

FAMILY MEDICAL LEAVE ACT (FMLA)

Source: Federal Law, State of Ohio FMLA Policy

Contact: Office of Employee Services

FMLA Policy:

BASIC LEAVE ENTITLEMENT

The Family and Medical Leave Act (FMLA) allows an eligible state employee to take up to twelve workweeks of leave per “rolling” twelve-month period for the following qualifying events:

- Incapacity due to pregnancy, prenatal medical care or child birth;
- Caring for the employee’s child after birth, or placement for adoption or foster care;
- Caring for the employee’s spouse, child or parent with a serious health condition; or
- The serious health condition of the employee that makes the employee unable to perform the employee’s job.

FMLA is not leave time, it is the right to use leave time (e.g., sick, personal, vacation, compensatory, disability, and unpaid) for a qualifying event.

QUALIFYING EXIGENCY LEAVE ENTITLEMENTS

Eligible employees with a spouse, child, or parent on federal active duty or call to federal active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies include activities related to short-notice deployment, attending military events, arranging for alternative childcare or attending school activities, addressing financial and legal arrangements, attending counseling sessions, attending post-deployment reintegration briefings, and spending time with a covered military member who is on rest and recuperation leave.

MILITARY CAREGIVER LEAVE ENTITLEMENTS

Employees may also be eligible to take up to 26 weeks of leave to care for a covered service member during a single 12-month period.

“Covered service member” refers to an employee’s spouse, child, parent or next of kin, who is a current member of the Armed Forces, including a member of the

National Guard or Reserves, who incurred a serious injury or illness in the line of active duty that renders the service member medically unfit to perform his or her duties and for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or in on the temporary retired list.

“Next of kin” is the nearest blood relative in the following order: blood relative designated in writing as “next of kin”; blood relatives granted legal custody; brothers/sisters; grandparents; aunts/uncles; and first cousins.

The “single 12-month period” begins on the first day the employee takes leave to care for the covered service member and ends 12 months after that date. An employee who is entitled to take leave due to a different FMLA qualifying reason may take leave during the same single 12-month period in which leave is taken to care for a covered service member, but the total leave taken for any purpose during the single 12-month period may not exceed 26 workweeks overall.

EMPLOYEE ELIGIBILITY

Employees are eligible if they meet both of the following criteria:

- 1) They have been employed by the state for at least twelve months and,
- 2) They have actually worked (i.e., in “active work status”) at least 1,250 hours during the past twelve months.

Previous employment with the state in which the employee was paid directly by warrant of the director of budget and management shall count toward meeting the twelve-month employment requirement.

“Active work status” includes overtime hours worked and is defined as “the conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, and disability leave.

For purposes of determining FMLA eligibility, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that a person reemployed under its provisions be given credit for any time he or she would have been employed *but for* the military service. Each month served performing military service counts as a month actively employed.

Eligible employees are entitled to the full amount of FMLA leave even if their spouse has already exhausted leave for a qualifying event.

Employees will be notified in writing of their eligibility or non-eligibility status within five business days after the first time an employee requests leave for a particular qualifying reason in a rolling 12-month period or within five days after

an employer receives knowledge that the reason for an employee's leave may be FMLA qualifying. This notice only indicates whether the employee is eligible for FMLA leave and is not determinative as to whether the employee's leave request qualifies for FMLA.

REQUESTS FOR FMLA LEAVE

Employees request FMLA leave using the standard Request for Leave Form (ADM 4528) and, depending on the type of FMLA requested, the FMLA Certification Form, through normal division/district/office channels. The forms must be submitted to the Office of Employee Services.

If the need for leave is foreseeable, employee requests must be submitted in writing at least thirty days prior to taking the leave. If the need for leave is unforeseeable, employee requests must be made as soon as practicable and must comply with the Agency's normal call-in procedures.

Leave taken for the birth or placement of a child must be taken within one year of the date of birth or placement of the child.

Medical records/information accompanying FMLA requests will be kept separate from personnel files, and to the extent permitted by law, will be kept confidential.

CERTIFICATIONS

An employee is required to submit a complete and sufficient certification on one of the following forms, depending on the nature and condition of the leave requests:

**Certification of Health Care Provider for Employee's Serious Health Condition*

**Certification of Health Care Provider for Family Member's Serious Health Condition*

**Certification of Qualifying Exigency for Military Family Leave*

**Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave*

*Equivalent documentation in the case of an adoption/foster care.

The Office of Employee Services may contact the employee's health care provider for the purposes of clarification and authentication of the medical certification after the Agency has given the employee the opportunity to cure any deficiencies.

For leave taken because of an employee's own serious health condition or serious health condition of a family member, a second opinion from a second health care provider designated by and paid for by the Agency may be required. If the first and second opinions conflict, the employee may be required to submit to a third examination at the Agency's expense by a health care provider chosen jointly by the employee and the Agency. The opinion of the third health care provider is final and binding.

The Agency may require an employee to provide recertification of an employee or family member's serious health condition at any time if:

- The employee requests an extension of leave;
- Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or
- Leave taken by the employee is inconsistent with the circumstances described in the employee's certification.

Absent such circumstances, if the medical certification indicates that the minimum duration of the condition is more than 30 days, the Agency may request recertification after the minimum duration has expired. However, the Agency may request a recertification of a medical condition every six months in connection with an absence by the employee. Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered member lasts beyond a single leave year, the employee is required to provide a new medical certification in each subsequent leave year.

DESIGNATION NOTICE

Within five business days after receiving enough information to determine whether the leave is taken for a FMLA-qualifying reason (e.g., after receiving a complete and sufficient certification), the employee will be notified as to whether the leave will be designated and counted as FMLA leave.

USE OF FMLA LEAVE

Employees may take intermittent leave when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the Agency's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis. In reviewing requests for intermittent leave, the Office of Employee Services will determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.

Leave must be taken in increments of no less than 1/10 hour. Bargaining Unit employees shall exhaust all accrued sick, vacation and personal leave balances, as appropriate, prior to going on unpaid leave. Exempt employees shall also exhaust all accrued compensatory time balances in addition to those listed above. All leave, paid or unpaid, shall be coded as FMLA. Employees will not accrue normal leave during any period of unpaid FMLA leave

Holidays that occur during a full week of FMLA will count against the employee's FMLA entitlement. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

An employee on FMLA leave shall not hold outside employment while on FMLA leave without the prior written approval from the Office of Employee Services.

INTERACTION WITH OTHER LEAVE PROGRAMS

Employees requesting Worker's Compensation or Disability Leave who are also eligible for FMLA leave shall have up to twelve weeks of the non-working portion of the approved benefit period, including any required waiting period, count concurrently as FMLA leave. FMLA may also be granted to an employee while their request is being reviewed. The granting of FMLA leave shall have no bearing on the approval or disapproval of an employee's request.

Employees requesting Adoption/Childbirth leave benefits who are also eligible for FMLA leave shall have the entire non-working portion of Adoption/Childbirth leave, including the required waiting period, count concurrently as FMLA leave. An employee who is not eligible for FMLA leave (e.g., the employee has not been in active work status for 1,250 hours during the previous twelve months or has already used his or her twelve workweeks of FMLA leave) shall retain his or her right to Adoption/Childbirth leave upon meeting the Adoption/Childbirth leave eligibility requirements.

EMPLOYEE BENEFITS

During unpaid FMLA leave, the Agency will continue to pay the employer's portion of health insurance premiums. Employees are required to continue to pay their portion of health insurance premiums directly to their Fiscal Officer.

If an employee chooses not to continue health care coverage during unpaid FMLA leave, the employee will be entitled to reinstatement into the benefit plan upon return to work.

Employees who are reinstated will not lose any service credit and FMLA leave will be treated as continuous service for the purpose of calculating any benefits that are based on length of service.

REINSTATEMENT

Employees are entitled to reinstatement to the same or similar position upon return from leave.

If the same job is not available, the Office of Employee Services will determine in which similar position the employee should be placed, making sure that the position has equivalent pay, benefits and conditions of employment.

Employees may be required to provide certification from a health care provider that they are able to perform the essential functions of their position prior to being reinstated.

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