

Elected Officials are Not Eligible for FMLA

At some point in your public sector HR career, you may be approached by an elected official who has an upcoming need for time away from the office due to a medical issue or other typically Family and Medical Leave Act (FMLA) qualifying reason. For regular county employees, you're accustomed to initiating the FMLA notification and certification process... but before you send out an FMLA packet, take note! Elected officials are **not** eligible for FMLA. Here's why, and when you work it through, there are some logical reasons why this makes sense.

Elected Officials Specifically Excluded:

The FMLA is a federal law that entitles eligible employees of covered employers to unpaid job protected leave for specified family and medical reasons, including military exigencies and military caregiver leave, along with continuation of group health insurance coverage as if the employee were still working.

Elected officials are specifically excluded from FMLA eligibility according to the law. Reviewing [29 U.S. Code § 203.Definitions](#) (e)(2)(C)(ii)(I) provides important insight from the definition section for the FMLA as follows:

"(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an [employer](#).

(2) In the case of an individual employed by a [public agency](#), such term means— ...

(C) any individual employed by a [State](#), political subdivision of a [State](#), or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the [State](#), political subdivision, or agency which [employs](#) him; and

(ii) who—

(I) holds a public elective office of that [State](#), political subdivision, or agency, ..."

Based on this definition, elected officials are excluded from the definition of employee(s) who may be eligible for protections under the FMLA.

Job Continuation Already Protected:

This exclusion makes sense. The FMLA offers job protection for certain kinds of absences. However, local government elected officials already enjoy job protection by virtue of their election, and for the length of a term which is often much longer than the FMLA's typical 12 weeks. Therefore, local government elected officials have no need for the FMLA's job protection benefit.

Benefits (and Salary) Already Protected:

In addition, counties have an obligation to continue an elected official's salary regardless of their attendance for the duration of their term, subject to any increases, as specified in their budget and in the Board's Resolution setting their annual salary. Benefits such as the county's group health insurance provided to the elected official continue as well. For regular county employees, FMLA eligibility provides protections such as benefit continuation, but does not require continuation of the employee's salary. (If salary continuation applies for regular county employees, this would be governed by personnel policies, collective bargaining agreement (CBA), board action/resolution, or another source.) This is another important area in which it is important to be aware of the differentiation between provisions applicable to elected officials versus those that apply to regular employees of the county.

Avoid Unintended Consequences:

Ensuring the county does not apply FMLA to individuals who are not entitled to the provisions of this law not only makes sense, but prevents others from concluding or arguing that the county has a practice of extending additional leave and benefits in excess of what the law/policy/CBA requires. This heads off a potential argument that the county should extend additional benefits in other instances as well. Additionally, it would not be advisable to collect or obtain any personal, family, or medical related information (through an FMLA certification process) for which there is not an authorized business purpose.

It's always best to ensure the county is following properly established leave and benefit provisions, and applying them to individuals who are qualified and eligible to receive those benefits. This ensures fair practices are followed and that the basis for the county's actions are appropriately authorized in accordance with each situation.