

The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act requires State agencies to provide up to 12 weeks (480 hours) in a calendar year or 26 weeks in a 12 month period of job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for the state for at least 12 months (not necessarily consecutively) and for at least 1,250 hours over the twelve months immediately preceding the leave. The leave taken may be paid if the employee has leave balances, or unpaid if the employee does not have leave balances. Current state rules do not require employees to exhaust their annual, converted sick, and excess leave balances before going onto unpaid FMLA leave. FMLA leave is covered in DHRM Rule R477-7-15. Employees should be placed on FMLA as soon as the leave commences regardless of whether the leave is paid or unpaid.

The employee may take FMLA leave for any of the following reasons:

- Birth of a child or care for a newborn child (*12 weeks maximum in a calendar year*).
- Placement in your home of a child for adoption or foster care (*12 weeks maximum in a calendar year*).
- Your own serious health condition (*12 weeks maximum in a calendar year*).
- To care for your spouse, child, or parent with a serious health condition (*12 weeks maximum in a calendar year*).
- Qualifying exigency- *leave where a spouse, son, daughter, or parent of the employee is on active or ordered to be called to military duty in the Armed Forces in support of a contingency operation. (12 weeks maximum in a calendar year). Appropriate documentation is required.*
- Service member Care Leave- *An employee who is the spouse, son, daughter, parent, or next of kin of a covered (serious injury or illness as a result of active military service) service member. (26 weeks maximum in a 12 month period)*

Generally speaking, “serious health conditions” must involve: (1) inpatient care (overnight stay) in a hospital or medical care facility, or (2) continuing treatment by a health care provider. Examples include, but are not limited to, pregnancy and childbirth, cancer, appendicitis, pneumonia, severe nervous disorders, and clinical depression.

The employee must complete and submit an “Application for Family and Medical Leave” form 30 days in advance of the leave when it is foreseeable. If 30 days notice is not possible, the employee must give as much notice as they can. This generally means notifying the Agency within one or two workdays of the time an employee first learns of the need for leave, unless extenuating circumstances exist. If the employee does not give timely notice, their FMLA leave benefits may be affected.

SUPERVISORS ROLES AND RESPONSIBILITIES

Supervisors have the unique responsibility for ensuring agency compliance with the FMLA. When employees are absent, sick, or injured, the employees generally tell their supervisor before telling anyone else.

It is not the supervisor's job to diagnose the sickness or injury; rather, the supervisor's roles are to:

1. Know what the employee's rights are.
2. Know when FMLA leave may apply.
3. Notify employees of FMLA information when an employee may qualify for FMLA leave.
4. Not deny a qualifying employee's leave request.
5. Not retaliate against an employee for taking FMLA leave.
6. Understand the relationships among the FMLA, the Americans with Disabilities Act, and Workers Compensation Laws.

NOTIFY APPROPRIATE PERSONNEL OF THE NEED FOR FMLA LEAVE

The human resource representative will determine whether or not an FMLA qualifying condition exists and designate the leave as FMLA, if appropriate. Your agency may require you to provide the "Application for Medical Leave" form to the employee once the employee requests a leave or is absent for any of these reasons. See "employeegateway.utah.gov" to obtain current forms and further information. As the immediate supervisor you will receive notice from your agency's human resource representative or other designated individual when an employee is granted leave for any of the reasons listed below.

Birth or Adoption of a Child

Both the mother and the father of the child can take leave to care for the child. Employees are not required to use accrued sick, annual, converted sick and excess leave before going on unpaid leave. The leave must be completed within one year of the birth or placement. Intermittent leave may not be taken unless both the agency and the employee agree.

Care for a Foster Child

Both the mother and the father can take leave to care for the child. Employees are not required to use accrued annual, converted sick and excess leave balances before going on unpaid leave. The leave must be completed within one year of the placement. Intermittent leave may not be taken unless both the agency and the employee agree.

Emergency or Planned Operation or Medical Procedure

This applies to the employee or if the employee needs to care for a spouse, child, or parent. Employees are not required to use accrued sick, annual, converted sick, or excess leave before going onto unpaid leave.

A Period of Incapacity of Three or More Consecutive Calendar Days

This applies to the employee or if the employee needs to care for a spouse, child or parent. Employees are not required to use accrued sick, annual, converted sick, or excess leave before going onto unpaid leave.

Intermittent Leave Requests that Involve Continuing Treatment

This applies to the employee or if the employee needs to care for a spouse, child or parent. This generally involves treatment by a health care provider, pregnancy, or a chronic (recurring, episodic) condition. Employees are not required to use accrued sick, annual, converted sick, or excess leave before going onto unpaid leave. Any intermittent leave may not be taken in less than ¼ hour increments.

Any Time a Medical Certification Has Been Submitted by the Employee

This involves justification of an absence, especially when required by the agency after an absence of four or more days. If the supervisor is placing an employee on corrective action for absenteeism or lack of production due to absenteeism, check with HR to be sure the employee is not protected under FMLA or other federal programs.

ADDITIONAL CONSIDERATIONS

Confidentiality Requirements

Supervisors should not explore or share the nature of employee illnesses, disabilities, and injuries. Not only under FMLA but under Americans with Disabilities Act, this information should be kept confidential and be divulged only to those who have a bonafide need to know. Generally speaking, share information only with your human resource representative and let him or her decide who else has a need to know.

Do Not Interfere with a Qualified Leave Request

You must not interfere with or deny the exercise of any right provided under FMLA. If the employee requests the leave in advance for a non-emergency medical procedure, it is okay to ask the employee to reschedule if the leave requested will cause an undue hardship on business operations. If the leave cannot be rescheduled, allow the employee to take the originally scheduled leave. Supervisors should confer with the agency human resource representative before denying any leave request for a purpose potentially qualifying under FMLA.

Do Not Retaliate Against an Employee for Taking FMLA

You must not discharge, discipline, or discriminate against any person for taking FMLA leave or for involvement in any proceeding under or relating to FMLA. The following are among actions which may be considered retaliation under FMLA: Giving the employee an unsatisfactory performance evaluation; failing to return the employee to work as quickly as possible; assigning

the employee less desirable duties, ostracizing the employee in any way. Supervisors must ensure that their decisions are job related and consistent with business necessity and not retaliatory or discriminatory.

The Americans with Disabilities Act (ADA), Workers Compensation, FMLA Connection

The ADA, Workers Compensation, and FMLA laws interact and sometimes conflict with each other in various ways. Your role as a supervisor is to help ensure that your agency complies with all three laws. The main relationship between the ADA and the FMLA is indicated under the “Confidentiality Requirements” above. Once again, do not divulge the nature or extent of a disability an employee may reveal to you to anyone (not even your immediate supervisor!) but your human resource representative or the person who is specifically charged with determining eligibility under the FMLA. Furthermore, you should not ask an employee about any disability he or she may have. If an employee reveals a disability and is seeking an accommodation for that disability, it is okay to do the supervisor action list to determine any ideas the employee may have for an accommodation. Any conversations or accommodation beyond this point should include your human resource representative.

As a supervisor, you also need to be concerned with the interactions between Workers Compensation and FMLA. You must be aware that an employee who is out on workers compensation leave cannot be compelled to return to work on a temporary transitional assignment status (TTA) if the employee’s condition also qualifies as a serious health condition under the FMLA. The employee can exhaust his or her 12 week FMLA entitlement before returning to work.