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GOVERNOR

KRISTY H. NICHOLS
COMMISSIONER OF ADMINISTRATION

State of Louisiana

Division of Administration
Office of State Human Capital Management

STATEWIDE PERSONNEL POLICY NO. 1

EFFECTIVE DATE: **August 25, 2015**

SUBJECT: **Family and Medical Leave Policy**

AUTHORIZATION: _____
Kristy Nichols, Commissioner of Administration

I. Policy

In accordance with the federal Family and Medical Leave Act of 1993, as amended ("FMLA"), the State of Louisiana ("State") provides eligible employees up to 12 weeks of job-protected leave, within a 12-month period measured forward, for specified family and medical reasons. The State also provides eligible employees up to 26 weeks of job-protected leave, within a 12-month period measured from the first day the employee takes leave to care for a covered service member and ends 12 months after that date.

The State shall require use of applicable accrued paid leave (annual, compensatory, and/or sick) concurrent with FMLA leave. When paid leave is exhausted, leave without pay shall be granted through exhaustion of the applicable FMLA entitlement.

II. Purpose

The purpose of this Family and Medical Leave Policy is to outline an employee's rights and responsibilities regarding leaves of absence due to family and/or medical reasons, including those under the FMLA.

III. Applicability

This policy applies to all eligible employees, regardless of status or position, in the following agencies: Division of Administration, Department of Economic Development, Department of Public Safety & Corrections (including the Office of Juvenile Justice), Department of Health & Hospitals, Department of Children & Family Services, Department of Transportation & Development, and Department of Revenue.

FMLA policies of these agencies are repealed and replaced by this policy.

IV. Requesting Leave

The State's FMLA administration is handled by FMLASource, Inc. All FMLA requests shall be initiated by the employee through FMLASource by utilizing one of the following communication methods:

- Toll-Free Number: 877-GO2-FMLA (877-462-3652)
- Website: www.fmlasource.com
- Email: FMLACenter@fmlasource.com
- Confidential Fax: 877-309-0218

V. Eligibility for Leave

To be eligible for FMLA leave, an employee must have been employed by the State for at least 12 months in the previous 7 years, unless the break was for military service, and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the FMLA leave. The 12 months that an employee must have been employed by the State need not be consecutive.

VI. Amount of Leave

Except in the case of leave to care for a covered service member with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 weeks of leave during any 12-month period. If the employee normally works a part-time schedule or variable hours, the FMLA leave entitlement shall be determined on a pro rata or proportional basis. The use and/or duration of FMLA leave may not be interrupted by holidays, office closures, etc.

The 12-month period is calculated as follows: Measured Forward. 12 weeks of leave are allowed during the 12-month period beginning on the first day the eligible employee takes FMLA leave.

If both spouses of a child are employed by the State, the two employees are limited to a combined total of 12 weeks of family leave to cover the time to care for a newborn child, a newly-adopted or newly-placed foster care child, or a parent with a serious health condition. Any remaining FMLA time from the employees' FMLA entitlement may be utilized by the employees individually for another qualifying FMLA reason.

An eligible employee is entitled to a combined total of 26 weeks of leave for to care for a covered service member with a serious injury or illness during the "single 12-month period." This "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 weeks of leave entitlement for other FMLA-qualifying reasons.

VII. Qualifying Reasons for Leave

Eligible employees can request family or medical leave to cover the time they need to be away from work for any of the following reasons:

- For placement of or care for a newborn child, a newly-adopted or newly-placed foster care child, as long as the leave is completed in the year following the child's birth or placement;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition, or for the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job;
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is deployed overseas on covered active duty; or
- To care for a covered service member or veteran with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member or veteran.

Leave for Pregnancy, Birth or Adoption

A. General Rules

Eligible employees are entitled to FMLA leave for pregnancy, birth, or adoption of a child as follows:

- Both spouses are entitled to FMLA leave for the birth of their child.
- Both spouses are entitled to FMLA leave to be with the newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth.
- An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth.
- Spouses who are eligible for FMLA leave and are both employed by the State will be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement.

B. Intermittent and Reduced Schedule Leave

An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy new born only if their supervisor agrees to and authorizes an intermittent or reduced schedule leave.

C. Leave for Adoption or Foster Care

Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

- Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination or travel to another country to complete an adoption.
- The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

Serious Health Condition

A "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider.

A. Inpatient Care

Inpatient care means 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.

B. Continuing Treatment

A serious health condition involving continuing treatment by a healthcare provider includes any one or more of the following:

- Incapacity and Treatment – A period of incapacity of more than 3 consecutive, full calendar days and any subsequent treatment period of incapacity relating to the same condition, that involves:
    - Treatment 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a healthcare provider (e.g., physical therapist), by a nurse under direct orders of a healthcare provider or on referral by a healthcare provider; or
    - Treatment by a healthcare provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the healthcare provider.
        - The requirements above for treatment by a healthcare provider mean an in-person visit to a healthcare provider. The first (or only) in-person treatment visit must take place within 7 days of the first day of incapacity.

- Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the healthcare provider.

- Pregnancy or Prenatal Care.
- Chronic Conditions – A chronic, serious health condition is one which:

  - Requires periodic visits (defined as at least twice a year) for treatment by a healthcare provider, or by a nurse under direct supervision of a healthcare provider;
  - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

- Permanent or Long-Term Conditions
  - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
  - The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider.

Leave Because of a Qualifying Exigency

Eligible employees may take FMLA leave while the employee's spouse, son, daughter or parent (the "military member" or "member") is deployed overseas on covered active duty for one or more of the following qualifying exigencies:

- Short-notice deployment;
- Military events and related activities;
- Childcare and school activities;
- Financial and legal arrangements;
- To attend counseling provided by someone other than a healthcare provider;
- Rest and recuperation;
- Post-deployment activities;
- Parental care; or
- Additional activities – Events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and as to both the timing and duration of such leave.

Leave to Care for a Covered Service Member with a Serious Injury of Illness

Eligible employees are entitled to FMLA leave to care for a covered service member (a current member or veteran of the Armed Forces, including a member or veteran of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy, is otherwise on the temporary disability retired list, for a serious injury or illness.

- A "serious injury or illness," in the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by a 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 on active duty in the Armed Forces, and that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

- In the case of a covered veteran, "serious injury or illness" means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and manifested itself before or after the member became a veteran and is:

    - 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
    - A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating ("VASRD") of 50% or greater, and such VASRD rating is based, in whole or part, on the condition precipitating the need for military caregiver leave; or
    - 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
    - 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.

- "Outpatient status" means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, parent or next of kin of a covered service member.

VIII. Intermittent Leave or Reduced Leave Schedule

Under certain conditions, FMLA leave may be taken intermittently or on a reduced leave schedule. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per week, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. Employees must follow their agency's leave policy regarding supervisor notification of anticipated treatments and/or appointments related to his leave for scheduling purposes.

IX. Employee Notice Requirements

Employees shall contact FMLASource to report all absences which may be covered by FMLA by utilizing one of the following communication methods:

- Toll-Free Number: 877-GO2-FMLA (877-462-3652)
- Website: www.fmlasource.com
- Email: FMLACenter@fmlasource.com
- Confidential Fax: 877-309-0218

Employees must provide at least 30-days' notice before the leave is to begin, or if circumstances do not permit 30-days' notice, then on the day the employee becomes aware of the need for leave, or the next business day. When the need for leave is not foreseeable, the employee must notify their immediate supervisor prior to his scheduled reporting time as well as FMLASource.

If leave is foreseeable and 30-days' notice is not given, the State may delay or deny leave in certain situations.

X. Medical Certification

If an employee requests family/medical leave or the State has reasonable knowledge as to a qualifying event, the employee must provide FMLASource with a medical certification which establishes that the condition qualifies as a "serious health condition," the expected duration of the leave, and the other relevant information sufficient to allow FMLASource to assess eligibility. The employee is also required to provide a certification for leave for the placement of a child and qualifying exigency. The employee is required to pay for any costs incurred for these certifications.

The employee or his healthcare provider must return the relevant certification to FMLASource within 15 calendar days from the date the medical certification is sent to the employee.

If an employee refuses to submit medical certification for a known qualifying event, the State will designate any and all leave as FMLA.

The State may require an employee to get a second opinion at the State's expense if the State has questions about the sufficiency of the medical certification. If the two certifications differ, the State may pay for a third certification of a doctor selected jointly by the employee and the State. The third opinion shall be final and binding. The employee is entitled to a copy of the second and third opinions upon request.

The State shall require a medical recertification every 6 months, and may require recertification more frequently in some instances, when the employee is on leave due to his

own serious health condition or that of a qualifying family member. The employee must submit a new medical certification when the stated duration has expired. The employee is required to pay for any costs incurred for the recertification.

XI. Scheduling Planned Medical Treatment

When planning medical treatment, the employee must consult with their supervisor and make a reasonable effort to schedule the treatment so as not to unduly disrupt State operations, subject to the approval of the healthcare provider.

Intermittent leave or leave on a reduced schedule must be medically necessary due to a serious health condition or a serious injury or illness. An employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting State operations, subject to the approval of the healthcare providers.

XII. Pay During Leave

Employees are required to use any accrued annual, compensatory, or sick leave during their FMLA leave before being placed on Leave Without Pay (LWOP). However, sick leave may only be used for the employee's own serious health condition.

All types of paid leave shall run concurrently with FMLA leave. FMLA leave shall also run concurrently with Workers' Compensation leave.

XIII. Medical and Other Benefits During Leave

Employees on FMLA leave who participate in the State's group health benefits plan shall continue to be covered by the State's group health benefits plan on the same terms that are applicable for active employees. While on paid leave, the State will deduct the employee's portion of the health plan premium as a regular payroll deduction. If leave is unpaid, employees must pay their portion of the health plan premium during the leave. Health care coverage may cease if premium payments are more than 30 days late. Employees who must pay premiums will receive instructions on how to make those payments. If the employee pays for their portion of group health benefits and other insurance, FMLA leave does not cause employees to lose any previously accrued employment benefits.

XIV. Job Restoration

Upon return from leave, the State will reinstate the employee to the position held before the leave or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. This includes the same or substantially similar duties and responsibilities with substantially equivalent skill, effort, responsibility and authority. Changes in assignment, duties, hours and schedules may occur due to business necessity. The employee will have no greater rights to reinstatement than if the employee had not taken

the leave. The State may reasonably accommodate any employee with a qualifying disability in accordance with the Americans with Disabilities Act, as amended, or other applicable laws.

XV. Return to Work Requirements

Except as provided below, before returning to work from an FMLA leave of absence taken for the employee's own serious health condition, the employee is required to provide FMLASource with a statement, signed by the employee's healthcare provider, certifying that the employee is able to perform the essential functions of his position.

An employee returning to full duty from an intermittent leave is not required to provide a certification that he is able to return to work.

If an employee will return to work earlier than anticipated from a continuous FMLA leave of absence, the employee must notify their supervisor 7 business days prior to their expected return date.

Continuing Obligations

Employees on leave must comply with applicable State policies, such as confidentiality and conflict of interest. Employees on continuous FMLA leave may not work elsewhere except as part of an approved rehabilitation program. Employees on intermittent leave may not work elsewhere unless their non-State employment existed prior to the certification of their FMLA condition or except as part of an approved rehabilitation program.

Failure to Return to Work

If the employee fails to return to work at the end of the FMLA leave, without notifying the State and FMLASource, the employee may be placed on leave without pay effective as of the first day the employee was scheduled to return to work and/or face removal or disciplinary action, up to and including dismissal.

XVI. Retaliation

Employees will not be retaliated against for asking for, applying for or partaking in a FMLA benefit. If an employee believes that he was retaliated against for asking for, applying for or partaking in an FMLA benefit, the employee shall report the same to his supervisor, department head, the Office of State Human Capital Management, or to a management level employee to whom the employee feels comfortable making such a complaint.

XVII. Compliance with FMLA and State Laws

This policy is intended to comply with and incorporate the provisions of the federal Family and Medical Leave Act of 1993, as amended. Situations not addressed by this policy will be resolved in strict compliance with the FMLA.

The State complies with all requirements, prohibitions and other provisions of the state and local laws applicable in areas where it operates or does business. If a state law providing for a job protected family and/or medical leave of absence and the federal FMLA are applicable to the same leave, the state leave and the FMLA leave will run concurrently. Employees receive all benefits and protections to which they are entitled under any and all applicable leave laws.

Information and records regarding and employee's medical condition and related leave needs must be maintained in strict confidence with all applicable laws and released only on a need-to-know basis.

XVIII. Violations

Failure to follow the proper procedures may jeopardize coverage of a claim and make an employee ineligible for benefits under this policy or delay the implementation of those benefits.

Employees who misrepresent facts in order to be granted FMLA leave or violate this policy may be subject to discipline, up to and including dismissal.