

Policy:	Leave of Absence (LOA)	Policy Reference and Revision Number:	HR 020 Rev 000
Department:	Human Resources	Effective Date:	08/01/2021
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Purpose

To provide family and medical leave consistent with the requirements of applicable federal and state law in effect at the time the leave is granted. These types of leaves are collectively referred to as “FMLA Leave”.

Policy

BWC Terminals (the “Company”) complies with all FMLA Leave requirements for eligible employees. To become eligible for FMLA Leave benefits, employees must:

- Have worked for the Company for a total of at least 12 months;
- Have worked at least 1,250 hours over the previous 12 months as of the start of the leave; and
- Work at a location where at least 50 employees are employed by the Company within 75 miles, as of the date the leave is requested.

Eligibility requirements may differ for employees who have been on a protected military leave of absence. If employees are unsure whether they qualify, they should contact Human Resources.

Employees are required to apply 40 hours of Paid Time Off (PTO) to satisfy a 5-day waiting period which begins on the first day an employee is out of work due to a medical condition or injury. If the employee does not have 40 hours of PTO available, then the employee may borrow up to 40 hours of PTO, if they have been employed more than 90 days. If they have not been employed more than 90 days, this will be unpaid 40 hours.

Hours worked do not include PTO, Company holidays, or any other paid or unpaid leave or layoff, except for periods of military leave covered by the Uniformed Services Employment and Reemployment Rights Act.

Procedure

Leave Entitlement

Eligible employees may take FMLA Leave for one of the following reasons, in addition to any reason covered by an applicable state family/medical leave law:

- For the birth, adoption, or foster placement of an employee’s child – and bonding with that child within 12 months following birth or placement (“Bonding Leave”);
- To care for an immediate family member (spouse, child, or parent with a serious health condition) (“Family Care Leave”);
- To take medical leave when the employee is unable to work because of a serious health condition (including any period of incapacity due to pregnancy, prenatal medical care or childbirth) (“Serious Health Condition Leave”);
- For *qualifying exigencies* (as defined by the FMLA) arising out of the fact that an employee’s spouse, parent, child is on active duty or has been called to active-duty status as a member of the National Guard

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or Reserves in support of a contingency operation. Exigencies leave has been extended to provide leave to families of Regular US Armed Forces provided they are being deployed to a foreign country (“Military Emergency Leave”); or

- To care for a spouse, child, parent or next of kin (nearest blood relative) who is a “Covered Servicemember,” as defined under Military Family Leave Entitlement below (“Military Caregiver Leave”).

Leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Definitions

“Child,” for purposes of Bonding Leave and Family Care Leave, means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA Leave is to commence. “Child,” for purposes of Military Emergency Leave and Military Caregiver Leave, means a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the person stood in *loco parentis*, and who is of any age.

“Parent,” for purposes of this policy, means a biological, adoptive, step or foster father or mother, or any other individual who stood in *loco parentis* to the person. This term does not include parents “in law.” For Military Emergency leave taken to provide care to a parent of a military member, the parent must be incapable of self-care, as defined by the FMLA.

“Covered Active Duty” means (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as defined by applicable law.

“Covered Servicemember” means (1) a member of the Armed Forces, including a member of a reserve component of the Armed Forces, 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 incurred or aggravated in the line of duty while on active duty that may render the individual medically unfit to perform their military duties, or (2) a person who, during the five (5) years prior to the treatment necessitating the leave, served in the active military and who was discharged or released therefrom under conditions other than dishonorable (a “veteran” as defined by the Department of Veteran Affairs), and who has a qualifying injury or illness incurred or aggravated in the line of duty while on active duty that manifested itself before or after the member became a veteran.

“Spouse,” for purposes of this policy, means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

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“Key Employee” means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee’s worksite.

Length of Leave

The maximum amount of FMLA Leave will be 12 workweeks in any 12-month period when the leave is taken for: (1) Bonding Leave; (2) Family Care Leave; (3) Serious Health Condition Leave; and/or (4) Military Emergency Leave. However, if both spouses work for the Company and are eligible for leave under this policy, the spouses will be limited to a total of 12 workweeks off between the two of them when the leave is for Bonding Leave or to care for a parent using Family Care Leave. The applicable "12-month period" utilized by the Company is the rolling 12-month period measured backward from the date an employee uses FMLA Leave. Under this method the 12-month period is measured backward from the day the employee uses any FMLA Leave.

The maximum amount of FMLA Leave for an employee wishing to take Military Caregiver Leave will be a combined leave total of 26 workweeks in a single 12-month period. A "single 12-month period" begins on the date of the employee's first use of such leave and ends 12 months after that date.

If both spouses work for the Company and are eligible for leave under this policy, the spouses will be limited to a total of 26 workweeks off between the two when the leave is for Military Caregiver Leave only or is for a combination of Military Caregiver Leave, Bonding Leave and/or Family Care Leave taken to care for a parent.

To the extent required by law, some extensions to leave beyond an employee’s FMLA entitlement may be granted when the leave is necessitated by an employee's work-related injury or illness or by a “disability” as defined under the Americans with Disabilities Act and/or applicable state or local law. Certain restrictions on these benefits may apply.

Intermittent or Reduced Scheduled Leave

Employees may take leave on an intermittent basis or work a reduced schedule under certain circumstances, which means taking leave in blocks of time or by reducing the employee’s normal weekly or daily work schedule. Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's own serious health condition. Only the amount of leave actually taken while on intermittent/reduced schedule leave will be charged as FMLA Leave.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the Company to schedule the leave so as not to unduly disrupt the Company’s operations, whenever practicable. If reasonable safety concerns exist regarding your ability to perform your duties, the Company may also require that you provide a medical certification by your health care provider that certifies you can perform the essential functions of your job as those essential functions relate to your serious health condition. If FMLA Leave is taken intermittently or on a reduced schedule basis due to foreseeable planned medical treatment, the Company may require employees to transfer temporarily to an available alternate position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave.

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Continuation of Group Health Benefits

The Company will maintain group health benefits for an employee on FMLA Leave on the same terms and conditions as if the employee continued to work. The employee must pay their normal portion of the premiums to maintain coverage.

The Company's obligation to maintain health benefits under FMLA stops if and when an employee informs the Company of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA Leave entitlement is exhausted. The Company's obligation also stops if the employee's premium payment is more than 30 days late and the Company has given the employee written notice at least 15 days in advance advising that coverage will cease if payment is not received.

In some circumstances, the Company may recover premiums if paid to maintain health insurance coverage for an employee who fails to return to work from FMLA Leave.

An employee will not accrue credit toward PTO or other benefits which are based upon time worked, for the time that they're on FMLA Leave.

Restoration of Employment and Benefits

Under most circumstances, employees will be reinstated to the same position held at the time of the FMLA Leave, or to an equivalent position with equivalent pay, benefits, and other employment terms and conditions. However, employees have no greater right to reinstatement than if they had been continuously employed rather than on FMLA Leave. For example, if an employee would have been laid off had they not gone on leave, or if their position is eliminated during the leave, then that employee would not be entitled to reinstatement.

Key employees may be subject to reinstatement limitations in some circumstances. If you are a key employee, you will be notified of this status at the time you request a leave, and the Company will notify you as soon as is practicable if there will be limitations on your reinstatement rights.

An employee's use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA Leave.

Failure to communicate with the Company leave administrator and supervisor weekly to provide the required medical recertification(s) or to return to work immediately upon expiration of a FMLA leave may result in termination of employment. Any changes to personal contact information should be communicated to the Human Resources department.

Notice of Eligibility for, and Designation of, FMLA Leave

When an employee requests FMLA Leave, or the Company acquires knowledge that leave may be for a FMLA purpose, the third-party administrator will notify the employee whether they are eligible for FMLA Leave and inform the employee of their rights under the FMLA.

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The Company may retroactively designate leave as FMLA Leave with appropriate written notice to the employee provided the failure to designate leave as FMLA-qualifying at an earlier date did not cause harm or injury to the employee.

Fraudulent Use of FMLA Prohibited

Employees are not permitted to work another job while on FMLA leave. An employee who fraudulently obtains FMLA Leave from the Company is not protected by FMLA’s job restoration or maintenance of health benefits provisions. In addition, the Company will take all available appropriate disciplinary action against such employee due to fraud.

Nondiscrimination

The Company takes its FMLA obligations very seriously and will not interfere, restrain or deny the exercise of any rights provided by the FMLA. The Company will not terminate or discriminate against any individual for opposing any practice, or because of involvement in any proceeding related to the FMLA. If an employee believes their FMLA rights have been violated in any way, they should immediately report the matter to Human Resources.

Employee Notice

Employees are required to provide their manager/supervisor with sufficient information to make them aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.

When the need for leave is foreseeable, and such notice is practicable, employees are required to provide notice to the Company at least 30 days before the commencement of the leave. Failure to provide advance notice when the need for leave is foreseeable may result in delay or denial of FMLA leave.

If the leave is not foreseeable, the employee must provide notice to the Company of the need for leave as soon as practicable and must follow the normal call-in procedures. Failure to follow the Company’s standard call-in procedures, absent unusual circumstances, will result in delay or denial of the leave.

Medical Certifications (Unrelated to Requests for Military Family Leave)

The Company requires that an employee’s request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification(s) by a health care provider. The Company utilizes a third party leave administrator to manage this process. Where possible and practicable, such medical certification should be provided before leave begins, or as soon thereafter as reasonably possible.

Except as expressly modified below (for Medical Re-certifications), whenever the Company requests employees to provide FMLA medical certifications, employees must provide the requested certifications within 30 calendar days after the Company’s request, unless it is not practicable to do so. The Company will inform employees if submitted medical certifications are incomplete or insufficient and provide employees at least 7 seven calendar days to cure deficiencies. FMLA leave may be delayed or denied if any employee fails to timely submit requested medical certifications or fails to correct deficiencies in medical certifications.

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With the employee's permission, the Company (through its leave administrator or individuals other than the employee's direct supervisor) may contact the employee's health care provider to authenticate or clarify medical certifications.

The Company may, at its own expense, require the employee to obtain a second or third medical opinions and periodic re-certification (as described below) from a health care provider. Employees are expected to cooperate with the Company in obtaining additional medical opinions that may be required.

Medical Re-certifications

An employee who, because of their own, or a covered relation's serious health condition will be on a FMLA leave for more than one (1) week is required to call the Company's leave administrator weekly to report when and if the employee expects to return to work. The Company may request recertification at any time during the course of the leave. The Company will notify employees if recertification is required and will give employees at least fifteen (15) calendar days to provide such recertification.

If the employee's leave to care for their own serious health condition, or that of a family member, or to care for a covered service member is expected to last more than 30 days, the Company will require a new certification from the employee's health care provider at least once every 45 days or sooner, regardless of the estimated duration of the serious health condition necessitating the need for leave.

For example, the Company may request recertification if (1) the employee requests an extension of leave; (2) the circumstances of the employee's condition as described by the previous certification change significantly (e.g., employee absences deviate from the duration or frequency set forth in the previous certification; employee's condition becomes more severe than indicated in the original certification; employee's encounter complications); or (3) the Company receives information that casts doubt upon the employee's stated reason for the absence. Any recertification requested by the Company will be at the employee's expense.

Return to Work/Fitness for Duty Medical Certifications

Unless notified that providing such certifications is not necessary, an employee returning to work from FMLA Leave that was taken because of their own serious health conditions must provide the Company medical certification confirming they are able to resume to work. The Company may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.

If the Company has a reasonable safety concern, it may also require periodic fitness-for-duty certifications prior to the employee's return from intermittent FMLA Leave, up to once every 30 days. A reasonable safety concern means a reasonable belief of significant risk of harm to the individual employee or others.

Submit Certifications Supporting Need for Military Medical Leave

The Company requires appropriate certification supporting an employee's request for military family leave. Leave for a qualifying requirement must be supported by a copy of the covered military member's active-duty orders and certification providing the appropriate facts related to the qualifying requirement for which leave is

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sought, including contract information if the leave involves meeting with a third party. Leave to care for a covered service member with a serious injury or illness must be supported by certification completed by an authorized health care provider of the covered service member's family.

Substitute Paid Leave for Unpaid FMLA Leave

FMLA leave under this policy is generally unpaid leave. However, employees may be eligible to receive benefits through state-sponsored programs or the Company's sponsored wage-replacement benefit programs. Employees may also choose to use accrued PTO and sick leave, to the extent permitted by law. All payments of wage-replacement benefits and accrued PTO will be integrated so that employees will receive no greater compensation than their regular compensation during this period. The use of paid benefits will not extend the length of the FMLA Leave.

Additional Information Regarding FMLA

A Notice to Employees of Rights Under FMLA (WHD Publication 1420) is included in the Benefits Guide.

Conflicts of Laws

This policy is not intended to be a comprehensive review of the FMLA or other various federal and state leave related laws. The Company and its employees are governed by such laws. To the extent this policy conflicts with applicable federal or state laws, such laws govern. Several states have family leave laws that provide leave benefits which exceed those available to employees under the FMLA. Employees should contact Human Resources for additional information.

For More Information

Questions about this policy or eligibility for FMLA Leave should be directed to the Company's Benefits and Compensation Manager.

Personal Leave

Employees may request personal leave for unique reasons that may not apply to the other types of leaves. This is an unpaid leave of absence which is generally considered after PTO benefits have been exhausted. Employees may request up to a maximum of 30 days of Personal Leave in any rolling 12-month period. Personal leave approval will be based on the nature of the leave, the employee's work history, and the business needs of the Company and the employee.

Employees who have at least three months of consecutive service as regular, full-time employees are eligible for personal leave.

Upon completion of the leave, the employee may be returned to their former position, if available. If the employee's position is not available, the employee may be offered another available position for which they are

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qualified. If no position is available when the employee can return to work, the employee will be terminated and may apply for the next available position.

The Company will maintain group health benefits for an employee on unpaid personal leave on the same terms and conditions as if the employee continued to work. The employee must pay their normal portion of the premiums to maintain coverage.

Employees requesting unpaid Personal Leave must complete the Personal Unpaid Leave of Absence Request Form (NON-FMLA LEAVE) and submit to Human Resources for determination.