

Office of Human Resources  
State of Louisiana  
Division of Administration

JOHN BEL EDWARDS  
GOVERNOR




JAY DARDENNE  
COMMISSIONER OF ADMINISTRATION

**PERSONNEL POLICY NO. 21**

**EFFECTIVE DATE:** July 2, 2018

**PREVIOUS VERSIONS:** August 5, 1993 (Original); May 16, 2001; March 20, 2009;  
June 12, 2013; August 25, 2015

**SUBJECT:** Family and Medical Leave Act (FMLA)

**AUTHORIZATION:**   
Barbara Goodson, Appointing Authority

**I. POLICY AND PURPOSE:**

It is the policy of the Division of Administration (DOA) to comply with all provisions of the Family and Medical Leave Act (FMLA). Specific situations not covered by or in conflict with this policy will be resolved via reference to and in strict compliance with the FMLA.

The purpose of this policy is to outline an employee's rights and responsibilities regarding leave for personal or family medical reasons, military caregiver, and military exigency under the FMLA, to set forth the process for requesting and utilizing such leave, and to ensure consistency and compliance with the requirements of the FMLA.

**II. APPLICABILITY:**

This policy applies to all DOA employees.

**III. QUALIFYING LEAVE:**

The FMLA provides unpaid, job-protected leave under the following circumstances:

**A) Family or Personal Medical Leave**

Up to 12 weeks of leave during a 12-month period will be provided to eligible employees for the following qualifying events:

- 1) The birth of a son or daughter, and to care for the newborn child;

- 2) The placement with the employee of a son or daughter for adoption or foster care;
- 3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; or
- 4) A serious health condition that makes the employee unable to perform the functions of his job.

**NOTE:** See Section V(B) for limitations regarding leave usage.

Employees should know that the use and duration of FMLA leave may not be interrupted by holidays, office closures, etc.

**B) Military Caregiver Leave**

Up to 26 weeks of leave during a single 12-month period will be provided to a spouse, son, daughter, parent, or next-of-kin to care for a covered servicemember with a serious illness or injury.

The 12-month period is measured forward from the date the employee begins leave to care for the covered servicemember.

**C) Military Exigency Leave**

Up to 12 weeks of leave during a 12-month period will be provided to eligible employees for a qualifying exigency while the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status. A qualifying exigency is defined as a non-medical need for leave due to:

- 1) 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) A need to care for the servicemember'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;
- 9) Additional activities which arise out of the servicemember's covered active duty or call to covered active duty status, provided that DOA and the employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

The 12-month period is measured forward from the date the employee begins leave to address the exigency.

#### IV. DEFINITIONS:

- A) **Eligible Employee** - An employee must have:
  - 1) Been employed by the State for a total of at least 12 months, which need not have been consecutive, on the date the FMLA leave is to commence. Any break in service must not be for more than seven years unless the break was for military service; and
  - 2) Actually worked at least 1250 hours over the 12-month period immediately preceding commencement of the FMLA leave.
- B) **Equivalent Position** - A position involving the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility, and authority, and located at the same or a geographically proximate work site to the employee's previous work location.
- C) **Family Relationships** -
  - 1) **Child** - A biological child, adopted child, foster child, stepchild, legal ward, or child for whom a person stands *in loco parentis* (in place of the parent) who is under age 18, or who is age 18 or older and satisfies certain defined requirements.
  - 2) **Parent** - A biological, foster, adoptive, or step-parent, or a person *in loco parentis* 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 place in which the employee was married. The State of Louisiana does not recognize "common law" marriages.

- 4) **Expanded Family Relationships for Military Leave** - Parents of a covered servicemember, son or daughter of a covered servicemember, next-of-kin of a covered servicemember, and son or daughter who is on active duty or called to active duty status.
- 5) **“Next-of-Kin”** - The blood relative designated in writing by the covered servicemember for purposes of military caregiver leave. When no such designation is made, “next-of-kin” extends to the nearest blood relative of the covered servicemember as defined in the Act.
- 6) **Covered Servicemember** -
  - a) 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.
  - b) A former member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness, and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes leave to care for the covered servicemember.

**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 practice as defined under such law.
- 7) Physician's 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** - FMLA leave may be utilized in blocks of time (hours/days/weeks) rather than in a single, extended absence. Leave is to be coded in increments in accordance with DOA policy.
- F) **Reduced Work Schedule** - An authorized work schedule that reduces the number of hours worked per workweek or 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 qualifying family member from participating in work, school, or other daily activities.

"Continuing treatment" by a health care provider includes any one or more of the following:

- 1) **Incapacity and treatment:** 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 by a health care provider two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist. The first treatment must take place within seven calendar days of the first day of incapacity; or
  - 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. The first (or only) in-person treatment must take place within seven calendar days of the first day of incapacity.
- 2) **Pregnancy or prenatal care:** Any period of incapacity due to pregnancy or for prenatal care. This includes morning sickness or pregnancy complications that make it impossible or inadvisable for the employee to work, as well as leave needed for prenatal appointments or tests.

- 3) **Chronic condition:** A serious health condition which:
  - a) Requires periodic visits (at least twice a year) for treatment by a health care provider; and
  - b) Continues over an extended period of time; and
  - c) May cause episodic rather than continuing periods of incapacity.

**H) Treatment** - The examination, evaluation, and regimen of care for a serious health condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Treatment that solely consists of taking over-the-counter medications (such as aspirin, antihistamines, or salves), bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not a regimen of continuing treatment for purposes of FMLA leave.

**I) Twelve-month Period -**

- 1) For all FMLA leave, the 12-month period begins on the date FMLA leave is first taken by the employee.
- 2) For FMLA leave for the birth of a child or placement of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.
- 3) For each 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under the FMLA. The 26 weeks of Military Caregiver Leave is not in addition to the 12 weeks of FMLA leave to which eligible employees otherwise may be 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 leave may be authorized for an employee who is needed to care for a qualifying family member, which includes providing physical and/or psychological care and comfort to the family member.

**V. PROCEDURE:**

**A) How Leave May Be Scheduled**

Leave may be taken in hourly increments, over consecutive days or weeks, or on a schedule that reduces the usual number of hours worked per workday or workweek.

The authorized frequency and duration of FMLA leave will be determined by Human Resources in accordance with the Certification completed by the health care provider.

**B) Limitations Regarding Leave Usage**

- 1) Leave following the birth, adoption, or foster care of a child shall be taken continuously. Under limited circumstances, a reduced work schedule may be authorized by the appointing authority provided that such a schedule does not interfere with efficient business operations.
- 2) When a husband and wife are both employed by the State of Louisiana, they are limited to a combined total of 12 weeks of leave for the birth, adoption, or foster care placement 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 health condition.
- 3) FMLA leave runs concurrent with other leave provided under the Civil Service Rules and federal, state, and local laws. This includes leave taken for a work-related injury or condition compensable under the Louisiana Workers' Compensation Law.

**C) Usage of Accrued Leave**

While using FMLA leave for a qualifying event, an employee is required to use any accrued balance of applicable leave (sick, annual, or compensatory leave). Sick leave may only be used for the employee's own serious health condition. When all applicable leave is exhausted, the employee will be placed on leave without pay. Once the FMLA entitlement is exhausted, DOA's customary leave practices apply.

**D) Calculation of the FMLA Entitlement for Part-time Employees**

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

**E) Determination that an Absence is FMLA-Qualifying**

DOA has the sole responsibility for determining and designating an employee's absence as FMLA-qualifying, even if the employee does not request or objects to using FMLA leave. This determination will be based upon the information and documentation provided by the employee and health care provider.

Employees are required to cooperate by responding to inquiries and producing required medical documentation. Failure to do so may result in denial or delay of FMLA-protected leave, and the imposition of corrective action.



Supervisors are responsible for monitoring leave usage and notifying Human Resources of employee absences that may be FMLA-qualifying. For example, absences for more than three consecutive days, repeated intermittent absences for the same health condition, or absences to care for a family member should prompt supervisors to contact Human Resources. Human Resources will contact the employee to determine if starting the FMLA procedure is appropriate.

**F) Confidentiality**

Information and records regarding an employee's medical condition must be maintained in strict confidence. Due to the privacy rights of our employees, all FMLA documentation is to be provided to and maintained in the Office of Human Resources.

**G) Notification to the Employee that an Absence is FMLA-Qualifying**

1) Employee's Eligibility Notice

Within five business days of an employee giving notice of his need to take leave, or DOA discovering that an employee's requested leave potentially is for an FMLA-qualifying event, DOA will inform the employee whether he is eligible for FMLA leave. If DOA determines that an employee is not eligible for FMLA leave, the reason(s) for this determination must be provided to the employee.

2) Final Confirmation Notice

Once DOA receives the Certification from a health care provider which provides sufficient information to determine whether leave is FMLA-qualifying, DOA must notify the employee of the determination within five business days (absent extenuating circumstances). This notification will be provided by the Office of Human Resources on the Final Confirmation Form.

3) Re-crediting FMLA Leave

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

**H) Employee Requests for Use of Leave Under the FMLA**

- 1) Any time an employee requests leave under the FMLA, he shall notify his immediate supervisor that the leave is related to his FMLA-qualifying event and ensure that his absence is properly coded.



- 2) Scheduling Medical Treatment - An employee is required to consult his immediate supervisor and make every reasonable effort to schedule treatment so as not to unduly disrupt business operations.
- 3) Foreseeable Need - An employee must provide advance notice of 30 days to his immediate supervisor when the need for leave is foreseeable and subject to pre-scheduling. When such advance notice is not possible, notice must be given as soon as practicable, but in no event later than three workdays following commencement of the absence. Such notice also applies to Military Exigency and Military Caregiver leave.
- 4) Leave Not Foreseeable - An employee must provide notice to his immediate supervisor as soon as practicable for leave that is not foreseeable and therefore not pre-approved. In all such instances, DOA's established leave procedures shall be followed. That is, call-in requirements must be satisfied to ensure that leave is timely and properly requested, approved, and then used. Failure to comply with the designated leave procedure will result in corrective action.

**I) Forms**

Specific forms required to ensure compliance with this policy can be found on the DOA Office of Human Resources' website at <http://www.doa.la.gov/Pages/ohr/Index.aspx> under the "Forms" link.

**J) Completed Certification of Health Care Provider Form**

In all cases involving non-military serious health conditions, an employee is required to provide the completed Certification of Health Care Provider form authorized by the Office of Human Resources. This completed document provides additional information to confirm that a requested absence is FMLA-qualifying, and identifies the expected frequency and duration of absences related to the serious health condition.

Any fees associated with completion of required Certification shall be the responsibility of the employee.

**K) Clarification of Certification**

If Human Resources determines that a Certification is deficient or requires clarification, the employee shall be so notified and afforded a minimum of seven days to provide additional information to Human Resources. Supervisory personnel are prohibited from seeking information or clarification regarding an employee's medical status or Certification.

**L) Second Opinions**

In any case in which DOA has reason to question the validity of the Certification provided by the health care provider or questions whether the leave need is due to a qualifying serious health condition, DOA may require, at its expense, that the employee obtain the opinion of a second health care provider designated or approved by DOA. If the second opinion differs from the opinion in the original Certification, DOA may require, at its expense, the opinion of a third health care provider approved jointly by DOA and the employee. Any such third opinion shall be considered final and binding on DOA and the employee.

**M) Re-certifications**

Once a Certification from a qualified health care provider is accepted such that FMLA leave has been confirmed, additional inquiries or re-certifications generally will not be required. However, as allowed by law, DOA may require re-certification on a reasonable basis. This may occur if leave usage extends beyond the duration or frequency originally requested or if the circumstances set forth within the original Certification change significantly.

**N) Group Health and Life Insurance**

**1) Group Health Coverage**

For the duration of FMLA leave, the employee's existing group health insurance coverage through the Office of Group Benefits shall be maintained at the same level and under the same conditions as was provided prior to commencement of leave. Should payroll deduction be unavailable to pay the employee's portion of the monthly premium, by agreement, DOA will satisfy the employee's share of the group health premium and recoup the sum paid upon the employee's return to work. Upon exhaustion of the FMLA entitlement, the employee will be responsible for paying the entire premium (employee and employer portions) required by the Office of Group Benefits to maintain group health insurance coverage.

**2) When Coverage Is Dropped**

DOA's commitment to pay the entire premium to maintain group health insurance coverage through the Office of Group Benefits will cease upon occurrence of the following circumstances:

- a) The employee exhausts the FMLA leave entitlement; or
- b) The employee informs DOA of his intent to not return from leave; or

- c) The employee fails to return from leave, thereby abandoning his position.

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

**3) Supplemental Insurance**

Should payroll deduction be unavailable, premiums for supplemental insurance (life, accident, disability, vision, dental, etc.) must be paid directly and entirely by the employee while off from work. The employee must contact the Office of Human Resources to arrange payment of these premiums. DOA will not under any circumstance pay premiums to maintain supplemental insurance coverage.

**O) Return to Work**

An employee returning from FMLA leave due to his own serious health condition generally will be required to present a statement from a qualified health care provider setting forth his fitness to return to duty to perform the essential functions of his job. In this statement, the health care provider must also identify, in detail, any restrictions/limitations upon the employee's return to duty, along with the duration thereof.

**P) Restoration after Leave**

- 1) Upon return from FMLA leave, an employee generally will be restored to the position of employment held when the leave commenced or to an equivalent position. The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of FMLA leave. Intangible, immeasurable aspects of the job are not guaranteed.
- 2) Restoration may be denied if:
  - a) The employee is unable to perform the essential functions of his position because of a physical or mental condition, including the continuation of a serious health condition; or
  - b) It can be shown that the employee would not otherwise have been employed at the time reinstatement is requested; or
  - c) The employee fails to provide a required fitness for duty statement to return to work; or

- d) The employee is no longer qualified for the position because of his inability to attend a necessary course, renew a license, etc. as a result of leave usage; however, the employee first must be given a reasonable opportunity to fulfill such conditions upon return to work.

## **VI. ADULT CHILDREN:**

FMLA leave may be available to care for a son or daughter 18 years or older.

The following conditions must be met. The adult child must:

- 1) Have a physical or mental disability as defined by the ADA, regardless of the age of onset or duration of impairment; and
- 2) Be incapable of self-care due to the disability; and
- 3) Have a serious health condition; and
- 4) Be in need of care due to the serious health condition.

## **VII. EXCLUDED CONDITIONS:**

The Code of Federal Regulations identifies certain conditions which are not considered to be serious health conditions and which are not covered by the Act. The following list of non-covered medical conditions is not all-inclusive, but is intended to provide insight as to the ordinary conditions (where complications do not result) Congress did not contemplate as qualifying as serious health conditions: common colds; ear aches; upset stomach; minor ulcers; headaches, other than migraines; routine dental or orthodontia problems; periodontal disease; and conditions for which cosmetic treatments are administered (most acne treatments or plastic surgery) unless inpatient hospital care is required.

The Code of Federal Regulations lists several other conditions which may be serious health conditions if all other requirements are met. These include: restorative dental or plastic surgery after an injury or removal of cancerous growths; mental illness; allergies; and substance abuse treatment.

## **VIII. OTHER CONSIDERATIONS:**

- 1) Should any aspect of the Americans with Disabilities Act (ADA) be triggered by virtue of the employee's serious health condition or leave usage, Human Resources will initiate the interactive process to determine if accommodation is warranted and reasonable.

- 2) The protection of the Family and Medical Leave Act does not exempt an employee from compliance with established time and attendance requirements, including the call-in procedure required by DOA policy. Failure to satisfy designated leave procedures renders the employee subject to corrective action.
- 3) Working secondary employment while off from work on FMLA leave, even if authorized by DOA prior to the FMLA-qualifying event, requires additional approval by the appointing authority.
- 4) Absences because of an employee's substance abuse (rather than treatment for substance abuse) does not qualify for FMLA leave. Treatment for substance abuse does not prevent DOA from taking action against an employee who violates the DOA's policy prohibiting substance abuse. Pursuant to that policy, which will be uniformly applied, an employee may be terminated for violations whether the employee qualifies for or seeks to use FMLA leave.

**IX. VIOLATIONS:**

- A) It is unlawful and thus prohibited for any administrator, director, manager, or supervisor to:
  - 1) Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
  - 2) Dismiss, discipline, or discriminate against an employee for exercising FMLA rights; or
  - 3) Dismiss, discipline, or discriminate against any employee for opposing any practice made unlawful by the FMLA; or
  - 4) Dismiss, discipline, or discriminate against any employee for involvement in any proceeding under or relating to the FMLA.
- B) Employees who knowingly and intentionally misrepresent facts or provide false documentation to support a request for FMLA leave will be subject to disciplinary action, up to and including dismissal.
- C) Failure to comply with the requirements of this policy may result in the denial or delay of FMLA leave, and subject the employee to disciplinary action, up to and including dismissal.

**X. EXCEPTIONS:**

Requests for exceptions to this policy must be submitted in writing to the Human Resources Director for consideration by the appointing authority. Exceptions will be granted only for justifiable reasons permissible under and supportive of the purpose and intent of the Act.

**XI. QUESTIONS:**

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