours for Military Caregiving (30 hours X 26 weeks).
  - b. The employee will only be permitted to use the FMLA entitlement as long as the FMLA-qualifying reason exists and the specified 12-month FMLA period has not ended.
  - c. If an employee does not use all of the FMLA entitlement during the 12-month period, the unused hours of the entitlement expire on the last day of the 12-month period.
2. The specified 12-month FMLA period (II.D.1) will be determined by measuring forward from the date an employee's FMLA begins.

For an employee who has not used FMLA in the past twelve (12) months or whose previous 12-month FMLA period has ended, the start date begins on the first date designated as FMLA on the Medical Certification (See Section VIII.A.3.a & b), or as verified by the HR Nurse Liaison (or designee). Leave may also be designated as FMLA retroactively if the employee will not be prejudiced.

- a. If an employee currently has a specified 12-month FMLA period and is still within that 12-month period, the balance of leave will be calculated based on previous usage and available hours. If the employee used some, but not all of the FMLA entitlement, the employee may be permitted to use some or all of the remainder of the FMLA entitlement hours.
  - b. Hours not used in one 12-month period are not carried over into a subsequent 12-month period.
  - c. A separate 12-month period will be designated for military caregiving leave as per the FMLA regulation (29 CFR § 825.200).
3. Spouses and Domestic Partners Employed with Pima County
    - a. In circumstances where eligible employees are spouses or domestic partners, such employees are permitted to take up to a combined total of twenty-six (26) weeks of FMLA during a 12-month period if the leave is taken for military caregiving.
    - b. The limitations of paragraphs II.D.3.a do not apply to FMLA taken by either spouse or domestic partner for:
      - (1) His/her own serious health condition;

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- (2) Caregiving of a specified family member with a serious health condition, to include a spouse, domestic partner, parent or child;
  - (3) Military qualifying exigency;
  - (4) Birth of a son or daughter and to care for and bond with the healthy newborn child;
  - (5) Placement with the employee of a son or daughter for adoption or foster care to include bonding.
- c. In circumstances where spouses or domestic partners also need leave for reasons listed in II.D.3.b, each spouse or domestic partner may be eligible for a separate entitlement of up to twelve (12) weeks less any leave taken as outlined in II.D.3.
- E. Leave Schedules for Medical Reasons:
1. Medically necessary leave taken as the result of the serious health condition of the employee, to include pregnancy, the serious health condition of the employee's spouse, child, parent or domestic partner or military caregiving, may be taken in accordance with the following schedules, as defined in section XI:
    - a. CONTINUOUS
    - b. INTERMITTENT to include a REDUCED SCHEDULE
  2. When FMLA is utilized on an intermittent or reduced schedule basis for planned medical treatments, the employee must make reasonable efforts to arrange the treatments so as not to unduly disrupt County and department operations.
  3. HR-FMLA may require an employee to provide confirmation of a family relationship (e.g., spouse, child, parent, domestic partner and next-of-kin).
  4. Transfer to an Alternative Position: When an employee qualifies for intermittent or reduced schedule FMLA, the County may temporarily transfer the employee to an alternative position for which the employee is qualified and which will better accommodate the recurring periods of leave. This transfer shall not result in a reduction of the employee's pay rate, benefits, or status for the duration of the temporary transfer and/or leave. Additionally, the employee must be able to perform the essential functions of the alternative position.
  5. Pregnancy
    - a. Should complications arise during pregnancy, the pregnant employee may qualify for FMLA for her own serious health condition. In this case, a completed Form MC-01 is required for any complications of pregnancy either before or after the birth of the child and/or for pre-natal care.
    - b. The pregnant employee may count routine pre-natal visits to a health care provider towards the FMLA entitlement.
    - c. The spouse or domestic partner who is an employee must provide a completed Form MC-02 to provide care for his or her pregnant spouse for the following reasons:

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- (1) to care for his / her pregnant spouse who is incapacitated, or
  - (2) to assist with his / her pregnant spouse's pre-natal care, or
  - (3) to care for his or her spouse following the birth of the child if the spouse has a serious health condition.
- F. Leave Schedules for Bonding (birth of child, or placement of a child for adoption or foster care):
1. FMLA leave taken to care for a new child (birth of child, or placement of a child for adoption or foster care) shall not exceed a maximum of twelve (12) weeks, whether taken sequentially or not, and shall only be taken during the one year period following birth or placement of child for adoption or foster care.
  2. Employees may be entitled to bonding leave on the following schedules:
    - a. CONTINUOUS
    - b. INTERMITTENT to include a REDUCED SCHEDULE. Subject to prior approval of the Appointing Authority or designee.
  3. The employee shall provide reasonable documentation within 7 calendar days of the birth or placement, unless it is not practicable under the circumstances. However, at some point during the FMLA entitlement, reasonable documentation shall be provided.
  4. "Reasonable documentation" includes a simple statement by the employee, a birth certificate, a court document, or other document demonstrating the familial relationship. The employee shall elect which form of documentation to provide. If the employee submits a birth certificate, court document, or other official record, the employee may submit a photocopy, scan, or facsimile and need not submit the original document. If the employee submits an original document, the County shall review the document and promptly return it to the employee.
- G. Leave Schedules for Military Qualifying Exigency:
1. An eligible employee may take FMLA for one or more of the following qualifying exigencies when a military member is on covered active duty or call to covered active duty status, as defined in section XI.
    - a. Short-notice Deployment
      - (1) To address issues that arise when the military member is notified of an impending call or order to covered active duty seven (7) or fewer calendar days prior to the date of deployment.
      - (2) Leave taken for this purpose may be used for a period of seven (7) calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.
    - b. Military Events and Related Activities
      - (1) To attend any official ceremony, program or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member.

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- (2) To attend 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 the military member.
- c. Childcare and School Activities
- (1) To arrange alternative childcare for a child of the military member (as defined in section XI) when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangements.
  - (2) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular or everyday basis) when the need to provide such care arises from the covered active duty of the military member.
  - (3) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member.
  - (4) To attend meetings with staff at a school or daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, meetings with school counselors for a child of the military member when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member, but not on a routine, regular, or everyday basis.
- d. Financial and Legal Arrangements
- (1) To make or update financial and/or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status (such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust).
  - (2) To act as the military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of ninety (90) days following the termination of the military member's covered active duty status.
- e. Counseling:
- To attend counseling provided by someone other than a health care provider for oneself, the military member, or for a child of the military member provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member.

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- f. Rest and Recuperation:
    - (1) To spend time with a covered military member who is on short-term, temporary Rest and Recuperation (R&R) leave during the period of deployment.
    - (2) An eligible employee may take FMLA for the duration of the R&R leave provided to the military member up to the maximum days allowed per the FMLA regulation for each instance of R&R.
  - g. Post-deployment Activities:
    - (1) To attend arrival home ceremonies, reintegration briefings and events, and any other official ceremonies or programs sponsored by the military for a period of ninety (90) calendar days following the termination of the military member's covered active duty status.
    - (2) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services.
  - h. Additional Activities:

To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
- 2. Employees shall be entitled to military qualifying exigency leave on the following schedules:
    - a. CONTINUOUS
    - b. INTERMITTENT to include a REDUCED SCHEDULE
  - 3. HR-FMLA requires a completed Certification of Military Qualifying Exigency (Form QE) and a copy of the military member's covered active duty orders and/or other documentation issued by the military which indicates that the military member is on covered active duty or a call to covered active duty and the dates of the covered active duty service. If leave is related to R&R, HR-FMLA requires a copy of the military member's R&R leave orders, or other documentation issued by the military which indicates that the military member has been granted R&R leave and the dates of the military member's R&R leave.
  - 4. HR-FMLA may require an employee to provide confirmation of a covered family relationship to the military member (e.g., spouse, child, parent and domestic partner).

### **III. USAGE AND RECORDING REQUIREMENTS**

- A. FMLA is a type of leave without pay (Pima County Personnel Policy 8-108), regardless of whether the employee is exempt or non-exempt. The County requires that all available sick leave, compensatory time, and annual leave banks be used concurrently with FMLA until exhausted, at which time the leave will be recorded as unpaid FMLA. The County shall count each day or partial day of FMLA against the employee's sick leave accrual, compensatory time, and/or annual leave accruals (in that order) except as outlined in III.B below.

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- B. Exempt employees who have exhausted their leave banks and utilize FMLA on an intermittent basis may have their salary reduced according to the hours of leave used, without compromising their exempt status.
  - C. The accrual of sick and annual leave hours shall cease during a period of unpaid FMLA pursuant to Personnel Policies 8-105 and 8-106.
  - D. A time card documenting FMLA usage, whether paid (using leave banks) or unpaid, must be submitted each payroll period for each employee designated as being on approved FMLA.
    - 1. Time shall not be recorded as FMLA until leave is approved by HR-FMLA.
    - 2. The employee and supervisor are responsible for coding the time card correctly in accordance with sections III.A. & B.
    - 3. If a full day of FMLA has been taken, a full day must be accounted for on the time card. If a partial day of FMLA has been taken, a partial day must be accounted for on the time card. This includes recording time as unpaid FMLA.
    - 4. Time card amendments to correctly reflect FMLA usage if HR-FMLA approval was obtained after the original submission of the time card must be submitted to HR-FMLA within three (3) pay periods.
  - E. An Appointing Authority may or may not permit employees in their department to flex work hours. If the Appointing Authority permits employees to flex work hours for any reason, an employee using intermittent FMLA shall have the same ability to flex work hours for FMLA-related absences as they would if the absence were not FMLA-related. If the employee flexes work hours for FMLA related absences, the FMLA time must be coded as FMLA on the employee's time card and counted towards the employee's FMLA entitlement.
  - F. If a holiday occurs within a full week of FMLA usage (continuous or intermittent), the employee will be charged a full week against his/her FMLA entitlement. If an employee uses less than a full week of FMLA and a holiday falls within that week, the holiday hours will not be counted against the employee's FMLA entitlement if the employee would not have been scheduled to work that day.
  - G. Holiday and other premium pay will be administered as per Personnel Policy 8-102.
  - H. Special leaves of absence with pay and leaves of absence without pay will be recorded as per Personnel Policies 8-107 and 8-108.

#### **IV. WORKERS' COMPENSATION, AMERICANS WITH DISABILITIES ACT ("ADA"), AND SHORT-TERM DISABILITY COORDINATION**

- A. The Industrial Commission of Arizona ("ICA") and/or Workers' Compensation:
  - 1. FMLA paperwork must be submitted to HR-FMLA for employees on approved ICA and/or workers' compensation and for employees whose approval is pending.
  - 2. If it is determined by HR-FMLA that the injury or illness is an FMLA-qualifying event and ICA and/or workers' compensation is approved, payment to the employee for time not worked shall be up to 66⅔% of the employee's salary from ICA/workers' compensation. The employee may elect to use their leave banks in the order of sick leave, compensatory time

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- and annual leave to supplement the ICA/workers' compensation for up to 100% of their salary.
3. If it is determined by HR-FMLA that the injury or illness is an FMLA-qualifying event and ICA and/or workers' compensation is approved, FMLA leave shall be used concurrently with workers' compensation until the employee's full FMLA entitlement is exhausted or the FMLA-qualifying event has ended.
  4. If an employee who is unable to return to their original position is offered an alternative "modified-duty" position, the employee may choose to accept it or decline it. If the employee accepts the position, the time spent at that position shall not be considered FMLA. The employee may decline the position and continue on FMLA until their FMLA entitlement is exhausted. Declining the position may result in the reduction or loss of ICA/worker's compensation benefits in accordance with Pima County Administrative Procedures.
  5. It is the department's responsibility to notify HR-FMLA upon the employee's return to work and/or change in ICA and/or workers' compensation status.
  6. Human Resources is responsible for coordination of ICA and/or workers' compensation as per Pima County Administrative Procedures.
- B. Americans with Disabilities Act ("ADA"):
1. The FMLA covers the need for leave from the workplace. The FMLA neither requires nor covers what, if any, accommodations may or may not be desirable or needed when the employee is at work.
  2. An employee exercising rights under the ADA does not lose any rights under the FMLA. An employee who could return to work with a reasonable accommodation is not required to do so if the employee is nonetheless entitled to FMLA.
  3. Qualified individuals with disabilities may be covered under the ADA. Some FMLA serious health conditions, such as most cancers, heart disease and serious strokes, would likely also be ADA disabilities. When an employee is eligible for leave as an ADA accommodation and FMLA, the leaves shall run concurrently until the exhaustion of their FMLA entitlement, at which time the employee would contact their department for other leave options.
  4. Human Resources is responsible for coordination of the ADA accommodation process for Pima County (see Administrative Procedure 23-29).
- C. Short-Term Disability Benefit
1. The FMLA paperwork and Short Term Disability Claim Packet must be submitted to HR-FMLA for employees who apply for the Short-Term Disability benefit.
  2. If it is determined by HR-FMLA that the injury or illness is an FMLA-qualifying event and the insurance provider approves the employee's claim, payment to the employee for time not worked shall be up to 66⅔% of the employee's salary from the Short-Term Disability benefit. The employee may elect to use their leave banks, in accordance with

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Administrative Procedure 23-37, to supplement the Short-Term Disability benefit for payment of 100% of their salary.

3. If it is determined by HR-FMLA that the injury or illness is an FMLA-qualifying event and Short-Term Disability is approved, FMLA leave shall be used concurrently with Short-Term Disability payments until the employee's full FMLA entitlement is exhausted or the FMLA-qualifying event has ended.
4. It is the department's responsibility to notify HR-FMLA upon the employee's return to work and/or change in Short-Term Disability status.
5. Human Resources is responsible for coordination of the Short-Term Disability benefit as per Pima County Administrative Procedure 23-24.

## **V. CONTINUATION OF EMPLOYMENT BENEFITS**

### **A. Continuation of Health and Dental Insurance**

1. Pima County shall continue to pay the employer portion of insurance premiums for the period of the employee's FMLA entitlement (maximum of 12 weeks as determined in II.D.1) unless coverage is discontinued as in V.A.2 below. This does not apply to continuation of benefits for extended periods of approved paid leave.
2. Employees taking FMLA shall be responsible for payment of the employee portion of insurance premiums. When leave banks are exhausted, this payment must be made as per Administrative Procedure 23-4 Leave of Absence – Insurance. Failure to make timely payments of insurance premiums may result in the discontinuation of health and/or dental insurance coverage for the duration of the unpaid FMLA.

### **B. Continuation of Other Benefits**

1. Continuation of retirement contributions shall be in accordance with the rules established by the Arizona State Retirement System or other appropriate system.
2. Continuation of employee-financed benefits such as AFLAC, Deferred Compensation, etc. shall be pursuant to agreements between the employee and the respective benefit providers.

### **C. Benefit Plan Revisions and Additions**

In circumstances where benefits are added, upgraded, or otherwise revised during the period of leave, such changes for employees on FMLA shall be effective on the same date as for employees in active work status.

## **VI. SUBMITTING FMLA PAPERWORK**

### **A. Planned Leaves**

1. For leave that can be reasonably anticipated or adequately planned, employees must request leave at least thirty (30) calendar days prior to the date leave is to begin. This includes any necessary recertification of an existing condition for a new 12-month FMLA period.
2. FMLA paperwork must be submitted by the employee to HR-FMLA.

3. Failure to submit FMLA paperwork thirty (30) calendar days in advance may result in a delayed start of FMLA.

B. Unexpected Leaves

1. If thirty (30) calendar days advance notice is not possible due to a lack of knowledge as to when leave will begin, a change in circumstances, or a medical emergency, paperwork must be submitted *as soon as practicable* under the facts and circumstances of the case. The term “as soon as practicable” means the time at which the employee becomes aware of the need for leave and is able to provide notification as outlined in VI.B.2 & 3. In most cases, notification should occur within two (2) business days.
2. If the employee is unable to do so personally, paperwork may be submitted by the employee’s representative (e.g., a spouse, domestic partner, family member, or other responsible party), supervisor, or DPR.
3. When there is reason to believe an employee may be absent for an FMLA qualifying reason and the employee is absent more than three (3) consecutive work days, the department must initiate the FMLA process, even if the employee has not provided notification.
  - a. Examples of more than three (3) consecutive work days for a Monday through Friday work week:
    - Monday/Tuesday/Wednesday/Thursday
    - Thursday/Friday/Monday/Tuesday where Saturday and Sunday are the employee’s regular days off (“RDO”).

**VII. MEDICAL CERTIFICATIONS AND RECERTIFICATIONS**

- A. Pima County requires a medical certification when the leave requested is for the serious health condition of the employee (Form MC-01), the serious health condition of a qualifying member of the employee’s family (Form MC-02), or military caregiving (Form MC-03).
1. Medical certification must be completed by a qualified health care provider.
  2. Fees incurred for the completion of medical certifications are the employee’s responsibility.
  3. Medical certifications must be submitted to HR-FMLA within fifteen (15) calendar days as noted on the Employee Rights and Responsibilities (“ERR”).
  4. Employees are required to use the Pima County FMLA certification forms as provided by HR-FMLA.
  5. It is the employee’s responsibility to ensure a complete medical certification is received by HR-FMLA.
  6. Failure to provide the requested certification may result in delay or denial of FMLA.
- B. When an employee is on approved FMLA for his/her own serious health condition or for caregiving of a family member and the need for leave lasts beyond a single leave year, HR-FMLA may require the employee to provide new medical certifications for subsequent leave years.

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- C. In circumstances where FMLA is for an extended period of time, the employee may be required to obtain recertification from the health care provider. Such requests for recertification are at the employee's expense and shall not be more frequent than every six (6) months unless:
1. The employee requests an extension of FMLA;
  2. Circumstances described by the original certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications of the condition, the frequency of absences);
  3. The supervisor, manager or DPR receives information and/or notices trends in FMLA usage that demonstrates a change or casts doubt upon the continuing validity of the most recent certification.
- D. Requests for recertification relating to paragraph VI.C.3. above must be made in writing and/or by secure email (if applicable) to HR-FMLA and must contain relevant information regarding attendance.
1. HR-FMLA will review the information and medical certification to determine if recertification of the condition is warranted and, if so, issue a Designation Notice of Recertification (DN-RC) to the employee.
  2. It is the responsibility of the employee to provide the completed medical certification form for the recertification.
  3. Medical certifications for recertification purposes are at the employee's expense.
  4. Medical certifications for recertification must be submitted to HR-FMLA within fifteen (15) calendar days of notice of recertification as noted on DN-RC.
  5. Failure to provide the requested recertification may result in the conclusion of approved FMLA for that event.
- E. Second and Third Medical Opinions:
1. HR-FMLA may require an employee requesting leave for the employee's own serious health condition to obtain a second medical opinion. Such evaluation shall be conducted by a qualified health care provider selected and paid for by the employee's department.
  2. Should the second opinion differ from the opinion of the employee's health care provider, Pima County may order and will pay for a third medical opinion. The health care provider selected shall be mutually agreed upon by both Pima County and the employee. The third opinion shall be final and binding.
  3. Second and third opinions are not permitted for military caregiving.
- F. The Genetic Information Nondiscrimination Act of 2008 ("GINA") prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, Pima County asks that health care providers do not provide any genetic information when responding to requests for medical information for the employee's own serious health condition or the serious health condition of the employee's family member.

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**VIII. PROCEDURES****A. FMLA Paperwork Processing**

1. Employees shall obtain paperwork through HR-FMLA.
2. FMLA paperwork must be sent to HR-FMLA via secure fax at 520-791-6514 or interoffice mail.
3. Within five (5) business days following receipt of the FMLA paperwork, HR-FMLA will provide the employee with an ERR.
  - a. If the employee is eligible for FMLA, HR-FMLA may also include one or more of the following as applicable to the leave request:
    - (1) Information regarding the required documents needed to determine qualification of the event (to include certifications, proof of family relationship); or
    - (2) Medical Certification from Health Care Provider for Employee's Serious Health Condition (Form MC-01) with Form EFA attached, if provided by department; or
    - (3) Medical Certification from Health Care Provider for Family Member's Serious Health Condition (Form MC-02); or
    - (4) Medical Certification from Health Care Provider for Covered Service member's Serious Health Condition (Form MC-03); or
    - (5) Certification of Military Qualifying Exigency (Form QE).
  - b. If the employee is eligible for FMLA and hospitalized at the time of request, upon verification of hospital admission by HR-FMLA, leave will immediately be designated as FMLA beginning the date of admission. The employee must submit Form MC-01 as per VIII.A.7. or the FMLA approval may be rescinded.
  - c. If the employee is not eligible for FMLA, HR-FMLA will deny FMLA and send a Designation Notice of Denial (DN-D) to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
4. The employee has fifteen (15) calendar days to complete and return the required documentation, as listed in ERR, directly to HR-FMLA unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts. In the instance when the employee is unable to meet the due date as specified on the ERR, the employee must contact HR-FMLA to request an extension of the due date. Extensions may be granted in increments not to exceed seven (7) calendar days each, absent extenuating circumstances.
5. Upon receipt of a medical certification and/or other required documents, HR-FMLA will review for completeness.
  - a. If documentation is complete and the event qualifies for FMLA, HR-FMLA will approve the FMLA and send a Designation Notice of Approval (DN-A) to the employee, copying the Appointing Authority

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- or designee, supervisor, and DPR. This notice may include, but is not limited to, the following information:
- confirmation that the event qualifies for FMLA;
  - the approved leave schedule (continuous or intermittent);
  - the approved time period of leave;
  - the number of hours, days, or weeks that will be counted against the employee's continuous FMLA entitlement;
  - any details regarding usage of intermittent leave (e.g., reduced schedule, flare-ups, appointments), as applicable; or,
  - whether a Fitness for Duty Report (Form FFD) is required.
- b. If the event does not qualify for FMLA, HR-FMLA will deny FMLA and send a DN-D to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
- c. If documentation is incomplete or if the required documents are not received by HR-FMLA within fifteen (15) calendar days, the employee will be notified by a Designation Notice of Cure (DN-C) that he/she has an additional time of seven (7) calendar days to clarify and/or cure any deficiencies. If it is not practicable under the circumstances to cure the deficiency within the additional time of seven (7) calendar days, the employee may be granted seven (7) additional days upon request. DPR will receive a copy of the DN-C.
6. If the required documents have not been received or the noted deficiencies have not been corrected by the due date listed on the DN-C, HR-FMLA will deny FMLA and send a DN-D to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
7. If an employee decides to rescind the FMLA request after the Leave Administration Form has been submitted and prior to start of leave, the request to rescind must be provided in writing (to include email) and forwarded to HR-FMLA. Upon receipt, HR-FMLA will close the FMLA request and, if applicable, may issue a DN-D to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
8. An employee is not on approved FMLA until he/she has received the DN-A from HR-FMLA designating the leave as FMLA.
9. If it is determined that additional FMLA is needed beyond the previously approved end date listed on the DN-A, the employee must provide a written request for extension directly to HR-FMLA. This request needs to be submitted prior to the original leave end date, absent extenuating circumstances. Additional information from the health care provider may be required for the extension. If the extension of FMLA is approved, HR-FMLA will send out a revised Designation Notice of Approval (DN-A) to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
10. When an employee exhausts his/her FMLA entitlement, HR-FMLA will send out a Designation Notice – End Date (DN-END) to the employee, copying the Appointing Authority or designee, supervisor, and DPR.

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**B. RETURN TO WORK AND REINSTATEMENT FOLLOWING FMLA**

1. A Fitness for Duty Report (“FFD”) or an equivalent return to work release is required when an employee returns from continuous FMLA for the employee’s own serious health condition. The FFD is not required when an employee returns from continuous FMLA for caregiving, birth of a child, placement of a child for adoption or foster care, or military qualifying exigency.
2. If a FFD is required to return to work and/or remove restrictions (as per the Designation Notice), the employee must not be permitted to work prior to providing a FFD or an equivalent return to work release from his/her health care provider.
3. If an employee is unable to perform one or more essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position. If the employee has not exhausted his/her FMLA entitlement, FMLA may be continued until the employee is able to perform all essential functions of the job. The employee may be referred to Human Resources ADA for possible workplace accommodation under ADA as per Administrative Procedure 23-29.
4. If an employee on continuous FMLA is able to return to work earlier than the date previously indicated on the DN-A, the employee is required to notify the department and HR-FMLA as soon as possible but not later than two (2) work days prior to the previously indicated return to work date. In the case of extenuating circumstances, notification must be made as soon as practicable but not later than the date of return.
5. When a return to work authorization is received and/or if the employee returns from leave prior to the anticipated return date, HR-FMLA will send out a Designation Notice – Return to Work (DN-RTW) to the employee, copying the Appointing Authority or designee, supervisor, and DPR.
6. An employee returning from a period of FMLA shall:
  - a. be restored to the same position held at the time leave commenced if it is available or to an equivalent position.
  - b. resume benefits at the same level as were provided prior to the beginning of leave and without any qualifications such as a waiting period or pre-existing condition clause. When benefits are changed during the period of leave, such changes will apply to the employee upon the employee’s return to work.
7. If an employee will exhaust his/her FMLA entitlement prior to being able to return to work, the employee must contact the department prior to the exhaustion of FMLA regarding his/her leave options, as per Pima County Personnel Policy 8-108.

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**IX. RESPONSIBILITY AND ACCOUNTABILITY****A. HR-FMLA**

The following apply to all departments within Pima County with the exception of the judicial departments.

1. HR-FMLA is responsible for all medical certification, official leave tracking, official file maintenance, and final FMLA designation approval.
2. HR-FMLA is the official, and only, point of contact with employees' military and health care providers.
3. HR-FMLA provides departments with necessary information regarding an employee's FMLA as outlined in this procedure and per the applicable regulation.
4. HR-FMLA will maintain FMLA paperwork and FFD forms and make them available on the Pima County Human Resources website
5. HR-FMLA will file and maintain all FMLA forms and documents, to include but not limited to certification forms, legal and/or military documents, in the employee's official FMLA file.
6. HR-FMLA will archive and purge documents contained in the FMLA file pursuant to Federal and State law and the Arizona State Library, Archives and Public Records retention schedule.

**B. EMPLOYEE**

1. An employee on FMLA must follow department call-in procedures. Failure to call in as outlined and directed may result in disciplinary action.
2. When an employee calls in to report an absence, he/she must state whether or not the leave is FMLA. If the employee is approved for FMLA for multiple qualifying events, he/she must also state the FMLA event (e.g., FMLA for caregiving or FMLA for self). The employee need not state the specific cause or illness. If an employee does not indicate that the leave is FMLA, the employee's time will not be recorded as FMLA.
3. When an employee is on approved continuous FMLA, the employee shall not participate in work and/or work-related activities to include checking County email and participating in teleconferences.
4. An employee on continuous FMLA must periodically call HR-FMLA regarding his/her status and intent to return to work, particularly during the last two (2) weeks of leave. These periodic calls will not be any more frequent than is necessary to verify the employee's plans to return to work. HR-FMLA will notify the employee's supervisor or DPR of updates or changes to the employee's return to work.
5. If an employee on continuous FMLA is able to return to work earlier than the date previously indicated on the DN-A, the employee is required to notify the department and HR-FMLA as soon as possible but not later than two (2) work days prior to the previously indicated return to work date. In extenuating circumstances, notification must be made as soon as practicable but not later than the date of return.

6. If it is determined that additional FMLA is needed beyond the previously approved end date listed on the DN-A, the employee must provide a written request for extension directly to HR-FMLA. This request needs to be submitted prior to the original leave end date, absent extenuating circumstances. The request may also require a recertification from the health care provider at the employee's expense.
7. An employee must not use or attempt to use FMLA for reasons or conditions other than those approved by HR-FMLA. Misuse may result in FMLA approval ending or being rescinded and, when appropriate, may also result in disciplinary action up to and including dismissal.
8. An employee may flex his/her work hours for FMLA related absences. If the Appointing Authority permits the flexing of FMLA related absences, the FMLA time must be coded as FMLA on the employee's time card.
9. An employee using intermittent FMLA for appointments which do not require a full day of leave, such as physical therapy or lab work, is only entitled to the time necessary and not a full day of leave. For example, the employee may use FMLA only for the duration of the medical appointment and time required to travel to and from the appointment location.
10. An employee must make reasonable efforts to arrange medical appointments and treatments so as not to unduly disrupt County and department operations when FMLA is utilized on an intermittent or reduced schedule basis.

For scheduled appointments, the Appointing Authority or designee may require the employee to provide a list of all appointments, to include approximate duration, on a monthly basis. It is the employee's responsibility to keep the list current and notify his/her department of any changes. Failure to do so may result in the loss of FMLA coverage for those appointments. In such cases, departments shall consult with HR-FMLA for guidance.

#### C. SUPERVISORS

1. When an employee is absent more than three (3) consecutive work days, the department must initiate the FMLA process.  
Examples of more than three (3) consecutive work days for a Monday through Friday work week:
  - Monday/Tuesday/Wednesday/Thursday
  - Thursday/Friday/Monday/Tuesday where Saturday and Sunday are the employee's regular days off (RDO)
2. If recurring absences and/or tardiness occur, the supervisor should inform the employee about FMLA and suggest he/she contact HR-FMLA.
3. Supervisors must not directly contact a health care provider or inpatient facility to request information. If information is needed, the supervisor must contact HR-FMLA.
4. Supervisors are responsible for protecting the privacy and confidentiality of their employees' medical conditions, particularly as a result of the FMLA process.
5. Supervisors shall ensure that employees are aware of department call-in procedures.

6. Supervisors must not ask employees the nature of qualifying events or the specifics of illnesses.
7. When an employee on approved FMLA calls in “sick”, the supervisor may ask whether the leave is to be recorded as “sick” or “FMLA” if the employee does not make that distinction. (See IX.B.2.)

If the employee indicates the absence is FMLA and is approved for multiple qualifying events (e.g., employee’s own serious health condition, caregiving, birth of a child) but fails to identify the FMLA event, the supervisor must ask the employee to state the event (e.g., FMLA for caregiving or FMLA for self). (See IX.B.2.)

8. Supervisors are responsible for adding intermittent FMLA usage to the employee’s time card using the eTIME leave editor.
9. Supervisors must not interfere with the exercise of employees’ FMLA rights, including refusing to authorize FMLA or discouraging use of FMLA.
10. Supervisors shall not consider or include approved FMLA usage and/or absences as a factor in employment actions, including but not limited to performance appraisals and/or disciplinary processes.

If an absence is in question, the supervisor must contact HR-FMLA for guidance.

#### D. DEPARTMENT

1. DPRs are responsible for submitting completed forms on behalf of employees and as requested by HR-FMLA in order to facilitate the FMLA process. Forms may include but are not limited to REQ, EFA, FFD and return to work notices.
2. DPRs are responsible for protecting the privacy and confidentiality of their employees’ medical conditions, particularly as a result of the FMLA process.
3. DPRs must not directly contact a health care provider or inpatient facility to request information. If information is needed, the DPR must contact HR-FMLA.
4. The department must provide the employee with a copy of the department’s applicable call-in procedure and inform the employee of the frequency of status calls when on continuous FMLA. (See IX.B.4.)
5. When an employee is on approved ICA and/or workers’ compensation, it is the department’s responsibility to notify HR-FMLA upon the employee’s return to work and/or change in work status.
6. A request for an exempt employee to work from home while on FMLA, to include checking County email and participating in teleconferences, must be approved by the County Administrator. A copy of the approval must be provided to HR-FMLA. The employee must be on approved intermittent FMLA. No approval may be made unless there is a current certification from the health care provider permitting such activity. The employee and his/her department are responsible for correctly tracking and reporting hours worked from home to ensure proper payment.

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**X. SECOND LEVEL REVIEW**

An employee who disagrees with a decision concerning FMLA approval or denial may request a Second Level Review. HR-FMLA will provide the Second Level Review Form upon request.

**XI. DEFINITIONS**

AMERICANS WITH DISABILITIES ACT (“ADA”) - the federal law that gives certain protections to individuals with disabilities.

CHILD, SON, and/or DAUGHTER - a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom an employee stands *in loco parentis*. The child must be either under age eighteen (18) or over age eighteen (18) and incapable of self-care because of a mental or physical disability.

CHILD, SON OR DAUGHTER WHO IS A MILITARY MEMBER - the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood or stands *in loco parentis* who is on covered active duty or call to covered active duty status, and who is of any age.

CHILD, SON OR DAUGHTER OF A COVERED SERVICE MEMBER - the biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood or stands *in loco parentis*, and who is of any age.

CONTINGENCY OPERATION - an action designated by the Secretary of Defense in which members of the armed forces (including reserves) are called to active duty pursuant to the relevant provisions of Title 10 of the United States Code and in which members of the armed forces are, or may become, involved in military operations.

CONTINUOUS LEAVE – leave taken as a single block of time. For example, multiple consecutive days off work for a period lasting from several days up to the employee’s maximum 12-week entitlement.

**COVERED ACTIVE DUTY OR CALL TO COVERED ACTIVE DUTY STATUS**

- In the case of a member of the regular Armed Forces - duty under a call or order to active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country.
- In the case of a member of the Reserve components of the Armed Forces - duty under a call or order to active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation as detailed in the FMLA regulation.

**COVERED SERVICE MEMBER**

- A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness
- A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness

**COVERED VETERAN** - an individual who served in the Armed Forces and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date of the employee's military caregiver leave.

**DEPARTMENT PERSONNEL REPRESENTATIVE ("DPR")** - an employee of Pima County designated by his/her department to handle personnel related tasks including, but not limited to, FMLA.

**DESIGNEE** – person(s) authorized by a Director or Elected Official (Appointing Authority) to approve and/or receive information in lieu or on behalf of the Appointing Authority.

**DOMESTIC PARTNER** - An unmarried adult with whom the employee cohabits, is financially interdependent, and maintains a domestic partnership.

**DOMESTIC PARTNERSHIP** – a relationship that meets the criteria outlined in the Pima County Affidavit Of Domestic Partnership. An employee must have a current affidavit on file with Human Resources in order to receive benefits for his or her domestic partner and/or the domestic partner's children. Benefits include coverage in employee health and wellness benefits and/or the use of FMLA to provide care for a domestic partner.

**ELIGIBLE EMPLOYEE** - an employee of Pima County, who has worked for the County at least twelve (12) months (whether or not such time is continuous, and who has not had a continuous break in service of more than seven (7) years) and has worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of leave.

**EQUIVALENT POSITION** – a position that is virtually identical to the employee's former position in terms of pay, benefits, status, and other terms and conditions of employment and also has the same or substantially similar duties and responsibilities.

**FAIR LABOR STANDARDS ACT ("FLSA")** – the federal law that establishes minimum wage, overtime pay, and related recordkeeping standards affecting full-time and part-time workers.

**FAMILY AND MEDICAL LEAVE ACT ("FMLA") OF 1993** - the federal law that requires employers to provide eligible employees with up to twelve (12) work weeks of unpaid, job-protected leave in a 12-month period for qualifying family and medical reasons.

**FAMILY AND MEDICAL LEAVE ("FMLA") LEAVE** - leave approved by HR-FMLA in accordance with the FMLA and Pima County policies and procedures for the employee's own serious health condition, caregiving of a qualifying family member, birth of a child, placement of a child for adoption or foster care, military qualifying exigency and/or military caregiving.

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**GENETIC INFORMATION** - as defined by the Genetic Information Nondiscrimination Act of 2008 (“GINA”), includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

**HR-FMLA** - the division of Pima County Human Resources responsible for administering FMLA, also known as Leave Administration.

**INCAPACITY** – inability to work, attend school or perform other regular daily activities due to a serious health condition, including treatment and/or recovery.

**INCAPABLE OF SELF CARE** - active assistance or supervision is required to provide daily self-care in three or more of the “activities of daily living” (“ADLs”) or “instrumental activities of daily living” (“IADLs”). ADLs include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc .

**IN LOCO PARENTIS** - persons with day-to-day responsibilities to care for and/or financially support a child, or who had such responsibilities for an employee when the employee was a child. A biological or legal relationship is not necessary.

**INPATIENT CARE and/or HOSPITALIZATION** - admission for an overnight stay in a hospital, hospice or residential medical care facility. Visits to an emergency room (without hospital admission), urgent care or other similar clinics do not qualify.

**INTERMITTENT LEAVE** - leave taken in separate blocks of time for as short as a portion of an hour to more than several weeks. Examples include but are not limited to leave taken sporadically for medical appointments or leave taken several days at a time over a period of six months for chemotherapy or the flare-up of a medical condition.

**MILITARY QUALIFYING EXIGENCY** - a need for leave by the employee while the employee's spouse, son, daughter, parent or domestic partner (the “military member”) is on covered active duty or has been notified of an impending call or order to covered active duty status.

**MILITARY CAREGIVING** – leave taken by an employee to care for a covered service member with a serious injury or illness under the FMLA.

**MILITARY MEMBER** - the employee's spouse, son, daughter, parent or domestic partner who is on covered active duty or called to covered active duty status.

**NEXT OF KIN OF A COVERED SERVICE MEMBER** - the nearest blood relative other than the covered service member's spouse, domestic partner, parent, son, or daughter, in the following order of priority: a blood relative with legal custody of the service member, brothers and sisters, grandparents, aunts and uncles, and first cousins unless the service member has designated in writing a blood relative as next of kin for purposes of the military caregiving under FMLA. When there is no designation made by the covered service member and multiple family members exist within the same level of relationship (e.g., multiple brothers and sisters), all such family members are treated as the next of kin for

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purposes of FMLA. Those family members may take FMLA to care for the covered service member either simultaneously or consecutively.

**NORMAL WORK SCHEDULE** - the employee's normal work schedule prior to the commencement of FMLA.

**OUTPATIENT STATUS OF A COVERED SERVICE MEMBER** - the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**PARENT** - a biological or legally adoptive parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include the parent of an employee's spouse (i.e., "in-law").

**QUALIFIED HEALTH CARE PROVIDER** - a doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices. Other qualified health care providers may include but are not limited to dentists, podiatrists, nurses, and psychologists as listed in FMLA regulations.

**REDUCED SCHEDULE LEAVE** - a leave schedule, fixed or variable, that reduces the usual number of hours per work week or per work day of an employee. Time not worked is coded as FMLA.

**RESERVE COMPONENTS OF THE ARMED FORCES** – for the purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation as per the FMLA regulation.

**SPOUSE** – for the purposes of FMLA administration, spouse is the employee's legally married husband or wife of the same or opposite gender. Domestic partners and fiancés are not considered spouses.

**SERIOUS HEALTH CONDITION** - an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider as defined in FMLA regulations.

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**SERIOUS INJURY OR ILLNESS OF A COVERED SERVICE MEMBER**

- In the case of a current member of the Armed Forces as defined in “Covered Service member” - an injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the 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.
- In the case of a covered veteran as defined in “Covered Service member” - a qualifying injury or illness if it 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 the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and meets the specifics of the FMLA regulation definition.

**UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION** - when the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position.

**WORKERS' COMPENSATION / INDUSTRIAL COMMISSION OF ARIZONA (“ICA”)** – a system of insurance that provides an employee with medical coverage and/or income replacement for an injury which occurred in the course of employment. ICA is the agency that administers and enforces state laws relating to workers' compensation in the state of Arizona.

Reference: Pima County Merit System Rules, Personnel Policies and Administrative Procedures (as currently existing or as subsequently amended)