

Policy 3512

From Human Resources

Revision as of 18:23, 19 December 2008 by Uballr1 (Talk | contribs)
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PERSONNEL POLICY

MANUAL

MoDOT Personnel Policy Title: Family and Medical Leave

Policy Number: 3512 **Chapter Title:** Leaves of Absence

Effective Date: July 1, 2005

Supersedes Policy Number 3512 **Dated** October 19, 2004

Approved By: Micki Knudsen, Human Resources Director

(Signature on file)

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POLICY STATEMENT

The department will comply with the federal Family and Medical Leave Act of 1993 by providing up to 12 weeks leave to employees who qualify for leave as stated in this policy.

DEFINITIONS

Serious Health Condition: An illness, injury, impairment, or physical or mental condition involving either inpatient care in a medical care facility and any corresponding period of incapacity or subsequent treatment, or continuing treatment by a health care provider.

Continuing Treatment: Periods of incapacity lasting more than three consecutive calendar days involving either treatment (two or more times) by a health care provider or treatment by a health care provider once resulting in a regimen of continuing supervised treatment including a course of prescription medication or therapy requiring special equipment; any period of incapacity due to pregnancy or prenatal care; any period of incapacity due to chronic serious health conditions; permanent or long-term incapacity due to a condition for which treatment may not be effective, if there is continuing supervision by a health care provider; or any period of incapacity to receive multiple treatments either for restorative surgery or for a condition likely to result in incapacity of more than three days absent medical intervention.

PROVISIONS/REQUIREMENTS

1. The Family and Medical Leave Act (FMLA) provides up to 12 weeks of paid or unpaid job protected leave per a 12-month period to salaried and wage employees who have worked for the State of Missouri at least 12 months and have physically worked at least 1,250 hours in the 12 months immediately preceding the leave. The 12-month period in which an employee is entitled to 12 weeks of family and medical leave is the 12 months measured backwards from the date an employee uses any family and medical leave.

Districts/divisions/offices have the responsibility for maintaining records of family and medical leave time for their employees.

2. Family and medical leave may be used under the following conditions:

- Birth of a child;
- Placement (adoption or foster care) of a child;
- Caring for a spouse, child, or parent of the employee when the spouse, child, or parent has a serious health condition; or
- For the serious health condition of the employee which makes the employee unable to perform the essential functions of his or her position.

Leave taken for the birth or placement of a child must be taken within a 12-month period after the birth or placement of the child. When an employee's personal care and attention is required in connection with the placement of a child, loss of time that is supported by appropriate documentation will be charged against the employee's accrued sick leave, annual leave or compensatory time. The final decision concerning the granting of leave under this section shall rest with the district engineer or the division leader/state engineer and shall be based upon the degree to which the employee is responsible for the care and nurture of the child.

The paternal guardian may charge up to five workdays of accrued sick leave after the birth or placement of a child. If the absence exceeds five workdays, the employee will be required to provide medical certification from a health care provider stating why the absence requires his/her personal attention and care.

When spouses both work for the State of Missouri, they may take a combined total of 12 weeks family and medical leave when the leave is taken for the birth or placement of a child. In all other family and medical leave situations, each spouse is individually entitled to a total of 12 weeks family and medical leave.

3. The definition of Serious Health Condition does not include, unless complications arise, such things as the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontic problems, or periodontal disease. Family and medical leave may not be used for routine physicals, eye or dental examinations unless the examination is to determine if a serious health condition exists.

4. If accrued paid leave (sick or annual leave) is used for any of the above purposes it may apply toward the total 12 weeks family and medical leave available. Compensatory time used by employees for a family and medical leave qualifying reason will not be designated as family and medical leave.

The department will notify employees that paid or unpaid leave is being designated as family and medical leave within two workdays of learning that an employee is taking leave for a qualifying reason. Designation of family and medical leave cannot be after the leave ends with two exceptions: the department did not learn of the reason for the leave until the employee's return from an absence, or the department must wait for information from the employee concerning a serious health condition to make a designation. Employees must notify the department within two workdays of their return to work if they want their absence to be designated as family and medical leave. Notice to employees of designated family and medical leave can be oral or in writing but if oral, the notice will be confirmed in writing by the next payday.

Employees have the option of using their accrued paid leave before taking unpaid family and medical leave with one exception. If employees use family and medical leave because of their own illness, accrued sick leave must be exhausted before taking unpaid family and medical leave.

Employees should review Personnel Policy 3511, "ShareLeave Program," before taking unpaid family and medical leave for their own illness, or the serious health condition of a spouse or child.

A "Family and Medical Leave Reference Chart" is attached (Attachment 1) which provides further guidance on usage of Family and Medical Leave.

5. Employees are required to give at least 30 days advance notice in writing of their intention to take family and medical leave when the leave is foreseeable. Foreseeable leave might be for the expected birth or placement of a child or planned medical treatments. There are obviously emergency situations when advance notice is not possible and in such circumstances the department requires written notice to be given as soon as is practical. Form FMLA1, "Notice of Intent to use Family and Medical Leave," is to be used to give supervisors notice of their intention to use family and medical leave. Form FMLA2, "Designation of Paid or Unpaid Family and Medical Leave," is used by the department to officially designate leave taken as family and medical leave.

6. Employees are also required to work with their supervisors in scheduling planned medical treatments for themselves or for covered family members so as not to unduly disrupt work schedules. Health care providers should be advised of this personnel policy when scheduling treatment.

7. In cases of leave used for the serious health condition of employees or a covered family member, the department requires certification of the illness from a health care provider. Certification includes: date the health condition commenced; probable duration; diagnosis and treatment; and a statement that either the employee is needed to provide health care or the employee is unable to perform the essential functions of his or her position. Form FMLA3, "Family and Medical Certification Statement," or a comparable form provided by a health care provider, should be used by employees to provide this information.

The department may request a second certification at the department's expense, and when those two certifications differ a third and binding certification from a jointly approved health care provider, also at the department's expense, shall be obtained. None of the health care providers used for certification shall be employed on a regular basis by the department. Recertification may be required by the department every 30 days.

Employees using family and medical leave because of their own serious health conditions are required to provide a release from their health care provider stating when they are able to return to work. The release must indicate they are capable of returning to work and identifying what, if any, restrictions the employees have.

8. In any case of leave needed for serious health conditions of employees or covered family members, employees have the option of using family and medical leave on an intermittent or reduced work schedule when medically necessary. In cases of birth or placement of a child, the department has the option to approve or disapprove an intermittent or reduced work schedule. Leave taken intermittently or on a reduced work schedule may equal, but not exceed, 12 workweeks total leave.

At the department's option, employees using intermittent or reduced work schedules may be transferred temporarily, with no reduction in pay, to positions where such a schedule does not unduly disrupt performance of job duties.

9. The department shall continue to provide the department's share of health insurance coverage to salaried employees, and wage employees who qualify to receive department paid insurance, taking family and medical leave. If salaried employees or qualified wage employees pay any part of the premium; (i.e., coverage for family members, additional life insurance, etc.), payments must continue to be paid manually by the employee.

State sponsored life insurance and disability insurance coverage provided to salaried employees and qualified wage employees at no cost is not included in the department's share of health insurance coverage provided to employees on unpaid family and medical leave. Employees have the option of continuing coverage for health, life, or disability insurance by making manual payments.

In cases involving serious health conditions, and in situations beyond the employee's control, when employees are not able to return to work at the end of the leave period, certification from the employee's or covered family member's health care provider is required to show the employee's inability to return to work. Employees who fail to return to work for any reason, which is neither involving a serious health condition nor beyond the employee's control, will be required to reimburse the department for paid insurance premiums provided while they were on unpaid family and medical leave.

10. When employees return to work after taking family and medical leave, they are guaranteed the return to the same position provided they return to work at the expiration of the approved family and medical leave time. If the same position is not available due to some type of business decision by the department, the employee will be returned to a position with the same pay and with similar responsibilities and duties. The department has no obligation to restore seasonal employees to positions when seasonal work has ended or when employees were hired for a specific time period and that time period has ended.

11. Annual leave and sick leave benefits earned prior to taking family and medical leave are not lost, but additional benefits do not accrue during unpaid leave. The time away from work on family and medical leave counts as creditable service towards retirement.

12. If employees exhaust all available paid sick leave and unpaid family and medical leave, and because of their own serious health condition are still unable to return to work, they may request approval for extended sickness or injury leave (refer to Personnel Policy 3501, "Extended Sickness or Injury Leave").

13. If employees exhaust all available family and medical leave and are still unable to return to work for reasons other than their own serious health condition, they may request approval for special leave without pay (refer to Personnel Policy 3509, "Special Leave Without Pay").

14. Employees absent under family and medical leave due to their own illness or injury may be offered return to work in temporary modified duty assignments; however, such employees may not be required to accept these assignments. For more information regarding temporary modified duty assignments refer to Personnel Policy 0509, "Temporary Modified Duty Assignments."

15. An Employment Status Maintenance (ESMT) transaction to place the employee in a leave without pay employment status is required when an employee takes more than 80 consecutive work hours (more than 10 consecutive workdays for employees on 5x8 schedules and more than 8 consecutive workdays for employees on 4x10 schedules) of unpaid family and medical leave. An ESMT is also required if an employee will be on unpaid leave for all the normal workdays and holidays within an entire pay period, even if this time is equal to or less than 80 hours. Unpaid family and medical leave will be considered as creditable service in the department and the department's retirement system. When an employee uses accrued sick leave, annual leave, or compensatory time to cover the family and medical leave, an ESMT transaction is not required.

CROSS REFERENCES

Personnel Policy 0509, "Temporary Modified Duty Assignments"

Personnel Policy 3511, "ShareLeave"

Personnel Policy 3509, "Special Leave Without Pay"

ATTACHMENT

FMLA Reference Chart

FORMS

Form FMLA 1 - Notice of Need for Family and Medical Leave Act (FMLA) Leave
(<http://wwwi/intranet/hr/documents/FormFMLA1.doc>)

Form FMLA 2A - Receipt of Notice of Need for Family and Medical Leave Act (FMLA) Leave
(<http://wwwi/intranet/hr/documents/FormFMLA2A.doc>)

Form FMLA 2B - Designation of Family and Medical Leave Act (FMLA) Leave
(<http://wwwi/intranet/hr/documents/FormFMLA2B.doc>)

Form FMLA 3 - Medical Certification Statement
(<http://wwwi/intranet/hr/documents/FormFMLA3.doc>)

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