

Revised July 16, 2018

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SECRETARY'S POLICY AND PROCEDURE MEMORANDUM (PPM) NO. 16

SUBJECT: Family and Medical Leave Act Policy

EFFECTIVE DATE: March 1, 1994

INSTRUCTIONS: This memorandum supersedes all other memoranda and manuals.

1. BASIC PROVISIONS

- A. In accordance with the Family and Medical Leave Act of 1993 (FMLA), eligible employees are entitled up to 12 workweeks (480 working hours) of unpaid, job-protected leave per 12-month period under the following circumstances:
- (1) For the birth of a child and/or to care for a newborn child within one year of birth (**complete Form 2a**). Refer to the intranet Human Resources Forms and Job Aids for Form 2a.
 - (2) 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 (**complete Form 3**). Refer to the intranet Human Resources Forms and Job Aids for Form 3.
 - (3) To care for a spouse, child, or parent with a serious health condition (**complete Form 2b**). Refer to the intranet Human Resources Forms and Job Aids for Form 2b.
 - (4) A serious health condition that renders the employee unable to perform the essential functions of his/her job (**complete Form 2a**). Refer to the intranet Human Resources Forms and Job Aids for Form 2a.
 - (5) For qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent who is a member of the National Guard, Reserves, or Regular Armed Forces and who is on covered active duty or has been notified of an impending call or order to covered active duty status in support of a contingency operation (**complete Form 2c**). Refer to the intranet Human Resources Forms and Job Aids for Form 2c.
- B. For military caregiver leave, eligible employees are entitled to take up to 26 workweeks of unpaid, job-protected leave during a "single 12-month period" under the following circumstances:

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- (1) To provide care to a current covered servicemember with a serious injury or illness who is the employee's spouse, son, daughter, parent, or next of kin (**complete Form 2d**). Refer to the intranet Human Resources Forms and Job Aids for Form 2d.
 - (2) To provide care to a covered veteran with a serious injury or illness who is the employee's spouse, son, daughter, parent, or next of kin (**complete Form 2e**). Refer to the intranet Human Resources Forms and Job Aids for Form 2e.
- C. In general, FMLA leave requests should be submitted in writing and approved by the appointing authority. In cases where the need for the FMLA leave is known by the employer, however, the appointing authority is obligated to place the employee on FMLA leave regardless of whether the employee actually requests it.

2. DEFINITIONS

- A. Eligible employee is defined as an employee who has been employed for a total of at least 12 months by the employer (State of Louisiana) in the previous seven years and has actually worked at least 1,250 hours (excluding leave and holidays) in the previous 12 continuous months on the date which any FMLA leave is to commence.
- B. Health care provider is defined as follows:
- (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, clinical social workers, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray) authorized to practice in the State.
 - (3) Nurse practitioners, nurse-midwives and physician assistants who are authorized to practice under State law.
 - (4) Christian Science practitioners listed with The First Church of Christ, Scientist (The Mother Church), in Boston, Massachusetts.
- C. Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves the following:

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- (1) Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility.
- (2) Any period of incapacity requiring absence from work of more than three consecutive, full calendar days and that also involves:
 - (a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist under orders of, or on referral by, a health care provider.) The two visits must occur within 30 days of the beginning of the period of incapacity, and the first visit to the health care provider must take place within seven days of the first day of incapacity. Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical, eye or dental examinations; 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 a health care provider. The first visit to the health care provider must take place within seven days of the first day of incapacity. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of treatment does not include the taking of over-the-counter medications, bed-rest, drinking fluids, exercise or other similar activities that can be initiated without a visit to a health care provider.
- (3) Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three (3) calendar days and for prenatal care. A chronic condition is one which:
 - (a) Requires periodic (at least two per year) visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

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- (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A period of incapacity for a chronic condition qualifies for FMLA leave even if it lasts less than three days.

Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths are serious health conditions provided all the other conditions are met (1, 2, and 3). Treatment for allergies or stress or substance abuse are serious health conditions if all conditions are met (1, 2, and 3). Prenatal care is included as a serious health condition. Routine preventive physical examinations are excluded.

- D. Parent is defined as the biological parent or an individual who stands or stood "in loco parentis" when the employee was a child. This term does not include parents "in-law."
- E. "In loco parentis" is defined as those individuals with day-to-day responsibilities to care for and to financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- F. Son or daughter is defined as a biological, adopted, or foster child, a stepchild, or legal ward, or a child of a person standing "in loco parentis," who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act Amendments Act of 2008.
- G. Physical or mental disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual (i.e., walking, breathing, speaking, hearing, seeing, learning, working, etc.).
- H. For purposes of this PPM, the following acronyms are used:
 - (1) FMLA Self (coded as LBFM) – FMLA leave granted to an eligible employee for his/her own serious health condition.
 - (2) FMLA Family (coded as LAFM) – FMLA leave granted to an eligible employee to care for a spouse, child, or parent with a serious health condition.

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- (3) Workers' Comp FMLA (coded as LDFM) – FMLA leave granted to an eligible employee who is on workers' compensation.
- (4) FMLA Leave without Pay (coded as LWFM) – FMLA leave granted to an eligible employee when the employee has insufficient accrued leave balances to cover the FMLA leave entitlement.
- (5) FMLA 12-week entitlement (coded as FMLB) – LaGov HCM payroll code used to establish the allocated 480 FMLA-protected hours during the applicable 12-month period. The 480 hours will be reduced as the eligible employee uses the FMLA-protected time for any qualifying event.

DEFINITIONS WITH RESPECT TO FMLA LEAVE RELATED TO MILITARY SERVICE

- I. Covered Active Duty: For members of the Regular Armed Forces, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country. For members of the Reserve components, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.
- J. Contingency Operation: A military operation designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
- K. Covered Servicemember: A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
- L. Outpatient Status: Status of a member of the Armed Forces assigned to:
 - (1) a military medical treatment facility as an outpatient; or
 - (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- M. Covered Veteran: A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves) that was discharged or

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released under conditions other than dishonorable and who was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

- N. Next of kin: The nearest blood relative of an individual.
- O. Qualifying Exigency includes:
 - (1) short-notice deployment
 - (2) military events and related activities
 - (3) childcare and school activities
 - (4) financial and legal arrangements
 - (5) counseling
 - (6) rest and recuperation
 - (7) post-deployment activities
 - (8) care of the military member's parent
 - (9) additional activities not encompassed in the other categories, but agreed to by the employer and employee
- P. Serious Injury or Illness of Current Servicemember: An injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces or that existed before the servicemember's active duty and was aggravated by service in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.
- Q. Serious Injury or Illness of a Veteran: An injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:
 - (1) A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the

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servicemember unable to perform the duties of his or her office, grade, rank, or rating.

- (2) A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition.
- (3) A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, with or without treatment.
- (4) An injury, including a psychological injury, on the basis of which the veteran is enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

R. Single 12-Month Period: For military caregiver leave, this period begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons. Military caregiver leave is available to an eligible employee once per servicemember or veteran, per serious injury or illness. This leave is only available during a single 12-month period, during which an eligible employee is entitled to a combined total of 26 workweeks for all types of FMLA leave.

3. REQUEST FOR FMLA LEAVE

A. EMPLOYEE RESPONSIBILITY

- (1) An employee must provide the appointing authority at least 30 days' advance notice before the FMLA leave is to begin when the need for the leave is foreseeable, based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. In the case of FMLA leave for an impending call or order to covered active duty of the employee's spouse, son, daughter or parent in support of a contingency operation, notice must be given as is reasonable and practicable. If 30 days' notice is not possible, notice must be given as soon as practical (i.e., verbal notification within one or two business days from the date the need for leave becomes known). In the case of an emergency, notice may be given by the employee's spouse, an adult family member or other responsible party.

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- (2) The employee must submit the applicable certification form within 15 calendar days from receipt of a request. If an employee fails to produce the certificate, the leave will not be designated as FMLA leave, and the employee's absence may not be protected by the FMLA.

- (3) An employee must provide, when requested, periodic updates on the status of his/her FMLA absence and/or intent to return to work, to include recertification or fitness for duty statements from his/her health care provider.

- (4) An employee who requests FMLA leave on the basis of a "qualifying exigency" resulting from the fact that the employee's spouse, son, daughter or parent is on covered active duty or called to covered active duty shall be required to complete and submit the Certification of Qualifying Exigency for Military Family Leave Form 2c. As specified on the form, documentation confirming the military member's covered active duty orders must also be submitted.

An employee who requests FMLA leave to care for a currently covered servicemember with a serious injury or illness shall be required to submit the Certification for Serious Injury of Illness of Current Servicemember for Military Family Leave Form 2d as completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

An employee who requests FMLA leave to care for a covered veteran with a serious injury or illness shall be required to submit the Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave Form 2e as completed by an authorized health care provider or submit a copy of the covered veteran's VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers.

- (5) In cases where the employee is using FMLA leave on an intermittent basis, either for his/her own serious health condition or to care for a family member, the employee should when practicable, provide advance notice to his/her supervisor each time FMLA leave is utilized.

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- (6) When the employee is using intermittent FMLA leave for his/her own serious health condition which is of a chronic nature (i.e., asthma, diabetes, migraine headaches) it is incumbent on the employee to advise his/her supervisor which absences are related to the chronic condition so that the leave can be coded appropriately.

B. SUPERVISOR RESPONSIBILITY

- (1) When an employee requests FMLA leave or when the supervisor acquires knowledge that an employee's leave may be for a FMLA-qualifying reason, the supervisor must notify the employee of his/her eligibility to take FMLA leave and his/her rights and responsibilities within five (5) business days, absent extenuating circumstances, through the FMLA Notice of Eligibility and Rights & Responsibilities (Form 1). If a supervisor suspects an absence may be FMLA qualifying, he/she is obligated to inquire further and determine reasons for the absence. The employee need not mention or actually request FMLA. If the leave is unforeseen and/or the supervisor has sufficient information to designate the leave as FMLA leave immediately, the supervisor must provide the employee with the Designation Notice (Form 3) at that time. In general, leave should never be coded as FMLA leave in the payroll system prior to an employee being informed the leave will be coded as such (e.g. FMLA Designation Notice – Form 3). All FMLA forms are available on the Human Resources Intranet webpage under Forms and Job Aids.
- (2) The supervisor shall indicate on the FMLA Notice of Eligibility and Rights and Responsibilities (Form 1) if the employee's request for FMLA leave must be supported by the applicable certification form. It is the employee's responsibility to provide a complete and sufficient certification (Forms 2a – e). The employee has 15 calendar days from receipt of the date of request to provide the supervisor with the certification form. The supervisor may require the original signature of the health care provider on the applicable form.

If an employee fails to provide the requested certification within the allotted time, the supervisor may delay FMLA leave until the employee submits the certification form. If an employee never produces a requested certification, the leave may not be designated as FMLA leave. As a common-sense practice, however, and in order to afford the FMLA-eligible employee with FMLA protection, the supervisor shall designate the leave as FMLA when the supervisor has personal knowledge that the employee's absence is due

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to an FMLA-qualifying condition even if the certification is not provided. Emergencies and unforeseeable events are examples of reasons why an employee may be placed on FMLA leave without a certification. The supervisor must still notify the employee of the FMLA designation via the FMLA Designation Notice (Form 3) prior to approving FMLA leave in the LaGov HCM payroll system.

- (3) A supervisor may request subsequent re-certification of medical conditions for pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider no more often than every 30 days. If the minimum duration specified on the applicable health care provider certification form is more than 30 days, however, the supervisor may not request re-certification until that minimum duration has passed unless the employee requests an extension of leave, circumstances described on the previous certifications have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the certification. If there is no specified end date for the duration of the medical condition (i.e., "ongoing," "undetermined," or left blank), medical recertification may be required no more often than every 30 days. In any case, however, recertification of an ongoing condition may be required every six months in conjunction with an absence. No recertification may be requested for military caregiver or qualifying exigency FMLA.
- (4) The supervisor must forward a copy of all FMLA-related documentation to the appropriate Human Resources personnel in each Section/District.

4. USAGE OF FMLA LEAVE

- A. Upon approval of FMLA leave, an employee must designate on the Application for Leave form and time sheets the type of leave that will be used for FMLA leave by using one of the FMLA leave codes: FMLA Self (LBFM), FMLA Family (LAFM), Worker's Comp FMLA (LDFM), or FMLA Leave without Pay (LWFM).

The LaGov HCM timekeeper must establish the FMLA leave quota (480 hours) starting the first day the employee actually uses FMLA leave and expiring one year (365 calendar days) thereafter. With each subsequent FMLA leave usage, the timekeeper must make two entries: one to deduct from the FMLA quota (FMLB); and a second entry to code the actual type of leave used: FMLA Self (LBFM), FMLA Family (LAFM), Worker's Comp FMLA (LDFM), or FMLA Leave without Pay (LWFM). When any of these FMLA absence codes are entered, except the FMLA Leave without Pay, the system will automatically deduct from the

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appropriate leave balance. Upon exhaustion of the FMLA quota (FMLB), no additional leave will be coded to a FMLA code during that applicable 12-month period, and it is at the District Administrator's/Section Head's discretion, taken on a case-by-case basis, as to whether additional leave will be approved. PPM #15, Part 10, reflects the approvals required to grant Leave without Pay beyond 480 hours for FMLA-related reasons or beyond one month for non-FMLA reasons.

- B. In cases involving the employee's own serious health condition or temporary disabilities, the employee will be required to request FMLA Self. When the FMLA Self code (LBFM) is entered, the LaGov HCM payroll system will deduct the employee's accrued sick leave, time and one-half K-time, straight K-time, and annual leave balances, in that order. When accrued paid leave balances are insufficient to cover the FMLA leave entitlement, FMLA Leave without Pay (LWFM) will be granted.
- C. In maternity cases, the employee will be allowed up to 12 weeks of FMLA leave for childbirth and childcare. If complications occur, the employee will be allowed to take 16 weeks of leave, in accordance with State law. FMLA Self (LBFM) will be granted during the continuous FMLA leave period and until the employee is released by her physician. The FMLA Self (LBFM) leave will reduce the employee's accrued sick leave, time and one-half K-time, straight K-time, and annual leave balances, in that order. After the physician's release and the employee's return to work, FMLA Family (LAFM) leave will be granted to provide any of the remaining 12-week FMLA leave entitlement; such leave may be used for bonding purposes. The FMLA Family (LAFM) leave will reduce the employee's accrued time and one-half K-time, straight K-time and then annual leave balances, in that order. FMLA Leave without Pay (LWFM) will only be granted when accrued paid leave balances are insufficient to cover the FMLA leave entitlement.
- D. FMLA leave will be granted to an eligible employee to care for a spouse, child, or parent with a serious health condition. The employee will be required to take FMLA Family leave. When the FMLA Family leave code (LAFM) is entered, the LaGov HCM payroll system will reduce the employee's accrued time and one-half K-time, straight K-time, and annual leave balances, in that order. When accrued paid leave balances are insufficient to cover the FMLA leave entitlement, FMLA Leave without Pay (LWFM) will be granted.
- E. If an employee uses sick leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, sick leave used for routine medical/dental

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appointments and non-serious illnesses, such as colds, common headaches, etc., does not count against the 12 weeks of FMLA leave entitlement.

- F. The 12-month eligibility period will be measured from the date the employee's first usage of FMLA leave begins. FMLA leave does not necessarily have to be taken all at once. Leave may be taken on an intermittent basis (i.e., one (1) week per month) or on a reduced schedule basis (i.e., 4 or 5 hours per day). In the case of a request for intermittent leave or leave on a reduced schedule which is medically necessary, the employee will submit the Certification of Health Care Provider Form 2a to show the intermittent/reduced leave schedule is necessary and show the schedule for treatment. When planning medical treatment, the employee will consult the appointing authority and make a reasonable effort to schedule leave so as not to unduly disrupt the operations of the section/district.

5. OTHER PROVISIONS

- A. There is a limitation for spouses who work for the same employer. (The State of Louisiana is considered one employer.) A husband and wife who are eligible for FMLA leave are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the FMLA leave is taken as follows:

- (1) For the birth of a child or to care for the child after birth.
- (2) For the placement of a child for adoption or foster care or to care for the child after placement.
- (3) To care for a parent with a serious health condition.

When an employee requests FMLA for any of the above reasons, he/she will include a statement on the Certification of Physician or Practitioner Form 2a or 2b that this request is not in conflict with the limitation for spouses who work for the same employer.

- B. Holidays or office closures which occur during a continuous period of FMLA leave shall reduce the employee's FMLA leave balance (FMLB) by the number of hours regularly scheduled on that day, provided that the employee was on FMLA leave directly before and after the holiday or office closure.
- C. Eligible employees with serious health conditions will not be terminated under Civil Service Rule 12.6(a) (exhaustion of sick leave) unless he/she has first been

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granted 12 weeks of FMLA leave (paid and/or unpaid) during the past year. (Refer to section 4.F. for definition of year.)

- D. The U.S. Department of Labor requires that employees are provided with specific information when placed on FMLA leave. The Notice of Eligibility and Rights & Responsibilities Form 1, and the Designation Notice Form 3 are therefore to be used when placing an employee on FMLA leave or upon receipt of an employee's request for FMLA leave.

6. RECORD KEEPING

- A. The FMLA requires that employers make, keep, and preserve records pertaining to their obligations under the act. Records specified by these regulations must be kept no less than three (3) years and be available for inspection, copying, and transcription by representatives of the Department of Labor upon request. Medical certification, recertification, or medical histories of employees or employees' family members are confidential and must be maintained by the appropriate Section/District in a confidential file kept separate from the employee's personnel file.
- B. Records to be kept by the appointing authority and the appropriate Human Resources personnel in each Section/District include the following:
 - (1) Basic payroll and identifying data, including name, address, and classification; rate or basis of pay; daily and weekly hours worked per pay period; and total compensation paid.
 - (2) Dates FMLA leave is taken by employee.
 - (3) If FMLA leave is taken in increments of less than one (1) full day, the hours of the leave.
 - (4) Copies of the employee's Application for Leave forms which reflect FMLA leave taken.
 - (5) Copies of Notice of Eligibility and Rights & Responsibilities (Form 1) and the Designation Notice (Form 3) advising employee that he/she has been placed on FMLA leave.
 - (6) Certification Forms 2a-e

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- (7) Any documents describing employer policies and practices regarding the taking of paid and unpaid FMLA leave.
- (8) Records of any dispute between the employer and employee regarding designation of leave as FMLA leave.

7. FMLA VIOLATIONS

If an employee believes that his/her rights have been violated under the FMLA, he/she may file a complaint without fear of harassment or retaliation with the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor.

8. FURTHER INFORMATION

Any questions regarding this policy should be directed to the Human Resources Section.



Shawn D. Wilson, Ph.D.
Secretary