

Family and Medical Leave Act (FMLA)

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

- A. **Eligibility:** Only eligible employees are entitled to FMLA leave. An eligible employee is one who: has at least 12 months of employment with the Division and has worked at least 1,250 hours for the employer during the 12 month period immediately preceding the leave. If eligible employees are entitled to:

Twelve workweeks (480 hours) of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty" or

Twenty-six work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent or next of kin (military caregiver leave).

NOTE: If the employee and his or her spouse are both employed by the Division and both take FMLA leave, the spouses' combined leave cannot exceed 12 weeks during any 12-month period if the leave is taken for the birth of a child, for the placement of a child with the employee for adoption or foster care, or to care for the employee's parent with a serious health condition.

Eligible spouses who both work for the Division are each entitled to up to 12 workweeks of FMLA leave in a 12-month period, without regard to the amount of leave their spouses use, for the following FMLA-qualifying leave reasons:

- the care of a spouse or son or daughter with a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job: and
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a military member on "covered active duty."

- B. **Duration of Leave:** Except as specified above, employees meeting the FMLA's eligibility requirements will be granted up to a total of twelve (12) weeks of unpaid FMLA leave during any "12-month period." Employees will be required to exhaust accumulated personal and vacation time balances prior to beginning unpaid FMLA leave but will be permitted to retain an amount of accumulated vacation time equivalent to 40 hours. However all personal time shall be exhausted before any vacation time can

be used. The amount of leave available to the employee will be determined on a "rolling" 12-month period, measured backward from the date the employee's leave is to begin. Any leave that qualifies as a FMLA leave, pursuant to the provisions of the FMLA, may be counted against an employee's 12-week-leave, whether paid or unpaid, provided the employer gives proper notice as outlined in the regulations of the FMLA. Once the Division has approved the FMLA leave the employee will need to have worked at least 1,250 hours in the immediate preceding 12 months in order to use FMLA leave on any given day within their 12 month calendar period. It is imperative that the employee be aware of how many hours they have worked in the prior 12 month period before requesting an FMLA leave day. Paid time off for Holidays, vacation, personal time, sick leave, worker's comp or paid FMLA do not count as hours worked.

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Leave taken because of a birth or placement of a child for adoption or foster care may be taken intermittently or on a reduced leave schedule only if mutually agreed upon by the Employee and the Employer. Leave taken to care for a sick child, spouse, or parent or for an Employee's own serious health condition or covered service member may be taken intermittently or on a reduced schedule when medically necessary, as evidenced by medical certification. Intermittent Leave will be counted first in one hour increments and then half (.5) hour increments.

- C. **Medical Certification of Leave:** An application for FMLA leave based on a serious health condition of the Employee or the Employee's spouse, child, or parent, must be accompanied by a medical certification statement, completed by the applicable health care provider within 15 calendar days of application. If needed, the employee may request up to two (2) extensions of three (3) days per extension to submit such documentation. For employees requesting leave related to Military Service, the employee must provide proof of the qualifying family member's pending or active duty military service. This documentation may include a copy of the military orders or other official communications. For Employees who are covered by the Employer's sick/accident insurance, the completed sick leave forms shall serve as the medical leave forms, which shall serve as the medical certification statement. For an Employee out on Workers Compensation time, the physicians' report shall serve as the medical certification statement. The completed medical certification statement must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the Employee is needed to care for a spouse, child, or parent, the medical certification statement must so state, along with an estimate of the amount of time the Employee will be needed. If the Employee has a serious health condition, the medical certification statement must document that the Employee cannot perform the essential functions of his/her job.

If the nature of the reason for the FMLA leave changes or the frequency or duration of the employees' time off increases beyond what is currently certified the employee must recertify within 15 calendar days in order to keep their FMLA leave valid.

- D. **Group Health Benefits Coverage during Leave:** During a period of FMLA leave, an Employee will be retained on their current group health plans (life, dental, optical, and hospital medical insurances) under the same conditions that applied before the leave commenced.

E. **Restoration to Employment and Seniority Accumulation:** An Employee returning from FMLA leave will be restored to the position he or she held prior to taking the leave or to a position with equivalent pay, benefits, and other terms and conditions of employment. When an employee is on intermittent or reduced schedule leave caused by foreseeable medical treatment, the Employer may temporarily transfer an employee to an equivalent hourly paid position with equal benefits that will better accommodate the Employer's needs and the Employee's need for recurring periods of leave. The Employer will first attempt to place them at the employee's current work location but if no opening exists at that location the Division will place the employee at another Division work location. Upon discontinuation of intermittent or reduced schedule leave, the employee may at the Employer's discretion transfer back to the position/shift from which they were transferred. An Employee is not entitled to the accrual of any seniority or employment benefits (vacation time, personal days, or holidays) that would have accrued if not for the taking of FMLA leave, with the exception that an Employee who takes FMLA leave will not lose seniority for the first thirty (30) calendar days of said FMLA leave. Employees on such leave will also accumulate retirement credit if the employee submits both the Employer and employee contributions for the duration of time the employee is off. The Employee will need to make application with the Retirement office for the contribution amount and conditions of repayment.

Please see attached Employee Rights.

Approved:  _____

Effective Date: January 1st, 2019

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 1 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.

BENEFITS & PROTECTIONS

ELIGIBILITY REQUIREMENTS

REQUESTING LEAVE

EMPLOYER RESPONSIBILITIES

ENFORCEMENT

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.

For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-869-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division

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