

**ARIZONA DEPARTMENT OF ADMINISTRATION
POLICIES AND PROCEDURES**

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| Policy Number: ADOA/HRD PA6.03 | Issued: January 17, 2013 |
| Subject: Leave – Family and Medical Leave Act (FMLA) | Effective: September 29, 2012 |
| Policy Section: Human Resources | Revised: |
| Policy Owner: HRD – Shared Services Office | |

This policy does not create a contract for employment between any ADOA employee and the Department. Nothing in this policy changes the fact that all uncovered employees of the Department are at will employees and serve at the pleasure of the appointing authority.

Scope:

This policy applies to all Arizona Department of Administration (ADOA) employees.

Authority:

- Family and Medical Leave Act (FMLA) of 1993, as amended
- 29 CFR Part 825
- National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA)
- R2-5A-D601, Family and Medical Leave Act (FMLA) Leave

Definitions:

“12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

“Armed Forces” includes the following military service branches: Army, Army Reserve, Army National Guard, Marine Corps, Marine Corps Reserves, Navy, Navy Reserves, Air Force, Air Force Reserve, Air Guard, Coast Guard, and Coast Guard Reserves.

“Contingency Operation” means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force or results in the call or order to, or retention on, active duty of members of the uniformed services during a war or during a national emergency declared by the President or Congress.

“Continuing Treatment” includes any one or more of the following:

1. A period of incapacity of more than three consecutive full calendar days combined with medical treatment, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - a. 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 or physician’s assistant 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
 - b. 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;

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- c. The requirement in (a) and (b) for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
2. Any period of incapacity due to pregnancy or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - a. Requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

"Covered Active Duty" means:

- For members of a **regular** component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country.
- For members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a) (13) (B) of title 10, United States Code.

"Covered Service Member for Exigency Leave" means an employee's spouse, son, daughter, or parent on active duty or call to active duty status in support of a contingency operation.

"Covered Servicemember for Servicemember Caregiver Leave" means:

- An employee's spouse, son, daughter, parent, or next of kin who is 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 disability retired list, for a serious injury or illness incurred in the line of active duty.
- An employee's spouse, son, daughter, parent, or next of kin who is a **veteran** who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness

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if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

"Hours of Service" means the number of hours actually worked; does not include any type of paid or unpaid leave with the exception of military leave.

"Intermittent Leave" means leave taken in separate blocks or periods of time, due to a single qualifying reason, usually to accommodate some form of regularly scheduled medical treatment, or leave taken on an occasional basis for medical appointments or flare ups caused by an FMLA qualifying medical condition.

"Key Employee" means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the State of Arizona.

"Medically Necessary" is a medical need for the leave, as distinguished from voluntary treatments and procedures.

"Next-of-Kin" means the nearest blood relative of the servicemember, other than the spouse, son, daughter or parent, in the following order of priority: blood relatives who have been granted legal custody of the servicemember 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 servicemember caregiver leave, in which case the designated individual shall be deemed to be the next of kin.

"Parent" means the biological, adoptive, step or foster father or mother of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. Does not include parents-in-law.

"Reduced Leave/Work Schedule" means a work schedule that reduces an employee's usual number of hours per workweek, or hours per workday. A reduced leave/work schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

"Salaried" means paid on a salary basis, as defined in 29 Code of Federal Regulations 541.118.

"Serious Health Condition" means an illness, injury, impairment, or a physical or mental condition that involves:

- Inpatient care (i.e., 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; or
- Continuing treatment by a health care provider.

"Serious Injury or Illness" means an injury or illness incurred by a covered servicemember in the line of active duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

"Son or Daughter" means 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. For the

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purpose of Servicemember leave, a son or daughter on “active duty or call to active duty status” can be older than 18 years of age.

“*Spouse*” means a husband or wife as defined or recognized under Arizona state law. It does not include unmarried domestic partners.

Policy:

- A. In accordance with the Family and Medical Leave Act (FMLA) of 1993 as amended, job protected unpaid family and medical leave will be granted to eligible employees for up to 12 weeks per 12-month period for any one or more of these reasons:
1. The birth of a son or daughter and in order to care for such son or daughter or the placement of a son or daughter with the employee for adoption or foster care (leave for this reason must be taken in the 12-month period following the son or daughter’s birth or placement with employee);
 2. In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.
 3. The employee’s own serious health condition that makes the employee unable to perform the functions of his/her position; or
 4. A qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered servicemember on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.
 - a. A call to duty for purposes of leave taken due to a qualifying exigency refers only to Federal call to active duty. State calls to duty are not covered unless under the order of the President of the United States.
 - b. Qualifying exigencies include:
 - Issues arising from a covered servicemember’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of **seven** days from the date of notification;
 - Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered servicemember;
 - Certain childcare and related activities arising from the active duty or call to active duty status of a covered servicemember, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered servicemember;
 - Making or updating financial and legal arrangements to address a covered servicemember’s absence;
 - Attending counseling provided by someone other than a health care provider for oneself, the covered servicemember, or the child of the covered

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servicemember, the need for which arises from the active duty or call to active duty status of the covered servicemember;

- Taking up to **five** days of leave to spend time with a covered servicemember who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered servicemember's active duty status, and addressing issues arising from the death of a covered servicemember;
- Any other event that the employee and employer agree is a qualifying exigency.

If a husband and wife, both of whom are employed by the State of Arizona, and each wishes to take leave for the birth of a son or daughter, adoption or placement of a son or daughter in foster care, to care for a parent (but not a parent-in-law) with a serious health condition, or for a qualifying military exigency, the husband and wife are only entitled to take a combined total of 12 weeks of FMLA leave.

- B. In accordance with the FMLA of 1993 as amended, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember who is undergoing medical treatment, recuperation or therapy or is in outpatient status or on the temporary disability retired list for a serious injury or illness incurred in the line of duty while on active duty.

If a husband and wife are both employed by the State of Arizona and each wish to take leave for the care of a qualified service member, the husband and wife shall be entitled to a combined total of 26 workweeks of FMLA leave.

- C. In accordance with the FMLA of 1993 as amended, an eligible employee shall be entitled to no more than 12 workweeks of leave for the reasons under paragraph (A), and a combined total of 26 workweeks of leave under paragraph (A) and (B) during a 12-month period.
- D. For part-time employees and those who work variable hours, the FMLA entitlement is calculated on a pro-rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave will be used for calculating the employee's normal workweek, but shall not exceed 40 hours per week.

Coverage and Eligibility

A. An eligible employee for the purposes of the FMLA is an employee who:

1. Is an employee of the State of Arizona;
2. Has been employed by the State of Arizona for at least 12 months (need not be continuous; however, employment prior to a break in service of 7 years or more need not be counted); and
3. Worked for at least 1,250 hours of service during the 12-months immediately preceding commencement of the leave.

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- B. If at any time during the approved FMLA leave the employee notifies the employer that the employee will not be returning to work, FMLA leave entitlement shall cease.

Paid Leave

- A. An employee on FMLA leave will be required to use appropriate accrued leave. Certain exceptions to an employee having to use accrued leave for unpaid FMLA leave exist, i.e., Industrial Leave.
- B. When an employee has used all appropriate paid leave time for a portion of FMLA leave and additional time off is needed, the employee may request unpaid leave to be granted so that the total period of leave (paid and unpaid) equals 12 workweeks or 26 workweeks dependent on the reason for the leave.
- C. All paid and unpaid leave taken for an FMLA qualifying event will be applied towards the employee's FMLA leave entitlement. For example, an employee using 10 weeks of industrial leave would simultaneously exhaust 10 weeks of his/her FMLA leave entitlement.

Intermittent Leave or Reduced Schedule Leave

- A. An employee **may** take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule for birth or placement for adoption or foster care of a son or daughter.
- B. An employee **may** take leave intermittently or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee when "medically necessary."
- C. An employee who needs intermittent or reduced schedule leave for foreseeable medical treatment must work with his/her supervisor to schedule the leave so as not to unduly disrupt the Department's operations.
- D. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- E. While on intermittent FMLA leave, an employee may be required to call in to his/her immediate supervisor to provide notification that a current absence is for an FMLA qualifying reason. Failure to follow call-in procedures may result in disciplinary action or dismissal from employment.
- F. While on reduced schedule leave, the Department will not reduce the employee's FTE. An employee on reduced schedule leave is required to use their paid leave balances for the periods of reduced schedule FMLA leave.
- G. For uncovered and covered employees who are exempt from earning overtime, straight time or compensatory leave under the Fair Labor Standards Act (FLSA) for working in excess of 40 hours in a workweek and have been determined by the State to be FLSA exempt, (i.e., are not charged leave for absences of less than eight hours in one work day), if FMLA is taken:

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1. On an intermittent leave basis (i.e., the employee is absent from work on an occasional basis): If the employee's absence is one or more full work day(s), the employee must use their paid leave for each full day of FMLA absence. If the employee's absence is less than one work day, the employee does not use their paid leave balances (i.e., sick and annual leave) for the time they are absent from work. A supervisor may request an employee who is using intermittent leave for scheduled medical treatments to schedule the appointments at times that cause the least disruption to the work unit, such as early morning or late afternoon appointments.

Example: An exempt employee's regular work schedule is Monday through Friday from 8:00 a.m. through 5:00 p.m. The employee's health care provider indicates they need to schedule four follow-up appointments for an FMLA-related reason over the next eight weeks. The employee schedules the appointments for when the health care provider's office opens, allowing the employee to arrive to work by 9:00 a.m. In this example, deductions are not made to either the employee's paid leave balances or the employee's available FMLA leave.

2. On a reduced schedule basis (i.e., the number of hours the employee may work per workweek or per workday is reduced as required through certification from their health care provider). On a reduced schedule FMLA, the employee retains their FTE status and must use their paid leave balances (i.e., sick and annual leave) for the time they are absent from work each day, even partial days.

Example 1 (reduced schedule, reduced hours per workweek): An employee's regular schedule is Monday through Friday from 8:00 a.m. through 5:00 p.m. and their healthcare provider indicates they can only work 30 hours per week for the next eight weeks. The employee works with his/her supervisor to discuss the available options to meet the medical certification in a way that would be the least disruptive to the work unit. Unless the medical provider has also limited the number of hours the employee can work each day, possible schedules include, but are not limited to the following: three 10-hour days, such as Monday, Tuesday, Wednesday or Monday, Wednesday and Friday; five 6-hour days; or, three 8-hour days and one 6-hour day. In this example, the employee would code the time they are absent from work (the balance of the 40 hours, including partial days), as either FMLA sick leave (310F), FMLA annual leave (300F), FMLA LWOP (640F), or other FMLA pay codes as applicable.

Example 2 (reduced schedule, reduced hours per workday): An employee's regular schedule is Monday through Friday from 8:00 a.m. through 5:00 p.m. and their healthcare provider indicates they can only work four hours per day for a period of two months. The employee would now work from 8:00 a.m. through noon each day for two months. This employee would code the time they are absent from work each day (four hours each work day) as either FMLA sick leave (310F), FMLA annual leave (300F), FMLA LWOP (640F), or other FMLA pay codes as applicable.

Effect on Health Benefits

- A. An employee granted leave under this policy will continue to be covered under the employee's group health insurance plan under the same conditions as coverage would have been provided if he/she had been continuously working during the leave period.

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- B. Employee contributions will be required either through payroll deduction or by direct payment to the Benefit Services Division if the employee is in a leave without pay status. The employee will be advised in writing at the beginning of the leave without pay period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's benefit contribution is more than 30 days late, the State has the option to terminate the employee's insurance coverage.
- D. If the employee fails to return from paid or unpaid family/medical/servicemember caregiver leave for reasons other than (1) the continuation, recurrence, or onset of a condition of the employee or a covered family member that entitles an employee to leave under the FMLA or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), agency management will, in order to ensure consistency, seek reimbursement from the employee for the portion of the premiums paid by the State on behalf of that employee (also known as the employer contribution) during the period of leave.
- E. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose any paid leave accrued prior to the start of the unpaid leave.

Job Protection

- A. If the employee returns to work within 12-26 workweeks (dependent on the category of leave) as provided by the FMLA following a family/medical/exigency/servicemember caregiver leave, the employee will be restored to the employee's former position or an equivalent position with equivalent pay, benefits, status and authority, unless the employee is determined to be a key employee. If the employee is a key employee, restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic harm to the State. Whether an employee is a key employee must be determined at the time of the request for leave.
- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from the leave.
- C. If the employee fails to return to work within the approved period of time following a family/medical/exigency/servicemember caregiver leave, the employee may be separated, in accordance with applicable laws and Personnel Rules.

NOTE: If any discrepancies exist between this policy, the FMLA and/or Arizona Revised Statutes or any other applicable State policies and/or rules, the FMLA and/or Arizona Revised Statutes or State policy and/or Rules will prevail.

Procedure:

General Notice Requirement:

To comply with the general notice requirements of the Act, a link to the Notice to Employees of Rights Under FMLA (WH Publication 1420) is provided at the end of this document.

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Employee and Employer Notice Requirements:

- A. An employee is required to give 30 days notice in the event of a foreseeable leave. A "Family and Medical Leave Request Form" (see Division Personnel Coordinator for a copy) must be completed by the employee and returned to the ADOA FMLA Coordinator in the HRD Shared Services Office. In unexpected or unforeseeable situations, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's call in procedures followed by a completed "Family and Medical Leave Request Form". The ADOA FMLA Coordinator will prepare the appropriate FMLA letter and FMLA package, (as applicable) obtain the appropriate Assistant Director's signature, and process the letter. The ADOA FMLA Coordinator will notify the appropriate Assistant Director, the employee's supervisor, personnel coordinator, benefits analyst, and payroll representative of the disposition of the request.
- B. If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice. The ADOA FMLA Coordinator will prepare the appropriate FMLA letter and FMLA package, (as applicable) obtain the appropriate Assistant Director's signature, and process the letter. The ADOA FMLA Coordinator will notify the appropriate Assistant Director, the employee's supervisor, personnel coordinator, benefits analyst, and payroll representative of the disposition of the request.
- C. The employee will be required to furnish the ADOA FMLA Coordinator with periodic reports of his/her status and intent to return to work as requested or no more than every 30 days while on FMLA leave. The ADOA FMLA Coordinator will notify the appropriate Assistant Director, the employee's supervisor, personnel coordinator, benefits analyst, and payroll representative of the employee's status.
- D. If the leave is not designated timely as FMLA, the ADOA FMLA Coordinator may retroactively designate the leave as FMLA leave with appropriate notice to the employee, provided the failure to timely designate the leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, the ADOA FMLA Coordinator and the employee can mutually agree that leave be retroactively designated as FMLA leave.
- E. An employee need not specifically request FMLA leave to be placed on FMLA leave. If the employee requests leave and, in explaining the reasons for the request, provides sufficient information to determine that the requested leave is for an FMLA-qualifying purpose, the employee's leave, paid or unpaid, shall be designated as FMLA leave and be appropriately substituted for all or some portion of the employee's FMLA leave entitlement.

Certification:

A. Medical Related

1. When leave is taken due to the employee's serious health condition or a covered family member's serious health condition, the employee must submit a completed "Certification of Health Care Provider" form (see Division Personnel Coordinator or ADOA FMLA Coordinator for a copy of this form) and return the certification to the

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ADOA FMLA Coordinator in the HRD Shared Services Office. Medical certification must be provided by the employee within 15 calendar days after the employee requests leave, unless it is not practicable to do so under the circumstances. Under such circumstances, the employee must contact the ADOA FMLA Coordinator. The medical certification must be completed by a duly licensed doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (only for subluxation of the spine demonstrated by x-ray), nurse practitioner, nurse-midwife, clinical social worker, or Christian Science Practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts, or any health care provider from whom the State will accept certification to substantiate a claim for benefits. Agency management may require a second or third opinion (at its own expense) and/or periodic reports on the employee's status and intent to return to work.

2. When leave is taken to care for a covered servicemember with a serious injury or illness (servicemember caregiver leave), the employee must submit a "Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave" form (Form WH-385) completed by an authorized health care provider of the covered servicemember or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.
3. When leave is taken due to the employee's serious health condition, before being restored to the employee's former position, the employee must provide a Fitness-for-Duty medical release from the employee's health care provider releasing the employee to return to work and assume the employee's duties.
4. All documentation related to the employee's or family member's medical condition will be **held in strict confidence** and maintained in the employee's medical records file by the ADOA FMLA Coordinator and **not** in the employee's personnel file.

B. Other Related

When leave is taken because of a qualifying exigency, the employee must provide a copy of the covered servicemember's active duty orders or other documentation issued by the military which indicates that the covered servicemember is on active duty or call to active duty status in support of a contingency operation and a completed "Certification of Qualifying Exigency For Military Family Member" form (Form WH-384) to the ADOA FMLA Coordinator in the HRD Shared Services Office before leave is granted.

Related Forms/Attachments:

[FMLA General Notice](#)
[FMLA Leave Request Form](#)

Corresponding Policies:

Not Applicable

Contact:

If you have any questions related to this policy, please contact your division Personnel Coordinator or the Human Resources Division Shared Services Office.