

FAMILY – MEDICAL LEAVE

SCOPE

This policy applies to employees in the state civil service.

STATEMENT OF POLICY

It is the policy of the State of Indiana to allow eligible employees to take leave for the following qualifying events in accordance with the Family and Medical Leave Act of 1993, as amended.

29 CFR §825.100(a)

1. birth of a child;
2. placement of a child for adoption or foster care;
3. for the care of a spouse, child, or parent who has a serious health condition;
4. the serious health condition of the employee which prevents the employee from performing the essential functions of his/her job;
5. because of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on covered active duty or call to covered active duty; or
6. for the care of a covered service member with a serious injury or illness.

Employee Eligibility 29 CFR §825.110

Employees who have

- been employed in an agency under the executive authority of the Governor for at least twelve (12) months (consecutive or non-consecutive);
- worked at least 1250 hours in the twelve-month period immediately preceding the need for family-medical leave; and
- not exhausted their allotment of family-medical leave in the applicable time period are eligible for family-medical leave (FML).

Requests for Family-Medical Leave

- If the need for leave is foreseeable, requests must be submitted at least thirty (30) days prior to taking the leave, or if this is not possible, on the same or next business day of learning of the need for leave. Documentation supporting the need for foreseeable leave must be submitted prior to the beginning of the leave, but in no circumstances later than fifteen (15) calendar days after notice of the need for leave. 29 CFR §825.302
- If the need for leave is not foreseeable, requests must be submitted in accordance with general leave request policies – fifteen (15) minutes before the shift or one (1) hour before shift in a 24/7 operation - barring extenuating circumstances which prevent notice by the employee, or employee's spokesperson, within that time frame. Documentation supporting the need for unforeseeable leave must be submitted no later than fifteen (15) calendar days after the beginning of the leave. 29 CFR §825.303
- Requests may be oral; however, they must be submitted in the form required by the State Personnel Director as soon as practicable.
- Employees requesting leave for which FML may apply are required to provide sufficient information to the employer for a determination to be made whether the absence qualifies for FMLA leave coverage. The employer is responsible for designating leave as FML if appropriate based on the information available without regard to an employee's request to have or not have the leave so designated. 29 CFR §825.301
- The following documentation may be required to support requests for leave, and must be provided if requested: 29 CFR §825.302(c)
 - a completed copy of the appropriate Certification of Health Care Provider for the medical condition of the employee, spouse, child, parent, or covered service member for whose care the leave is requested; 29 CFR §825.306 and 29 CFR §825.310

- documentation of the qualifying exigency includes a copy of the orders for active duty and, if the leave is to meet with a third party, contact information and the purpose of the meeting; 29 CFR §825.309
- documentation of the birth, adoption, or foster care relationship for which parenting leave is requested;
- documentation of family relationship(s) may be required. 29 CFR §825.122(k)
- Leave may be taken in increments no less than fifteen (15) minutes. 29 CFR §825.205(a)
- Leave requested for birth, adoption, or foster care placement must be taken within one (1) year of the birth or initial placement. 29 CFR §825.120(a)(2) and 29 CFR §825.121(a)(2)

Use of Paid Leave 29 CFR §825.207

- Any use of paid leave for an FML-qualifying absence will run concurrently with the FML designation.
- Employer shall designate paid or unpaid leave as FML, whether the employee designates it as such or not, if all the following apply:
 - The employer has compelling information based on information provided by the employee that leave was taken for an FML-qualifying event; and
 - The employee is properly notified of his/her FML rights.
- Employees eligible for premium overtime with a balance of compensatory time shall be required to use such comp time concurrently with any FML absence prior to the use of any accrued benefit leave (sick, vacation, or personal leave).
- Employees shall be required to use any available sick leave if the FML is for the serious health condition of the employee, spouse, child, or parent after exhausting any available compensatory time as required above and prior to use of other accrued benefit leave (vacation or personal leave).
- Employees may choose to use vacation and/or personal leave for an FML-qualifying absence if they want to receive compensation for that absence and they call-in and request that leave within fifteen (15) minutes of the beginning of their shift or one (1) hour prior to the beginning of their shift in a 24/7 operation. This option is available only if the employee does not have a balance of comp time which is required to be used as stated above or if sick leave is not available or appropriate under the circumstances of the leave.
- FML runs concurrently with the elimination and benefit periods of the State's Short/Long Term Disability Plan and may run concurrently with Workers' Compensation if the absence qualifies for both programs.
- Whether FML is paid, unpaid, or a combination, the employee is entitled to only twelve (12) weeks in each fiscal year for leave taken due to qualifying events 1 through 5 above. Leave taken due to qualifying event 6 above (alone or in combination with other qualifying events) is limited to 26 weeks in the single 12-month period designated to care for a covered service member.

Notice to Employee 29 CFR §825.300

- Employer shall at a minimum notify employees of the FML rights:
 - orally within five (5) days of counting the leave as FML; and
 - in writing by the payday following the date leave is designated as FML.
- If the following payday is less than one week from the date leave is designated as FML, employer shall provide written notice to the employee by the next payday.

Intermittent Use of FML 29 CFR §825.202

- Employees are entitled to take intermittent leave for the employee's serious health condition or due to the serious health condition of a parent, spouse, or child, or to care for a covered service member or because of a qualifying exigency.
- To be entitled to intermittent leave, the employee must submit certification to establish the medical necessity of the leave (e.g. periodic testing and treatments) and work with the employer to determine a schedule of treatments that causes the least disruption to operations subject to the approval of the health care provider. The agency may consider a temporary transfer to an alternative, comparable position which better accommodates the intermittent leave or reduced schedule for planned medical treatment.
- Employer may grant employees intermittent leave or a reduced work schedule for the birth or placement of a child if operational needs allow such intermittent leave or a reduced work schedule. Such leaves/schedule must be discussed and agreed upon by the employee and employer prior to the commencement of such leave/schedule.

Medical Certification 29 CFR §825.305, et al.

- Employer shall require employees to provide a new certification annually for each fiscal year for any medical condition for which the need for leave may be expected to continue beyond that fiscal year. The annual certification is subject to calculation of eligibility and second and third opinions may be obtained.
- It is the employee's responsibility to provide a complete and sufficient certification in accordance with 29 CFR §825.306, -.309, or -.310. Such certification must be submitted 30 days in advance of foreseeable absences or within 15 calendar days of the first day of an unforeseeable absence unless it cannot be done under the particular circumstances even with the employee's diligent, good faith efforts. Employees needing an extension must request it prior to the expiration of the 15-day time limit. Unreasonable failure to submit documentation in advance of a foreseeable absence may result in delay of FML coverage which could cause unauthorized absences subject to disciplinary action.
- Certifications must be complete and sufficient. A certification is incomplete if one or more applicable entries have not been completed. A certification is insufficient if the information provided in a completed certification is vague, ambiguous, or non-responsive. Employees have 7 calendar days to correct and resubmit a completed, sufficient certification.
- Employees may provide the employer with authorization to contact their health care provider(s) directly, but are not required to do so. If the employee chooses not to provide authorization and does not otherwise clarify a deficient certification, leave will be denied. 29 CFR §825.306(e)
- In addition to the certification required with a request for leave that qualifies as a serious health condition, employer may require a second opinion from a second health care provider designated and paid for by the employer. 29 CFR §825.307
- If the first and second opinions conflict, employer shall require the employee to submit to a third examination at the agency's expense by a health care provider chosen jointly by the employee and the agency. In choosing the third health care provider, both the employee and the employer must be reasonable and act in good faith. One method of choosing a third health care provider is to request a list of providers in the relevant specialty from the State's third party administrator of the short/long term disability plan. The employee and employer can then work through the list until they agree upon a provider. The opinion of the third health care provider is final and binding. 29 CFR §825.307
- Second and third opinions are not permitted for leave to care for a covered service member if the documentation is issued by Department of Defense, Veterans Administration, or TRICARE. 29 CFR §825.310(a)(1-4)

- Second and third opinions are permitted for leave to care for a covered service member if the documentation is issued by another health care provider. 29 CFR §825.310(a)(5)

Recertification 29 CFR §825.308

- Employer may require employees to provide recertification of the medical necessity for intermittent leave in any event every six (6) months.
- Except as provided above, employer may request recertification no more than once every thirty (30) days in conjunction with an employee's absence unless:
 - the employee requests an extension of the leave;
 - circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
 - the employer receives information that casts doubt upon the continuing validity of the certification.
- Recertifications are at the employee's expense. No second or third opinion on recertification may be required other than the annual certification described above in Medical Certification.
- Recertifications are not permitted for leave to care for a covered service member if the documentation is issued by Department of Defense, Veterans Administration, or TRICARE or because of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on active duty or call to active duty status for deployment to a foreign country.

Verification 29 CFR §825.307

- It is the employee's responsibility to provide a complete and sufficient certification and to clarify the certification if necessary. Employees shall have an opportunity to cure any deficiencies in a medical certification. Subsequent to that opportunity, employer shall be entitled to contact the appropriate health care provider to authenticate the document submitted and/or to clarify the information on the document. Authentication and clarification do not involve gathering additional information not covered by the certification form. 29 CFR §825.307
- Contact with a health care provider may be made by another health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health care provider. 29 CFR §825.307(a)
- Employer may contact third parties or Department of Defense to verify meetings and/or active duty orders pursuant to leave requests because of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on covered active duty or call to covered active duty. No additional information may be requested and the employee's permission is not required. 29 CFR §825.309(d)
- Use of family-medical leave for any purpose other than its intended purpose will be considered grounds for disciplinary action up to and including dismissal.

Employee Benefits 29 CFR §825.209 through -.213

- The employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- Employees in an unpaid status for a full pay period while under an approved FML leave are responsible for only the employee share of premiums.
- The employee's portion of that premium payment will be deducted from the employee's paycheck(s) upon return to pay status. The amount deducted from each paycheck will depend upon the number and amount of premiums required to cover the full unpaid absence.
- If the employee does not return to pay status or if any of the missed premiums are not recovered prior to the end of the calendar year through payroll deductions, the employee will

be billed at home by the insurance carrier(s) for the employee portion of the missed premiums. Employees will have a minimum thirty (30) day grace period in which to make premium payments for health insurance. The employee's health insurance can only be cancelled if the employee is given at least fifteen (15) days written notice that payment has not been received. Failure to submit payment will result in termination of coverage retroactive to the date for which the last full premium was paid. The employee will be responsible for any claims incurred in the affected benefit timeframe if coverage is terminated for non-payment.

- If coverage lapsed for a period during an unpaid leave of absence due to an employee's failure to pay the employee portion of the premiums, coverage will be reinstated four days after the employee's first paycheck upon returning to pay status.
- Employer may seek reimbursement for any health insurance premiums paid on behalf of the employee if the employee fails to return to work from FML unless the reason for the employee failing to return to work is due to the continuation or recurrence of the serious health condition or is otherwise beyond the employee's control as defined in the FMLA.
- Employees who are reinstated will not lose any service credit and FML will be treated as continuous service for the purpose of calculating any benefits which are based on length of service.

Reinstatement 29 CFR §825.214 through -.219

- Employees are entitled to reinstatement to the same or similar position upon return from FML.
- If the same job is not available, the employer will determine in which similar position the employee should be placed, making sure the position has equivalent pay, benefits, and conditions of employment.
- Employees who take leave due to their own serious health condition may be required to provide certification from a health care provider that they are able to perform the essential functions of their position. If the employee's condition qualifies as a disability under the ADA and s/he submits a return-to-work statement with restrictions, an interactive discussion is required to determine whether effective reasonable accommodation(s) can be implemented without undue hardship that will enable the employee to perform the essential functions of the job.

Protections 29 CFR §825.220

- Employers are prohibited from interfering with exercise of rights under the FMLA.
- Individuals, not just employees, are protected from retaliation.

Recordkeeping 29 CFR §825.500

- Employer will maintain records of leave balances and usage.
- Medical records accompanying FML requests will be kept separate from personnel files in a confidential manner.

REFERENCES

29 CFR Part 825

IC 4-15-2.2-10

31 IAC 5-8

31 IAC 5-9

FMC on Job Classifications Normally Eligible for Premium Overtime

Leaves of Absence Policy/R&P

Vacation Leave Policy/R&P

Sick Leave Policy/R&P

Personal Leave Policy/R&P

Military Family Leave Policy/R&P

Hours of Work and Overtime Policy/R&P
Worker's Compensation Law and Rules
<http://www.in.gov/spd/2397.htm> for additional information

EFFECTIVE

Supersedes Family-Medical Leave Policy dated March 27, 2015.

APPROVED Brandy L. Hendrickson
Brandy L. Hendrickson, State Personnel Director

Date 2/1/2017