

**ARIZONA DEPARTMENT OF ADMINISTRATION
POLICIES AND PROCEDURES**

Policy Number: ADOA/HRD PA6.03	Issued: January 17, 2013
Subject: Leave – Family and Medical Leave Act (FMLA)	Effective: September 29, 2012
Policy Section: Human Resources	Revised: October 5, 2018
Policy Owner: HRD – Shared Services Office	

This policy does not create a contract for employment between any Arizona Department of Administration (ADOA) employee and the Department. Nothing in this policy changes the fact that all uncovered employees of the Department are at will employees and serve at the pleasure of the appointing authority.

Scope:

This policy applies to all Arizona Department of Administration (ADOA) employees.

Authority:

- The [federal] Family and Medical Leave Act (FMLA)
- 29 CFR Part 825.100 through 29 CFR 825.800, [federal] FMLA Regulations
- National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA)
- A.A.C. R2-5A-D601, Family and Medical Leave Act (FMLA) Leave
- BSD1000 Benefit Health Plan Premium Policy for Active Employees

Definitions:

In this policy, unless otherwise specified:

“12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

“Armed Forces” includes the following military service branches: Army, Army Reserves, Army National Guard, Marine Corps, Marine Corps Reserves, Navy, Navy Reserves, Air Force, Air Force Reserves, Air Guard, Coast Guard, and Coast Guard Reserves.

“Contingency Operation” means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are, or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services during a war or during a national emergency declared by the President or Congress.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

“Continuing Treatment” includes any one or more of the following:

1. A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - a. Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider or physician’s assistant;
 - b. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider;
 - c. The requirement in (a) and (b) for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
2. Any period of incapacity due to pregnancy or for prenatal care;
3. 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 (at least twice a year) for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
 - 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 (e.g., asthma, diabetes, epilepsy, etc.)
4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s, a severe stroke, or the terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

“Covered Active Duty” or *“Call to Covered Active Duty Status”* means:

- For members of a **regular** component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country.
- For members of the **reserve** components of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country under a

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

Federal call or order to active duty in support of a contingency operation under Section 688 of Title 10 of the United States Code.

“Covered Servicemember for Exigency Leave” means an employee’s spouse, son, daughter, or parent on active duty or call to active duty status in support of a contingency operation.

“Covered Servicemember for Servicemember Caregiver Leave” means:

- An employee’s spouse, son, daughter, parent, or next of kin who is a **current** 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 otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of active duty, or that existed before the beginning of the member’s active duty and was aggravated by service in the line of active duty, and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- An employee’s spouse, son, daughter, parent, or next of kin who is a **veteran** who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

“Hours of Service” means the number of hours actually worked; does not include any type of paid or unpaid leave, with the exception of military leave.

“Intermittent Leave” means leave taken in separate blocks or periods of time, due to a single qualifying reason, usually to accommodate some form of regularly scheduled medical treatment, or leave taken on an occasional basis for medical appointments or flare-ups caused by an FMLA qualifying medical condition.

“Key Employee” means a salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the State of Arizona.

“Medically Necessary” is a medical need for the leave, as distinguished from voluntary treatments and procedures.

“Next-of-Kin” means the nearest blood relative of the servicemember, other than the spouse, son, daughter or parent, in the following order of priority: blood relatives who have been granted legal custody of the 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 or her nearest blood relative for purposes of servicemember caregiver leave, in which case the designated individual shall be deemed to be the next of kin.

“Parent” means the biological, adoptive, step or foster father or mother of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. Does not include parents-in-law.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

“Reduced Leave/Work Schedule” means a work schedule that reduces an employee’s usual number of hours per workweek, or hours per workday. A reduced leave/work schedule is a change in the employee’s schedule for a period of time, normally from full-time to part-time.

“Salaried” means paid on a salary basis, as defined in 29 Code of Federal Regulations 541.118.

“Serious Health Condition” means an illness, injury, impairment, or a physical or mental condition that involves:

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider.

“Serious Injury or Illness” means an injury or illness incurred by a covered servicemember in the line of active duty on active duty or that existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of active duty, and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

“Son or Daughter” means 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 18 years of age or older and incapable of self-care because of a mental or physical disability. For the purpose of Servicemember leave, a son or daughter on “active duty or call to active duty status” can be older than 18 years of age.

“Spouse” is defined in 29 CFR Part 825.122 and means a husband or wife recognized under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into in a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.

Policy:

- A. In accordance with the Family and Medical Leave Act (FMLA) of 1993 as amended, job protected unpaid family and medical leave will be granted to eligible employees for up to 12 weeks per 12-month period for any one or more of these reasons:
 1. The birth of a son or daughter and in order to care for such son or daughter or the placement of a son or daughter with the employee for adoption or foster care (leave for this reason must be taken in the 12-month period following the son’s or daughter’s birth or placement with employee);
 2. In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition;

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

3. The employee's own serious health condition that makes the employee unable to perform the functions of the employee's position; or
4. A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered servicemember on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.
 - a. A call to duty for purposes of leave taken due to a qualifying exigency refers only to a Federal call to active duty. State calls to duty are not covered unless under the order of the President of the United States.
 - b. Qualifying exigencies include:
 - Addressing issues arising from a covered servicemember's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
 - Attending military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered servicemember;
 - Handling certain childcare and related activities arising from the active duty or call to active duty status of a covered servicemember, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered servicemember;
 - Making or updating financial and legal arrangements to address a covered servicemember's absence;
 - Attending counseling provided by someone other than a health care provider for oneself, the covered servicemember, or the child of the covered servicemember; the need for which arises from the active duty or call to active duty status of the covered servicemember;
 - Taking up to five days of leave to spend time with a covered servicemember who is on short-term temporary rest and recuperation leave during deployment;
 - Attending certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered servicemember's active duty status, or addressing issues arising from the death of a covered servicemember;
 - Participating in any other event that the employee and Department agree is a qualifying exigency.

If both spouses are employed by the State of Arizona and both wish to take leave for the birth of a son or daughter, adoption or placement of a son or daughter in foster care, to care for a parent (but not a parent-in-law) with a serious health condition, or for a

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

qualifying military exigency, the spouses are only entitled to take a combined total of 12 weeks of FMLA leave.

- B. In accordance with the FMLA of 1993 as amended, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember who is undergoing medical treatment, recuperation or therapy or is in outpatient status or on the temporary disability retired list for a serious injury or illness incurred in the line of duty while on active duty.

If two employees are legally married to each other and both are employed by the State of Arizona and both wish to take leave for the care of a qualified servicemember, the employees shall be entitled to a combined total of 26 workweeks of FMLA leave.

- C. In accordance with the FMLA of 1993 as amended, an eligible employee shall be entitled to no more than 12 workweeks of leave for the reasons under paragraph (A), and a combined total of 26 workweeks of leave under paragraph (A) and (B) during a 12-month period.
- D. For part-time employees and those who work variable hours, the FMLA entitlement is calculated on a pro-rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave will be used for calculating the employee's normal workweek, but shall not exceed 40 hours per week.

Coverage and Eligibility

- A. An eligible employee for the purposes of the FMLA is an employee who:
1. Is an employee of the State of Arizona;
 2. Has been employed by the State of Arizona for at least 12 months. The 12-month period does not need to be continuous; however, employment prior to a break in service of seven years or more need not be counted; and
 3. Worked at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.

NOTE: Time worked for the State through a temporary employment/placement agency counts toward the 12-months of service and the 1,250 hour requirements.

- B. If at any time during the approved FMLA leave the employee notifies the Department that the employee will not be returning to work, FMLA leave entitlement shall cease.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

Paid Leave

- A. An employee on FMLA leave will be required to use appropriate accrued leave. Certain exceptions to an employee having to use accrued leave for unpaid FMLA leave exist, i.e., Industrial Leave.
- B. When an employee has exhausted all appropriate paid leave time for a portion of FMLA leave and additional time off is needed, the employee must request unpaid leave to be granted so that the total period of leave (paid and unpaid) equals up to 12 workweeks or 26 workweeks dependent on the reason for the leave.
- C. All paid and unpaid leave taken for an FMLA qualifying event will be applied towards the employee's FMLA leave entitlement. For example, an employee using ten weeks of industrial leave would simultaneously exhaust ten weeks of FMLA leave entitlement.

Intermittent Leave or Reduced Schedule Leave

- A. An employee **may** take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule for the birth or placement for adoption or foster care of a son or daughter.
- B. An employee **may** take leave intermittently or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee when "medically necessary."
- C. An employee who needs intermittent or reduced schedule leave for foreseeable medical treatment must work with their supervisor to schedule the leave so as not to unduly disrupt the unit's operations.
- D. The employee may be required to temporarily transfer to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- E. While on intermittent FMLA leave, an employee may be required to call their immediate supervisor to provide notification that a current absence is for an FMLA qualifying reason. Failure to follow call-in procedures may result in disciplinary action or dismissal from employment.
- F. While on reduced schedule FMLA leave, the Department will not reduce the employee's full-time equivalent (FTE) status. An employee on reduced schedule leave is required to use their paid leave balances for the periods of reduced schedule FMLA leave.
- G. For uncovered and covered employees who are exempt from earning overtime, straight time or compensatory leave under the Fair Labor Standards Act (FLSA) for working in excess of 40 hours in a workweek and have been determined by the State to be FLSA exempt, (i.e., are not charged leave for absences of less than eight hours in one work day), if FMLA is taken:

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

1. On an intermittent leave basis (i.e., the employee is absent from work on an occasional basis): If the employee's absence is one or more full work day(s), the employee must use their paid leave for each full day of FMLA absence. If the employee's absence is less than one work day, the employee does not use their paid leave balances (i.e., sick and annual leave) for the time the employee is absent from work. A supervisor may request an employee who is using intermittent leave for scheduled medical treatments to schedule the appointments at times that cause the least disruption to the work unit, such as early morning or late afternoon appointments.

Example: An exempt employee's regular work schedule is Monday through Friday from 8:00 am through 5:00 pm. The employee's health care provider indicates the employee needs to schedule four follow-up appointments for an FMLA-related reason over the next eight weeks. The employee schedules the appointments for when the health care provider's office opens, allowing the employee to arrive to work by 9:00 am. In this example, deductions are not made to the employee's paid leave balances. The one hour of missed work time will be designated as FMLA leave (640F) and deducted from the employee's available FMLA hours.

2. On a reduced schedule basis, the number of hours the employee may work per workweek or per workday is reduced as required through certification from their health care provider. On a reduced schedule FMLA, the employee retains their FTE status and must use paid leave balances (i.e., sick and annual leave) for the time the employee is absent from work each day, including partial days.

Example 1 (reduced schedule, reduced hours per workweek): An employee's regular schedule is Monday through Friday from 8:00 am through 5:00 pm and the employee's health care provider indicates the employee can only work 30 hours per week for the next eight weeks. The employee works with their supervisor to discuss the available options to meet the medical certification in a way that would be the least disruptive to the work unit. Unless the health care provider has also limited the number of hours the employee can work each day, possible schedules include, but are not limited to the following: three 10-hour days, such as Monday, Tuesday, Wednesday or Monday, Wednesday and Friday; five 6-hour days; or, three 8-hour days and one 6-hour day. In this example, the employee codes the time the employee is absent from work (the balance of the 40 hours, including partial days), as either FMLA sick leave (310F), FMLA annual leave (300F), FMLA LWOP (640F), or other FMLA pay codes as applicable.

Example 2 (reduced schedule, reduced hours per workday): An employee's regular schedule is Monday through Friday from 8:00 am through 5:00 pm and their health care provider indicates the employee can only work four hours per day for a period of two months. The employee works from 8:00 am through noon each day for two months. The employee codes the time missed from work each

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

day (four hours each work day) as either FMLA sick leave (310F), FMLA annual leave (300F), FMLA LWOP (640F), or other FMLA pay codes as applicable.

Effect on Health Benefits

- A. An employee granted leave under this policy will continue to be covered under the employee's group health insurance plan under the same conditions as coverage would have been provided if the employee had been continuously working during the leave period.
- B. Benefit premiums will be required either through payroll deduction if the employee has sufficient pay in their paycheck to cover the cost of their premiums, or by direct payment to the Health Insurance Trust Fund (HITF) if the employee is in an unpaid status. If the employee is in an unpaid status and owes benefit premiums, the employee will receive notification as to the amount owed, due date, and method of payment required. Benefit premium amounts are subject to any change in rates that occurs while the employee is on leave.
- C. The employee will have 30 days from each scheduled pay date to remit unpaid premium payments. If payment is not received timely by HITF, the employee's benefits coverage will be retroactively terminated due to non-payment. Please refer to the Statewide Policy, *Benefit Health Plan Premium Policy for Active Employees* for more detailed information.
- D. If the employee fails to return from paid or unpaid FMLA leave for reasons other than (1) the continuation, recurrence, or onset of a condition of the employee or a covered family member that entitles an employee to leave under the FMLA or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the Department may, in order to ensure consistency, seek reimbursement from the employee for the portion of the premiums paid by the State on behalf of the employee (also known as the employer premium) during the period of leave.
- E. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose any paid leave accrued prior to the start of the unpaid leave.

Job Protection

- A. If the employee returns to work within 12 to 26 workweeks (dependent on the category of leave) as provided by the FMLA following an FMLA leave, the employee will be restored to the employee's former position or an equivalent position with equivalent pay, benefits, status and authority, unless the employee is determined to be a key employee. If the employee is a key employee, restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic harm to the State. Whether an employee is a key employee must be determined at the time of the employee's request for leave.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been separated but for the leave, the employee would not have the right to be reinstated upon return from the leave.
- C. If the employee fails to return to work within the approved period of time following an FMLA leave, the employee may be separated, in accordance with applicable laws and Personnel Rules.

NOTE: If any discrepancies exist between this policy, the FMLA, Arizona Revised Statutes or any other applicable State policies and/or rules, the FMLA and/or Arizona Revised Statutes or State policy and/or Rules will prevail.

Procedure:

General Notice Requirement

To comply with the general notice requirements of the Act, a link to the Notice to Employees of Rights Under FMLA (WH Publication 1420) is provided at the end of this document.

Employee and Employer Notice Requirements

- A. An employee is required to provide 30 days notice in the event of a foreseeable leave. A "Family and Medical Leave Request" form must be completed by the employee and returned to the ADOA FMLA Coordinator in the Human Resources Department (HRD), Shared Services Office. In unexpected or unforeseeable situations, an employee must provide notice to the FMLA Coordinator as soon as practicable under the facts and circumstances of the particular case. Generally, it is practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the unit's call in procedures followed by a completed "Family and Medical Leave Request" form. The FMLA Coordinator will prepare the FMLA materials (as applicable) and process the FMLA request. The FMLA Coordinator will notify the employee's supervisor and ADOA payroll representative of the disposition of the FMLA request.
- B. If an employee fails to provide 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice. The FMLA Coordinator will prepare the FMLA materials (as applicable) and process the FMLA request. The FMLA Coordinator will notify the employee's supervisor and ADOA payroll of the disposition of the FMLA request.
- C. The employee will be required to furnish the FMLA Coordinator with periodic reports of their status and intent to return to work as requested, or no more than every 30 days while on FMLA leave. The FMLA Coordinator will notify the employee's supervisor and ADOA payroll representative of the employee's status.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

- D. If the leave is not timely designated as FMLA, the FMLA Coordinator may retroactively designate the leave as FMLA leave with appropriate notice to the employee, provided the failure to timely designate the leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, the FMLA Coordinator and the employee can mutually agree that leave be retroactively designated as FMLA leave.
- E. An employee need not specifically request FMLA leave to be placed on FMLA leave. If the employee requests leave, and in explaining the reasons for the request, provides sufficient information to determine that the requested leave is for an FMLA-qualifying purpose, the employee's leave, paid or unpaid, **shall** be designated as FMLA leave and be appropriately substituted for all or some portion of the employee's FMLA leave entitlement.

Certification

A. Medical Related

1. When leave is taken due to the employee's serious health condition or a covered family member's serious health condition, the employee must submit a completed "Certification of Health Care Provider" form (see the ADOA FMLA Coordinator for a copy of this form) and return the certification to the FMLA Coordinator in the HRD Shared Services Office. The employee must provide the completed medical certification within 15 calendar days after the employee requests leave, unless it is not practicable to do so under the circumstances. Under such circumstances, the employee must contact the FMLA Coordinator. The certification must be completed by a duly licensed doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (only for subluxation of the spine demonstrated by x-ray), nurse practitioner, physician's assistant, nurse-midwife, clinical social worker, or Christian Science Practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, or any health care provider from whom the State will accept certification to substantiate a claim for benefits. The Department may require a second or third opinion (at its own expense), and/or periodic reports on the employee's status and intent to return to work.
2. When leave is taken to care for a covered servicemember with a serious injury or illness (servicemember caregiver leave), the employee must submit a "Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave" form (Form WH-385) completed by an authorized health care provider of the covered servicemember or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.
3. When leave is taken due to the employee's own serious health condition, before being restored to the employee's former position, the employee must provide a "Health Status Update and/or Medical Clearance for Return to Work" form from the employee's health care provider, releasing the employee to return to work and assume the employee's duties. The release must state if there are any work restrictions upon the employee's return to work.

Arizona Department of Administration (ADOA) Policies and Procedures

Subject: Leave - Family and Medical Leave Act (FMLA)

4. All documentation related to the employee's or family member's medical condition will be **held in strict confidence** and maintained in the employee's medical record file by the FMLA Coordinator and **not** in the employee's personnel file.

B. Other Related

When leave is taken because of a qualifying exigency, the employee must provide a copy of the covered servicemember's active duty orders or other documentation issued by the military which indicates the covered servicemember is on active duty or call to active duty status in support of a contingency operation. The employee must also provide a completed "Certification of Qualifying Exigency For Military Family Member" form (Form WH-384) to the FMLA Coordinator in the HRD Shared Services Office before leave is granted.

Related Forms/Attachments:

- [FMLA General Notice](#)
- Family and Medical Leave Request

Corresponding Policies:

- BSD1000 - Benefit Health Plan Premium Policy for Active Employees
- ADOA/HRD PA5.01 Modified Duty

Contact:

If you have any questions related to this policy, please contact the ADOA Human Resources Division, Shared Services Office.

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

BENEFITS & PROTECTIONS

ELIGIBILITY REQUIREMENTS

REQUESTING LEAVE

EMPLOYER RESPONSIBILITIES

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For additional information or to file a complaint:

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