

Appendix Q

Family and Medical Leave (FMLA/FLA) Personnel Procedure

Purpose:

To explain how the Family and Medical Leave Policy (Chapter 4.26) will be administered.

Eligibility

To be eligible for leave under the federal Family and Medical Leave Act (FMLA), an employee must have worked for the District for 12 months (over any time frame, including a break in service not to exceed 7 years) and have worked a minimum of 1250 hours in the 12 months immediately preceding the request for leave. Except for Military Caregiver Leave, the District uses a rolling 12 month period calculated backwards from the date an employee first uses leave.

1. Leave Entitlement: An eligible employee may be granted up to 12 workweeks of unpaid leave during any 12 month period for one or more of the following reasons:
 - a. For incapacity due to pregnancy, prenatal medical care, or child birth, and care of the newborn;
 - b. For pre-adoption activities, or to care for a child after placement in the home for adoption or foster care;
 - c. To care for the employee's parent, spouse, or child with a *serious health condition*;
 - d. For the employee's *own serious health condition* that makes the employee unable to perform the essential functions of his/her job;
 - e. For a *qualifying exigency* arising from an employee's parent, spouse or child's call to active National Guard or military Reserve duty in support of a contingency operation.
 - i. *Exigency leave*: Is only available to family members of those in the National Guard and Reserves and to *certain retired military recalled to duty*.
 1. Does not apply to families of active members of the regular armed forces.
 2. Only applies to a federal call to duty or a state call *under order of the president*.
 - f. For *Military Caregiver Leave*: An employee who is the spouse, son, daughter, parent, or *next of kin* of a covered service member with a serious illness or injury incurred in the line of duty while on active duty is entitled to a total of **26 workweeks** of unpaid leave *during a single 12-month period* to care for the service member.
 - i. There is a separate "*FMLA year*" for *military caregiver leave*. It is measured *forward from the first day caregiver leave is used and ends 12 months later*.
 - ii. Once an employee takes military caregiver leave, and has begun the "*FMLA year for military caregiver leave,*" *the employee can take a maximum of 26 weeks of leave for any FMLA purpose.*

2. Leave for Pregnancy Disability and to Care for Newborn: In addition to the federal FMLA described above, state law provides certain additional leave rights in connection with pregnancy related disability and to care for a newborn.
 - a. *Pregnancy Disability Leave*, for the period of time the employee is temporarily disabled or incapacitated due to pregnancy or childbirth, must be granted regardless of the employee's eligibility for FMLA.
 - i. If the employee is eligible for FMLA leave, the Pregnancy Disability leave will run concurrently with her FMLA leave.
 - ii. If the employee is not eligible for FMLA leave, the employee must use her paid leave(s) (per District sick and vacation leave policies) for Pregnancy Disability Leave.
 - iii. Once the employee has exhausted her paid leave, she may be placed on leave without pay status for the duration of her Pregnancy Disability Leave.
 - b. The Washington Family Leave Act (FLA): provides certain additional leave benefits to care for a newborn.
 - i. Except for *qualifying exigency leave* and *service member caregiver leave*, the FLA largely mirrors the FMLA, with the same eligibility standards and entitlement to 12 weeks of leave for family and medical reasons. As with FMLA leave, the employee is required to use accrued paid leave(s) as part of their FLA leave.
 - ii. In most situations, leave under the FLA runs concurrently with FMLA leave. FLA leave does not run concurrently with Pregnancy Disability Leave. In this instance, FLA leave is in addition to any leave taken for Pregnancy Disability.

For example, assume an FMLA and FLA eligible employee works up to her delivery date, and (per her doctor's certification) needs 6 weeks of Pregnancy Disability Leave to recover from childbirth. This 6 week period is also covered by FMLA leave. Once the employee is no longer disabled from childbirth, she is still entitled to 12 weeks of FLA leave to care for the newborn. Thus the total leave entitlement would be 18 weeks - 6 weeks of Pregnancy Disability leave, and 12 weeks of FLA leave. Only the first 12 weeks of leave would run concurrently with FMLA leave.
3. Differences between federal FMLA and state FLA
 - a. Under the federal Family and Medical Leave Act (FMLA), the District must continue to pay its portion of the employee's health insurance premium for up to 12 workweeks of FMLA leave.
 - i. ***The District is not required*** to pay employee health insurance premium under the state Family Leave Act (FLA) or for Pregnancy Disability Leave unless they run concurrent with FMLA leave.
 - ii. In the above example, the District's obligation to pay its portion of the health insurance premium ends with the completion of 12 weeks of FMLA leave, even though the employee may be entitled to use an additional 6 weeks of FLA leave.
 - iii. As long as the employee is on paid leave, he/she should continue to receive their benefits in the normal manner.

iv. Under COBRA, once an employee is placed on leave without pay status, he/she is entitled to continue their health insurance on a self-pay basis.

- b. The federal FMLA may run concurrently with other state leave statutes such as Worker's Compensation, Pregnancy Disability Leave, FLA, or Family Care Act Leave. Whenever possible, the District will run leaves concurrently.
- c. Disability or incapacity due to pregnancy or childbirth may not run concurrently with the state FLA.

4. Limitations on FMLA Leave Entitlement

- a. Married couples employed by Whitman County Library are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent with a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is used). FMLA leave for birth and aftercare, or placement for adoption or foster care, must end within 12 months of the birth or placement.
- b. Employees may take FMLA leave intermittently (e.g., in separate blocks of time for a single qualifying reason), or on a reduced work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care of the newborn, or placement for foster care or adoption, use of intermittent leave is subject to District approval.

5. Continuation of Pay and Benefits

- a. FMLA leave is unpaid leave. However, per District policy, employees are required to use their accrued paid leave (e.g. sick, vacation, and/or holiday leave) as part of their FMLA leave entitlement.
- b. Employee use of paid leave, to run concurrent with FMLA leave, must comply with the District's normal policies for using paid leave. Once the employee has exhausted their paid leave, they should be placed on leave without pay for the duration of their FMLA leave.
- c. During the 12 (or 26) workweeks of FMLA leave, the District will continue to pay its portion of health insurance premiums, provided that the employee continues to pay his/her share of the health insurance premiums, if any. **Failure of the employee** to pay his/her portion of the premium may result in cancellation of health insurance. It is the *employee's responsibility* to arrange for continuation of premium payments while on FMLA leave.
- d. If the employee has exhausted FMLA leave, and extends their leave as leave without pay (LWOP), the employee may continue health insurance benefits on a self-pay basis under COBRA.
- e. Benefits that operate on an accrual basis (e.g., vacation and sick leave) will not accrue during any unpaid leave under this policy. Moreover, an employee on leave without pay (LWOP) will not accrue seniority or service time for the employee's eligibility for performance review, salary review or adjustment. The employee's anniversary date should be adjusted per current policy.

- f. An employee's eligibility for qualified benefits (e.g., worker's compensation, retirement or deferred compensation) will be governed by the terms of each respective benefit plan.

6. Employee Notice & Responsibilities

- a. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the District's normal call-in procedures.
- b. Employees seeking *Qualifying Exigency Leave* must give reasonable and practical notice if the exigency is foreseeable. The notice should include: information that a covered family member is on active duty or been called to active duty, provide a **listed** reason for leave (**see list of reasons at end of document**), and an estimate of the duration of the requested leave.
- c. For *Military Caregiver Leave* employees must give as much notice as practicable.
- d. Employees must provide sufficient information for the District to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave.
- e. *Employees also must inform the District* if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- f. **Periodic notification during leave.** Employees should contact their immediate supervisor or manager every two (2) weeks by telephone and once a month in writing/email to report on their status and intentions to return to work at the end of their leave period, unless other arrangements have been made.

7. Certification Requirements

- a. The District may require certification from a health care provider substantiating the employee's leave request. *Anytime an employee expects to be or is absent for more than 3 consecutive work days as the result of his or her own serious health condition (including pregnancy), the employee may be required to submit a medical certification.* Certification requirements differ according to whether the leave is for the employee's own serious health condition or that of a covered family member. When an employee foresees the need for leave and has provided at least 30 days notice, the District may request certification before the leave begins. ***The employee must provide certification within 15 calendar days of the District's request. Failure to provide the requested certification may delay the leave.***
- b. The District may require a second, and in some cases a third, medical opinion, at the District's expense, depending upon the circumstances. During the course of the leave, the District may under certain circumstances require additional medical recertification every 30 days. In addition, if the circumstances giving rise to the need for leave have changed significantly, or if the District has reason to doubt the validity of the stated reason for the absence, the District reserves the right to request recertification at any time.
- c. Employees seeking **Qualifying Exigency Leave** or **Military Caregiver Leave** must certify they are eligible to take leave.

- i. Qualifying Exigency Leave. The employee should provide a copy of the service member's active duty orders, documentation verifying time, place, and date of scheduled pre- or post-deployment activities, and/or complete the Department of Labor (DOL) form WH-384.
 - ii. Military Caregiver Leave. The employee should provide a copy of the Department of Defense (DOD) "*invitational travel orders*" or "*invitational travel authorization*," and/or complete form WH-385.
- d. All employees returning from FMLA leave taken because of their own serious health condition are required to furnish a "*Fitness for duty*" certification before they will be allowed to return to work. The District will consider making a reasonable accommodation for any disability an employee may have where required by law. Medical certification may also be required for any employee who claims he or she is unable to return to work at the scheduled conclusion of a leave or who requests a leave extension.
8. *Reinstatement after leave.* Eligible employees taking leave under this policy will be reinstated to their former position, or to an equivalent position with equivalent benefits and other terms and conditions of employment. However, no employee is entitled under this policy to any right, benefit, or position other than that to which the employee would have been entitled had he or she not taken leave. Thus, for example, if a layoff or some other extenuating circumstance or business condition arises which affects the employee's position, reinstatement may not be possible.

The District also reserves the right to deny leave reinstatement to key employees, where such denial is necessary to prevent substantial and grievous economic injury to the District's operations.

Key employees should be notified in writing of the District's intention to deny reinstatement as soon as a determination is made that such injury would occur.

Key employees are defined as salaried FMLA eligible employees who are among the highest-paid 10 percent of all employees employed by the District within seventy-five miles of the facility at which the employee is employed.

Definitions

Child: includes a biological, adopted, foster child, stepchild, legal ward, or a child of an employee standing in *loco parentis* (i.e., in place of a parent), who is under 18, or older than 18 if incapable of self-care because of a mental or physical disability.

Parent: includes the biological, adoptive, or step parent, or individual who stood in *loco parentis* to an employee when the employee was a child.

Spouse: either a husband or wife as defined under Washington Law and does not include a domestic partner.

Serious Health Condition: Includes an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider (i.e., doctors of medicine or osteopathy who are licensed to practice medicine or surgery by the state in which they practice), or involves a period of incapacity requiring 3 or more days absence from work and necessitates continuing treatment by a health care provider or any period of incapacity due to pregnancy or prenatal care.

Covered Service Member: *an individual* with a serious illness or injury, incurred in the line of duty, while on active duty, as determined by the Department of Defense (DOD), that may render him/her medically unfit to perform the duties of his office, grade, rank, or rating and for which he/she is undergoing medical treatment, recuperation, therapy, or outpatient treatment or is on a *temporary disability retired list (TDRL)*.

Next of Kin: As in the case of defining a son or daughter, “parent” is defined broadly and includes the service member’s biological, adopted, or foster parent; stepparent; or other person who stood in loco parentis to the service member. “Parent” *does not include in-laws*. “Next of kin” *excludes* a service member’s spouse, parent, or child, and is defined as the following blood relatives, in this order of priority:

1. Blood Relatives with legal custody of the service member by court order or statute;
2. Siblings;
3. Grandparents;
4. Aunts and Uncles; and
5. First Cousins

The service member, however, may designate a specific blood relative as next of kin in writing, and that will control. Employers can ask employees for reasonable documentation of family relationships; a simple statement will suffice.

Qualifying Exigencies (Eight types of qualifying exigencies): The regulation contains a “specific and exclusive” list of reasons for qualifying exigency leave, as follows:

1. Short-notice deployment, meaning a call or order that’s given seven or fewer calendar days before deployment. The employee can take up to seven days beginning on the date of notification.
2. Military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member’s call to duty.
3. Urgent (as opposed to recurring and routine) child-care and school activities such as arranging for child care. “Child” is defined more broadly than under the childbirth and adoption leave portions of the FMLA to include a biological, adopted, or foster child; a stepchild; a legal ward of a covered military member; or a child for whom a covered military member stands in lieu of a parent. The child must be either under age 18 or, if older than 18, incapable of caring for herself because of physical or mental disability.
4. Financial and legal tasks, such as making or updating legal arrangements to deal with a family member’s active duty.
5. Counseling for the employee or his minor child that isn’t already covered by the FMLA.
6. Spending time with the covered service member on rest and recuperation breaks during deployment, for up to five days per break.
7. Post-deployment activities such as arrival ceremonies and reintegration briefings, or to address issues from the service member’s death on active duty.

8. Other purposes arising out of the call to duty, as agreed upon by the employee and employer.

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