State of Ohio
Family and Medical Leave (FMLA) Policy

BASIC LEAVE ENTITLEMENT

The Family and Medical Leave Act (FMLA) allows an eligible state employee to take up to twelve workweeks of leave per rolling twelve-month period for the following qualifying events:

- Incapacity due to pregnancy, prenatal medical care or child birth;
- Caring for the employee’s child after birth, or placement for adoption or foster care;
- Caring for the employee’s spouse, child, or parent with a serious health condition; or
- The serious health condition of the employee that makes the employee unable to perform the employee’s job.

QUALIFYING EXIGENCY LEAVE ENTITLEMENTS

Eligible employees with a spouse, child, or parent on federal active duty or call to federal active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies include activities related to short-notice deployment, attending military events, arranging for alternative childcare or attending school activities, addressing financial and legal arrangements, attending counseling sessions, attending post-deployment reintegration briefings, and spending time with a covered military member who is on rest and recuperation leave.

MILITARY CAREGIVER LEAVE ENTITLEMENTS

Employees may also be eligible to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

“Covered servicemember” refers to an employee’s spouse, child, parent or next of kin, who is a current member of the Armed Forces, including a member of the National Guard or Reserves, who incurred a serious injury or illness in the line of active duty that renders the servicemember medically unfit to perform his or her duties and for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or in on the temporary retired list.

“Next of kin” has the same definition as set forth in 29 CFR 825.127(b)(3).

The 26 weeks of leave is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any “single 12-month period.”

The “single 12-month period” begins on the first day the employee takes leave to care for the covered servicemember and ends 12 months after that date. An employee who is entitled to take leave due to a different FMLA-qualifying reason make take leave during the same single 12-month period in which leave is taken to care for a covered servicemember, but the total leave taken for any purpose during the single 12-month period may not exceed 26 workweeks overall.
EMPLOYEE ELIGIBILITY

Employees are eligible if they meet both of the following criteria:

1) They have been employed by the state for at least twelve months and,
2) They have actually worked (i.e., in "active work status") at least 1,250 hours during the past twelve months.

Previous employment with the state in which the employee was paid directly by warrant of the director of budget and management shall count toward meeting the twelve-month employment requirement.

“Active work status” includes overtime hours worked and is defined as "the conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, and disability leave." (AC 123:1-47-01 (A)(3)).

For purposes of determining FMLA eligibility, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that a person reemployed under its provisions be given credit for any time he or she would have been employed but for the military service. Each month served performing military service counts as a month actively employed by the employer. The employee’s pre-service work schedule can generally be used to determine the number of hours that would have been worked during the period of military service.

Eligible employees are entitled to the full amount of FMLA leave even if their spouse has already exhausted leave for a qualifying event.

Agencies must notify employees in writing of their eligibility or non-eligibility status within five business days after the first time an employee requests leave for a particular qualifying reason in a rolling 12-month period or within five days after an employer receives knowledge that the reason for an employee’s leave may be FMLA-qualifying. This notice only indicates whether the employee is eligible for FMLA leave and is not determinative as to whether the employee’s leave qualifies for FMLA.

REQUESTS FOR FMLA LEAVE

If the need for leave is foreseeable, employee requests must be submitted in writing at least thirty days prior to taking leave. If the need for leave is unforeseeable, employee requests must be made as soon as practicable and must comply with an agency’s normal call-in procedures.

Leave taken for the birth or placement of a child must be taken within one year of the date of birth or placement of the child.

Employees must submit requests on their agency’s standard leave request form. Employees who know the requested leave is for an FMLA-qualifying event may specify that the leave is requested pursuant to the FMLA.
CERTIFICATIONS

If the agency does not have enough information to determine whether the employee’s leave is taken for FMLA-qualifying reason, the agency may require the employee to submit a complete and sufficient certification on one of the following forms, depending on the nature and condition of the leave requests:

- Certification of Health Care Provider for Employee’s Serious Health Condition
- Certification of Health Care Provider for Family Member’s Serious Health Condition
- Certification of Qualifying Exigency for Military Family Leave
- Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
- Equivalent documentation in the case of an adoption/foster care.

 Agencies may contact the employee’s health care provider for the purpose of clarification and authentication of the medical certification after the agency has given the employee an opportunity to cure any deficiencies. To make such contact, an agency must use a health care provider, a human resources professional, a leave administrator or a management official. The employee’s direct supervisor may not contact the employee’s health care provider. Additionally, the requirements of the Health Insurance Portability and Accountability Act (HIPAA) must be satisfied when individually-identifiable health information of an employee is shared with an employer by a HIPAA-covered health care provider.

For leave taken because of an employee’s own serious health condition or the serious health condition of a family member, agencies may require a second opinion from a second health care provider designated by and paid for by the agency. If the first and second opinions conflict, agencies may 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 agency must be reasonable and act in good faith. The opinion of the third health care provider is final and binding.

An agency may require an employee to provide recertification of an employee or family member’s serious health condition at any time if:

- The employee requests an extension of leave;
- Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or
- Leave taken by the employee is inconsistent with the circumstances described in the employee’s certification.

Absent such circumstances, if the medical certification indicates that the minimum duration of the condition is more than 30 days, an agency must wait until that minimum duration expires before requesting a recertification. However, in all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee.

Second and third opinions are not permitted on an employer’s request for recertifications. Second and third opinions and recertifications are not permitted for leave taken because of a qualifying exigency or for leave taken to care for a covered servicemember.
Where the employee’s need for leave due to the employee’s own serious health condition, or the serious health condition of the employee’s covered member lasts beyond a single leave year, the agency may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification, including second and third opinions.

**DESIGNATION NOTICE**

Within five business days after receiving enough information to determine whether the leave is taken for a FMLA-qualifying reason (e.g., after receiving a complete and sufficient certification), the agency must notify the employee whether the leave will be designated and will be counted as FMLA leave. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period.

If the agency determines that the leave will not be designated as FMLA-qualifying, the agency must notify the employee of that determination.

The agency must notify the employee of the amount of leave counted against the employee’s FMLA entitlement. If the amount of leave needed is not known, then the agency must provide notice of the amount of leave counted against the employee’s FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period.

**USE OF FMLA LEAVE**

Employees may take intermittent leave when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

In reviewing an employee’s request for intermittent leave, the agency Human Resources office shall determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.

Leave must be taken in increments of no less than 1/10 hour. If it is physically impossible for an employee using intermittent leave to commence or end work mid-way through a shift, the entire period that the employee is absent may be designated as FMLA leave and be counted against the employee’s FMLA entitlement.

Holidays that occur during a full week of FMLA leave will count against the employee’s FMLA entitlement. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee’s FMLA entitlement unless the employee was otherwise scheduled and is expected to work during the holiday.

If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee’s ability to work overtime, the overtime hours which the employee would have been required to work may be counted against the employee’s FMLA entitlement.

Agencies may grant employees intermittent leave for the birth or placement of a child. Intermittent leave for the birth or placement of a child shall be upon approval of the employee’s supervisor and the Human Resources office. Employees should request such leave from their supervisors and may request a review from their Human Resources office of any decision made.

An employee on FMLA leave shall not hold outside employment while on FMLA leave without the prior written approval from the agency’s Human Resources office.
INTERACTION WITH OTHER LEAVE PROGRAMS

Employees shall exhaust all accrued sick, vacation, personal leave, and compensatory time balances, as appropriate, prior to going on unpaid leave. The paid leave used will count concurrently as FMLA leave.

When FMLA leave is used concurrently with Disability Leave, Workers' Compensation, or Adoption/Childbirth Leave, the leave policies for those programs shall override the requirement of this policy for employees to exhaust all of their accrued leave.

Employees requesting Workers' Compensation, Occupational Injury Leave, or Disability Leave who are also eligible for FMLA leave shall have up to twelve weeks of the non-working portion of the approved benefit period, including any required waiting period, count concurrently as FMLA leave. Agencies may also grant FMLA leave to employees while their request is being reviewed. The granting of FMLA leave shall have no bearing on the approval or disapproval of employees' requests.

Employees requesting Adoption/Childbirth leave benefits who are also eligible for FMLA leave shall have the entire non-working portion of Adoption/Childbirth leave, including the required waiting period, count concurrently as FMLA leave. An employee who is not eligible for FMLA leave (e.g., the employee has not been in active work status for 1,250 hours during the previous twelve months or has already used his or her twelve workweeks of FMLA leave) shall retain his or her right to Adoption/Childbirth leave upon meeting the Adoption/Childbirth leave eligibility requirements.

EMPLOYEE BENEFITS

Agencies are required to continue paying the employer's portion of health insurance premiums during approved FMLA leave.

Employees are required to continue paying the employees' portion of health insurance premiums. Information on how health insurance premiums are to be paid while on FMLA leave may be obtained from the Human Resources or Payroll office.

Employees shall be given a thirty-day grace period from the due date of their health insurance premium. Employees who fail to pay their portion of the health insurance premium within this grace period may, with fifteen days notice from their agency Human Resources or Payroll office, be removed from their respective health insurance plan. Agencies that cancel an employee's health insurance without giving fifteen days notice become liable for the employee's health care costs.

If an employee chooses not to continue health care coverage during FMLA leave, the employee will be entitled to reinstatement into the benefit plan upon return to work.

Agencies may seek reimbursement for any health insurance premiums paid on behalf of the employee if the employee's failure to return to work from FMLA leave, 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 FMLA leave will be treated as continuous service for the purpose of calculating any benefits that are based on length of service.
REINSTATEMENT

Employees are entitled to reinstatement to the same or similar position upon return from leave.

If the same job is not available, the agency's Human Resources office will determine in which similar position the employee should be placed, making sure that the position has equivalent pay, benefits and conditions of employment.

Before they are reinstated, 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.

RECORDKEEPING

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

GENERAL NOTICE REQUIREMENT

All agencies are required to post and distribute a notice of FMLA rights and responsibilities and the state and agency FMLA policies. This material should be included in the agency’s handbook (if one exists), in a conspicuous place on the agency’s premises, and should be distributed to each new employee upon hiring. Electronic posting and distribution is permissible so long as all employees and applicants have access to the information.

Questions or requests for assistance should be addressed to each agency Human Resources Office.