# Policy 3512

## From Human Resources

Revision as of 19:27, 6 April 2009 by Uballr1 (Talk | contribs)
(diff) ←Older revision | Current revision (diff) | Newer revision→ (diff)

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| **PERSONNEL POLICY MANUAL** |
| **MoDOT Personnel Policy Title**: Family and Medical Leave<br><br>**Policy Number**: 3512 **Chapter Title**: Leaves of Absence<br><br>**Effective Date**: February 1, 2009<br><br>**Supersedes Policy Number** 3512 **Dated** July 1, 2005 |
| **Approved By**: Micki Knudsen, Human Resources Director<br><br>(Signature on file) |

## Contents


- 1 POLICY STATEMENT
- 2 DEFINITIONS
- 3 PROVISIONS/REQUIREMENTS
- 4 CROSS REFERENCES
- 5 ATTACHMENT
- 6 FORMS

# POLICY STATEMENT

The department will comply with the federal Family and Medical Leave Act (FMLA) of 1993 by providing up to 12 workweeks of 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 (overnight stay) in a medical care facility and any corresponding period of incapacity or subsequent treatment, or continuing treatment by a health care provider. The definition of serious health condition does not include, unless complications arise, such things as the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc.

Continuing Treatment: Periods of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, which also involves treatment two or more times by a health care provider, within 30 days of the first day of incapacity unless extenuating circumstances exist (the first of which must take place within seven days of the first day of incapacity and the second must be at the direction of the health care provider); or treatment by a health care provider on at least one occasion, within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. This may include 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.

Spouse: A husband or wife as defined or recognized under state law for purposes of marriage in the State of Missouri.

Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in place of a parent with day-to-day responsibility to care for and financially support the child, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. For purposes of qualifying exigency leave or military caregiver leave only, the definition of child applies to a child of any age.

Parent: The biological, adoptive, step, or foster parent of an employee or an individual who stood in place of a parent to an employee when the employee was under 18 or incapable of self-care. This does not include parents-in-law.

Next of Kin of a Covered Servicemember: The nearest blood relative other than the covered servicemember's spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

# PROVISIONS/REQUIREMENTS

1. The FMLA provides up to 12 workweeks 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 1250 hours in the 12 months preceding the leave. The 12-month period in which employees are entitled to 12 workweeks of FMLA leave is the 12 months measured backwards from the date employees use any FMLA leave, excluding military caregiver leave which is 26 workweeks within a 12-month period calculated by the 12 months following the first day of leave used.

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

When situations require that leave be taken in increments less than one week, the 12 workweeks may be taken intermittently during the 12-month period. FMLA leave weeks will be prorated based on the amount of leave taken when compared to the employee's regularly scheduled workweek. For example, if an employee's regularly scheduled workweek consists of 30 hours and under intermittent FMLA leave he/she only works 20 hours in a week, the employee has used 1/3 weeks of FMLA leave. If the employee's regularly scheduled work hours cannot be determined with any certainty, the amount of FMLA leave the employee's workweek will be determined by the average number of hours the employee was scheduled over the prior 12-month period.

Holidays that occur in a week in which FMLA leave is used may count towards the employees' FMLA leave entitlement.

2. FMLA leave may be used for:

a. The birth of the employee's child and to care for the newborn child.

b. The placement (adoption or foster care) of a child with the employee.

c. The care of the employee's spouse, child, or parent when the spouse, child, or parent has a serious health condition.

d. The serious health condition of the employee, which makes the employee unable to perform the essential functions of his or her position.

e. The qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

f. The care of a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the servicemember.

3. If accrued paid leave (sick leave, annual leave, or compensatory time) is used for any of the above purposes, it may apply toward the total 12 workweeks of FMLA leave available.

The department will notify employees that paid or unpaid leave is being designated as FMLA leave within five workdays of learning that employees are taking leave for a qualifying reason, absent extenuating circumstances. Employees must notify the department as soon as practicable if they want their absence to be designated as FMLA leave. Notice to employees that leave is designated as FMLA leave will be in writing. Notice of the amount of FMLA leave used may be oral or written; but if oral, the notice will be confirmed in writing by the next payday. If the following payday is within one week of oral notice, written confirmation will be provided by the second payday following the oral notice.

Employees requesting FMLA leave for their own serious health condition, or to care for their spouse, parent, or child with a serious health condition, must first exhaust their accrued paid sick leave before taking unpaid FMLA leave. Employees requesting FMLA leave to care for a covered servicemember with an injury or illness are also required to first exhaust accrued paid sick leave before taking unpaid FMLA leave.

Employees have the option of using their other applicable accrued paid leaves before taking unpaid FMLA leave.

Employees should review Personnel Policy 3511, "ShareLeave Program," before taking unpaid FMLA leave for their own serious health condition, or the serious health condition of their spouse, child, or parent.

The "Family and Medical Leave Act (FMLA) Leave Reference Chart" (Attachment 1) provides further guidance on usage of FMLA leave.

4. 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 spouses both work for the State of Missouri, they may take a combined total of 12 workweeks of FMLA leave for the birth or placement of a child. In all other FMLA leave situations, excluding military caregiver leave, each spouse is individually entitled to a total of 12 workweeks FMLA leave.

Employees are permitted to use up to 2 workweeks of their accrued sick leave as "family leave" for the birth or placement of a child, within the first 12 weeks following the birth or placement. Additional paid sick leave may only be used for the birth or placement of a child to the extent the circumstances meet the usual requirements for the use of sick leave.

If employees take leave for their own serious health condition of childbirth and recovery from childbirth, and wish to return to work before the normal recovery period has passed (typically six weeks after the birth), a release from the health care provider must be provided stating when employees are able to return to work.

5. Eligible employees with a spouse, child, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement for military caregiver leave that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is an active member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty as designated by the Department of Defense that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Spouses who both work for the State of Missouri are entitled to a combined 26 workweeks of military caregiver leave.

6. Employees are required to give at least 30 days advance notice in writing of their intention to take FMLA 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 Need for Family and Medical Leave Act (FMLA) Leave,” is to be used by employees to give supervisors notice of their need for or intention to use FMLA leave. Form FMLA2A, “Receipt of Notice of Need for Family and Medical Leave Act (FMLA) Leave,” is used by the department to acknowledge the receipt of employees’ need for FMLA leave and request medical certification, and Form FMLA2B, “Designation of Family and Medical Leave Act (FMLA) Leave,” is used by the department to officially designate leave taken as FMLA leave.

7. 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.

8. In cases of leave used for the serious health condition of employees or a covered family member, the department requires certification of the serious health condition from a health care provider. Certification includes the medical facts that support the identification of a serious health condition; the date the medical condition began and its expected duration; whether leave will be intermittent or on a reduced leave schedule; the duration of the leave; if the serious medical condition is pregnancy or a chronic condition, whether the patient is presently

incapacitated and the duration and expected frequency of episodes of incapacity; an estimate of the number of any required additional treatments; 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.

Employees must provide the requested medical certification within 15 calendar days unless it is not practicable under the particular circumstances to do so despite the employees’ diligent, good faith efforts. If the certification is not complete or is insufficient, employees will be required to obtain and provide the additional information necessary to make the certification complete and sufficient.

The department may request a second certification at the department's expense. 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. Health care providers used for certification cannot be employed on a regular basis by the department. Recertification may be required by the department every 30 days once the minimum duration of the condition has passed, if circumstances have changed, or information has been received that casts doubt on employees’ stated reason for the absence.

Employees using FMLA leave because of their own serious health condition 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. Refer to Personnel Policy 0602, “Fit for Duty Review Program.”

9. In any case of leave needed for serious health conditions of employees or covered family members, employees have the option of using FMLA leave on an intermittent or reduced work schedule when medically necessary. In cases of leave to care for a child after the birth or placement, 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.

10. 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, while they are taking unpaid FMLA leave. Any part of the health insurance premium, which is employees’ responsibility and normally deducted from their paychecks, must be paid manually by employees while they are on unpaid FMLA leave, or coverage may lapse.

State sponsored life insurance and disability insurance coverage, typically 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 FMLA leave. Employees have the

option of continuing coverage for life or disability insurance by making manual payments, or this coverage may also lapse.

In cases involving serious health conditions, and in situations beyond employees' control, when employees are not able to return to work at the end of the leave period, certification from the their health care provider or their covered family member's health care provider is required to show employees' 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 employees' control, will be required to reimburse the department for paid insurance premiums provided while they were on unpaid FMLA leave.

11. When employees return to work after taking FMLA leave, they are guaranteed the return to the same position provided they return to work at the expiration of the approved FMLA leave time. If the same position is not available due to some type of business decision by the department, employees 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.

12. Unused annual leave and sick leave benefits earned prior to taking FMLA leave are not lost, but additional benefits do not accrue during unpaid leave. The time away from work on FMLA leave counts as creditable service towards retirement.

13. If employees exhaust all available paid leave and unpaid FMLA 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").

14. If employees exhaust all available FMLA 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").

15. Employees absent under FMLA leave due to their own serious health condition 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."

16. An Employment Status Maintenance (ESMT) transaction to place employees in a leave without pay employment status is required when employees take 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 FMLA leave. An ESMT is also required if employees 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. When employees use accrued sick leave, annual leave, or compensatory time to cover the FMLA leave, an ESMT transaction is not required.

# CROSS REFERENCES

Personnel Policy 0509, “Temporary Modified Duty Assignments”

Personnel Policy 0602, “Fit for Duty Review Program”

Personnel Policy 3500, “Sick Leave”

Personnel Policy 3501, “Extended Sickness or Injury Leave”

Personnel Policy 3511, “ShareLeave”

Personnel Policy 3509, “Special Leave Without Pay”

# ATTACHMENT

Family and Medical Leave Act (FMLA) Leave Reference Chart (http://hrwiki/images/e/eb/3512_Attachment.doc)

# FORMS

Form FMLA1, Notice of Need (http://wwwi/intranet/hr/documents/FormFMLA1.doc)

Form FMLA2A, Notice of Eligibility and Rights and Responsibilities (http://wwwi/intranet/hr/documents/FormFMLA2A.doc)

Form FMLA2B, Designation Notice (http://wwwi/intranet/hr/documents/FormFMLA2B.doc)

"Family and Medical Leave Certification Statement" (http://wwwi/intranet/hr/documents/FormFMLA3.doc)

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