

PPM #13

Policy Name: *Family and Medical Leave Act (FMLA)*
Effective Date: *August 5, 1993*
Revision Date: *April 23, 2010; December 1, 2011; September 12, 2013*

Authorization: 
Charles R. Davis, Deputy Secretary

I. POLICY

It is the policy of the Office of Lieutenant Governor (OLG) and Department of Culture, Recreation and Tourism (DCRT) to comply with all provisions of the Family and Medical Leave Act (FMLA) of 1993, as amended. In specific situations that are not covered by this policy, or that are in conflict with this policy, the provisions of the FMLA shall apply.

II. PURPOSE

The purpose of this policy is to ensure the promulgation of rules governing the FMLA and to explain the process for adhering to the policy.

III. APPLICABILITY

This policy shall be applicable to all sections and employees of the OLG/ DCRT.

IV. QUALIFYING LEAVE

For employee informational purposes, the FMLA generally provides:

A. Family or Personal Medical Leave

Up to 12 weeks of job-protected leave during a 12-month period will be provided to eligible employees for the following qualifying events:

1. The birth of a child and/or to care for the baby;
2. The acceptance of a child for adoption or foster care;
3. To care for the employee's spouse, son, daughter or parent with a serious health condition; or
4. A serious health condition that renders the employee unable to perform the essential functions of his/her job.

B. Military Caregiver Leave

Up to 26 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent or next-of-kin of a member of the Armed Forces, including the National Guard or Reserves, per each qualifying event, to care for such member of the Armed Forces who is undergoing medical treatment, recuperation or therapy, who is in outpatient status otherwise, or who is on the temporary disability retired list for a serious injury or illness or for the aggravation of existing or pre-existing injuries incurred in the line of duty while on active duty. For purposes of Military Caregiver Leave, the single 12-month period is measured forward from the date the employee begins leave to care for the covered servicemember.

An employee who has an adult son or daughter who was wounded or sustained an injury or illness while in military service may be entitled to leave beyond these 26 weeks in the next FMLA leave cycle if the service member's condition requires treatment and assistance beyond the initial 12-month period.

Example: An employee has exhausted his 26 workweeks of military caregiver leave to care for an adult child who sustained extensive burn injuries to his body. The employee may be entitled to up to 12 workweeks of leave in the next FMLA leave year to attend to his son as he undergoes and recovers from additional surgeries and skin grafts because: (i) the adult son's burn injuries substantially limit his ability to perform manual tasks and therefore constitutes a disability under the ADA; (ii) the son is incapable of self-care due to a disability; (iii) the adult son's burn injuries are a serious health condition; and (iv) the father is needed to provide care and comfort to his adult son.

C. Military Exigency Leave

Up to 12 weeks of job-protected leave during a 12-month period for any qualifying exigency, which is defined as a non-medical need for leave due to:

1. Short-notice deployment;
2. Military events and activities;
3. Childcare and school activities;
4. Financial and legal arrangements;
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities; or
8. Additional activities which arise out of active duty, provided that the employer and employee agree, including timing and duration of such leave.

For purposes of Military Exigency Leave, the single 12-month period is measured forward from the date the employee begins leave.

V. DEFINITIONS

A. Eligible Employee - An employee who:

1. Has been employed by the State for a total of at least 12 months. These need not have been consecutive. However, the break in service must not be for more than seven years unless the break was for certain military service on the date on which any FMLA leave is to commence; and
2. Has worked at least 1250 hours over the 12 month period preceding the start of the leave.

NOTE: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), a returning member of the National Guard or Reserve is entitled to FMLA leave if the hours that he or she would have worked for the civilian employer during the period of military service would have met the FMLA eligibility threshold.

- ### B. Equivalent Position - An employee returning from FMLA leave will have the same pay, benefits and working conditions, including privileges, perquisites and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. "Equivalent position" involves the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility and authority. Equivalent positions will be at the same or a geographically proximate worksite where the employee previously had been employed.

C. Family Relationships

1. Son or daughter - A biological, adopted or foster child, stepchild, legal ward, or a child of a person standing *en loco parentis* (in the place of the parent), who is either under age 18, or age 18 or older if the adult son or daughter:
 - a. Has a disability as defined by the ADA, regardless of the age of onset or duration of impairment;
 - b. Is incapable of self-care due to that disability;
 - c. Has a serious health condition; and
 - d. Is in need of care due to the serious health condition.

All four requirements must be met in order for an eligible employee to be entitled to FMLA-protected leave to care for his/her adult son or daughter. Definitions for these terms are found below and in separate definitions for "serious health condition" and "needed to care for".

- A. “Disability”, as defined in the ADA and its amendments act, the ADAAA, is an impairment that substantially limits one or more major life activities, a record of such an impairment or being regarded as having such an impairment.

- (1.) “Major life activities” include but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, operation of a major bodily function such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Conditions that are episodic or in remission are considered disabilities if the condition would substantially limit a major life activity when active. Examples of such conditions are: cancer in remission or conditions with episodic periods of illness such as multiple sclerosis, asthma, epilepsy, diabetes, lupus or post-traumatic stress disorder.

Some impairments will virtually always qualify as disabilities because by their nature they substantially limit at least one major life activity. Examples include deafness, blindness, intellectual disability, missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, muscular dystrophy, major depressive disorder, bipolar disorder, obsessive compulsive disorder and schizophrenia.

Pregnancy is not itself a disability; however, pregnancy-related impairments may be considered disabilities if they substantially limit a major life activity. Examples of pregnancy-related disabilities may be gestational diabetes or pregnancy-related sciatica.

- (2.) “Substantially limited” does not require that the impairment prevent or severely or significantly restrict performing a major life activity. This term is construed broadly without consideration of the use of mitigating measures to ameliorate the effects of an impairment, except the use of ordinary eyeglasses or contact lenses.

- B. “Incapable of self-care” - Even if an adult child has a disability, the FMLA requires that he or she be “incapable of self-care” because of the disability in order to meet the definition of “son or daughter”. This means that the adult child must require active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” or “instrumental activities of daily living”.

- (1.) “Activities of daily living”, as illustrations, include adaptive activities such as caring for one’s grooming and hygiene, bathing, dressing and eating.

- (2.) “Instrumental activities of daily living”, as illustrations, include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office and medication management.

Necessarily, the determination of whether an adult child is incapable of self-care due to a disability is a fact-specific determination based on the individual’s condition at the time the leave is requested. In other words, does the adult child need active assistance or supervision in performing three or more activities of daily living or instrumental activities of daily living at the time leave is requested?

2. Parent - A biological or adoptive parent, or a person who stood *en loco parentis* to an employee when the employee was a child. This term does not include an employee's mother-in-law or father-in-law.
3. Spouse – Husband or wife as defined in accordance with the law of the State in which the employee resides. The State of Louisiana does not recognize “common law” marriages.
4. Expanded Family Relationships for Military Leave - Parents of a covered service-member, son or daughter of a covered service-member, next-of-kin of a covered service-member, and son or daughter who is on active duty or called to active duty status.

Next-of-kin must be a blood relative. It can be a blood relative designated in writing by the servicemember. If there is no designation, “next-of-kin” in descending order are the blood relative with legal custody, siblings, grandparents, aunts, uncles, and first cousins. Any and all are entitled to leave, whether taken simultaneously or not. Unlike parents employed by the same employer, there is no requirement for sharing leave. If there is a designation, no other person shall be considered “next-of-kin” for purposes of servicemember family leave.

5. Covered Servicemember - Current member of the regular Armed Forces, National Guard or Reserve, including those on the temporary disability retired list, and who has a condition that was incurred in the line of duty while on active duty which prevents the performance of his or her military duties, and who is receiving treatment or therapy for that condition as an outpatient, and who served in the regular Armed Forces, the Reserves within 5 years of the date the Veteran undergoes medical treatment, recuperation or therapy.

D. Health Care Provider

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;

2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
 3. Nurse practitioners, nurse midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
 4. Christian Science practitioners with restrictions as outlined in the Federal Regulations;
 5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
 6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law; or
 7. Physician Assistants who are authorized to practice under state law and all medical paraprofessionals who are performing within the scope of their practice as defined under state law.
- E. Intermittent Leave - Under certain conditions, FMLA leave may be utilized in small blocks of time (hours, days, weeks) that total the appropriate FMLA entitlement, rather than being used as periods consisting of consecutive weeks or days. Employees may use leave in the increments allowed by the OLG/DCRT leave policies.
- F. Reduced Leave Schedule - Leave schedule that reduces the usual number of hours per workweek or hours per workday.
- G. Serious Health Condition - 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.

Continuing treatment by a health care provider, including any one or more of the following:

1. Incapacity and treatment: A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - a. Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider. The first treatment must take place within seven (7) days of the first day of incapacity, or

- b. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.
2. Pregnancy or prenatal care: Any period of incapacity due to pregnancy or for prenatal care.

Incapacity is a result of the pregnancy, such as morning sickness or complications that make it impossible or inadvisable for the employee to work.

Prenatal care is for the need of leave for the purpose of prenatal appointments or tests.

- a. Requires periodic visits for treatment;
 - b. Continues over an extended period of time, including recurring episodes of a single underlying condition; and
 - c. May cause episodic rather than a continuing period of incapacity (migraines, asthma, diabetes, epilepsy, etc.).
 3. Chronic Condition Requiring Treatment: Includes any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A “chronic serious health condition” is one which:
 - a. Requires periodic visits for treatment;
 - b. Continues over an extended period of time, including recurring episodes of a single underlying condition; and
 - c. May cause episodic rather than a continuing period of incapacity (migraines, asthma, diabetes, epilepsy, etc.).
- H. Treatment - For purposes of the FMLA, treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.
- I. Twelve-month Period
1. For purposes of regular family or personal FMLA, the 12-month period begins on the date the first quarter hour of FMLA leave is taken by the employee.
 2. For purposes of Military Caregiver Leave and Military Exigency Leave, the 12-month period begins on the date the employee takes the first leave for military reasons. This 12-month period may be different from the 12-month period used for regular FMLA.
 3. For purposes of FMLA leave for the birth of a child or acceptance of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.

4. For purposes of Military Caregiver Leave, an employee is limited to no more than 26 weeks of leave during each single 12-month period. This is the case even if the employee takes the leave to care for more than one covered service-member or to care for the same covered service-member who has incurred more than one serious injury or illness and if the single 12-month period involved overlap each other. If leave would qualify as both Military Care Giver Leave and regular FMLA leave, it must be classified as Military Care Giver Leave.
5. During any single 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave. The 26-week Military Caregiver Leave is not in addition to the 12 weeks of regular FMLA leave to which eligible employees may otherwise be entitled.
- J. Subsequent FMLA Period - Once the initial 12-month entitlement period has been exhausted, the employee does not begin a new entitlement period until the next FMLA qualifying leave usage, provided the employee is eligible.
- K. "Needed to Care For" - FMLA is allowed for an employee needed to care for a family member, including providing physical and/or psychological care and comfort.

VI. PROCEDURE

A. How Leave May Be Scheduled

Leave may be taken in consecutive days or weeks or it may be taken intermittently or on a schedule that reduces the usual number of hours per workday or workweek when required. Leave may be taken in the same increments as allowed in the OLG/DCRT leave policies.

B. Limitations Regarding Leave Schedules

1. Intermittent or reduced leave schedules following the birth, adoption, or foster care of a child as part of a gradual return-to-work schedule may be allowed provided that the manager and/or appointing authority determines that such intermittent leave does not interfere with the efficient operation of the section. Management may stipulate that leave for these purposes be taken consecutively for an extended period if that schedule will provide more business efficiency.
2. When both spouses in a family are employed by the OLG/DCRT or State of Louisiana, and both are entitled to FMLA leave, the combined total number of workweeks of FMLA leave to which they are jointly entitled is limited to twelve (12) workweeks during any twelve (12) month period if leave is taken for the birth or adoption of a child or to care for a sick parent. This limitation does not apply to leave taken by one spouse to care for the other who is seriously ill, to care for a child with a serious health condition, or to care for the employee's own serious illness.

3. FMLA leave runs concurrent with other leave entitlements provided under Civil Service Rules and federal, state, and local laws. FMLA leave also runs concurrent with any leave taken that is compensable under the worker's compensation laws of this state.

C. Usage of Accumulated Leave

While absent for an FMLA eligible event and using FMLA leave, an employee is also required to use any available balance of applicable paid leave (that is, sick leave, annual leave, or compensatory leave). When all available paid leave is exhausted, the employee will be placed on leave without pay.

D. Determination that an Absence is FMLA Eligible

Per federal regulations, the employer is responsible for determining when an employee's absence is eligible for FMLA leave and designating leave as FMLA-qualifying even if the employee does not specifically request FMLA leave. For employees of the OLG/DCRT, Human Resources, in collaboration with the employee's supervisory chain of command and appointing authority, makes this determination. The employee must respond to Human Resources' questions that are posed to determine if the absence is FMLA-qualifying. Failure to respond to such inquiries may result in denial of FMLA protection if the employer is unable to determine that the leave is qualifying.

E. Confidentiality

Due to HIPPA regulations, and the privacy rights of our employees, all FMLA documents are to be provided to and maintained in the Human Resources Division. Therefore, no other copies should be maintained at the agency or supervisory level. Completed FMLA documents should be mailed to Human Resources at P. O. Box 94361, Baton Rouge, LA 70804-9361 and/or faxed to (225) 342-7928.

F. Notification to the Employee that His/Her Absence is FMLA Eligible

Once it is known that a qualifying condition exists, the employee should be notified verbally if appropriate - but must be notified in writing - that the absence will be considered FMLA-qualifying and deducted from the employee's FMLA balance. Written notice of eligibility for FMLA leave should be provided to the employee within five (5) business days.

If an employee is not eligible for FMLA leave, the employer should provide the employee with written reasons for this determination within five (5) business days of the request.

Should the employer discover later that the absence is not FMLA eligible, the employee shall be so notified and the leave designated as FMLA will be restored to the employee's FMLA quota.

G. Notice from Employee of Need for FMLA Leave

1. Anytime that an employee requests leave in any category for a purpose which is eligible under the FMLA (including military caregiver/exigency), he/she shall notify the immediate supervisor that the leave requested is FMLA leave. If the employee is uncertain as to whether or not the leave is eligible under the FMLA, the supervisor should be consulted. Any questions concerning eligibility should be directed to the Human Resources Division. All forms and notices used must be those provided on the OLG/DCRT Channel Z website.
2. Foreseeable Need - The employee must provide 30 days advance written notice to the immediate supervisor if possible when the leave is foreseeable. If 30 days advance notice is not possible, the employee must notify the immediate supervisor as soon as the need for leave is known. The supervisor may inquire as to why the employee was unable to give a 30-day notice.
3. Leave Not Foreseeable - In cases where the employee cannot provide advance notice, the employee or the employee's spokesperson must give notice to the supervisor as soon as practicable, but within three workdays following the event.
4. Military Exigency/Military Caregiver - Employees must give 30-days advance notice for this type of FMLA leave, or must notify the immediate supervisor as soon as the need for leave is known. If the immediate supervisor is not available, the notice must be provided to the next supervisor within the chain of command. This notice must include anticipated time and duration of the leave needed.

H. Completed *Certification of Health Care Provider* Form

In all cases, the employee is required to provide the completed Certification of Health Care Provider form. This completed document provides additional information to the employer to confirm that the absence is FMLA eligible.

Any fees associated with the completion of the Certification of Health Care Provider form shall be the responsibility of the employee.

I. Clarification of Medical Certification

If the medical certification contains deficiencies or needs clarification, the employee must be given an opportunity to verify or clarify. Such clarification must be in writing and handled only by Human Resources personnel. The employee must be given a minimum of seven (7) days to address any deficiencies or clarify his/her certification.

Note: This section does not apply to military leave provisions.

J. Group Health and Life Insurance

1. Maintenance

For the duration of FMLA, the employee's then existing health insurance coverage through the Office of Group Benefits shall be maintained at the same level and under the same conditions as was provided prior to commencement of the leave.

2. Premium Payments

Any supplemental insurance premiums must be paid directly by the employee. The employee must contact the Human Resources Division to arrange payment of the employee's share of the premiums where appropriate. These arrangements will accommodate the financial situation of the employee as well as the administrative concerns of the OLG/DCRT.

Should the employee fail to provide his/her share of the insurance premium per the agreement, the OLG/DCRT shall continue to submit the employee's share. The OLG/DCRT shall pursue repayment of these premiums upon return of the employee as allowed by the FMLA.

3. When Coverage Is Dropped

The OLG/DCRT shall no longer pay the employee's portion of the premium and thus cease maintenance of health insurance benefits if and when:

- a. The employee informs the agency of his/her intent not to return from leave, or
- b. The employee fails to return from leave, thereby terminating employment, or
- c. The employee exhausts the FMLA leave entitlement.

In some situations, the employee may be entitled to continue health care coverage under COBRA (Consolidated Omnibus Budget Reconciliation Act).

K. Restoration after Leave

1. Upon return from FMLA, employees generally will be restored to their original or an equivalent position. The use of FMLA will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employee returning from a medical FMLA leave may be required to present medical certification of fitness for duty.

2. Restoration may be denied under certain circumstances, including:

- a. If it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested;
- b. The employee fails to provide a fitness for duty certificate to return to work, if required;
- c. The employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave; however, the employee will be given a reasonable opportunity to fulfill such conditions upon return to work; or
- d. The employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition.

VII. EXCEPTIONS

Requests for exceptions to this policy must be justified, documented and submitted in writing to the appointing authority for consideration.

VIII. QUESTIONS

Questions regarding this policy should be directed to the Human Resources Division.

IX. VIOLATIONS

It is unlawful and thus prohibited for any employer, administrator, manager, supervisor or employee to:

- A. Interfere with, restrain or deny the exercise of any right provided under the FMLA; or
- B. Discriminate against an employee in any way for using his/her FMLA entitlement; or
- C. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Any employee found to have violated this policy may be subject to disciplinary action, including the possibility of termination.

Any employee who fails or refuses to cooperate by meaningfully discussing and/or providing medical documentation supportive of a request for FMLA leave may have his/her leave delayed or denied.

X. OTHER CONSIDERATIONS

Should any aspect of the Americans with Disabilities Act (ADA) be applicable, the OLG/DCRT shall comply with this law.

XI. FORMS

Specific forms related to this policy can be found on OLG/DCRT's intranet site, Channel Z, at <http://www.crt.state.la.us/HR/Policies.aspx>.

Summary of Changes: Revised policy number (December 1, 2011); updated provisions relative to Military Caregiver, Military Exigency, and Son/Daughter to comply with FMLA regulation changes, revised responsibility for FMLA determination from employee's supervisor to Human Resources to reflect current practice, removed Responsibilities section (September 12, 2013).