

**Governor's Office of Homeland Security  
and Emergency Preparedness  
State of Louisiana**

JOHN BEL EDWARDS  
GOVERNOR




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DIRECTOR

**Family and Medical Leave Act (FMLA)  
Policy Number: HR-0007**

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**Approval:**

  
James B. Waskom, Director

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**I. POLICY**

It is the policy of the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) to comply with all provisions of the Family and Medical Leave Act of 1993 as amended. In specific situations that are not covered by this policy, or that are in conflict with this policy, the provisions of the Family and Medical Leave Act ("FMLA") shall apply.

**II. PURPOSE**

The purpose of this policy is to ensure the promulgation of rules governing the FMLA, to assign responsibility for aspects of the policy and to explain the process for adhering to the policy.

**III. APPLICABILITY**

This policy applies to all employees of the GOHSEP.

**IV. Qualifying Leave**

For employee informational purposes, the FMLA generally provides:

### **A. Family or Personal Medical Leave**

Up to 12 weeks of job-protected leave during a 12-month period will be provided to eligible employees under the provisions of the Family and Medical Leave Act of 1993 (FMLA) as amended for the following qualifying events:

1. The birth of a child. \*
2. The acceptance of a child for adoption or foster care. \*
3. To care for the employee's spouse, child or parent with a serious health condition. \*
4. A serious health condition that makes the employee unable to perform the essential functions of his/her job.

\* See Section VI. B. for limitations

### **B. Military Caregiver Leave**

Up to 26 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent, or next-of-kin of a covered service member. A covered service member includes:

1. 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
2. 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 (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

For purposes of Military Caregiver Leave, the single 12-month period is measured forward from the date the employee begins leave to care for the covered service member, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the "Definitions" section for Family Relationships related to Military Caregiver Leave.

### **C. Military Exigency Leave**

Up to 12 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent of a covered service

member for any qualifying exigency, which is a non-medical need for leave due to 1) short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, or 8) additional activities which arise out of a covered active duty, provided that the employer and employee agree, including timing and duration of such leave.

For purposes of “exigency leave”, the term “covered active duty” means –

In the case of a member of the regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 of the the United States Code.

For purposes of Military Exigency Leave, the single 12-month period is measured forward from the date the employee begins leave, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the “Definitions” section for Family Relationships related to Military Leave.

## **V. DEFINITIONS**

### **A. Eligible Employee - An employee who:**

1. Has been employed by the State for a total of at least twelve (12) months (These need not have been consecutive. However, the break in service must not be for more than seven years unless the break was for certain military service) on the date on which any FMLA leave is to commence, and
2. Has worked at least 1250 hours over the 12-month period preceding the start of the leave.

Note: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), a returning member of the National Guard or Reserve is entitled to FMLA leave if the hours that he or she would have worked for the civilian employer during the period of military service would have met the FMLA eligibility threshold.

## **B. Equivalent Position**

An employee returning from FMLA leave will have the same pay, benefits, and working conditions, including privileges, perquisites, and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. Equivalent positions involve the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility, and authority. Equivalent positions will be at the same or a geographically proximate work site where the employee had previously been employed.

## **C. Family Relationships**

1. **Child** - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *en loco parentis* (in the place of the parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
2. **Parent** – a biological or adoptive parent or a person who stood *en loco parentis* to an employee when the employee was a child. This term does not include an employee's mother-in-law or father-in-law.
3. **Spouse** - Husband or wife as defined in accordance with the law of the State in which the employee resides.
4. **Expanded Family Relationships for Military Leave** - Parents of a covered service-member, son or daughter of a covered service-member, next-of-kin of a covered service-member, and son or daughter who is on active duty or called to active duty status.

Next-of-Kin is defined as the nearest blood relative of the service member.

## **D. Health Care Provider**

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
3. Nurse practitioners, nurse midwives, and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
4. Christian Science practitioners with restrictions as outlined in the Federal Regulations;

5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law; or
7. Physician Assistants who are authorized to practice under state law and all medical Para-professionals who are performing within the scope of their practice as defined under state law.

**E. Intermittent Leave**

Under certain conditions, FMLA leave may be utilized in small blocks of time (hours, days, weeks) that total the appropriate FMLA entitlement, rather than being used as periods consisting of consecutive weeks or days. Employees may use leave in the increments allowed by the GOHSEP's leave and time and attendance policies. If an employee qualifies for intermittent leave on an unpredictable basis, the employer must notify the employee upon request every thirty (30) days of the amount of leave time designated as FMLA leave during the preceding thirty days, provided the employee used leave during that period.

**F. Reduced Leave Schedule**

Leave schedule that reduces the usual number of hours per workweek or hours per workday.

**G. Serious Health Condition**

An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Continuing treatment by a health care provider, including any one or more of the following:

**1) Incapacity and treatment:**

A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(a) Treatment two (2) or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a healthcare provider. The first treatment must take place within seven (7) days of the first day of incapacity, or

(b) Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.

**2) Pregnancy or prenatal care:**

Any period of incapacity due to pregnancy or for prenatal care.

**3) Chronic conditions:**

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (Example: asthma).

A chronic serious health condition is one which:

- (a) Requires periodic visits (at least twice a year) for treatment by a healthcare provider,
- (b) Continues over an extended period of time, and
- (c) May cause episodic rather than continuing periods of incapacity.

**G. Treatment**

For purposes of the FMLA, treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

## **H. Twelve-month Period**

1. For purposes of regular family or personal FMLA, the 12-month period begins on the date the first quarter hour of FMLA leave is taken by the employee.
2. For purposes of Military Caregiver Leave and Military Exigency Leave, the 12-month period begins on the date the employee takes the first leave for military reasons. This 12-month period may be different from the 12-month period used for regular FMLA.
3. For purposes of FMLA leave for the birth of a child or acceptance of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.
4. For purposes of Military Caregiver Leave, an employee is limited to no more than 26 weeks of leave during each single 12-month period. This is the case even if the employee takes the leave to care for more than one covered service-member or to care for the same covered service-member who has incurred more than one serious injury or illness and if the single 12-month period involved overlap each other. If leave would qualify as both Military Care Giver Leave and regular FMLA leave, it must be classified as Military Care Giver Leave.
5. During any single 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave. The 26 weeks *Military Caregiver Leave* is not in addition to the 12 weeks of FMLA leave to which eligible employees would be otherwise entitled.

## **I. Subsequent FMLA Period**

Once the initial 12-month entitlement period has been exhausted, the employee does not begin a new entitlement period until the next FMLA qualifying leave usage, provided the employee is eligible.

## **J. "Needed to Care For"**

FMLA is allowed for an employee needed to care for a family member, including providing physical and/or psychological care.

## **VI. PROCEDURE**

### **A. How Leave May Be Scheduled**

Leave may be taken in consecutive days or weeks or it may be taken intermittently or on a schedule that reduces the usual number of hours per workday or workweek when required.

Leave shall be taken in the same increments as allowed in the GOHSEP's leave and time and attendance policies.

**B. Limitations Regarding Leave Schedules**

1. Intermittent or reduced leave schedules following the birth, adoption, or foster care of a child as part of a gradual return-to-work schedule will be allowed if the section chief determines that such intermittent leave does not interfere with the efficient operation of the section. The section chief may stipulate that leave for these purposes must be taken consecutively if that schedule will provide more business efficiency.
2. When both spouses in a family are employees of the Governor's Office of Homeland Security and Emergency Preparedness, they may each take a total of twelve (12) weeks of FMLA, if they are taking leave for the birth or adoption of a child, or to care for a sick parent.
3. FMLA leave runs concurrent with other leave entitlements provided under applicable Executive Orders and federal, state, and local laws.

**C. Usage of Accumulated Leave**

While absent for an FMLA eligible event and using FMLA leave, an employee is also required to use any available balance of applicable paid leave (that is, sick leave, annual leave, or compensatory leave). When all available paid leave is exhausted, the employee will be placed on leave without pay.

**D. Calculation of the FMLA Period for Part-time Employees**

For part-time employees, FMLA leave is calculated as a percentage of the time actually worked.

**E. Duty to Notify**

No later than on the **morning of the third consecutive workday** during which an employee will be absent due to a health condition that might be covered by the FMLA, the employee or his/her spokesperson must notify the Human Resources Office by phone and ensure that he/she talks to a member of the Office in person. This obligation to notify the Human Resources Office is in addition to an employee's obligations to comply with and report absences in accordance with GOHSEP's Leave and Time and Attendance Policy.



**F. Determination that an Absence is FMLA Eligible**

Per Federal Regulations, the employer has the responsibility to determine when an employee's absence is eligible for FMLA even if the employee does not specifically request FMLA leave. In the GOHSEP, the Human Resources Office makes the determination with assistance from the immediate supervisor when appropriate. The determination that an absence is FMLA eligible must be based only on information the employer solicits from the employee or the employee's spokesperson. The employee must respond to the employer's questions that are posed to determine if the absence is FMLA-qualifying. Failure to respond to such inquiries may result in denial of FMLA protection if the employer is unable to determine that the leave is qualifying.

**G. Confidentiality**

All FMLA information and paperwork is to be kept confidential and shall be kept under separate lock and key in the employee's confidential medical file.

**H. Notification to the Employee that his/her Absence is FMLA Eligible**

Once it is known that a qualifying condition might exist, the employee should be notified verbally if appropriate -- but must be notified in writing -- that the absence will be considered FMLA qualifying and deducted from the employee's FMLA balance. Written notice of eligibility for FMLA leave should be provided to the employee within five (5) business days.

If an employee is not eligible for FMLA leave, the employer should provide the employee with written reasons for this determination within five (5) business days of the request.

Should the employer discover later that the absence is not FMLA eligible, the employee shall be so notified, and the leave designated as FMLA will be restored to the employee's FMLA quota.

**I. Notice from Employee of Need for FMLA Leave**

1. **Any time** that an employee requests leave in any category for purpose which is eligible under the FMLA (including military caregiver/exigency), he/she **shall** notify the Office of Human Resources and the immediate supervisor that the leave requested is FMLA leave. If the employee is uncertain as to whether or not the leave is eligible under the FMLA, the Office of Human Resources

should be consulted. Any questions concerning eligibility should be directed to the Office of Human Resources. All forms and notices used must be those provided by the Office of Human Resources.

2. **Foreseeable Need** - When the leave is foreseeable, the employee must provide **30 days advanced** written notice to the Office of Human Resources and the immediate supervisor if possible. If 30 days advance notice is not possible, the employee must notify the Office of Human Resources and the immediate supervisor as soon as the need for leave is known. The Office of Human Resources and/or the supervisor may inquire as to why the employee was unable to give a 30-day notice.
3. **Leave Not Foreseeable** - In cases where the employee cannot provide advance notice, the employee or the employee's spokesperson must give notice to the Office of Human Resources and the immediate supervisor as soon as practicable, but within three (3) workdays following the event.
4. **Military Exigency/Military Caregiver** - Employees must give 30-days advance notice for this type of FMLA leave, or must notify the Office of Human Resources and the immediate supervisor as soon as the need for leave is known. This notice must include anticipated time and duration of the leave needed.

**J. Completed *Certification of Health Care Provider Form***

The employee is required to provide the completed Certification of Health Care Provider form. This completed document provides additional information to the employer to confirm that the absence is FMLA eligible.

**K. Clarification of Medical Certification**

Note: This section does not apply to military leave provisions.

If the medical certification contains deficiencies or needs clarification, the employee must be given an opportunity to verify or clarify. Such clarification must involve the Office of Human Resources and must be in writing. The employee must be given a minimum of seven (7) days to fix any deficiencies or clarify his/her certification.

**L. Group Health and Life Insurance**

**1. Maintenance**

For the duration of Family and Medical Leave, the employee's pre-existing health insurance coverage under the Office of Group Benefits

shall be maintained at the same level and under the same conditions as was provided prior to commencement of the leave.

**2. Premium Payments**

Any supplemental insurance premiums must be paid directly by the employee. The employee must contact the Office of Human Resources to arrange payment of the employee's share of the premiums where appropriate.

**3. When Coverage Is Dropped**

Health insurance benefits may cease if :

- a) The employee informs the agency of his/her intent not to return from leave, or
- b) The employee fails to return from leave, thereby terminating employment, or
- c) The employee exhausts the FMLA leave entitlement.

In some situations, the employee may be entitled to continue health care coverage under COBRA (Consolidated Omnibus Budget Reconciliation Act).

**M. Restoration after Leave**

1. Upon return from Family and Medical Leave, most employees will be restored to their original or an equivalent position. The use of Family and Medical Leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employee returning from a medical FMLA leave may be required to present medical certification of fitness for duty.

2. Restoration may be denied under certain circumstances, including:
  - a) if it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested;
  - b) the employee fails to provide a fitness for duty certificate to return to work, if required;
  - c) the employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave; however, the employee will be given a reasonable opportunity to fulfill such conditions upon return to work;  
or
  - d) the employee is unable to perform the functions of the position because of a physical or mental condition, including the continuation of a serious health condition.

## **VII. RESPONSIBILITY**

All employees are responsible for complying with all aspects of this policy.

## **VIII. QUESTIONS**

Questions regarding this policy should be directed to Human Resources Office.

## **IX. VIOLATIONS**

It is unlawful and thus prohibited for any employer, administrator, manager, or supervisor to:

- a) Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- b) Discriminate against an employee in any way for using his/her FMLA entitlement; or
- c) Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Employees found to have violated this policy may be subject to disciplinary action up to and including termination, and/or denial or delay of requested leave.

## **X. OTHER CONSIDERATIONS**

Should any aspect of the Americans with Disabilities Act (ADA) be applicable, the GOHSEP shall comply with this law.

Any requests from employees for accommodations due to any aspect of the ADA, should refer to GOHSEP Policy *HR-0010 Americans with Disabilities Act*.

## **XI. FORMS**

Specific forms related to compliance with this policy can be obtained from the Human Resources Office.