STATE OF LOUISIANA
EPARTMENT OF CIVIL SERVIC
BATON ROUGE, LOUISIANA
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GENERAL CIRCULAR NO. 1126

TO: Heads of State Agencies and Personnel Officers

SUBJECT: U. S. Family and Medical Leave Act of 1993

The purpose of this General Circular is to inform all state agencies of the latest pertinent information we have obtained from the U. S. Department of Labor concerning the application of the U. S. Family and Medical Leave Act of 1993. This act allows employees to claim leave under four major circumstances: (1) For the birth of a child, (2) For the placement of a child, for the adoption of a child, or for the foster care of a child, (3) In order to care for a parent, child or spouse with a serious health condition and (4) Because of the employee's own serious health condition. To understand the details of each condition the Federal Regulations governing the act and the Act itself must be referred to.

1. The U.S. Department of Labor has strongly indicated that the State will be treated as one employer. Therefore, we are taking the position that all classified employees are covered by this Act.

2. A covered employee is entitled to twelve weeks of leave in a "year". The Act requires the "employer" to choose one of four options as the "year". Because of the needs of our 24 hour institutions, we are designating that all agencies use a "first usage" year. This 12 month period begins with an employee's first usage of FMLA leave.

3. Employees must meet the following eligibility requirements:

    a. Employed for 12 months by the state and for at least 1250 hours during the 12 months preceding the start of FMLA leave. The employee must have actually worked the 1250 hours. Leave time is excluded.

b. The 12 month period required for employment need not be continuous. If an employee has worked any part of each of 52 weeks, the 12 month employment requirement is considered met. These 52 weeks must have been within a reasonable time period.

4. The following are some salient points that need to be addressed:

a. An agency can place an employee on FMLA leave (paid or unpaid) even if the employee has not requested leave under FMLA. However, the employer should always require the employee to use paid leave first. This usually simplifies the problem with paying medical insurance premiums.

b. The employee may utilize paid leave during FMLA leave and after exhaustion of sick leave, may use annual leave when the employee cannot work because of illness or injury.

c. While an employee may be terminated for exhaustion of sick leave under Civil Service Rule 12.6, if that employee has not used all of the 12 weeks of FMLA leave, the employer will be in violation of the Act. Therefore, the employee should not be terminated unless FMLA leave has also been exhausted.

d. The employer may designate absences as FMLA leave where the reason for the absence is covered by FMLA and the employee may demand to use appropriate paid leave during FMLA leave. In either case, the employer must advise the employee in writing with notice of the employee's rights and obligations when such designation is made.

e. The employee must give 30 days notice of the need for FMLA leave, or if not practicable, as much notice as is practicable.

f. The leave is a 12 week only entitlement.

g. Sick leave can still only be used for the employee's illness and may not be used for taking care of a family member.

h. Use of straight time compensatory leave is not prohibited for FMLA leave; however use of time and one-half compensatory leave is not allowed.

i. All medical records submitted to the employer for verification of leave must be treated as confidential.

j. The "key employee" provision of the act should not be used.

5. Notice to employees

   a. Notice of rights containing at least those on the attached notice must be posted prominently.

   b. If the agency has a formal written policy or handbook covering leave and benefits, FMLA rights must be included within that policy or handbook.

6. Please use the resources available to you to become familiar with FMLA, as we expect that we will frequently deal with the rights and obligations created by the Act. In addition to the above issues, other important areas are:

   a. Eligibility of employee
   b. Causes for FMLA leave
   c. Definitions in the Act
   d. Medical certifications
   e. Maintenance of health and life insurance
   f. Record keeping
   g. Notices to employees

Any questions on the FMLA Act or regulations should be addressed to the Wage and Hour Division of the U. S. Department of Labor. Contact the Personnel Management Division of the State Civil Service Department for questions on the State policy on compliance with FMLA.

Sincerely,

Herbert L. Sumrall

Herbert L. Sumrall
Director

YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any 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 or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor, Employment Standards Administration
Wage and Hour Division, Washington, D.C. 20210

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