


**Family and Medical Leave (FMLA)**

POLICY NUMBER: 200-05	EFFECTIVE DATE: February 07, 2020	APPOINTING AUTHORITY APPROVAL: 
REPLACES POLICY DATED: 02/28/11	AUTHORITY: Family and Medical Leave Act of 1993, as amended; 29 CRF Part 825; ORC Chapter 5906; State of Ohio Family and Medical Leave Policy (HR-21).	

**I. PURPOSE**

The Department of Administrative Services (DAS) developed this policy to inform DAS employees about leave entitlements provided by the Family and Medical Leave Act of 1993, as amended (FMLA), and to establish the standards used by DAS to administer FMLA leave.

A glossary of terms can be found in this policy as Appendix A – Definitions. The first occurrence of a defined term is in *italics*.

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## II. POLICY

It is the policy of DAS to provide eligible DAS employees with the ability to take job-protected leave for certain family and medical reasons, as required by the FMLA and other applicable law.

**1.0 Types of FMLA Leave Entitlements.** For purposes of explanation within this policy, the various FMLA leave entitlements are organized into three primary categories: 1) General; 2) Qualifying Exigency; and 3) Military Caregiver. This section explains the basic criteria for each of the three categories. Please note, additional requirements and other guidance are discussed in greater detail in later sections.

1.1 GENERAL LEAVE ENTITLEMENTS: The FMLA allows an eligible employee to take up to 12 work weeks (typically, 480 hours) of leave per *rolling 12-month period* for certain qualifying events.

1.1.1 Qualifying Events: The General Leave Entitlement is available for the following qualifying events:

1.1.1.1 Periods of incapacity due to pregnancy, prenatal medical care, and/or child birth;

1.1.1.2 To care for the employee's child after birth or placement for adoption or foster care;

1.1.1.3 To care for the employee's *spouse, child, or parent* with a *serious health condition*; and/or,

1.1.1.4 To care for the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job.

1.1.2 Timing Limitations: Leave availability for some of the qualifying events listed above may be subject to additional timing limitations.

1.1.2.1 ADOPTION/CHILDBIRTH: 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.

1.2 QUALIFYING EXIGENCY LEAVE ENTITLEMENTS: An eligible employee may take up to 12 work weeks (typically, 480 hours) to address certain qualifying exigencies when the employee's spouse, child, or parent is: 1) a member of the Armed Forces (including National Guard and Reserves); and 2) on *Covered Active Duty or Call to Covered Active Duty*.

1.2.1 Qualifying Exigencies: The Qualifying Exigency Leave Entitlement is available for the following exigencies:

1.2.1.1 Issues arising from short-notice deployment;

1.2.1.2 Attending military events and related activities;

1.2.1.3 Arranging for alternative childcare or attending school activities;

1.2.1.4 Activities related to care of a member's parent who is incapable of self-care and when the care is necessitated by the member's covered active duty or call to covered active duty;

1.2.1.5 Addressing financial or legal arrangements;

1.2.1.6 Attending counseling sessions;

1.2.1.7 Attending post-deployment activities;

- 1.2.1.8 Spending time with a member who is on rest and recuperation leave; and,
  - 1.2.1.9 Any other circumstance that the employee and DAS agree is a qualifying exigency.
- 1.2.2 Timing Limitations: Leave availability for certain qualifying exigencies is subject to additional timing limitations.
- 1.2.2.1 *Short-Notice Deployment*: Leave for issues arising from *short-notice deployment* may be taken for a period of up to 7 days from the day the member receives notice of deployment.
  - 1.2.2.2 *Post-Deployment Activities*: Leave for post-deployment activities must occur within 90 days of the end of the Military Member's Covered Active Duty.
  - 1.2.2.3 *Rest and Recuperation*: Leave to spend time with a Military Member who is on rest and recuperation may be taken for up to 15 calendar days and must be taken while the member is on rest and recuperation leave.
- 1.3 MILITARY CAREGIVER LEAVE ENTITLEMENTS: Eligible employees may take up to 26 weeks of leave during a single 12-month period to care for their spouse, child, parent, or next of kin who is a *covered service-member* suffering from a *serious injury or illness*.
- 1.3.1 Availability: The 26 weeks of leave is to be applied on a per-covered-service-member, per-serious injury or illness basis. Employees may be entitled to additional periods of military caregiver leave if they care for more than one covered service-member or if they care for a single covered service-member who suffers an additional serious injury or illness in a different 12-month period. However, employees are not entitled to more than 26 weeks of leave within any single 12-month period.
  - 1.3.2 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. If an employee does not take all of his or her 26 weeks of leave entitlement during this single 12-month period, the employee forfeits his or her right to take the remaining portion of the leave entitlement.
  - 1.3.3 Interaction with Other FMLA Leave Entitlements: An employee who is entitled to take FMLA leave due to a different FMLA-qualifying reason may take such leave during the same single 12 month period in which leave is taken to care for a covered service-member, but the total leave taken for all FMLA-qualifying reasons during the single 12 month period may not exceed 26 work weeks.

## 2.0 Employee Eligibility

- 2.1 GENERAL CRITERIA: To be eligible for FMLA leave, an employee must meet both of the following conditions:
- 2.1.1 12-Months: The employee must have been employed by the State of Ohio for at least 12 months; and

- 2.1.1.1 Previous employment with the State of Ohio in which the employee was paid directly by warrant of either the Auditor of State or the Director of the Office of Budget and Management will count toward meeting the 12-month employment requirement.
- 2.1.2 1,250 Hours: The employee must have been in *active work status* at least 1,250 hours during the 12 months immediately preceding the date that the requested leave would begin.

## 2.2 SPECIAL ELIGIBILITY RULES:

- 2.2.1 Military Service: For purposes of determining FMLA eligibility, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that a person re-employed 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.
  - 2.2.1.1 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.
- 2.2.2 Spouse: Eligible employees are entitled to the full 12 work weeks of FMLA leave even if their spouse has already exhausted leave for the same qualifying event. Similarly, when the employee and spouse are both employed by DAS (and both are otherwise "eligible employees"), both are entitled to the full amount of FMLA leave even if the other employee/spouse has already exhausted leave for the same qualifying event.

## 3.0 Certification

- 3.1 GENERALLY: If OES does not have enough information to determine whether an eligible employee's request for FMLA leave is for an FMLA-qualifying reason, OES may require the employee to submit a complete and sufficient certification of the employee's need for FMLA leave.
  - 3.1.1 Subsequent Certification Requirements: Additionally, certification may be required at a later date to address matters that arise regarding the appropriateness of the leave or its duration.
- 3.2 NOTICE OF CERTIFICATION REQUIREMENT: If certification is required, OES will notify the requesting employee of the requirement within the *Notification of Eligibility and Rights & Responsibilities* information that is provided to the employee. This notice will be provided to the employee within five (5) business days of OES's receipt of the employee's request for FMLA leave.
- 3.3 FORMS: If certification is required, the requesting employee must submit a complete and sufficient certification on the form(s) provided by OES. Depending on the circumstances for the leave request, OES will supply the employee with one or more of the forms listed below:
  - 3.3.1 Certification of Health Care Provider for Employee's Serious Health Condition
  - 3.3.2 Certification of Health Care Provider for Family Member's Serious Health Condition

- 3.3.3 Certification of Qualifying Exigency for Military Family Leave
  - 3.3.4 Certification for Serious Injury or Illness of Covered Service Member
  - 3.3.5 Equivalent documentation in the case of an adoption/foster care
- 3.4 TIME FOR RETURNING CERTIFICATION FORMS TO OES: Employees who are required to provide certification must return the completed certification form(s) to OES within fifteen (15) calendar days from the date OES requested the certification.
- 3.4.1 Cost: The employee is responsible for paying the cost of the medical certification and for making sure the certification is provided to OES. Any additional recertification reports (discussed in Section 4.8) requested by OES will also be at the employee's expense.
  - 3.4.2 Failure to Comply with Certification Requirements: An employee's failure to timely provide complete certification documentation may result in denial of the employee's request for FMLA leave, unless the employee can demonstrate it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
- 3.5 CLARIFICATION AND AUTHENTICATION OF CERTIFICATIONS: OES may contact the employee's health care provider for the purpose of clarification and authentication of the medical certification.
- 3.5.1 If there is a deficiency in the certification response, OES generally will not contact the employee's healthcare provider until after providing the employee with an opportunity to cure the deficiency.
  - 3.5.2 Only a health care provider, a human resource professional within OES, a leave administrator, or other appropriate management official may contact the employee's health care provider.
    - 3.5.2.1 The employee's direct supervisor may not contact the employee's health care provider.
- 3.6 MULTIPLE HEALTH CONDITIONS: If an employee or his/her family member has multiple health conditions for which FMLA leave is being requested, a separate medical certification may be required for each individual condition.
- 3.7 SECOND AND THIRD OPINIONS: For FMLA leave taken because of an employee's own serious health condition or the serious health condition of a family member, OES may require a second opinion from a second health care provider selected by OES.
- 3.7.1 Third Opinions: If the first and second opinions conflict, OES may require the employee to submit to a third examination by a health care provider chosen jointly by the employee and OES. In choosing the third health care provider, both the employee and OES must be reasonable and act in good faith. The opinion of the third health care provider is final and binding.
  - 3.7.2 Cost: OES will pay the costs for second, and where applicable, third opinions.
  - 3.7.3 Failure to Cooperate: Failure or refusal of the employee to submit to or cooperate in obtaining either the second or third opinions, if requested, may result in the denial of the employee's FMLA leave request.

- 3.7.4 Qualifying Exigency or Care for a Covered Service Member: Second and third opinions will not be requested for leave taken due to a qualifying exigency or for leave taken to care for a covered servicemember.
- 3.8 RECERTIFICATION: In certain circumstances where an employee's request for FMLA was previously approved for a serious health condition, OES may require the employee to subsequently recertify the employee's need for FMLA leave.
  - 3.8.1 General Standards: Generally, recertification requests will be administered according to the following standards:
    - 3.8.1.1 Employees will not be required to recertify more often than every 30 days.
    - 3.8.1.2 Requests to recertify will only be made in connection with an employee absence or request for leave.
    - 3.8.1.3 If the minimum duration of the period of incapacity specified on a certification furnished by the health provider is more than 30 days, OES generally will not request recertification until that minimum duration has passed. However, OES may require an employee to provide recertification of an employee or family member's serious health condition at any time if:
      - 3.8.1.3.1 The employee requests an extension of FMLA leave;
      - 3.8.1.3.2 Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or
      - 3.8.1.3.3 FMLA leave taken by the employee is inconsistent with the circumstances described in the employee's certification.
    - 3.8.1.4 In all cases, an employer may request a recertification of a medical condition every 6 months in connection with an absence by the employee.
  - 3.8.2 Time for Returning Recertification Forms to OES: The employee must provide the requested certification to OES within 15 calendar days of OES's request for recertification or within the time frame requested by OES, whichever is longer.
  - 3.8.3 Cost: OES will pay the cost for recertifications.
  - 3.8.4 Second and Third Opinions: Second and third opinions will not be requested on recertifications.
  - 3.8.5 Qualifying Exigency or Care for a Covered Service Member: Recertification will not be required where the need for FMLA leave is due to a qualifying exigency for leave taken to care for a covered service member.
- 3.9 NEW CERTIFICATION: Where the employee's need for FMLA leave is due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, and the need for such leave extends beyond a single leave year, OES may require the employee to provide a new medical certification in each subsequent leave year.
  - 3.9.1 Authentication/Clarification and Second/Third Opinions: New medical certifications are subject to the provisions for authentication and clarification, including second and third opinions.

## 4.0 Notices

- 4.1 NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES: OES will notify employees in writing of their eligibility or non-eligibility status, as well as their FMLA rights and responsibilities, within 5 business days after the first time an employee requests FMLA leave for a particular reason in a rolling 12-month period, or within 5 business days after OES receives knowledge that the reason for an employee's leave request may be FMLA-qualifying.
  - 4.1.1 NOT a Designation Notice: This notice only indicates whether the employee is eligible for FMLA leave and is not determinative as to whether the employee's purpose for requesting leave qualifies for FMLA.
  - 4.1.2 Applicability: This notice is not required for FMLA absences for the same qualifying reason during the same leave year or for FMLA absences for a different qualifying reason where the employee's eligibility status has not changed.
    - 4.1.2.1 If the employee requests leave for a different qualifying reason in the same leave year and the employee's eligibility status has changed, OES will notify the employee of the change in eligibility status within 5 business days of the request for leave.
- 4.2 DESIGNATION NOTICE: Within 5 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), OES will notify the employee whether the leave will be designated/counted as FMLA leave.
  - 4.2.1 Non-Qualifying: Employees will also receive such notice where OES determines that the leave will not be designated as FMLA-qualifying.
  - 4.2.2 Amount of Leave Counted as FMLA Leave: The Designation Notice will notify the employee of the amount of leave counted against the employee's FMLA leave entitlement.
    - 4.2.2.1 If the amount of leave needed is not known, then OES 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.
  - 4.2.3 Fitness for Duty: If an employee will be required to submit a statement from a health care provider stating that the employee is fit for duty, this requirement will be indicated on the Designation Notice as provided below in Section 5.3.
  - 4.2.4 Applicability: Only one Designation Notice is required for each FMLA-qualifying reason per applicable 12-month period.
- 4.3 Fitness for Duty Notice: If an employee's FMLA leave is due to his or her own serious health condition, OES may require the employee to submit a statement from a health care provider stating that the employee is able to perform the essential functions of his or her position (with or without reasonable accommodation) upon returning to work.
  - 4.3.1 Placement: As mentioned above in Section 5.2.3, where applicable, this requirement will be indicated on the Designation Notice. An updated position description or list of essential functions will also be included with this notice.

- 4.3.2 Administration: The above described fitness for duty requirement will be imposed in a uniform manner to all similarly situated employees.

## **5.0 Call-Off and Timekeeping Procedures While On FMLA Leave.**

- 5.1 EMPLOYEE CALL-OFF RESPONSIBILITIES: An employee taking leave for an approved FMLA reason must continue to call-off work pursuant to the normal call off procedures as required for any other condition.
- 5.1.1 Alternate Procedure: The employee and the employee's supervisor (and/or OES) may mutually agree on an alternate call-off procedure while the employee is off.
- 5.2 REQUEST TIMING:
- 5.2.1 Foreseeable Leave: If the need for leave is foreseeable, an employee's request must be submitted at least 30 days prior to taking leave or, if this is not possible, as soon as possible. If the employee fails to provide 30-days-notice for foreseeable leave, with no reasonable explanation for the delay, the leave may be denied or delayed until at least 30 days from the date DAS receives notice.
- 5.2.1.1 *Operational Considerations:* When a request is made for FMLA leave due to a foreseeable serious health condition of either the employee or a member of the employee's family, which involves planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unreasonably interfere with the operations of DAS.
- 5.2.2 Unforeseeable Leave: If the need for leave is unforeseeable, the employee's request must be made as soon as practicable and must comply with the normal call-in and leave request procedures.
- 5.3 KRONOS ENTRY: To request leave for an approved FMLA reason, the employee must also submit an FMLA leave request in the Kronos timekeeping system.
- 5.3.1 OES will provide a job-aid to each employee with an approved FMLA leave case. The Kronos FMLA request job-aid is sent to the employee with their FMLA Designation Notice. Instructions are also available on the DAS HRD State Payroll Processing website in the Kronos Employee Tutorial.
- 5.3.2 Once the FMLA leave case has been entered in the Kronos system and the employee and manager have been notified via FMLA Designation Notice, the employee will request their FMLA leave in Kronos.
- 5.3.3 Leave must be taken in increments of no less than 1/10<sup>th</sup> of an hour.
- 5.4 MANAGEMENT RESPONSIBILITIES: Supervisors are required to complete the "Employee Call/Report-Off Form" each time an employee calls-off from work, which shall be forwarded immediately to OES if questions in Part 2 are answered "yes."



- 5.4.1 Follow-up: OES will follow-up with the employee to determine whether the absence is due to an FMLA-qualifying reason or qualifies for any other applicable benefit.

5.5 OVERTIME: 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. However, voluntary overtime hours that an employee does not work due to his or her FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

## **6.0 Interaction with Other Leave While on FMLA Leave.**

6.1 SUBSTITUTION OF PAID LEAVE: Employees will be required to exhaust all accumulated sick, vacation, personal leave, and compensatory time as allowed by law or applicable collective bargaining agreement prior to being granted leave without pay for FMLA requests. The paid leave will count concurrently as FMLA leave.

- 6.1.1 Order: Available paid leave must be used in the following order: sick leave, vacation, personal leave, and compensatory time in lieu of sick.

6.2 LEAVE USAGE WITH OTHER LEAVE PROGRAMS: When FMLA leave is used concurrently with Disability Leave, Workers' Compensation, or Adoption/Childbirth Leave, the standards for those programs, when applicable, shall override the requirement of this policy for employees to exhaust all of their accrued paid leave.

- 6.2.1 Adoption/Childbirth Leave: Employees requesting Adoption/Childbirth leave, who are also eligible for FMLA, shall have the entire non-working portion of Adoption/Childbirth leave, including the required waiting period, count concurrently towards the employee's FMLA leave entitlement.

- 6.2.1.1 *Employee Not Eligible for 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 12 months or has already used his or her 12 weeks of FMLA leave) will retain his or her right to Adoption/Childbirth leave upon meeting the Adoption/Childbirth leave eligibility requirements.

- 6.2.1.2 *Extending FMLA Leave Beyond Adoption/Childbirth Leave*: If an employee chooses to extend his or her leave under FMLA, all available paid leave shall be exhausted prior to going in to a "leave without pay" status in accordance with this policy. OES must receive a written request of the employee's intentions of extending leave under FMLA prior to the end of the adoption/childbirth leave benefit.

- 6.2.2 Disability and Workers' Compensation Programs: Employees requesting Disability Leave or Workers' Compensation, who are also eligible for FMLA leave will have up to 12 work weeks of the non-working portion of the

approved benefit period, including any required waiting period, count concurrently as FMLA leave.

6.2.2.1 *Pending Claim:* Where appropriate, FMLA may be approved while and employee's claim for Disability or Workers' Compensation is pending. OES's FMLA determination will have no bearing on the approval or disapproval of an employee's Disability or Workers' Compensation claim(s).

6.3 HOLIDAYS: Holidays that occur during a full week of FMLA leave will count against the employee's FMLA leave 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 leave entitlement unless the employee was otherwise scheduled and was expected to work during the holiday.

## **7.0 Intermittent Leave and Reduced Schedule.**

7.1 USE OF INTERMITTENT LEAVE: Employees may take *intermittent FMLA leave* when medically necessary for the employee's serious health condition, the serious health condition of a qualifying family member, or military caregiver leave. Intermittent leave may also be used when needed to cover an absence due to a qualifying exigency.

7.1.1 Adoption/Childbirth Leave: An employee may take leave on an intermittent or reduced schedule basis for either the birth of the employee's child or upon the placement of a child for adoption or foster care with the employee.

7.2 SCHEDULE: In reviewing an employee's request for intermittent FMLA leave, OES will determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.

## **8.0 Employee Benefits.**

8.1 PREMIUMS: DAS will continue to pay the employer's portion of the premiums for health, dental, vision, and life insurance benefits under the same terms and conditions as if the employee had continued to work throughout the leave.

8.1.1 Employee Obligation: An employee on FMLA leave is required to continue paying his or her portion of the health care premium and any other benefit paid for by the employee (in whole or in part). Employees are obligated to pay their share of the premium even if the leave is unpaid. Procedures on how health insurance premiums are to be paid while on unpaid FMLA leave may be obtained from OES.

Non-Payment: DAS will not continue to pay the employer portion of health care premiums while the employee is on FMLA leave if the employee fails to pay the employee's portion of the health care premium, or if the employee's payment for his/her portion of the premium is late by more than 30 days.

8.1.1.1 *30 Day Grace Period:* If an employee on FMLA leave fails to timely pay his or her portion of the health care premium, the

employee will have a 30-day grace period from the due date of that premium to pay the amount owed.

- 8.1.1.2 *15 Day Notice:* An employee, who fails to pay his or her portion of the health care premiums within the 30-day grace period, may, with 15 days written notice from DAS, be removed from his or her respective health care plan.

- 8.1.2 **Rate Changes:** Contribution amounts are subject to any change in rates that occurs while the employee is on leave.

- 8.2 **REINSTATEMENT INTO THE PLAN:** 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.

- 8.3 **LENGTH OF SERVICE:** Employees who return to work from FMLA leave will not lose any service credit for the period of time on FMLA leave, and the leave will be treated as continuous service for the purpose of calculating any benefits, which are based on length of service. However, this policy shall not impact service credit calculations/determinations for purposes of any of the State of Ohio public retirement systems.

- 8.4 **REIMBURSEMENT:** If the employee does not return to work, for reasons other than a continued serious health condition or other circumstances beyond the employee's control as described in the FMLA, DAS may seek reimbursement from the employee for any amounts paid for benefits by DAS on the employee's behalf during any period of unpaid FMLA leave.

- 8.4.1 Any arrears in the share of premiums will be collected in total upon return to work unless payment options are agreed upon by the employee and OES.

## **9.0 Outside Employment and Operational Considerations.**

- 9.1 **OUTSIDE EMPLOYMENT:** An employee on FMLA leave shall not hold outside employment while on FMLA leave without the prior written approval from OES.
- 9.2 **OPERATIONAL CONSIDERATIONS:** Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt DAS's operations.

## **10.0 Reinstatement Following FMLA Leave**

- 10.1 **RIGHTS:** An employee on FMLA leave has no greater right to reinstatement, or to other benefits and conditions of employment, than if the employee had been continuously employed.
- 10.2 **FITNESS FOR DUTY STATEMENT:** Prior to reinstatement, employees required to provide a fitness for duty statement as described above in Section 5.3, must provide the required statement from their health care provider before they will be permitted to resume work.

10.3 SAME OR EQUIVALENT POSITION: Upon return from FMLA leave, employees are entitled to reinstatement to the same position the employee held when the leave commenced, or an equivalent position.

10.3.1 Equivalent Position: Upon request for reinstatement, if the position that the employee occupied prior to taking FMLA leave is not available, the employee will be placed in a position which entails substantially equivalent levels of skill, effort, responsibility and authority and which carries equivalent status, pay, benefits, and other terms and conditions of employment as the position the employee occupied prior to taking FMLA leave.

10.4 LAYOFFS: An employee of DAS will not be laid off as a result of exercising his or her right to FMLA leave. However, an employee on FMLA leave will not be reinstated by DAS, if, as a result of a layoff, the employee would not otherwise be employed by DAS at the time reinstatement is requested.

### 11.0 Records

11.1 STORAGE AND CONFIDENTIALITY: All records relative to FMLA leave will be maintained by OES. Any medical records accompanying FMLA leave requests will be kept separate from an employee's regular personnel and benefit/payroll files to ensure confidentiality. To the extent permitted by law, medical records related to FMLA leave will be kept confidential.

## III. INQUIRIES

Inquiries regarding FMLA leave should be directed to the Office of Employee Services (OES).

30 E. Broad Street, 40<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-2136

Policies for DAS Employees may be found online at:

<https://das.ohio.gov/Divisions/Administrative-Support/Employees-Services/DAS-Policies>

## IV. REVISION HISTORY

Date	Description of Change
4/18/2005	Original Policy Approved and Distributed
3/15/2006	“active work status”, Military Leave and miscellaneous items revised
1/06/2008	“Director of the Office of Budget and Management” rule amendment; New appointing authority
02/28/2011	Add “Qualifying Exigency and Military Caregiver Leave entitlements”; Use of FMLA, Certification, Designation Notice, Recertification, and Definitions sections revisions
02/07/2020	Updated with law changes and Timekeeping system changes

## **APPENDIX A: DEFINITIONS**

DAS will use the definitions below to administer this policy, unless a different meaning is otherwise required by the FMLA, its corresponding regulations, or other applicable law.

1. **Active Work Status:** The conditions under which an employee is actually in a work status and is eligible to receive pay. It includes overtime hours worked, but does not include: vacation leave, sick leave, bereavement leave, administrative leave, compensatory time, holidays, personal leave and disability leave. Workers compensation leave and adoption/childbirth leave, etc. are also not included. *See* OAC 123:1-47-01.
2. **Child:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence. *See* 29 CFR § 825.102.
3. **Continuing Treatment:** A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
  - a. Incapacity and treatment. A period of incapacity of more than three consecutive, full calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - i. Treatment two or more times, within 30 days of the first day of incapacity (unless extenuating circumstances exist), by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
    - ii. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
  - b. Pregnancy and prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.
  - c. Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - i. Requires periodic visits for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
    - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - d. Permanent or long-term conditions. A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
  - e. Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a

provider of health care services under orders of, or on referral by, a health care provider, for:

- i. Restorative surgery after an accident or other injury; or
- ii. A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

*See 29 CFR § 825.115.*

4. **Covered Active Duty or Call to Covered Active Duty:** For members of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. For members of the Reserve components of the Regular Armed Forces (members of the National Guard and Reserves), duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in certain contingency operations. *See 29 CFR § 825.126.*
5. **Covered Service-Member:** Refers to an employee's spouse, child, parent or next of kin who is:
  - a. A current 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 retired list, for a serious injury or illness; or
  - b. A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness. *See 29 CFR §§ 825.122, and 825.127.*
6. **Covered Veteran:** An individual who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the 5 year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. If the veteran was discharged prior to March 8, 2013, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. *See 29 CFR §§ 825.122, and 825.127.*
7. **Incapable of Self-Care:** The individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately to one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining residence, using telephones and directories, using a post office, etc. *See 29 CFR § 825.102.*
8. **Incapacity:** Inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. *See 29 CFR § 825.113.*
9. **Inpatient care:** An overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. *See 29 CFR § 825.114.*
10. **Intermittent FMLA Leave:** Leave taken in separate periods of time due to a single illness or injury, rather than one continuous period of time, and may include leave of periods from tenths

of an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken in several days at a time spread over a period of six months, such as for chemotherapy. *See* 29 CFR § 825.202.

11. **Loco Parentis:** (“in the place of a parent” or “instead of a parent”) refers to an employee that assumes the legal responsibility of a parent with regard to a child giving day to day care or financial support.
12. **Licensed Health Care Provider:** A doctor of medicine, a doctor of osteopathy, podiatrists, dentists, optometrists, psychiatrists, clinical psychologists, and others as specified by law. *See* 29 CFR § 825.102.
13. **Next of Kin of a Covered Service-Member:** The nearest blood relative, other than the covered service-member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service-member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service-member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service-member, all such family members shall be considered the covered service-member’s next of kin and may take FMLA leave to provide care to the covered service-member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service-member’s only next of kin. DAS is permitted to require an employee to provide reasonable documentation or statement attesting to the existence of a covered family relationship to the covered service-member pursuant to Sec. 825.122(k). *See* 29 CFR § 825.127.
14. **Parent:** Biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law". *See* 29 CFR § 825.102.
15. **Physical or Mental Disability** – means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disability Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.
16. **Rolling Twelve-Month Period:** A rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave under this policy. Each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. (For example, if an employee used four weeks of FMLA leave beginning February 4, 2018 and four weeks beginning June 1, 2018, and four weeks beginning December 1, 2018, the employee would not be entitled to any additional leave until February 4, 2019. Beginning on February 4, 2019 the employee would be entitled to four weeks of FMLA leave.)
17. **Serious Health Condition:** An illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. However, please note the following:

- a. Treatment for purposes of policy this definition 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 includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). 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. *See* 29 CFR § 825.113.
- b. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FML. Restorative dental, or plastic surgery after an injury, or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness from stress or allergies may be serious health conditions, but only if all the conditions of this section are met. *See* 29 CFR § 825.113.
- c. Substance abuse may be a serious health condition, provided other requirements of this definition are met. However, FMLA leave may only be taken for substance abuse treatment administered by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee’s use of substance, rather than for treatment, does not qualify for FMLA leave. *See* 29 CFR § 825.119.
- d. Absences attributed to incapacity for chronic conditions or pregnancy/prenatal care may qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness. *See* 29 CFR § 825.115.

18. **Serious Injury or Illness** – Means:

- a. In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating;
- b. In the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the time period described in the



definition of “covered servicemember”, a qualifying injury or illness (as defined by the Secretary of Labor) that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty in the Armed Forces) and that manifested itself before or after the member became a veteran. *See* 29 CFR § 825.127.

19. **Short-Notice Deployment:** Deployment within 7 days or less notice. *See* 29 CFR § 825.126.
20. **Spouse:** A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:
  - a. Was entered into in a State that recognizes such marriages; or
  - b. If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.