



LEWIS AND CLARK COUNTY POLICY

Subject: Employee Benefits – Leave Provisions	Policy No: 1.2.8
Approved:	Effective Date: Aug. 1, 2015 Revised Date: 05/31/17, 10/2021

I. Policy Statement

The County offers leave provisions consistent with those allowed by federal and Montana state law.

II. Applicability

All Lewis and Clark County employees.

III. Definitions

Affected Employee – An employee of Lewis and Clark County whose life, the lives of members of his immediate household or whose property is endangered during a declared disaster or emergency. A County employee who is a member of the national guard of the state of Montana and who is ordered to active federal or state service by competent authority is not an affected employee under this rule.

Affected Work Site – Portions of a department's premises that are directly threatened or affected by disaster or emergency conditions as described in this policy.

Contribution – A voluntary and irrevocable contribution of accrued sick leave an employee donates directly to another employee.

Disability – Any illness, injury, or other condition that prevents the employee from performing some or all of the duties of the position. A disability may be the result of a short-term illness or injury, pregnancy or child-birth, or industrial accident. "Disability" also includes, as provided in [49-2-101](#) and [49-3-101](#), MCA:

- a. A physical or mental impairment that substantially limits one or more of a person's major life activities;

- b. A record of an impairment; or
- c. A condition regarded as an impairment.

Disaster – As defined in [10-3-103](#), MCA, "the occurrence or imminent threat of widespread damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, or accidents involving radiation by-products or other hazardous materials."

Education Leave - Employees attending courses at an accredited vocational or post-secondary educational institution for up to eight (8) credit hours per academic year.

Emergency – As defined in [10-3-103](#), MCA, "the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize."

Employee – Any person employed by any department except elected officials and persons contracted as independent contractors or hired under personal services contracts. For purposes of sick leave donation, a short-term worker is not an employee.

Extensive Illness or Accident – An illness, injury, disability as defined in the disability and maternity leave policy, or quarantine that incapacitates an employee for 10 or more consecutive working days.

In a Pay Status – The hours an employee is paid at the regular pay rate up to a maximum of 40 hours in a workweek. This includes hours an employee is paid for annual leave, sick leave, holidays, and compensatory time. For the purposes of sick leave donation, the term does not include hours that exceed 40 hours in a workweek, which are paid as overtime or recorded as compensatory time.

Industrial Accident – An injury or accident, as defined in [39-71-119](#), MCA.

Maternity Leave – Any leave of absence granted to or required of an employee because of the employee's disability due to pregnancy. It may be a paid or unpaid leave of absence.

Military Leave – A period of absence from employment for the purpose of attending regular encampments and training courses of the military forces of the United States.

Participating Employee – An employee who has met the conditions specified in this policy.

Personal Emergency – Circumstances affecting a County employee which are the same or similar to those covered by the definitions of disaster or emergency, but which are not covered by a declaration of disaster or emergency by the governor or during a work site closure.

Reasonable Accommodation – In accordance with section 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990:

- a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position the qualified applicant desires;
- b. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- c. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Short-term Illness or Injury – A condition of limited duration, such as a cold, the flu, or a sprained ankle, which in and of itself does not limit employability.

Volunteer Service – Participation in local volunteer emergency services, including, but not limited to, volunteer fire fighting, search and rescue, or civil defense.

Working Day – The period of time in a pay status for an employee that is their regularly scheduled hours in a calendar day.

IV. Directives

A. Prior Service With Another Montana Agency

1. County employees who have been employed with another Montana agency, meaning any legally constituted department, board, or commission of state, city, or county government or any political subdivision thereof as defined in [2-18-601](#) MCA, may use that time towards their vacation accrual rate. However, in accordance with [2-18-601](#), MCA, time as an elected state, county or city official, as a schoolteacher, as an independent contractor or personal services contractor does not count toward the rate earned. For purposes of this paragraph, an employee of a school district or the university system is eligible to have school district or university employment time count toward the rate earned schedule if that employee was eligible for annual leave pursuant to [2-18-601](#), MCA, in the position held with the school district or university system. Employees eligible to use service time from employment with another agency may do so provided that:
 - a. They obtain a Certification of Prior Employment Hours for Annual Vacation Leave Rate Earned Form from the Human Resource Department staff.
 - b. The employee sends the form and it is certified by the appropriate Montana agency.
 - c. When the Human Resource Department staff receives the completed certification form, the employee will receive the additional time towards his or her vacation accrual rate. For the purpose of determining years of employment, an employee must be credited with an entire pay period in which he is in a pay status or on an authorized leave of absence with pay, regardless of the number of hours of service in the pay period.
 - d. It is the employee's responsibility to furnish all the necessary information to the Human Resource Department staff.

B. Vacation Leave Accrual Policy

1. Regular, Seasonal and Temporary status employees accumulate vacation leave credits from the first day of employment and may use the credits after six months of continuous employment. Seasonal employees who work two or more seasons may carry over vacation credits if County management has continued need of the employee. If a Seasonal employee carries vacation leave over, employment in two of more seasons is considered continuous employment. Short-term workers do not accrue vacation time.
2. Vacation leave credits will be earned at a yearly rate calculated in accordance with the following schedule where one (1) year equals 2,080 hours of work.

40 hours x 52 weeks = 2,080 hours = 1 year

Completed Years of Employment	Credits Per Year	Full-Time/40 Hrs Worked/Bi-Weekly Pay Period	Part Time Accrual Rate
1 year through 10	120 hours	4.62 hours	.058 x # of hours
11 through 15	144 hours	5.54 hours	.069 x # of hours
16 through 20	168 hours	6.46 hours	.081 x # of hours
21 or more	192 hours	7.38 hours	.092 x # of hours

- a. Overtime hours are not counted in the calculation of vacation credits earned.
 - b. When calculating incomplete pay periods and part-time hours, final figures are rounded off to the nearest hundredth of an hour.
 - c. For the purpose of determining years of employment, an employee must be credited with an entire pay period in which he/she is in a pay status or on an authorized leave of absence with pay, regardless of the number of hours of service in the pay period. (Refer to Section 08-02- Prior Service With Another Montana Agency.)
3. The following rules will apply to vacation leave:
- a. Vacation time taken off will be recorded to the nearest quarter (.25) hour.
 - b. No vacation leave with pay will be granted in advance of credits earned. Credit earned in one pay period may be used in the next.
 - c. Vacation leave credits will not accrue in any leave of absence without pay status.
 - d. Non-exempt employees may not use vacation leave hours to create an overtime pay situation. In the event that requested use of vacation leave creates an overtime pay liability, the Human Resource Department staff will reduce requested vacation leave hours so that the employee's hours in an active pay status do not exceed forty (40) in a given work week.
 - e. Vacation leave cannot be used without prior approval of the employee's supervisor.
 - f. Pursuant to provisions described in [2-18-617](#), MCA, vacation leave credits may be accumulated to a total not to exceed two (2) times the maximum hours earned annually as of the end of the first pay period of the next calendar year. Excess

vacation time is not forfeited if taken within ninety (90) calendar days from the last day of the calendar year in which the excess was accrued. It is the responsibility of the elected official/department director to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited **and** the elected official/department director denies that request, the excess vacation leave is not forfeited and the County will ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited.

- g. Elected officials/department directors may authorize the use of vacation leave for employees to care for a newborn child or adopted child.
- 4. Holiday/Vacation Leave-Vacation leave taken over a legal holiday will not be charged against the employee's accumulated vacation leave total for the legal holiday.
- 5. Vacation Leave/Sick Leave-Vacation leave time may be substituted for sick leave time with the consent of the employee.
- 6. Employee Termination -An employee who terminates employment for a reason that does not reflect discredit on the employee and who has worked the qualifying period for use of vacation leave is entitled to a lump sum payment at the wage rate current at the time of termination for unused vacation leave, provided the employee has worked the qualifying period of six (6) continuous calendar months.
- 7. Transferred Employees-If an employee is transferred between departments, the employee will not be entitled to a lump sum payment for accrued vacation leave credits. The department receiving the transferred employee will assume the liability for the accrued vacation credits earned and transferred with the employee.

C. Sick Leave Accrual Policy

- 1. Regular, Seasonal and Temporary status employees will be eligible to accumulate sick leave credits from the first day of employment and use them after ninety (90) days of continuous employment. Seasonal employees who work two or more seasons may carry over sick leave credits if County department management has continued need of the employee. If a Seasonal status employee carries sick leave over, employment in two or more seasons is considered continuous employment.
- 2. Sick leave credits will be earned at a yearly rate calculated in accordance with the following schedule where one (1) year equals 2,080 hours of work.

40 hours x 52 weeks = 2,080 hours = 1 year.

Period of Employment	Sick Leave Credit/year
40 hours per week	96
Less than 40 hours per week	.04615 x # of hours worked

- a. Overtime hours are not counted in the calculation of sick leave credits earned.

- b. When calculating incomplete pay periods and part-time hours, final figures are rounded off to the nearest hundredth of an hour.
- c. Sick leave does not accrue on overtime worked and no employee will earn more than the statutory full-time accrual rate of 12 days (96 hours) per year. Employees in a leave-without-pay status do not accrue sick leave.

D. Use of Sick Leave

1. The following procedures will apply to the use of sick leave:
 - a. Sick leave time taken will be recorded to the nearest quarter (.25) hour when fractions of hours are used.
 - b. No sick leave with pay will be granted in advance of credits earned.
 - c. Sick leave credits will not accrue in an authorized leave of absence without pay status.
 - d. The elected official/department director may require medical certification to confirm the appropriate use of sick leave, including the need to care for an ill or injured immediate family member. A licensed physician, or another licensed health care provider competent to treat and diagnose the particular illness or condition, must provide medical certification. All required medical certifications or examinations must be job-related and consistent with business necessity.
 - e. When the reason for leave also qualifies for the use of Maternity Leave, Parental Leave, or Family Medical Leave (FMLA), the elected official/department director and the employee must follow the medical certification procedures and other requirements of the Maternity Leave procedures or Parental Leave procedures, the FMLA procedures, and the FMLA regulations (29 CFR 825).
 - f. All medical information obtained through certification or medical examinations must be:
 - i. maintained as confidential in secured, separate files from the usual personnel files; and
 - ii. maintained according to ADA and GINA confidentiality requirements.
 - g. Whenever the County Human Resource Director or the elected official/department director has reason to believe that an individual employee might be abusing sick leave, they may request the employee claiming or using sick leave to substantiate or verify their claim with proper medical certification. The elected official/department director may also request medical certification that the employee is released to return to work.
 - h. The elected official/department director may require a medical release to return to work from employees who take extended sick leave [more than three (3) working days].
 - i. Non-exempt employees may not use sick leave hours to create an overtime pay situation. In the event that requested use of sick leave creates an overtime pay liability, the Human Resource Department staff will reduce requested sick leave hours so that the employee's hours in an active pay status does not exceed forty (40) hours in a given work week.
2. Sick leave may be granted for:
 - a. Time off when an employee is unable to perform job duties because of physical or mental illness, injury or disability.
 - b. Maternity-related disability; including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child.

- c. Parental leave as provided in 2-18-606, MCA.
 - d. Quarantine resulting from exposure to contagious disease.
 - e. Consultation, examination or treatment by a licensed health care provider.
 - f. Short-term attendance to an immediate family member or, at the elected official/department director's discretion, another relative because of physical or mental illness, injury, disability, or examination or treatment until other care can reasonably be obtained. Immediate family members are the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild, or corresponding in-law.
 - g. Necessary care of a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993.
 - h. Death or funeral attendance for an immediate family member or, at the elected official/department director's discretion, another person. (See also Bereavement Pay, below.)
3. Holiday/Sick Leave-Sick leave taken over a legal holiday will not be charged against the employee's accumulated sick leave for the legal holiday. Exceptions may be made for employees scheduled to work the holiday (i.e. emergency services). Proper medical certification may be required to substantiate the illness.
 4. Sick Leave/Vacation Leave-If all sick leave credits have been used, an employee that is eligible to use vacation leave credits will have the option of using accrued vacation leave credits.
 5. An employee who terminates employment with the County is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's wage at the time the employee terminates employment with the County. Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments.
 6. Transferred Employees-If an employee is transferred between departments, the employee will not be entitled to a lump sum payment for accrued sick leave credits. The department receiving the transferred employee will assume the liability for the accrued sick leave credits transferred with the employee.

E. Abuse of Sick Leave

1. Sick leave abuse occurs when an employee uses sick leave for unauthorized purposes or misrepresents the actual reason for charging an absence to sick leave. Sick leave abuse is cause for dismissal and forfeiture of the lump-sum payment (2-18-618, MCA).
2. Abuse also may occur when an employee establishes a pattern of sick leave usage over a period of time. Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline.
3. Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to the appropriate grievance procedure.

F. Donation and Receipt of Sick Leave Policy

1. Lewis and Clark County recognizes that the inability to work due to illness or injury not covered by workers' compensation may create a serious strain on the employee's financial situation. Accordingly, Lewis and Clark County allows the sharing of accrued sick leave between qualified employees for a specific event where sick leave may be used appropriately. However, this policy does not guarantee that the County will approve a leave of absence, and nothing in this policy guarantees that an employee will receive donations of sick leave. This policy establishes procedures for donations of sick leave. The department employing the recipient of a sick leave donation will pay all costs of the use of that sick leave.
2. General Provisions
 - a. Elected officials/department directors must approve an employee's request for donations of sick leave.
 - b. An employee who has a discreet event that requires use of sick leave in excess of the employee's accrued sick leave or who is required to provide necessary care as defined below, which results in the employee's absence from work for no less than 10 consecutive working days may request donations of sick leave. In addition, the employee must satisfy the eligibility requirements outlined below.
 - c. An employee who has received approval to request donations of sick leave from the elected official/department director will notify the staff of the Human Resource Department. The Human Resource Department staff will provide the employee with the necessary forms. Solicitations for donations may be done by the elected official/department director, the employee's direct supervisor, or the Human Resources Department, and not contain personal health information without the employee's consent. The employee may not solicit donations directly.
 - d. An eligible full-time employee may receive contributions of sick leave up to a maximum of 240 hours sick leave in a 12-month period. Departments will calculate the 12-month period from the first day an employee uses sick leave credits received through contributions. Donated sick leave may be used for any purpose where sick leave would be allowed (see above).
 - e. Departments will prorate the available hours a part-time employee may receive based on either:
 - i. the part-time employee's regular schedule at the time the employee became qualified for a sick leave contribution; or
 - ii. the average amount of time the employee is in a pay status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the qualifying event an employee was in a pay status an average of 20 hours per week, the maximum available sick leave is 120 hours in a 12-month period.
 - f. Except as described below, an employee may not donate a total of more than 80 hours of sick leave in a 12-month period. An employee's contribution cannot reduce the employee's accumulated sick leave balance below 40 hours. Departments will calculate the 12-month period from the first day of the pay period following the pay period in which a department removes the first contribution from the donating employee's account.

- g. Subject to elected official/department director approval, an employee may use sick leave hours obtained from donations as follows:
 - i. to provide necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Policy;
 - ii. for continuing physical or mental illness, injury, disability, or treatment by a licensed health care provider that is directly related to the original reason that caused the employee to become eligible to receive a sick leave contribution;
 - iii. in the same pay period in which the Human Resource Department staff adds the credits to the employee's account;
 - iv. if an employee is incapacitated and unable to apply for a sick leave contribution, another person may do so for the employee; and
 - v. together with an approved leave of absence without pay, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.
- h. An employee's use of contributed sick leave hours does not prohibit department management from taking appropriate disciplinary action due to an employee's unauthorized absence from work.

G. Prohibited Uses of Contributed Sick Leave

1. An employee may not use contributed sick leave hours:
 - a. if the employee is eligible for workers' compensation wage loss benefits;
 - b. during a leave of absence without pay which was approved for reasons other than an extensive illness or accident or providing necessary care as described in this policy;
 - c. when the employee has personally accrued sick leave or compensatory time available, for example, when an employee has sick leave or compensatory time available that has accrued while the employee was using sick leave from contributed sick leave hours; or
 - d. retroactively to a previous pay period in which the employee was in a leave without pay status and had not yet become eligible to receive contributed sick leave hours.
2. If any of the above or other unforeseen reasons cause an employee to have unused sick leave credits from contributed sick leave hours, the sick leave becomes excess sick leave and may not be used. The Human Resource Department staff will remove excess sick leave credits from the employee's account and return them to donating employees.
3. An employee may not cash out sick leave credits if those credits were obtained through a sick leave donation. On termination of employment, the Human Resource Department staff will remove unused credits from the employee's account and return them to donating employees.

H. Sick Leave Contribution Procedures

1. An employee who chooses to make a contribution of sick leave will submit a completed sick leave donation form to the Human Resource Department.
2. The Human Resource Department will determine that:
 - a. the receiving employee is eligible to use and receive donated sick leave;

- b. the contributing employee has met the eligibility requirements to make a sick leave donation, as defined below;
- c. the elected official/department director of the employee requesting the donation has agreed to allow the employee to accept donations; and
- d. the Human Resource Department has deducted the appropriate hours from the donating employee's sick leave account.

I. Eligibility Requirements to Contribute Sick Leave

- 1. To be eligible to make a sick leave donation, an employee will:
 - a. have completed the 90-day qualifying period to take sick leave; and
 - b. may not reduce a full-time employee's balance of sick leave below 40 hours.
- 2. The Human Resource Department will prorate the minimum balance for a part-time employee based on either:
 - a. the part-time employee's regular schedule at the time the employee makes the initial donation; or
 - b. the average amount of time the employee is in a pay status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the donation a part-time employee was in a pay status an average of twenty (20) hours per week, the employee will keep a minimum balance of twenty (20) hours of sick leave following the donation.
- 3. One donated credit hour will be subtracted from the donating employee's sick hour accruals for each credit hour added to the recipient employee's sick leave credit accumulation.
- 4. Employees may donate up to twenty (20) hours of sick leave to an individual employee, and up to eighty (80) hours total sick leave during a twelve (12) month period.
- 5. Once made, employees cannot rescind donated credits, subject to the qualification below.
- 6. Credits not used by the recipient employee will be returned to the donating employee when the recipient employee returns to work, completes his/her recuperation, or terminates employment with the County. Credits will be returned in the reverse order of their donation.
- 7. An eligible employee may make a sick leave donation to an eligible employee of any County department.

J. Eligibility Requirements to Receive Contributed Sick Leave

- 1. To be eligible to receive a sick leave donation, an employee will have:
 - a. met the 90-day qualifying period to use sick leave;
 - b. suffered an extensive illness or accident or be required to provide necessary care as defined above, which resulted in the employee's absence from work for no less than ten (10) consecutive working days;

- c. used all available accrued sick leave, annual leave, other accrued paid leave, and compensatory time;
 - d. taken twenty (20) consecutive hours of leave of absence without pay following the use of all accrued paid leave and compensatory time (departments may not prorate this amount for part-time employees);
 - e. received approval from the supervisor for leave of absence;
 - f. received approval from the elected official/department director (or designee) to receive sick leave donations; and
 - g. provided a medical provider's certification of extensive illness or accident when requested by the employing department.
2. In any twelve (12) month period, an employee may receive either 1) a total equal to half (1/2) the sick leave hours the employee would have accrued since the start of employment with the County or 2) a total of two hundred forty (240) credit hours of donated sick, whichever is less. For the purposes of this section, the twelve (12) month period begins with the pay period of the first draw of donated leave.
 3. Donations are applied based on hours (credits), not on rate of pay of the donating employee.
 4. Meeting the requirements to receive sick leave donation does not guarantee that the employing elected official/department director (or designee) will approve the employee's use of donated sick leave.

K. Bereavement Leave Pay

1. Upon the death of a member of the employee's immediate family, a Regular, Seasonal or Temporary status employee will be granted up to twenty-four (24) hours of paid bereavement leave. Immediate family is defined as the employee's spouse, parents, spouse's parents, grandparents, spouse's grandparents, brothers, sisters, household dependents, brothers-in-law, and sisters-in-law. Bereavement leave may be extended using vacation leave and sick leave, with proper authorization.

L. Leave of Absence Without Pay – General Provisions

1. Leave of absence without pay is an **unpaid leave status authorized by the elected official/department director and the Human Resource Director**. An employee may be allowed to request and take a leave of absence without pay at the elected official/department director's discretion, unless the purpose of leave is to serve in a public office, active duty or another extended military service, or leave taken under terms and conditions of the Family and Medical Leave Act.
 - a. Leave of absence without pay will be for use as outlined under disability leave, maternity leave, parental leave, family and medical leave, public office leave, or military leave, or for up to one month for other valid and good reasons if authorized by the elected official/department director.
 - b. Leave of absence without pay for situations in excess of thirty (30) calendar days will be granted only with the approval of the employee's elected official/department director and the Human Resource Director.

M. Leave of Absence Without Pay - Guidelines

1. Elected official/Department directors may grant a leave of absence without pay by following these guidelines:
 - a. The elected official/department director must receive a written request from an employee for use of leave without pay. The request should include a reason for the request and the amount of leave time requested.
 - b. Upon receipt of a written request, the elected official/department director will base the decision on whether or not to grant leave of absence without pay using a cost/benefit analysis that may include weighing both direct and indirect costs against benefits to the department. The elected official/department director's assessment may include, but is not limited to, the following: loss of productivity by the employee; overtime or compensatory time for other current employees; hiring and training a temporary replacement; and the impact on the department budget and customers; and long-term retention of an employee and improved job performance as a result of the leave.
 - c. While an employee is on leave of absence without pay, the County's contribution to health, dental, vision, and life insurance plans stop unless the leave is in conjunction with family and medical leave provisions (see below).
 - d. Employees on authorized leave of absence without pay will make arrangements with the Human Resource Department to pay health plan contributions.
 - e. The elected official/department director (or designee) will provide written notice to the Human Resource Department whenever an employee is authorized to take a leave of absence without pay. The notice will include information about the start and end dates for the leave, together with a general explanation about the need for leave.
 - f. Notice will be provided to the Human Resource Department prior to the start of the first pay period affected by the leave of absence without pay.
 - g. Absence from work does not constitute an authorized leave of absence without pay.

N. Disability Leave

1. Disability leave is available to Regular and Seasonal status employees. Employees may use sick leave credits, vacation leave credits, or leave of absence without pay for the purpose of recovering from physical disabilities or injuries.
2. An employee requesting disability leave must:
 - a. substantiate the request with proper medical certification;
 - b. make a written request for a specific period of time to their immediate supervisor; and
 - c. have approval by the elected official/department director and the Human Resource Director.
3. Disability leave of absence without pay for up to six (6) calendar weeks for employees in a Regular status may be granted by the employee's elected official/department director and the Human Resource Director, and must be substantiated by proper medical certification.
 - a. When a leave of absence is due to disability, the Human Resource Director may approve a combination of paid leave and leave of absence without pay.

- b. Extensions beyond six (6) calendar weeks may be granted with the approval of the elected official/department director and Human Resource Director.
- c. An employee who requests disability leave may be required to provide medical certification certifying that the employee is fit to perform the duties of the position.
- d. If the employee who requests disability leave is a qualified individual with a disability, the County may be required to provide a reasonable accommodation for the employee unless to do so would impose an undue hardship in accordance with Section 503 and 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990.
- e. When the period of authorized leave of absence without pay has expired and the employee is unable to return to work either with or without reasonable accommodation, the County is relieved of employment responsibility to the employee.
- f. Leave of Absence Without Pay will dictate the accrual of benefits during the disability leave of absence without pay.
- g. While an employee is on disability leave of absence without pay, the County's contribution to health, dental, vision, and life plans stop unless the leave is in conjunction with family and medical leave provisions (see 08-14 below). Employees on authorized disability leave of absence without pay will make arrangements with the Human Resource Department to pay the health plan contributions.

O. Parental Leave-Paid

1. Lewis and Clark County will provide up to four (4) weeks of Paid Parental Leave to eligible employees following the birth of their child or placement of a child with an employee in connection with adoption or foster care. The effective date of this leave is July 1, 2021. The purpose of this paid leave is to enable the employee to care for and bond with their newborn, newly adopted, or newly placed child. Eligible employees must meet the following criteria:
 - a. Be a Regular status employee. Seasonal employees must be in a paid status when the leave is taken and paid. Short-term employees, temporary employees and interns are not eligible for this leave.
 - b. Have been employed with Lewis and Clark County for at least twelve (12) consecutive months preceding the birth, adoption, or placement date;
 - c. Have worked at least 1,040 hours during the twelve (12) months preceding the date the leave would begin.
 - d. The birth or placement of the child must be July 1, 2021 or after.
2. The four (4) weeks of Paid Parental Leave is based on the employee's regular work schedule prior to the date the leave would begin. For example, an employee working half-time would receive four (4) weeks at twenty (20) hours per week. For employees working a varied or intermittent schedule, paid hours for this leave will be calculated based on the average hours worked per pay period in the three (3) months immediately preceding the date the leave would begin.
3. The employee must use the paid parental leave within six (6) months of the birth, adoption, or placement of the child(ren). If both parents, including established

domestic partners, are employed in the same department, the Department Head or Elected Official, may require the parents to take the leave at different times.

4. Unused paid parental leave may not be carried over beyond six (6) months from the birth, adoption, or placement of the child(ren).
5. Upon termination, an employee may not be paid for any unused paid parental leave for which they were eligible.
6. Paid parental leave will be coordinated with other leave policies of the County:
 - a. Leave taken under this policy will run concurrently with leave eligible under the Family Medical Leave Act (if eligible), thus be counted toward the twelve (12) weeks available under the FMLA. All other provisions and requirements under the FMLA will apply to the FMLA leave. The total amount of paid or unpaid leave under the FMLA will not exceed twelve (12) weeks during the rolling twelve (12) month FMLA period.
 - b. Once the paid parental leave is exhausted, employees may use accrued leave or request unpaid leave toward any remaining FMLA leave or other leave they may be eligible for.
 - c. The County will maintain employer paid benefits during paid parental leave just as they would if the employee was using accrued leave such as sick or vacation.
 - d. If a holiday occurs while the employee is on paid parental leave, the holiday should be coded as holiday; however, the paid holiday will not extend the total paid parental leave entitlement.
 - e. Employees not qualifying for leave under this paid parental leave provision may be eligible for other leave options under Policy 1.2.8 Employee Benefits-Leave Provisions.
7. The employee will provide their supervisor and the Human Resource Department with notice of the request for leave at least 30 days prior to the proposed date of the leave (or if the leave was not foreseeable, as soon as possible). The employee must complete the necessary HR forms and provide all documentation as required by the HR department to substantiate the request.

P. Maternity Leave Policy

1. The County will grant a leave of absence without pay for pregnancy or childbirth for any Regular or Seasonal status employee. Maternity or pregnancy leave will be authorized for a period of up to 60 calendar days and will be subject to the same terms and conditions as a leave of absence without pay. Maternity leave may be extended with written approval of the Human Resource Director.
 - a. Maternity leave will be granted with the approval of the employee's elected official/department director and the Human Resource Director.
 - b. While an employee is on maternity leave, no vacation or sick leave credits accrue and service time for retirement will be adjusted accordingly.
 - c. While an employee is on maternity leave, the County's contribution to health, dental, vision, and life insurance plans stop unless the leave is in conjunction with family and medical leave provisions (see 08-14 below). Employees on authorized

maternity leave will make arrangements with the Human Resource Department staff to make health plan contributions.

- d. If an employee elects to extend maternity leave beyond 60 days, the elected official/department director may require appropriate certification by a medical provider.
- e. Employees using leave of absence without pay for pregnancy and related maternity time off who have signified on the request for leave that they have an intention to return to work at the end of the agreed to leave time will be reinstated to the original job, or to an equivalent position with equivalent pay if and when the employee is physically able to return to work as certified by a licensed medical provider.
- f. It is the objective of this policy to establish minimum standards for leave requests and approval, medical certification and reinstatement when an employee is unable to work due to maternity. Nothing in this policy guarantees the approval or granting of leave requested. The County will approve a reasonable leave of absence, as provided in this policy, when maternity leave is requested.

Q. Parental Leave

1. The County will permit Regular or Seasonal status employees a reasonable leave of absence without pay not to exceed fifteen (15) working days for parental leave immediately following the birth of a child or placement of a child with the employee for adoption. Parental leave may be extended with written approval of the Human Resource Director.
 - a. Parental leave will be granted with the approval of the employee's elected official/department director and the Human Resource Director.
 - b. While an employee is on parental leave, no vacation or sick leave credits accrue and service time for retirement will be adjusted accordingly.
 - c. While an employee is on parental leave, the County's contribution to health, dental, vision, and life insurance plans stop unless the leave is in conjunction with family and medical leave provisions (see 08-14 below) or unless the employee requests use of sick leave, vacation leave or compensatory time. Employees on authorized leave of absence without pay will make arrangements with the Human Resource Department staff to pay health plan contributions.
 - d. If an employee elects to extend parental leave beyond fifteen (15) days, the elected official/department director may require appropriate certification or documentation of birth or adoption.
 - e. An employee may request the use of sick leave, vacation leave, compensatory time or leave of absence without pay as parental leave.

R. Family and Medical Leave

1. Employees are eligible for family and medical leave if they have worked for the County for at least one (1) year and for 1,250 hours over the previous twelve (12) month period. Family and medical leave for up to twelve (12) weeks in a twelve (12) month revolving period will be granted to Regular status employees for any of the purposes described below. The twelve (12) month period will begin on the date the employee requests leave. Employees using family and medical leave will be reinstated to their original job, or to an equivalent position with equivalent pay providing that they have indicated a desire to return to work at the end of the leave

- period. During the first 12 weeks of leave, the employee will receive health plan coverage according to the terms and conditions that were in effect for the employee prior to the request for leave. Employees must still make the employee portion of health plan contributions while on family and medical leave.
2. Leave Requirements: Unpaid leave will be granted for any of the following reasons:
 - a. To care for the employee's child after birth, or placement for adoption or foster care.
 - b. To care for the employee's spouse, child, or parent, who has a serious health condition.
 - c. For a serious health condition that makes the employee unable to perform the employee's job.
 - d. For any qualifying exigency arising from the fact that the spouse, child or parent is on active duty or has been notified of an impending call to active duty status, in support of a contingency operation.
 - e. To care for a spouse, child, parent or next of kin who is recovering from a serious illness or injury sustained in the line of duty while on active duty. [In this case only, the caregiver is entitled to 26 weeks of leave in a single twelve (12) month period.]
 3. Leave Requests: To request family and medical leave, the employee will:
 - a. Make a written request for a specific period of time to their immediate supervisor.
 - b. Have approval by the elected official/department director and the Human Resource Director.
 - c. Provide medical certification of the health condition or qualifying exigency upon request.
 - d. Upon receipt of a request for family and medical leave, the Human Resource Department staff will provide the employee with the appropriate form to complete the leave request.
 4. Notice Requirements
 - a. The elected official/department director (or designee) must notify the Human Resource Director (or designee) any time an employee is absent from work the three (3) consecutive days.
 - b. The Human Resource Department staff will provide the employee with FMLA leave request paperwork upon receiving notice of absence.
 - c. The Human Resource Department staff will notify the employee and the elected official/department director if FMLA leave is approved or denied.
 5. Combining Family and Medical Leave With Other Leave – Family and medical leave is a twelve (12) week leave of absence without pay that provides the employee with reinstatement rights and paid health plan coverage while the employee is on leave, subject to the following conditions:
 - a. Use of Sick Leave – Employees taking FMLA leave for purposes that qualify for use of sick leave will be required to take at least 20 hours of accrued sick leave each week before leave without pay will be approved, except as provided below.
 - i. Employees with fewer than 20 hours of accrued sick leave must take all accrued sick leave each week before leave without pay will be approved.
 - ii. When an employee requires leave due to a job-related injury or illness covered by workers' compensation insurance, use of sick leave will not be required.

- b. Use of Vacation Leave
 - i. Employees may request to take their accrued annual vacation leave during an approved FMLA leave.
 - ii. Employees will not be required to take accrued annual leave during FMLA leave if the reason for absence is illness.
 - c. Use of Compensatory Time
 - i. Department may allow employees to use accrued nonexempt compensatory time, but the hours will not count toward the employee's entitlement to 12 weeks of FMLA leave each year as provided in the FMLA regulations.
 - ii. Department may require employees to use accrued exempt compensatory time when approving any type of FMLA leave.
6. Return to Work – Employees must provide the Human Resource Director (or designee) with notice of return to work from FMLA leave within 24 hours of their return.

S. Public Office Leave

- 1. The County will grant a leave of absence, not to exceed 180 days per year, to any County employee elected or appointed to a public office in the city, county, or state. The leave will apply to the time period while the employee is performing public service.
- 2. Upon completion of the public service, the employee will be restored to the position occupied prior to the leave, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to the leave of absence for public service under this section.
- 3. An employee granted a leave of absence will make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed medical provider.
- 4. Unemployment benefits paid to a person by application of this section may not be charged against an employer under the unemployment insurance law.

T. Military Leave

- 1. Military leave with pay, not to exceed 120 working hours in a calendar year, will be granted to employees who have been employed continuously for six months and who are members of the organized State Militia, National Guard, Reserved Corps, or other military forces of the United States.
- 2. In addition to using military leave, County employees with orders have the option of using annual vacation leave or requesting leave of absence without pay status when ordered to active duty with the State National Guard.
- 3. While an employee is on leave of absence without pay, the County's contribution to health, dental, vision, and life insurance plans stop unless the leave is in conjunction with family and medical leave provisions.

4. Employees on authorized leave of absence without pay will make arrangements with the Human Resource Department to pay health plan contributions. Employees should consult the health plan summary plan description for reasonable notice requirements for and plan limitation of County health plan coverage.
5. Departments will provide written notice to the Human Resource Department whenever an employee takes military leave or is authorized to take a leave of absence without pay in conjunction with military training or service. The notice will include information about the starting and end dates for the leave, together with copies of military orders.
6. Notice will be provided to the Human Resource Department prior to the start of the first pay period affected by the military leave or leave of absence without pay.
7. For the purpose of determining the number of years of employment used in vacation leave credits, the period of absence from employment due to a war involving the United States or in any other national emergency and for ninety (90) days thereafter, the period is considered as service if one of the following instances apply:
 - a. Employee is ordered to active duty with the Armed Forces of the United States.
 - b. Voluntary service on active duty in the Armed Forces or on ships operated by or for the United States Government.
 - c. Direct assignment to the United States Department of Defense for duties related to National Defense, if leave of absence without pay has been authorized.

U. Holiday Leave and Holiday Pay

1. The following are legal holidays:
 - a. New Year's Day, January 1.
 - b. Martin Luther King Day, third Monday in January.
 - c. President's Day, third Monday in February.
 - d. Memorial Day, last Monday in May.
 - e. Independence Day, July 4.
 - f. Labor Day, first Monday in September.
 - g. Columbus Day, second Monday in October.
 - h. Veteran's Day, November 11.
 - i. Thanksgiving Day, fourth Thursday in November.
 - j. Christmas Day, December 25.
 - k. State-wide election day in November of even years.
2. Holiday benefits are calculated based on an employee's regular schedule. For purposes of this section, changes to an employee's schedule that extend beyond one pay period are changes to the regular schedule. An employee's regular schedule may be changed in ways including:
 - a. a change initiated by management; or
 - b. a change initiated by an employee and approved by management, including, but not limited to, requests to work fewer hours on an ongoing basis, or requests to use leave without pay by itself or in combination with accrued paid leave.

3. An employee must be in a pay status either the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed to be eligible to receive holiday benefits.
4. An employee will not be eligible to receive holiday benefits if:
 - a. the employee is a new employee and begins work on the day after a holiday is observed; or
 - b. the employee is reinstated or reemployed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period or a disciplinary suspension, or is called back to seasonal or temporary employment on the day after a holiday is observed.
5. All full-time Regular, Seasonal or Temporary status employees will receive eight (8) hours off with pay for days observed as legal holidays or authorized proclaimed work days off, provided they are in an active pay status on the last regularly scheduled working day prior to the holiday.
6. Full-time Regular, Seasonal or Temporary status employee who is scheduled for a day off, which is observed as a legal holiday or authorized proclaimed work day off, will be entitled to receive eight (8) hours off with pay either on the day preceding or the day following; whichever allows a day off in addition to the employee's regularly scheduled day off. Employees under scheduling restrictions will be allowed to use the holiday hours when the scheduling allows.
7. Part-time Regular, Seasonal and Temporary status employees will receive holiday benefits on a prorated basis. Holiday benefits will be an average of the employee's hours regularly scheduled to work in the pay period. To find the average number of regularly scheduled work hours, divide the number of hours regularly scheduled to work in a pay period by 10 (the number of work days in a pay period).
8. If the pay period in which the holiday falls is not characteristic of the employee's regular schedule, the department will approximate the employee's schedule for purposes of determining holiday benefits. If the agency cannot determine an employee's regular schedule, the number of hours in a pay status divided by 10 may be used to determine the holiday benefit.
9. If part-time employees are scheduled to work on a holiday, they will take their holiday time off within fourteen (14) calendar days with the elected official/department director's authorization. The Human Resource Director must authorize any diversions from these guidelines.
10. If an employee's regular work day schedule is more than eight (8) hours, he/she may use vacation or comp time for those additional hours in order to receive a full work day's wages on a holiday. (EXAMPLE 1: a full-time employee scheduled to work ten (10) hours on a holiday would earn eight (8) hours holiday time and would need to use two (2) hours of vacation or compensatory leave to receive a full work day's wages. EXAMPLE 2: a part-time employee scheduled to work five (5) hours a day four (4) days a week would earn four (4) hours of holiday time and would need to use one (1) hour of vacation or compensatory leave to receive a full work day's wages.)

V. Education Leave – Education leave is available to Regular status employees, subject to the guidelines below:

1. Education leave may be granted to any Regular status employee, with the elected official/department director's approval, after 6 months of continuous employment.
2. The elected official/department director will forward the employee's approved request for the education leave to the Human Resource Director outlining the nature of the coursework, the length of leave, impact on department services, person(s) involved, and estimated cost to the County.
3. Employees on education leave will report back to work for the balance(s) of their work day after scheduled class(es) is/are over and within a reasonable time allowed for travel.
4. The County, upon receiving evidence of satisfactory completion of approved job related courses, will reimburse the employee for tuition and books for up to \$500.00 per fiscal year. The employee's department will submit claims and payment will be taken from department funds appropriated for the purpose of education.
Reimbursements of funds to the employee are subject to County budget constraints.
5. Graduate credit classes may be taken under the terms and conditions stated above. However, reimbursement will be subject to Internal Revenue Service rules governing educational assistance programs (Section 127). Specifically, reimbursement received for graduate credit is not exempt from the income exclusion under Section 127, and must be reported to the IRS as income for the employee.
6. Notification that a requested class is being taken for graduate credit must be included in the educational leave request and must also be noted on the claim form when the request for reimbursement is submitted. The department making the request must forward a copy of the original request and the reimbursement claim to the County Clerk/Treasurer or Finance Director.

W. Disaster and Emergency Leave

1. Lewis and Clark County will provide paid time off not charged to an employee's accrued leave or compensatory time for an employee affected by a disaster or emergency as declared under the authority of [10-3-303](#), MCA, subject to the terms and conditions described below.
2. Emergency Leave Procedures
 - a. When the governor of the state of Montana, pursuant to [10-3-303](#), MCA, or the Board of County Commissioners declare a disaster or emergency, an affected employee of the County will receive paid time off which is not charged to any accrued leave or compensatory time.
 - b. An elected official/department director (or designee) will determine on a case-by-case basis:
 - i. whether or not an employee of the department is affected by a declared disaster or emergency; and

- ii. the period of time for which the employee should receive paid time off under this section.
 - c. When the declaration does not define affected employees, employees who want paid time off under this policy will make a request through their supervisor stating the reasons they were affected.
 - d. An employee who reports for work and performs regular duties and responsibilities during a declared disaster or emergency will be paid for hours worked at the regular pay rate. No additional leave will be granted.
 - e. If an employee is requested to return to work to perform essential services during a declared disaster or emergency which requires the general closure of County offices, that employee will be authorized compensatory time in addition to his/her regular pay rate. This provision applies to all exempt employees and to non-exempt employees who have not worked in excess of 40 hours during the work week.
3. Personal Disaster/Emergency and Volunteer Service
- a. An employee who is affected by a personal disaster, emergency, or who wishes to provide volunteer service is eligible to apply to take annual vacation leave, accrued compensatory time or leave of absence without pay. The employee may not take sick leave except for reasons outlined in the sick leave policy.
 - b. Application for and approval of use of leave or compensatory time will be in compliance with rules on annual vacation leave, leave of absence without pay and/or compensatory time.
 - c. An employee must provide written verification of participation in the emergency if requested by the elected official/department director.
4. Affected Worksite Closures
- a. An elected official/department director may declare an affected work site closed when the site is under his or her authority and with the approval of the Board of County Commissioners (or designee).
 - b. The elected official/department director may temporarily reassign an employee to an alternate work site during the closure of the employee's regular work site.
 - c. An elected official/department director will determine which employees are affected by the work site closure. An employee may receive paid time off under this policy only for regularly scheduled hours that fall during the work site closure.
 - d. County employees may be assigned to a work site that is not a County-controlled facility, for example a state office or facility leased from a private owner. In the event the facility is ordered closed by those with the authority to do so and under circumstances similar to those described in this rule, an affected employee may receive paid time off under conditions described in this rule.
 - e. An employee who voluntarily reports for work and performs regular duties during the closure of an affected work site will be paid the regular wage for hours worked. No additional pay or leave will be granted.
 - f. If management requests that an employee remain at work or report to work to perform essential services during the closure of an affected work site, that employee will be authorized hour-for-hour compensatory time in addition to his regular pay rate. This provision applies to all exempt employees and to non-exempt employees who have not worked in excess of 40 hours during the work week.

V. **Closing**

Provisions of this policy will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Human Resource Department.

VI. **References**

None

VII. **Attachments**

None