


<b>MISSOURI DEPARTMENT OF TRANSPORTATION</b>    <b>PERSONNEL POLICY MANUAL</b>	<b>Chapter Title</b> Leaves of Absence		
	<b>Policy Title</b> Family and Medical Leave		
	<b>Policy Number</b> 3512	<b>Page</b> 1 of 6	<b>Effective Date</b> August 1, 2023
<b>Approved By</b> Ashley Halford, Human Resources Director, Signature on File	<b>Supersedes Policy Number</b> 3512	<b>Page</b> 1 of 6	<b>Prior Effective Date</b> September 15, 2022

## **POLICY STATEMENT**

The department will comply with the federal Family and Medical Leave Act (FMLA) of 1993 by providing up to 12 workweeks of unpaid, job-protected leave to eligible employees.

## **PROVISIONS / REQUIREMENTS**

1. Employees may be eligible for up to 12 workweeks of FMLA leave per a 12-month period if they have worked for the State of Missouri at least 12 months and have physically worked at least 1,250 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.
2. FMLA leave may be used by eligible employees for:
  - A. Incapacity due to pregnancy, prenatal medical care, or childbirth.
  - B. The care of the employee's child after birth or placement (adoption or foster care).
  - 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 their position.

- E. The qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty).
- 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.

If accrued paid leave (sick leave, annual leave, or compensatory time) is used for any of the above purposes, it will not apply toward the total 12 workweeks of unpaid FMLA leave available.

- 3. If situations require that leave be taken in increments less than one week, employees may be eligible to take the 12 workweeks intermittently during the 12-month period and should contact their local human resources representative to discuss such arrangements. Unpaid leave taken intermittently or involving a reduced work schedule may equal, but not exceed, 12 workweeks total leave during the 12-month period.

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

Employees will be notified if leave is being designated as FMLA leave.

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

- 4. Employees requesting FMLA leave for their own serious health condition (including leave for incapacity due to pregnancy, prenatal medical care, or childbirth), 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, unless the servicemember being cared for does not fall under the sick leave policy definition of immediate family and sick leave cannot be used. Refer to Personnel Policy 3500, "Sick Leave."

Employees have the option of using their other applicable accrued paid leaves before taking unpaid FMLA leave. However, once the unpaid FMLA leave status has started intermittent use of annual leave and/or compensatory time will not be

allowed, except as appropriate in cases of intermittent FMLA leave. Refer to Personnel Policy 3001, "Annual 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.

5. If an employee, not separating from the department, will be in a leave without pay status for more than one week (40 hours), an Employment Status Maintenance (ESMT) transaction should be processed to place the employee into the appropriate leave without pay status.
6. Employees are permitted to use up to two workweeks of leave for domestic or sexual violence as outlined in Personnel Policy 6508. However, Policy 6508 does not create a right for an employee to take unpaid leave that exceeds the amount of total unpaid leave time allowed under this FMLA policy (meaning the combined total of unpaid leave used under Policy 6508 and this FMLA policy cannot exceed 12 workweeks).
7. Employees are permitted to use up to 6 weeks of parental leave upon the birth or adoption of a child for purposes of nurturing and bonding. This parental leave must be used within the first 12 weeks following the birth or adoption. Refer to Personnel Policy 3516 ("Parental Leave").

For the birth of a child, the parent that gave birth to the child is also permitted to use up to two workweeks of their accrued sick leave for the purpose of recovering from childbirth even if circumstances do not exist which meet the usual requirements for the use of paid sick leave. This sick leave must be used within the first 12 weeks following the birth or adoption. Any use of sick leave must immediately follow the use of parental leave. Additional paid sick leave may only be used if circumstances exist which meet the usual requirements for the use of paid sick leave.

The leave permitted under this paragraph must be used before using unpaid FMLA. FMLA leave taken for the birth or placement of a child must be used within a 12-month period after the birth or placement of the child.

The "Family and Medical Leave Act (FMLA) Leave Reference Chart" (Attachment 1) provides further guidance on the types and amounts of leave that may be used.

8. Employees are required to give at least 30 days advance notice of their intention to take FMLA leave when the leave is foreseeable (such as expected birth or placement of a child or planned medical treatments). If advance notice is not possible due to unforeseeable or emergency situations, the department requires notice to be given as soon as is practical. Form FMLA1, "Notice of Need," is to be used by employees to give Human Resources notice of their need for or intention to use FMLA leave.

Employees must consult with their supervisors when scheduling planned medical treatments for themselves, covered family members, or covered servicemembers, and make a reasonable effort not to unduly disrupt work schedules.

9. In cases of leave taken 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. Form FMLA3A, "Certification for Employee's Serious Health Condition," and Form FMLA3B, "Certification for Family Member's Serious Health Condition," should be used by employees to provide this information.

Certification is also required in cases of leave used for a qualifying exigency or to care for a covered servicemember. Form FMLA3C, "Certification of Qualifying Exigency," and Form FMLA3D, "Certification for Serious Injury or Illness of Covered Servicemember," should be used by employees to provide this information.

Employees must provide the requested 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.

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.

10. Employees absent under FMLA leave due to their own serious health condition may be offered return to work in temporary modified duty assignments. Refer to Personnel Policy 0509, "Temporary Modified Duty Assignments."
11. 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 and what, if any, restrictions they have.

If employees take leave for incapacity due to pregnancy, prenatal medical care, or 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 and what, if any, restrictions they have.

12. The department shall continue to provide the department's share of health insurance coverage to eligible employees who 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 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.

13. 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.

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

14. 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 sick leave. Refer to Personnel Policy 3501, "Extended Sick Leave."

If employees exhaust all available paid leave and unpaid 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."](#)

**CROSS REFERENCES**

[Personnel Policy 0509, "Temporary Modified Duty Assignments"](#)  
[Personnel Policy 3001, "Annual Leave"](#)  
[Personnel Policy 3500, "Sick Leave"](#)  
[Personnel Policy 3501, "Extended Sick Leave"](#)  
[Personnel Policy 3511, "ShareLeave Program"](#)  
[Personnel Policy 3509, "Special Leave Without Pay"](#)  
[Personnel Policy 3516, "Parental Leave"](#)  
[Personnel Policy 6508, "Domestic and Sexual Violence"](#)

**ATTACHMENT**

[Family and Medical Leave Act \(FMLA\) Leave Reference Chart](#)

**FORMS**

[Form FMLA1 - Notice of Need](#)  
[Form FMLA2A - Notice of Eligibility and Rights and Responsibilities](#)  
[Form FMLA2B - Designation Notice](#)  
[Form FMLA3A - Certification for Employee's Serious Health Condition](#)  
[Form FMLA3B - Certification for Family Member's Serious Health Condition](#)  
[Form FMLA3C - Certification of Qualifying Exigency](#)  
[Form FMLA3D - Certification for Serious Injury or Illness of Covered Servicemember](#)