

6.6 FAMILY AND MEDICAL LEAVE

Employees may be entitled to a leave of absence under a federal law entitled the Family and Medical Leave Act (FMLA). This policy provides general information and highlights of the FMLA. Periodically, the federal FMLA may be amended or changed. The Director of Human Resources maintains the most current copy of the County's FMLA policy. If an employee has any questions concerning FMLA leave, the employee is encouraged to speak with the Director of Human Resources.

I. Employees Eligible for FMLA Leave

FMLA leave is available to eligible employees. To be an eligible employee, an employee must: (1) have been employed by the County for at least 12 months (which need not be consecutive); (2) have been employed by the County for at least 1250 hours of service during the 12-month period immediately preceding the commencement of the leave; and (3) be employed at a worksite where 50 or more employees are located within 75 miles of the worksite.

When an employee requests FMLA leave, or when the County acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the County must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. Employee eligibility is determined (and notice will be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

II. Employee Entitlements for FMLA Leave

As described below, the FMLA provides eligible employees with a right to leave, health insurance benefits and, with some limited exceptions, job restoration. The FMLA also entitles employees to certain written notices concerning their potential eligibility for and designation of FMLA leave.

A. Basic FMLA Leave Entitlement

The FMLA provides eligible employees up to 12 work weeks of unpaid leave for certain family and medical reasons during a 12-month period. The 12-month period is determined on a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Leave may be taken for any one, or for a combination, of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent (but not in-law) who has a **serious health condition**;

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- for the employee's own **serious health condition** (including any period of incapacity due to pregnancy, prenatal medical care or childbirth) that makes the employee unable to perform one or more of the essential functions of the employee's job; and/or
- because of any **qualifying exigency** arising out of the fact that the spouse, or a son, daughter or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

A **serious health condition** is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. Qualifying exigencies can include leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

B. Additional Military Family Leave Entitlement (Injured Servicemember Leave)

In addition to the basic FMLA leave entitlement discussed above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a **covered servicemember** is entitled to take up to 26 weeks of leave during a single 12-month period to care for the covered servicemember with a serious injury or illness. Leave to care for a covered servicemember shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the injured covered servicemember.

When, during the single 12-month period, leave qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition, the County will designate such leave as leave to care for a covered servicemember in the first instance and such leave shall not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the

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case with other FMLA leave, the County may retroactively designate leave as leave to care for a covered servicemember.

A **covered servicemember** means (A) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or (B) a veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

C. Intermittent Leave and Reduced Leave Schedules

FMLA leave usually will be taken for a period of consecutive days, weeks or months. However, employees also are entitled to take FMLA leave intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee, covered family member or the serious injury or illness of a covered servicemember. Leave due to qualifying exigencies may also be taken on an intermittent or reduced schedule basis.

D. Protection of Group Health Insurance Benefits

During FMLA leave, eligible employees are entitled to receive group health plan coverage on the same terms and conditions as if they had continued to work.

E. Restoration of Employment and Benefits

At the end of FMLA leave, subject to some exceptions including situations where job restoration of key employees will cause the County substantial and grievous economic injury, employees generally have a right to return to the same or equivalent positions with equivalent pay, benefits and other employment terms. The County will notify employees if they qualify as key employees, if it intends to deny reinstatement, and of their rights in such instances. Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee's FMLA leave.

F. Notice of Eligibility for, and Designation of, FMLA Leave

Employees requesting FMLA leave are entitled to receive written notice from the County telling them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not eligible. When eligible for FMLA leave, employees are entitled to receive written notice of (1) their rights and responsibilities in connection with such leave; (2) the County's designation of leave as FMLA-qualifying or non-qualifying, if not FMLA-qualifying, the reasons why; and (3) the amount of leave, if known, that will be counted against the employee's leave entitlement.

The County may retroactively designate leave as FMLA leave with appropriate written

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notice to employees provided that the County's failure to designate leave as FMLA-qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, the County and employee can mutually agree that leave be retroactively designated as FMLA leave.

G. When a Husband and Wife Work for the County

A husband and wife who are both employed by the County will be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the birth of the employee's child, for the placement with the employees through adoption or foster care, or to care for a parent with a serious health condition.

III. Employee FMLA Leave Obligations

A. Provide Notice of the Need for Leave

Employees who take FMLA leave must timely notify the County of their need for FMLA leave. The following describes the content and timing of such employee notices.

1. Content of Employee Notice

To trigger FMLA leave protections, employees must inform the Director of Human Resources of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically, or explaining the reasons for leave so as to allow the County to determine that the leave is FMLA-qualifying. For example, employees might explain that:

- a medical condition renders them unable to perform the functions of their job
- they are pregnant or have been hospitalized overnight
- they or a covered family member are under the continuing care of a health care provider
- the leave is due to a qualifying exigency cause by a covered military member being on covered active duty or called to covered active duty status; or
- if the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness

Calling in sick, without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy. Employees must respond to the County's questions to determine if absences are potentially FMLA-qualifying.

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If employees fail to explain the reasons for FMLA leave, the leave may be denied. When employees seek leave due to FMLA-qualifying reasons for which the County has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

2. Timing of Employee Notice

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide the County notice of the need for leave as soon as practicable under the facts and circumstances of the particular case. Employees who fail to give 30 days notice for foreseeable leave without a reasonable excuse for the delay, or otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

Employees must also follow their Departmental call-in procedures when requesting FMLA leave, absent unusual circumstances. If employees fail to comply with these requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied provided that employees have not otherwise provided timely notice as required by the FMLA regulations.

B. Cooperate in the Scheduling of Planned Medical Treatment (Including Accepting Transfers To Alternative Positions) and Intermittent Leave or Reduced Leave Schedules

When planning medical treatment, employees must consult with the County and make a reasonable effort to schedule treatment so as not to unduly disrupt the County's operations, subject to the approval of an employee's health care provider. Employees must consult with the County prior to the scheduling of treatment to work out a treatment schedule which best suits the needs of both the County and the employees, subject to the approval of an employee's health care provider. If employees providing notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglect to fulfill this obligation, the County may require employees to attempt to make such arrangements, subject to the approval of the employee's health care provider.

When employees take intermittent or reduced work schedule leave for foreseeable planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition or to care for a covered servicemember, the County may temporarily transfer employees during the period that the intermittent or reduced leave schedules are required to alternative positions with equivalent pay and benefits for which the employees are qualified and which better accommodate recurring periods of leave.

When employees seek intermittent leave or a reduced leave schedule for reasons unrelated to the planning of medical treatment, upon request, employees must advise the County of the reason why such leave is medically necessary. In such instances, the County and employee

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shall attempt to work out a leave schedule that meets the employee's needs without unduly disrupting the County's operations, subject to the approval of the employee's health care provider.

C. Submit Medical Certifications Supporting Need for FMLA Leave (Unrelated to Requests for Military Family Leave)

Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications supporting their need for FMLA-qualifying leave. As described below, there generally are three types of FMLA medical certifications: an initial certification, a recertification and a return to work/fitness for duty certification.

It is the employee's responsibility to provide the County with timely, complete and sufficient medical certifications. Whenever the County requests employees to provide FMLA medical certifications, employees must provide the requested certifications within 15 calendar days after the County's request, unless it is not practicable to do so despite an employee's diligent, good faith efforts. The County shall inform employees if submitted medical certifications are incomplete or insufficient, and provide employees at least seven calendar days to cure deficiencies. The County will deny FMLA leave to employees who fail to timely cure deficiencies or otherwise fail to timely submit requested medical certifications.

With the employee's permission, the County (through individuals other than an employee's direct supervisor) may contact the employee's health care provider to authenticate or clarify completed and sufficient medical certifications. If employees choose not to provide the County with authorization allowing it to clarify or authenticate certifications with health care providers, the County may deny FMLA leave if certifications are unclear.

Whenever the County deems it appropriate to do so, it may waive its right to receive timely, complete and/or sufficient FMLA medical certifications.

1. Initial Medical Certifications

Employees requesting leave because of their own, or a covered relation's, serious health condition, or to care for a covered servicemember, must supply medical certification supporting the need for such leave from their health care provider or, if applicable, the health care provider of their covered family or service member. If employees provide at least 30 days notice of medical leave, they should submit the medical certification before leave begins. A new initial medical certification will be required on an annual basis for serious medical conditions lasting beyond a single leave year.

If the County has reason to doubt initial medical certifications, it may require employees to obtain a second opinion at the County's expense. If the opinions of the initial and second health care providers differ, the County may, at its expense, require employees to obtain a third,

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final and binding certification from a health care provider designated or approved jointly by the County and the employee.

The County shall provide employees with copies of second or third medical opinions, upon request by employees. Requested copies shall be provided to employees within five business days unless extenuating circumstances prevent such action.

The County will reimburse employees or family members for any reasonable out-of-pocket travel expenses incurred to obtain second or third medical opinions. Except in very rare circumstances, the County will not require employees or family members to travel outside normal commuting distance for purposes of obtaining second or third medical opinions.

2. Medical Recertifications

Depending on the circumstances and duration of FMLA leave, the County may require employees to provide recertification of medical conditions giving rise to the need for leave. The County will notify employees if recertification is required and will give employees at least 15 calendar days to provide medical recertification.

Generally, the County may request medical certification no more often than every 30 days and only in connection with an employee's absence. If medical certification indicates the minimum duration of the condition is more than 30 days, the County will wait until that minimum duration expires before requesting medical recertification. In all cases, the County may request recertification of a medical condition every six months in connection with an employee's absence.

The County may request certification in less than 30 days, or before the minimum duration of the condition has elapsed, if (1) employees request extensions of leaves; (2) circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications, etc.); or (3) the County receives information casting doubt upon an employee's stated reason for the absence or the continuing validity of a certification.

3. Return to Work/Fitness for Duty Medical Certifications/Outside Employment

Unless notified that providing such certifications is not necessary, employees returning to work from FMLA leaves that were taken because of their own serious health conditions that made them unable to perform their jobs must provide the County medical certification confirming that they are able to return to work and the employee's ability to perform the essential functions of the employee's position, with or without reasonable accommodation. The County may delay and/or deny job restoration until the employee provides the return to work/fitness for duty certification.

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If an employee has been approved for outside employment as discussed more fully in Chapter 7, Section 6, the employee must speak with the Director of Human Resources about continuation of such employment during any approved leave.

D. Submit Certifications Supporting Need for Military Family Leave

Upon request, the first time employees seek leave due to qualifying exigencies arising out of the covered active duty or call to covered active duty status of a covered military member, the County may require employees to provide: (1) a copy of the covered military member's covered active duty orders or other documentation issued by the military indicating the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's covered active duty service; and (2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of new covered active duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies, arising out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

When leave is taken to care for a covered servicemember with a serious injury or illness, the County may require employees to obtain certifications completed by an authorized health care provider of the covered servicemember. In addition, and in accordance with the FMLA regulations, the County may request that the certification submitted by employees set forth additional information provided by the employee and/or the covered servicemember confirming entitlement to such leave.

E. Substitute Paid Leave for Unpaid FMLA Leave

Employees must use any accrued paid time while taking unpaid FMLA leave. The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leaves and the paid time will run concurrently with an employee's FMLA entitlement.

When a leave of absence is taken in connection with a disability leave plan or workers' compensation injury/illness, it shall run concurrently with any FMLA leave entitlement. For such a leave, at the employee's option, the County will allow an employee to use accrued sick or annual leave and to receive credit for a portion of such leave from applicable workers' compensation insurance benefits.

F. Pay Employee's Share of Health Insurance Premiums

As noted above, during FMLA leave, employees are entitled to continued group health plan coverage under the same conditions as if they had continued to work. Unless the County notifies employees of other arrangements, whenever employees are receiving pay from the County during FMLA leave, the County will deduct the employee portion of the group health plan premium from the employee's paycheck in the same manner as if the employee was actively

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working. If FMLA leave is unpaid, employees must pay their portion of the group health premium by submitting a check or certified funds to the benefits specialist located in Human Resources. The County will not accept a cash payment.

The County's obligation to maintain health care coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the County will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date. If employees do not return to work within 30 calendar days at the end of the leave period (unless employees cannot return to work because of a serious health condition or other circumstances beyond their control), they will be required to reimburse the County for the cost of the premiums the County paid for maintaining coverage during their unpaid FMLA leave.

G. Report Periodically Concerning Intent to Return to Work

Employees must contact their Department Head at least one time per week regarding their status and intention to return to work at the end of the FMLA leave period. If an employee's anticipated return to work date changes and it becomes necessary for the employee to take more or less leave than originally anticipated, the employee must provide the County with reasonable notice (i.e., within two business days) of the employee's changed circumstances and new return-to-work date. If employees give the County unequivocal notice of their intent not to return to work, the County's obligation to maintain health benefits (subject to COBRA requirements) and to restore their positions cease.

IV. Coordination of FMLA Leave with Other Leave Policies

The FMLA does not affect any federal, state or local law prohibiting discrimination, or supersede any state or local law which provides greater family or medical leave rights. For additional information concerning leave entitlements and obligations that might arise when FMLA leave is either not available or exhausted, please consult the County's other leave policies in this handbook or contact Human Resources.

V. Questions and/or Complaints about FMLA Leave

If you have questions regarding this FMLA policy, please contact Human Resources. The County is committed to complying with the FMLA and, whenever necessary, shall interpret and apply this policy in a manner consistent with the FMLA.

The FMLA makes it unlawful for employers to: (1) interfere with, restrain, or deny the exercise of any right provided under FMLA; or (2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA. If employees believe that their FMLA rights have been violated, they should contact the Human Resources Department immediately. The County will investigate any FMLA complaints and take prompt and appropriate remedial action to address and/or remedy any

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FMLA violation. Employees also may file FMLA complaints with the United States Department of Labor or may bring private lawsuits alleging FMLA violations.

Additional Definitions:

Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined by the FMLA. This term does not include parents in law.

Son or daughter means, for purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, 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. **Incapable of self-care** means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living 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. **Physical or mental disability** means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms. Persons who are **in loco parentis** include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Adoption means legally and permanently assuming the responsibility of raising a child as one’s own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave.

Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the state as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the state and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, state action is involved in the removal of the child from parental custody.

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Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status and who is of any age.

Son or daughter of a covered servicemember means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents in law.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

Covered active duty means (A) 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 (B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member of the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.

Covered service member means (A) members of the Armed Forces (including the Reserves and National Guard) who are undergoing medical treatment, recuperation, or therapy is otherwise on outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or (B) veterans who were members of the Armed Forces (including Reserves and National Guard) during the five-year period preceding the date on which they undergo such medical treatment, recuperation or therapy for an injury or illness incurred in the line of active duty with the Armed Forces.

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Veteran has the meaning given the term in section 101 of Title 38, United States Code.

Health Care Provider means: (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; (2) podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice under the state law and performing within the scope of their practice as defined by state law; (3) nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized under state law and performing within the scope of their practice as defined by state law; (4) Christian Science practitioners (may be required to submit to second or third certification through examination—not treatment of a health care provider); (5) any other health care provider from whom the employer or the employee's group health plan benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and (6) a health care provider who practices in a country other than the United States who is authorized to practice in accordance with the laws of that country and is performing within the scope of his or her practice as defined under such law. For purposes of leave taken to care for a covered servicemember, in addition to the above, any one of the following health care providers may complete such a certification: (1) a United States Department of Defense (DOD) health care provider; (2) a United States Department of Veterans Affairs (VA) health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider.

Airline flight crew members are entitled to additional protections under the FMLA. Please contact the Human Resources Department for additional information.

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