



HUMAN RESOURCES

Family and Medical Leave Act (FMLA) Policy

POLICY Number: B-018

6 September 2013

1. **AUTHORITY:** Director of State Civil Service as contained in La. R.S. 36:54; The Family and Medical Leave Act (FMLA) effective 8/5/1993, as amended.
2. **PURPOSE:** To establish a formal policy and guidelines for FMLA use by the employees of State Civil Service.
3. **APPLICABILITY:** This policy shall apply to all qualified employees of State Civil Service.
4. **POLICY:** In compliance with the Family and Medical Leave Act (FMLA) effective 8/5/1993, as amended, it shall be the policy of State Civil Service to provide "qualified employees" with a minimum of twelve (12) workweeks of paid, unpaid and/or a combination of both during the designated twelve month period for FMLA "qualifying events" and up to twenty six (26) workweeks of leave to care for a covered service member with a serious illness or injury.

Leave for qualifying reasons shall be granted and charged under the applicable leave category (compensatory, annual, sick leave and leave without pay) as outlined in this policy and in accordance with State Civil Service rules.

5. PROVISIONS:

a. Qualified Employees:

- i. Employees who have been employed by the State of Louisiana for at least twelve (12) months on the date on which any FMLA qualifying event is to commence **and** have worked at least 1,250 hours within state service during the previous twelve (12) month period.
- ii. The twelve (12) month employment period need not be consecutive months. If an employee is maintained on the payroll for any part of a week, the time counts as one (1) week of employment.

b. Qualifying Events:

- i. Birth of employee's child and the leave to care for that child. Leave to be completed within one (1) year of the birth of the child. Note: If both parents work for the State of Louisiana they may take a combined total of 12 weeks.
- ii. Placement of a child with the employee for adoption or foster care if taken within one (1) year of the placement of the child. Note: If both parents work for the State of Louisiana they may take a combined total of 12 weeks.
- iii. To care for the employee's spouse, child, or parent suffering from a serious health condition. Note: Unmarried domestic partners do not qualify for family leave to care for their partners. Note: If both parents work for the State of Louisiana they may take a combined total of 12 weeks.
- iv. The employee has a "serious health" condition which renders him/her unable to perform the functions of his/her job.
- v. To care for the employee's family members or next of kin that are covered service members with a serious illness or injury incurred in the line of duty on active duty.
 1. A serious injury means an injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty and that may render the member medically unfit to perform the duties of the members' office, grade, rank or rating; and
 2. In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty in the armed forces and manifested itself before or after the member became a veteran, and is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; or
 - b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating of 50 % or greater and the disability rating is based, in whole or part, on the condition precipitating the need for military caregiver leave; or
 - c. A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

- d. An injury. Including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- vi. “Any qualifying exigency” affecting families of activated National Guard or Reserves (See Military/Leave Entitlement section for more details.)

c. Leave Entitlement:

- i. Qualified employees are entitled to a total of 12 workweeks leave of absence during a twelve-month period for any one qualifying event or combination of qualifying events. The twelve-month period shall begin with the date of first FMLA leave usage.
- ii. If both an employee and his/her spouse are employed by the State, they are limited to a total of 12 weeks of combined leave between them, when that leave is taken for one of these two purposes:
 - 1. To care for a parent with a serious health condition OR
 - 2. For the birth/foster-care/adoption of a child.

Example: *John takes six workweeks to care for his seriously ill father. His wife, Mary, then takes six workweeks to care for her seriously ill father. This would exhaust the 12 workweek FMLA entitlement to care for a seriously ill parent. So if either John’s mother or Mary’s mother became ill, neither John nor Mary would be entitled to further FMLA to care for her.*

However, if John took six workweeks to care for his seriously ill father, and Mary took six workweeks to care for her father and then their child became ill, Mary and John could each take an additional six workweeks to care for that child.

Similarly, if John took six workweeks to care for his seriously ill father, and Mary took six workweeks to care for her ill father and then Mary herself became ill, Mary would be entitled to an additional six weeks for her own illness, and if necessary, John would be entitled to six weeks in order to care for her.

- iii. An eligible employee who takes FMLA leave shall be restored to the same position that the employee held when the leave started, or to an equivalent position. Equivalent pay and other terms and conditions of employment, including group health coverage, benefits, etc. in place prior to commencement of FMLA leave will also be restored.

d. Definitions/Record Keeping:

- i. Child: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or who is 18 or over and incapable of self-care (see definition) because of a mental or physical disability. Physician certification indicating the adult child’s permanent or long term serious health condition, or physical/mental disability must be submitted.

- a. Child in regard to active duty or call to active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stands in loco parentis, who is of any age.
- ii. Parent: 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 above. Parent does NOT include "in-law".
- iii. Covered active duty – means duty during deployment of the member with the Armed Forces to a foreign country.
- iv. Next of Kin of a Covered Service Member: The nearest blood relative other than the covered service member's spouse, parent, son or daughter, in the following order of priority:
 - 1. Blood relatives granted legal custody of the covered service member by court decree or statutory provision;
 - 2. Brothers and Sisters;
 - 3. Grandparents;
 - 4. Aunts and Uncles;
 - 5. First Cousins

Unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

Note: When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, ALL such family members shall be considered to be the covered service member's next of kin and may take FMLA to provide care to the covered service member, either consecutively or simultaneously.

- v. Son or Daughter on Active Duty or Call to Active Duty Status: The employee's biological, adopted or foster child, step child, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty status or call to active duty status that is any age.
- vi. Son or Daughter of a Covered Service Member: The service member's biological, adopted or foster child, step child, legal ward or a child for whom the service member stood in loco parentis, and who is of any age.
- vii. Parent of a Covered Service Member: A covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. (Does not include "in-law")

Note: Documentation of relationship may be required, such as a statement from the employee, a child's birth certificate, a court document, etc.

- viii. Health Care Provider:
 - 1. A doctor of medicine or osteopathy authorized to practice in Louisiana;

2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment of consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice, and performing within the scope of their practice;
 3. Nurse practitioners, nurse midwives, clinical social worker and physician assistants who are authorized to practice, and who are performing within the scope of their practice; or
 4. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.
 5. Any other health care provider recognized by the State of Louisiana's group health plan benefits manager.
- ix. Incapable of Self Care: The individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (i.e., caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, etc.)
- x. Intermittent Leave: Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, may include leave of periods from a half-hour or more to several weeks (i.e., leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy).
- xi. Physical or Mental Disability: Physical or mental impairment that substantially limits one or more of the major life activities (i.e., lifting, standing, stooping, hearing, seeing, etc.).
- xii. Qualifying Exigency Leave: Something needing immediate action or a difficult situation requiring urgent action. This leave can only be used by families of National Guard and Reserves and certain retired members of the military. This leave applies only to a federal call to duty or a state call under order of the President.
- xiii. Covered Military Service Member: A current member of the Armed Forces, including a member of the National Guard or reservist on covered active duty; or a covered veteran.
- xiv. Covered Veteran – means an individual who was a member of the Armed Forces and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee took FMLA.
- xv. Reduced Work Schedule: Schedule that reduces the usual number of hours per work week or hours per work day.
- xvi. Spouse: Husband or wife as recognized under State law.
- xvii. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves:
1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;

2. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under supervision of) a health care provider;
3. Continuing treatment by (or under supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

Note: Voluntary or cosmetic treatments (plastic surgery) which are not medically necessary are not “serious health conditions”, unless inpatient hospital care is required. Restorative dental surgeries after an accident or removal of cancerous growths are serious health conditions provided all the other conditions are met (1, 2, or 3). Treatments for allergies or stresses, or for substance abuse, are serious health conditions if all conditions are met (1, 2 or 3). Prenatal care is included as a serious health condition. Routine preventive physical examinations are excluded.

Examples of Serious Health Conditions (not inclusive):

- Appendicitis
- Back conditions requiring extensive therapy or surgical procedures
- Emphysema, Pneumonia, or other severe respiratory conditions
- Heart Attack or heart conditions requiring bypass or valve operations
- Injuries caused by serious accidents
- Most cancers, Removal of cancerous growths
- Ongoing pregnancy, prenatal care, childbirth and recovery
- Restorative dental surgery after an accident
- Severe arthritis
- Severe nervous disorders
- Severely ill but not receiving continuing active care from a doctor, such as Alzheimer’s, late-stage cancer
- Stroke
- Treatment for substance abuse if inpatient treatment is required
- Treatment for serious, chronic health condition which, if left untreated, would likely result in an absence of more than (3) days

Examples of Medically Necessary Intermittent or Reduced Leave Schedule:

- A course of medication or therapy to resolve condition
- Treatment for early stage cancer (chemotherapy)
- Physical therapy after a hospital stay or because of severe arthritis
- Prenatal care

e. Requests for Leave/Employee Notice Forms:

- i. FMLA procedures and the appropriate forms must be completed by the employee for each occurrence of leave qualifying under FMLA. When need for leave is foreseeable, the employee shall make every effort to provide at least 30 days advanced notice to the Director or his/her designated representative. When need for leave is not foreseeable,

the employee shall make every effort to submit their request and notice as soon as possible prior to commencement of leave, normally within one or two business days of the date the employee learns of the need for leave. Employees who take FMLA “intermittent leave” **must** follow call-in procedures for requesting leave when foreseeable.

1. Failure on the part of the employee to complete and submit appropriate request in accordance to this policy and the Department’s leave policy may result in delay/denial of leave and/or, disciplinary action as deemed appropriate by the Director.
2. Absence of request for leave may not preclude the designation of FMLA leave when the absences are perceived to be for a FMLA qualifying reason.

f. Certification/Documentation:

- i. When leave (sick, annual, compensatory, LWOP) is used due to a medical necessity, the Director or supervisor responsible for administering leave may require certification of physician/practitioner when:
 1. The leave is due to the “serious health condition” of the employee or the employee’s spouse, child or parent under the 12 workweek FMLA entitlement.
 2. The leave (sick, annual, compensatory, LWOP) is utilized due to medical necessity- i.e. incidental occurrences of leave which are not necessarily applicable to FMLA (routine doctor, dental appointments, etc.)
- ii. For purposes of FMLA leave regulations, the employee notice of FMLA leave is to indicate the requirement for timely submission of a physician/practitioner certification; Certification of Health Care Provider for Employee’s Serious Health Condition [US DOL Form WH-380E](#), or Certification of Health Care Provider for Family Member’s Serious Health Condition [US DOL Form WH-380F](#). Failure of the employee to provide the required document on a timely basis (no later than 15 days from the date requested) may result in delay or denial of leave and/or, disciplinary action as deemed appropriate by the Director.
- iii. If after reviewing the Physician Certification Form, the FMLA Coordinator finds that the illness indicated does not qualify for FMLA, the employee must be so notified.
- iv. The absence of required forms does not preclude the designation of FMLA leave when absences are deemed to be for an FMLA qualifying reason by the FMLA coordinator.
- v. Documentation may be required to establish the legal relationship of the employee to spouse, child, parent and/or “loco parentis”; or to document the official placement of a child for adoption or foster care.

g. Designation of Leave:

- i. It shall be the responsibility of the Director or the delegated supervisor with authority for leave administration to designate leave, paid or unpaid, as FMLA qualifying (communicating with the FMLA Coordinator), based upon information provided by the employee; and to determine the appropriate leave category to be charged. Employee will be provided a Designation Notice, [US DOL Form WH-382](#) to certify the leave request has been approved.
- ii. The use of all applicable accrued balances of paid leave (annual, sick and compensatory) must be depleted prior to granting unpaid leave (LWOP).
- iii. When leave is designated as FMLA qualifying the employee shall be provided a Notice of Eligibility and Rights & Responsibilities, [US DOL Form WH-381](#).
- iv. FMLA leave shall be approved intermittently when it has been certified as medically necessary. If the need for a reduced workweek or to take leave intermittently is foreseeable based on planned medical treatment, an appointing authority may temporarily transfer the employee to a position with equivalent pay and benefits in order to better accommodate recurring periods of leave.
- v. FMLA leave whether annual, sick, compensatory, or LWOP, etc, shall be administered in accordance with this policy.

6. MILITARY LEAVE/ENTITLEMENT:

a. Qualified Employees:

- i. Employees who have been employed by the State of Louisiana for at least twelve (12) months on the date on which any FMLA qualifying event is to commence **and** have worked at least 1,250 hours within state service during the previous twelve (12) month period.
- ii. The twelve (12) month employment period need not be consecutive months. If an employee is maintained on the payroll for any part of a week, the time counts as one (1) week of employment.

b. Qualifying Events:

- i. To care for the employee's family member or next of kin that are covered military members with a serious illness or injury incurred in the line of duty on covered active duty.
- ii. Helps families of activated Nation Guard or Reserves deal with "any qualifying exigency" that might come up. Examples of this could be:

1. Short-notice deployment, meaning a call or order that's given no more than seven calendar days before deployment (the employee can take up to seven (7) days beginning on the date of notification).
2. For military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member's call to duty.
3. For urgent (as opposed to recurring and routine) child-care and school activities, such as arranging for child care.
4. For financial and legal tasks, such as making or updating legal arrangements to deal with the family member's active duty.
5. For counseling for the employee or his/her minor child that isn't already covered by the FMLA.
6. To spend time with the covered service member on rest and recuperation breaks during deployment, for up to fifteen (15) days per break.
7. For post-deployment activities such as arrival ceremonies and reintegration briefing or to address issues from the service member's death while on active duty.
8. For parental care, such as arranging alternative care for the covered military member's parents, to provide for urgent care of the military member's parents or to meet with staff of the care facility of the military member's parents.
9. Other purposes arising out of the call to duty, as agreed to by the employee and employer.

iii. Entitlement:

1. To care for the employee's family member or next of kin that are covered service members with a serious illness or injury incurred in the line of duty on active duty. Entitlement is limited to a combined total of twenty-six (26) workweeks when the employee and his/her spouse are both employed by the State and FMLA is necessary due to the following:
 - i. The 26 weeks of leave may be taken in a single block or intermittently.
 - ii. The 26 weeks entitlement may not be carried over from year to year.

Example: Military caregiver:

Spouse of a covered military service member may take 26 weeks of military caregiver leave for her spouse's qualifying leg injury in year one and take additional military caregiver leave in year two for her

daughter's qualifying injury or for her spouse's second, unrelated illness or injury.

2. Helps families of covered military members deal with "any qualifying exigency" that might come up.
 - a. Entitlement allows eligible employees to take up to 12 weeks of FMLA leave for a "qualifying exigency" arising from the fact their spouse, child, or parent is on active duty or has been called to active duty.
 - b. The 12 weeks of leave may be taken in a single block or intermittently.
 - c. The 12 weeks entitlement may not be carried over from year to year.
3. An employee returning from active military duty must be treated as if he were continuously employed. If the time spent on military leave combined with the time worked over the preceding 23 months equals 1250 hours, the employee is eligible and entitled to FMLA qualifying events.

iv. Certification/Documentation:

1. The leave is due to the recovering for an illness and injury of the employee or employee's family member or next of kin incurred in the line of duty on active duty under the 26 workweek FMLA leave entitlement.
 - a. Employees seeking caregiver leave must follow existing FMLA notice rules, including the requirement to work with you to schedule leave without unduly disrupting operations.
 - b. Documentation stating that the service member's injury or illness was incurred in the line of duty on active duty and they are undergoing treatment for such injury or illness by a health care provider. Certification for Serious Injury or Illness of Covered Service Member - - for Military Family Leave, [US DOL Form WH-385](#) .
2. The leave is due to the "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent under the 12 workweek FMLA leave entitlement. Certification of Qualifying Exigency for Military Family Leave, [US DOL Form WH-384](#) .
 - a. When seeking qualifying exigency leave, the employee must give reasonable and practicable notice if the exigency is foreseeable. The notice must indicate that a family member is on active duty or has been called to active duty status, cite a

listed reason for leave, and give the anticipated length of absence.

- b. Qualifying employees must provide documentation of the service member's active-duty orders. After obtaining the complete, sufficient certification supporting a request for qualifying exigency leave, you may NOT request additional information. Recertification is not permitted.

7. EXCEPTIONS: Any exceptions to this policy must be approved by the Director. Requests for exception shall be submitted to the Director for review.

s/Shannon S. Templet
Director