POLICY TITLE: Family and Medical Leave
NUMBER: 3512
CHAPTER TITLE: Leaves of Absence

EFFECTIVE DATE: January 1, 2026
PRIOR EFFECTIVE DATE: August 1, 2023

POLICY STATEMENT

The Family Medical Leave Act (FMLA) is a federal law that guarantees eligible employees with qualifying conditions the right to be absent from work (with or without pay) for up to 12 work weeks per year (or 26 work weeks per year for the care of a qualifying covered service member) and at the end of such time, restoration to the same or a substantially equivalent position. FMLA does not provide additional paid leave for employees; it designates leave taken for qualifying conditions to ensure that employees are granted benefits under the FMLA. Absences covered under FMLA run concurrently with all types of accrued paid and unpaid leave.

DEFINITIONS

Eligible employee: an employee who has been employed by the State of Missouri for at least 12 months and who has worked at least 1250 hours within the 12 months preceding the date the leave is to begin.

Year: Preceding twelve months from the date the leave is to begin.

Child: A biological, adopted or foster child, stepchild, legal ward or 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 due to mental or physical disability. For leave involving a qualifying exigency or the care of a covered service member a child can be of any age.

Spouse: A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State or Country in which the marriage was entered into.

Domestic Partner: Identifies the personal relationship between individuals who are living together and sharing a common domestic life together and are jointly responsible for the basic necessities of life but are not joined in any type of legal partnership, marriage, or civil union.

Parent: the biological parent of an employee, stepparent, or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents-in-law.

In loco parentis: Persons with day-to-day responsibilities to care for and financially support a child.

Next of kin: the nearest blood relative of a covered service member other than their spouse, domestic partner, child, or parent.

Serious health condition: An illness, injury, impairment, or physical or mental condition that involves:

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 of more than three (3) consecutive calendar days, that also involves continuing treatment by, or under the supervision of, a health care provider; or
3. Continuing treatment by, or under the supervision of, 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) consecutive calendar days; or for pregnancy or prenatal care. The definition of serious health condition does not include, unless complications arise, such medical conditions as the common cold, flu, earaches, upset stomach, minor ulcers, and headaches other than migraine, routine dental, orthodontic problems or periodontal disease. FMLA leave may not be used for routine physicals and eye or dental examinations unless the examination is to determine if a serious health condition exists.

Covered service member: A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes the medical treatment, recuperation or therapy. In the case of a veteran, the injury or illness must have been incurred in the line of duty on active duty or existed before the beginning of active duty and was aggravated by service in the line of duty and manifested itself before or after the member became a veteran.

Covered active duty: A member of the regular armed forces during deployment to a foreign country or a member of the Reserves or National Guard during deployment to a foreign country under a call or order to active duty.

Qualifying exigency: One or more of the following situations where an employee's spouse, domestic partner, child, or parent is on covered active duty or call to active-duty status:

1. To address any last-minute issues prior to a military service member's deployment (leave taken for this purpose can be used for a period of seven calendar days);

2. To attend any military events or family support or assistance programs.

3. To arrange for alternative childcare, provide childcare on an urgent, immediate need basis, enroll or transfer a child into a new school or daycare facility, or to attend meetings with staff at a school or a daycare facility.

4. To make or update financial or legal arrangements, or to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits.

5. To attend counseling provided by someone other than a health care provider for employee, for the covered service member, or for the employee's child.

6. To spend time with a covered service member who is on leave during the period of deployment (leave taken for this purpose can be used for a period of five calendar days).

7. To engage in post-deployment activities including ceremonies, reintegration briefings, and issues relating to the death of a covered service member.

Substantially equivalent position: A position that has the same pay, benefits and working conditions, including privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.

PROVISIONS / REQUIREMENTS

1. Employees may be eligible for up to 12 work weeks (480 hours), or 26 work weeks for covered service members, of FMLA leave, during any 12-month period. The 12-month period in which employees are entitled to 12 workweeks of FMLA leave is the 12 months calculated backwards from the date employees use any FMLA leave.

2. FMLA leave may be used by eligible employees for:

   a. A serious health condition of an employee that makes the employee unable to perform an essential function of the job.

   b. The care of an employee's spouse, domestic partner, child, or parent who has a serious health condition.

   c. For any of the following: 1) the birth of a son or daughter; 2) to care for the newborn child (i.e., baby bonding time); or 3) for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child (i.e., baby bonding time).

      1) FMLA leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement for the adoption or foster care to proceed.

      2) The right to FMLA leave related to the birth or placement of a child (i.e., baby bonding time) expires 12 months after the birth or placement of a child; and

      3) In the event that both parents are employees of the State of Missouri, leave for baby bonding time following the birth or placement of a child shall be limited to a period of 12 weeks (480 hours) between the parents.

   d. A qualifying exigency resulting from a situation where an employee's spouse, domestic partner, child, or parent is on covered active duty, or has been notified of an impending call or order to active duty, in the Armed Forces in support of a military operation which involves military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

3. When accrued paid leave (sick leave, annual leave, or compensatory time) is used for an FMLA qualifying reason, it must apply toward the total 12 workweeks of FMLA leave available and will run concurrently.

4. Employees have the right to take FMLA leave all at once, or, when medically necessary, in separate blocks of time, or by reducing the time they work each day or week. Intermittent or reduced schedule leave is also available for military family leave reasons. However, employees may use FMLA leave intermittently or on a reduced leave schedule for bonding with a newborn or newly placed child only if they and the department agree on a reduced schedule. FMLA 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.

5. Employees requesting FMLA leave for their own serious health condition, or to care for their spouse, domestic partner, parent, or child with a serious health condition, must use their accrued leave concurrently with FMLA leave. Employees requesting FMLA leave to care for a covered servicemember with an injury or illness are also required to use their accrued leave concurrently with FMLA leave, in accordance with department leave policies. Use of accrued paid leave must start at the same time FMLA leave starts.

   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, domestic partner, child, or parent.

6. 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.

7. 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).

8. Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, within one or two business days of learning of the need for leave. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable, which is typically within two business days of learning of the need for leave. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

   When leave beyond FMLA is necessary, employers may request reasonable medical information to substantiate the existence of a qualifying disability and need for accommodation when this information is not already available. Not all employees who take

FMLA leave for a serious health condition will qualify for an Americans with Disabilities Act (ADA) accommodation, though many with medical impairments may be eligible. Requests for a job accommodation for an ADA qualifying condition must be received prior to the expiration of the approved FMLA period.

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 a certification form to be submitted to HR. Form WH-380-E, “Employee’s Serious Health Condition,” and Form WH-380-F, “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 or veteran. Form WH-384, “Qualifying Exigency,” Form WH-385, “Military Caregiver Leave of a Current Servicemember,” or Form WH-385-V, “Military Caregiver Leave of a Veteran,” should be used by employees to provide this information.

   Employees must provide the requested certification within 15 calendar days of requesting FMLA leave 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.

   Once an employee has completed the appropriate certification form, HR must provide notification of approval or denial of FMLA leave. HR will provide the response using Form WH-381, “Eligibility Notice and Rights and Responsibilities,” and Form WH-382, “Designation Notice.”

   If the department has reason to doubt the validity of the medical certification, a second certification may be requested 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.

   The regulations allow recertification no more often than every 30 days in connection with an absence by the employee unless the condition will last for more than 30 days. For conditions that are certified as having a minimum duration of more than 30 days, the employer must wait to request a recertification until the specified period has passed, except that in all cases the employer may request recertification every six months in connection with an absence by the employee. The regulations also allow an employer to request recertification in less than 30 days if the employee requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the employer receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of the certification.

   Additionally, employers may request a new medical certification each leave year for medical conditions that last longer than one year. Such new medical certifications are subject to second and third opinions.

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 the 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. After using FMLA leave, an employee must be able to return to the same job or to an "equivalent job." An equivalent job means a job that is virtually identical to the employee's original job in terms of pay, benefits, and other employment terms and conditions. An employee should usually be able to return from FMLA leave to their original schedule and work location.

    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 3500, “Sick Leave.”



Ashley Halford
Human Resources Director

CROSS REFERENCES

Personnel Policy 0509, "Temporary Modified Duty Assignments"
Personnel Policy 3001, "Annual Leave"
Personnel Policy 3500, "Sick Leave"
Personnel Policy 3511, "ShareLeave Program"
Personnel Policy 3516, "Parental Leave"
Personnel Policy 6508, "Domestic and Sexual Violence"

FORMS

Form WH-380-E: Employee's Serious Health Condition.
Form WH-380-F: Family Member's Serious Health Condition.
Form WH-381: Eligibility Notice and Rights and Responsibilities
Form WH-382: Designation Notice
Form WH-384: Qualifying Exigency
Form WH-385: Military Caregiver Leave of a Current Servicemember
Form WH-385-V: Military Caregiver Leave of a Veteran