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State of Louisiana
Division of Administration
Office of Human Resources

DIVISION OF ADMINISTRATION

PERSONNEL POLICY NO. 21

EFFECTIVE DATE: August 5, 1993

REVISED DATE: May 16, 2001; March 20, 2009; June 12, 2013

SUBJECT: Family and Medical Leave Act (FMLA)

AUTHORIZATION: 
Monique Appeaning, Appointing Authority

I. POLICY:

It is the policy of the Division of Administration (DOA) to comply with all provisions of the Family and Medical Leave Act of 1993 as amended. In specific situations that are not covered by this policy, or that are in conflict with this policy, the provisions of the Family and Medical Leave Act ("FMLA") shall apply.

II. PURPOSE:

The purpose of this policy is to ensure compliance with the laws and rules governing the FMLA, to assign responsibility for aspects of the policy and to explain the process for adhering to the policy.

III. APPLICABILITY:

This policy shall be applicable to all sections of the Division of Administration, both general and ancillary appropriations.

IV. QUALIFYING LEAVE:

For employee informational purposes, the FMLA generally provides:

A. Family or Personal Medical Leave

Up to 12 weeks of job-protected leave during a 12-month period will be provided to eligible employees under the provisions of the Family and Medical Leave Act of 1993 (FMLA) as amended for the following qualifying events:

1. The birth of a child and/or to care for the baby. *
2. The acceptance of a child for adoption or foster care. *
3. To care for the employee's spouse, child or parent with a serious health condition. *
4. A serious health condition that makes the employee unable to perform the essential functions of his/her job.

* See Section VI(B) for limitations.

B. Military Caregiver Leave

Up to 26 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent or next-of-kin of a member of the armed forces, including the National Guard or Reserves per each qualifying event, to care for such member of the armed forces who is undergoing medical treatment, recuperation or therapy, who is in outpatient status otherwise, or who is on the temporary disability retired list for a serious injury or illness or a veteran who 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 takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

For purposes of Military Caregiver Leave, the single 12-month period is measured forward from the date the employee begins leave to care for the covered service member, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the "Definitions" section for Family Relationships related to Military Caregiver Leave.

C. Military Exigency Leave

Up to 12 weeks of job-protected leave during a 12-month period permits FMLA leave for any qualifying exigency, which is a non-medical need for leave due to short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, 8) additional activities which arise out of active duty, provided that the employer and employee agree, including timing and duration of such leave, or 9) to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

For purposes of "exigency leave", the term "active duty or a call to active duty status" generally means duty under a federal call to active duty in support of contingency operations in a foreign country as defined by applicable regulations.

For purposes of Military Exigency Leave, the single 12-month period is measured forward from the date the employee begins leave, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the "Definitions" section for Family Relationships related to Military Leave.

V. DEFINITIONS:

A. Eligible Employee - An employee who:

1. Has been employed by the State for a total of at least 12-months (These need not have been consecutive. However, the break in service must not be for more than seven years unless the break was for certain military service) on the date on which any FMLA leave is to commence, **and**
2. Has worked **at least 1250 hours over the 12-month period preceding the start of the leave.**

Note: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), a returning member of the National Guard or Reserve is entitled to FMLA leave if the hours that he or she would have worked for the civilian employer during the period of military service would have met the FMLA eligibility threshold.

B. Equivalent Position - An employee returning from FMLA leave will have the same pay, benefits and working conditions, including privileges, perquisites and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. Equivalent positions involve the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility and authority. Equivalent positions will be at the same or a geographically proximate work site where the employee had previously been employed.

C. Family Relationships -

1. **Child** - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *en loco parentis* (in the place of the parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
2. **Parent** - A biological, or adoptive parent, or a person who stood *en loco parentis* to an employee when the employee was a child. This term does not include an employee's mother-in-law or father-in-law.
3. **Spouse** - Husband or wife as defined in accordance with the law of the State in which the employee resides.
4. **Expanded Family Relationships for Military Leave** - Parents of a covered service-member, son or daughter of a covered service-member, next-of-kin of a covered service-member, and son or daughter who is on active duty or called to active duty status.

Next-of-Kin is defined as the nearest blood relative of the service member.

5. **Covered Service Member** - Current member of the Regular Armed Forces, National Guard or Reserve, including those on the temporary disability retired list, but does not include former members or members on the permanent disability retired list.

D. Health Care Provider -

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);

3. Nurse practitioners, nurse midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
4. Christian Science practitioners with restrictions as outlined in the Federal Regulations;
5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law; or
7. Physician Assistants who are authorized to practice under state law and all medical para-professionals who are performing within the scope of their practice as defined under state law.

E. Intermittent Leave - Under certain conditions, FMLA leave may be utilized in small blocks of time (hours, days, weeks) that total the appropriate FMLA entitlement, rather than being used as periods consisting of consecutive weeks or days. Employees may use leave in the increments allowed by the DOA's leave policies. If an employee qualifies for intermittent leave on an unpredictable basis, the employer must notify the employee upon request every thirty (30) days of the amount of leave time designated as FMLA leave during the preceding thirty days, provided the employee used leave during that period.

F. Reduced Leave Schedule - Leave schedule that reduces the usual number of hours per workweek or hours per workday.

G. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Continuing treatment by a health care provider, including any one or more of the following:

- 1) **Incapacity and treatment:** A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(a) Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider. The first treatment must take place within seven (7) days of the first day of incapacity, or

(b) Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.

2) Pregnancy or prenatal care: Any period of incapacity due to pregnancy or for prenatal care.

3) Chronic conditions: 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;

(b) Continues over an extended period of time; and

(c) May cause episodic rather than continuing periods of incapacity.

H. Treatment - For purposes of the FMLA, treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

I. Twelve-month Period -

1. For purposes of regular family or personal FMLA, the 12-month period begins on the date the first quarter hour of FMLA leave is taken by the employee.

2. For purposes of Military Caregiver Leave and Military Exigency Leave, the 12-month period begins on the date the employee takes the first leave for Military Reasons. This 12-month period may be different from the 12-month period used for regular FMLA.

3. For purposes of FMLA leave for the birth of a child or acceptance of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.
4. For purposes of Military Caregiver Leave, an employee is limited to no more than 26 weeks of leave during each single 12-month period. This is the case even if the employee takes the leave to care for more than one covered service-member or to care for the same covered service-member who has incurred more than one serious injury or illness and if the single 12-month period involved overlap each other. If leave would qualify as both Military Care Giver Leave and regular FMLA leave, it must be classified as Military Care Giver Leave.
5. During any single 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave. The 26 weeks Military Caregiver Leave is not in addition to the 12 weeks of FMLA leave to which eligible employees would be otherwise entitled.

J. Subsequent FMLA Period - Once the initial 12-month entitlement period has been exhausted, the employee does not begin a new entitlement period until the next FMLA qualifying leave usage, provided the employee is eligible.

K. "Needed to Care For" - FMLA is allowed for an employee needed to care for a family member, including providing physical and/or psychological care.

VI. PROCEDURE:

A. How Leave May Be Scheduled

Leave may be taken in consecutive days or weeks or it may be taken intermittently or on a schedule that reduces the usual number of hours per workday or workweek when required.

Leave may be taken in the same increments as allowed in the DOA's leave policies.

B. Limitations Regarding Leave Schedules

1. Intermittent or reduced leave schedules following the birth, adoption, or foster care of a child as part of a gradual return-to-work schedule will be allowed provided that the section head determines that such intermittent leave does not interfere with the efficient operation of the section. The section head may stipulate that leave for these purposes must be taken consecutively if that schedule will provide more business efficiency.

2. **Where a husband and wife are employed by the Division of Administration,** they may take a combined total of 12 weeks if they are taking leave for the birth or adoption of a child or to care for a sick parent. This limitation does not apply to leave taken by one spouse to care for the other who is seriously ill, to care for a child with a serious health condition, or to care for the employee's own serious illness.
3. FMLA leave runs concurrent with other leave entitlements provided under Civil Service Rules and federal, state, and local laws.

C. Usage of Accumulated Leave

While absent for an FMLA eligible event and using FMLA leave, an employee is also required to use any available balance of **applicable paid leave** (that is, sick leave, annual leave, or compensatory leave). When all available paid leave is exhausted, the employee will be placed on leave without pay.

D. Calculation of the FMLA Period for Part-time Employees

For part-time employees, FMLA leave is calculated as a percentage of the time actually worked.

E. Determination that an Absence is FMLA Eligible

Per Federal Regulations, the employer has the responsibility to determine when an employee's absence is eligible for FMLA even if the employee does not specifically request FMLA leave. In the DOA, the supervisor makes the determination with assistance from the Office of Human Resources when appropriate. The determination that an absence is FMLA eligible must be based only on information the employer solicits from the employee or the employee's spokesperson. The employee must respond to the employer's questions that are posed to determine if the absence is FMLA-qualifying. Failure to respond to such inquiries may result in denial of FMLA protection if the employer is unable to determine that the leave is qualifying.

F. Confidentiality

All FMLA information and paperwork is to be kept confidential and should be kept separate from an employee's personnel file. Only the employee may choose to share the information with co-workers.

G. Notification to the Employee that His/Her Absence is FMLA Eligible

Once it is known that a qualifying condition might exist, the employee should be notified verbally if appropriate -- but must be notified in writing -- that the absence will be considered FMLA qualifying and deducted from the employee's FMLA balance. Written notice of eligibility for FMLA leave should be provided to the employee within five (5) business days.

If an employee is not eligible for FMLA leave, the employer should provide the employee with written reasons for this determination within five (5) business days of the request.

Should the employer discover later that the absence is not FMLA eligible, the employee shall be so notified and the leave designated as FMLA will be restored to the employee's FMLA quota.

H. Notice from Employee of Need for FMLA Leave

1. **Any time** that an employee requests leave in any category for a purpose which is eligible under the FMLA (including military caregiver/exigency), he **shall** notify the immediate supervisor that the leave requested is FMLA leave. If the employee is uncertain as to whether or not the leave is eligible under the FMLA, the supervisor should be consulted. Any questions concerning eligibility should be directed to the Office of Human Resources. All forms and notices used must be those provided on the DOA Office of Human Resources website.
2. **Foreseeable Need** - The employee must provide **30 days advance** written notice to the immediate supervisor if possible, when the leave is foreseeable. If 30 days advance notice is not possible, the employee must notify the immediate supervisor as soon as the need for leave is known. The supervisor may inquire as to why the employee was unable to give a 30-day notice.
3. **Leave Not Foreseeable** - In cases where the employee cannot provide advance notice, the employee or the employee's spokesperson must give notice to the supervisor as soon as practicable, but within three workdays following the event.
4. **Military Exigency/Military Caregiver** - Employees must give 30-days advance notice for this type of FMLA leave, or must notify the immediate supervisor as soon as the need for leave is known. If the immediate supervisor is not available, the notice must be provided to the immediate supervisor's supervisor or section head. This notice must include anticipated time and duration of the leave needed.

I. Completed *Certification of Health Care Provider Form*

In all cases, the employee is required to provide the completed Certification of Health Care Provider form. This completed document provides additional information to the employer to confirm that the absence is FMLA eligible.

J. Clarification of Medical Certification

Note: This section does not apply to military leave provisions.

If the medical certification contains deficiencies or needs clarification, the employee must be given an opportunity to verify or clarify. Such clarification must involve the Office of Human Resources and must be in writing. The employee must be given a minimum of seven (7) days to fix any deficiencies or clarify his certification.

K. Group Health and Life Insurance

1. Maintenance

For the duration of Family and Medical Leave, the employee's pre-existing health insurance coverage under the Office of Group Benefits shall be maintained at the same level and under the same conditions as was provided prior to commencement of the leave.

2. Premium Payments

Any supplemental insurance premiums must be paid directly by the employee. The employee must contact the Office of Human Resources to arrange payment of the employee's share of the premiums where appropriate. These arrangements will accommodate the financial situation of the employee as well as the administrative concerns of the DOA.

Should the employee fail to provide his share of the insurance premium per the agreement, the DOA shall continue to submit the employee's share. The DOA shall pursue repayment of these premiums upon return of the employee as allowed by the FMLA.

3. When Coverage Is Dropped

The DOA shall no longer pay the employee's portion of the premium and thus cease maintenance of health insurance benefits if and when:

- a) The employee informs the agency of his intent not to return from leave, or

- b) The employee fails to return from leave, thereby terminating employment, or
- c) The employee exhausts the FMLA leave entitlement.

In some situations, the employee may be entitled to continue health care coverage under COBRA (Consolidated Omnibus Budget Reconciliation Act).

L. Restoration after Leave

1. Upon return from Family and Medical Leave, most employees will be restored to their original or an equivalent position. The use of Family and Medical Leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employee returning from a medical FMLA leave may be required to present medical certification of fitness for duty.

2. Restoration may be denied under certain circumstances, including:
 - a) If it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested;
 - b) The employee fails to provide a fitness for duty certificate to return to work, if required;
 - c) The employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave; however, the employee will be given a reasonable opportunity to fulfill such conditions upon return to work; or
 - d) The employee is unable to perform the functions of the position because of a physical or mental condition, including the continuation of a serious health condition.

VII. RESPONSIBILITY:

Deputy/Assistant Commissioners and equivalent are responsible for:

Implementing the provisions of the policy.

Holding accountable the section heads under his supervision for adhering to all aspects of this policy.

Ensuring the participation of all employees under his supervision (directly and indirectly) in all programs provided to educate employees regarding the FMLA.

Section Heads are responsible for:

Ensuring that each employee under his supervision is: made aware of this policy as well as any revisions, informed that he must abide by the policy, and informed of the consequences of any violation of the policy.

Ensuring that the required posting is maintained in all work areas.

Ensuring that all required information is obtained from the employee upon determination that FMLA leave is appropriate.

Ensuring that records are maintained which reflect the dates that Family and Medical Leave is taken by each employee, including daily and weekly hours worked per pay period.

Monitoring the effectiveness of and ensuring compliance with this policy.

Ensuring the participation of all employees under his supervision (directly and indirectly) in all programs provided to educate employees regarding the FMLA.

Ensuring that the FMLA documents are forwarded to the Office of Human Resources and preserving the confidentiality of this information when it is disseminated.

Ensuring that, when an employee requests leave of any kind, consideration is given as to whether FMLA leave is appropriate.

Maintaining records of any dispute between the agency and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Managers/Supervisors are responsible for:

Complying with this policy in any fashion instructed by the section head.

Making the initial determination of the employee's FMLA eligibility, notifying the employee of the approval of FMLA eligibility, and tracking the employee's use of the FMLA leave and remaining balance.

Ensuring that the FMLA documents are forwarded to the Office of Human Resources and preserving the confidentiality of this information when it is disseminated.

The Office of Human Resources is responsible for:

Keeping DOA administrators and employees apprised of developments in the federal law, including required postings describing provisions of the FMLA, and providing training to administrators, supervisors, and employees regarding compliance with this Act.

Acting as the official repository for employees' FMLA documents.

Immediately informing the appointing authority of the situation upon becoming aware of an allegation of violation of the FMLA and conducting an appropriate investigation.

Ensuring that the employee's share of State sponsored health insurance premiums are paid to the appropriate insurance carrier during Family and Medical Leave, to include working with the employee to arrange receipt of his payment when leave without pay applies.

Recouping employees' share of the premiums paid by the DOA as permitted by the FMLA, and with the assistance of the legal staff.

Employees are responsible for:

Informing the section head or his designee when requested leave is due to a reason covered by the FMLA.

Complying with all aspects of this policy and immediately bringing violations to the attention of a supervisor.

Making arrangement with staff of the Office of Human Resources for direct payment of insurance premiums in the event that leave without pay becomes necessary and payroll deduction of premiums is not possible.

Reimbursing the DOA through the Office of Human Resources for insurance premiums paid on the employee's behalf.

Timely submitting Health Care Provider Certifications and other documents which are completed in full as required by this policy or by the section head or his representative.

Communicating with their supervisors regarding the need for leave and taking into consideration the business needs of their offices.

VIII. EXCEPTIONS:

Requests for exceptions to this policy must be justified, documented and submitted in writing to the appointing authority for consideration.

IX. QUESTIONS:

Questions regarding this policy should be directed to staff of the Office of Human Resources.

X. VIOLATIONS:

It is unlawful and thus prohibited for any employer, administrator, manager, or supervisor to:

- a) Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- b) Discriminate against an employee for exercising FMLA entitlements; or
- c) Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Employees found to have violated this policy may be subject to disciplinary action and/or denial or delay of requested leave.

XI. OTHER CONSIDERATIONS:

Should any aspect of the Americans with Disabilities Act (ADA) be applicable, the DOA shall comply with these laws.

XII. FORMS:

Specific forms related to compliance with this policy can be found on the DOA Office of Human Resources' website at <http://www.doa.louisiana.gov/ohr/index.htm> under the "Forms" link.