


# Family and Medical Leave Act Policy

	<b>Louisiana Department of Health (LDH)</b>	
	<b>Policy Number</b>	29.2
	<b>Content</b>	Federal Regulations Regarding Family and Medical Leave Act
	<b>Effective Date</b>	February 03, 2014
	<b>Inquiries to</b>	Office of Management and Finance Division of Human Resources, Training & Staff Development P. O. Box 4818 Baton Rouge, LA 70821-4818 (225)342-6477      FAX (225)342-6892

If there is a discrepancy between an LDH Policy and a Program Office or facility policy, the LDH policy shall govern/overrule/supersede the conflicting section within the Program Office or facility policy.

## I. POLICY STATEMENT

It is the policy of the Louisiana Department of Health (LDH) to comply with all provisions of the Family and Medical Leave Act of 1993 as amended. In specific situations that are not covered by this policy, or that are in conflict with this policy, the provisions of the Family and Medical Leave Act (“FMLA”) shall apply.

## II. PURPOSE

The purpose of this policy is to ensure the promulgation of rules governing the FMLA, to assign responsibility for aspects of the policy and to explain the process for adhering to the policy.

## III. APPLICABILITY

This policy shall be applicable to all eligible employees of LDH.

## IV. EFFECTIVE DATE

The effective date of this policy is February 03, 2014.

## V. QUALIFYING LEAVE

For employee informational purposes, the FMLA generally provides:

### A. Family or Personal Medical Leave

Up to 12 weeks of job-protected leave during a 12-month period will be provided to eligible employees under the provisions of the Family and Medical Leave Act of 1993 (FMLA) as amended for the following qualifying events:

1. The birth of a child and/or to bond with and care for the baby. \*
2. The placement of a child with the employee for adoption or foster care.
3. To care for the employee's spouse, child or parent with a serious health condition. \*
4. A serious health condition that makes the employee unable to perform the functions of his job.

\* See Section V. B. for limitations.

### B. Military Caregiver Leave

Up to 26 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent or next-of-kin of a member of the armed forces, including the National Guard or Reserves per each qualifying event, to care for such member of the armed forces who is undergoing medical treatment, recuperation or therapy, who is in outpatient status otherwise, or who is on the temporary disability retired list for a serious injury or illness. A serious injury or illness for a covered service member includes injuries or illnesses that existed before the beginning of the member's active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

For purposes of Military Caregiver Leave, the single 12-month period is measured forward from the date the employee begins leave to care for the covered service member, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the "Definitions" section for Family Relationships related to Military Caregiver Leave.

### C. Military Exigency Leave

Up to 12 weeks of job-protected leave during a 12-month period permits FMLA leave for any qualifying exigency, which is a non-medical need for leave due to 1) short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) Rest and Recuperation, 7) post-deployment activities, 8) additional activities which arise out of covered active duty, or 9) parental care leave provided that the employer and employee agree, including timing and duration of such leave.

Note: The maximum amount of time an eligible employee may take for Rest and Recuperation qualifying exigency leave is 15 calendar days.

For purposes of “exigency leave”, the term “covered active duty or a call to covered active duty status” means deployment to a foreign country. Exigency leave applies to military members of the Regular Armed Forces, the National Guard and the Reserves.

For purposes of Military Exigency Leave, the single 12-month period is measured forward from the date the employee begins leave, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the “Definitions” section for Family Relationships related to Military Leave.

D. Required Information for Certification of a Qualifying Exigency  
Upon an employer’s request, an employee must provide a copy of the covered military member’s active duty orders to support a request for qualifying exigency leave. In addition, upon an employer’s request, certification for qualifying exigency leave must be supported by a certification containing the following information:

1. Statement or description of appropriate facts regarding the qualifying exigency for which the leave is needed;
2. Approximate date on which the qualifying exigency commenced or will commence;
3. Beginning and end dates for leave to be taken for a single continuous period of time;
4. An estimate of the frequency and duration of the qualifying exigency leave if leave is needed on a reduced scheduled basis or intermittently;
5. If the qualifying exigency requires meeting with a third party, the contact information for the third party and description of the purpose of the meeting;

6. If the request for exigency leave is for Rest and Recuperation leave, a copy of the military member's Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

## VI. DEFINITIONS

- A. Eligible Employee - An employee who:
  1. Has been employed by the State for a total of at least 12-months (These need not have been consecutive. However, the break in service must not be for more than seven years unless the break was for certain military service) on the date on which any FMLA leave is to commence, **and**
  2. Has worked **at least 1250 hours over the 12-month period preceding the start of the leave.**

Note: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), a returning member of the National Guard or Reserve is entitled to FMLA leave if the hours that he or she would have worked for the civilian employer during the period of military service would have met the FMLA eligibility threshold.

- B. Equivalent Position - An employee returning from FMLA leave will have the same pay, benefits and working conditions, including privileges, perquisites and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. Equivalent positions involve the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility and authority. Equivalent positions will be at the same or a geographically proximate work site where the employee had previously been employed.
- C. Family Relationships –
  1. Child - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *en loco parentis* (in the place of the parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
  2. Parent - a biological or adoptive parent or a person who stood *en loco parentis* to an employee when the employee was a child. This term does not include an employee's mother-in-law or father-in-law.

3. Spouse - husband or wife as defined in accordance with the law of the State in which the employee resides.
4. Expanded Family Relationships for Military Leave - Parents of a military member, son or daughter of a military member, next-of-kin of a military member, and son or daughter who is on covered active duty or called to covered active duty status. Next-of-Kin is defined as the nearest blood relative of the service member.
5. Military Member - Current member of the Regular Armed Forces, National Guard or Reserve, including those on the temporary disability retired list and covered veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness.
6. Covered Veteran – An individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran (the period between enactment of the FY2010 NDAA on October 28, 2009 and the effective date of the final rule on March 8, 2013 is excluded in the determination of the five-year period for covered veteran status).

NOTE: A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

- a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; OR
- b. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50% or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; OR
- c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful

occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR

- d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

D. Health Care Provider

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
3. Nurse practitioners, nurse midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
4. Christian Science practitioners with restrictions as outlined in the Federal Regulations;
5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law; or
7. Physician Assistants who are authorized to practice under state law and all medical para-professionals who are performing within the scope of their practice as defined under state law.

- E. Intermittent Leave - Under certain conditions, FMLA leave may be utilized in small blocks of time (hours, days, weeks) that total the appropriate FMLA entitlement, rather than being used as periods consisting of consecutive weeks or days. Employees may use leave in the increments allowed by LDH's leave

policies. If an employee qualifies for intermittent leave on an unpredictable basis, the employer must notify the employee upon request every thirty (30) days of the amount of leave time designated as FMLA leave during the preceding thirty days, provided the employee used leave during that period. For intermittent leave supervisors shall complete the LDH FMLA Intermittent Leave Form every thirty (30) days, review the form with the employee, obtain the employee's signature, sign the form and file the form in the employee's confidential supervisory file.

- F. Reduced Leave Schedule - Leave schedule that reduces the usual number of hours per workweek or hours per workday.
  
- G. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.
  
- H. Continuing treatment by a health care provider, include any one or more of the following:
  - 1. Incapacity and treatment: A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
    - a. Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider. The first treatment must take place within seven (7) days of the first day of incapacity, or
    - b. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.

Note: A telephone consultation with a health care provider is not considered "treatment" under the FMLA.

- 2. Pregnancy or prenatal care: Any period of incapacity due to pregnancy or for prenatal care. Special provision for routine prenatal care – Employees are not required to use the FMLA for routine prenatal care, but may request to do so.

- I. Chronic conditions: Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. (Example: asthma)
  - 1. A chronic serious health condition is one which:
    - a. Requires periodic visits (at least twice a year) for treatment by a health care provider;
    - b. Continues over an extended period of time; and
    - c. May cause episodic rather than continuing periods of incapacity.
- J. Treatment - For purposes of the FMLA, treatment 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, dental examinations or telephone consultations. 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.
- K. Twelve-month Period
  - 1. For purposes of regular family or personal FMLA, the 12-month period begins on the date the first quarter hour of FMLA leave is taken by the employee.
  - 2. For purposes of Military Caregiver Leave and Military Exigency Leave, the 12-month period begins on the date the employee takes the first leave for Military Reasons. This 12-month period may be different from the 12-month period used for regular FMLA.
  - 3. For purposes of FMLA leave for the birth of a child or acceptance of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.
  - 4. For purposes of Military Caregiver Leave, an employee is limited to no more than 26 weeks of leave during each single 12-month period. This is the case even if the employee takes the leave to care for more than one covered service-member or to care for the same covered service-member who has incurred more than one serious injury or illness and if the single 12-month period involved overlap each other. If leave would



qualify as both Military Care Giver Leave and regular FMLA leave, it must be classified as Military Care Giver Leave.

5. During any single 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave. The 26 weeks Military Caregiver Leave is not in addition to the 12 weeks of FMLA leave to which eligible employees would be otherwise entitled.
- L. Subsequent FMLA Period - Once the initial 12-month entitlement period has been exhausted, the employee does not begin a new entitlement period until the next FMLA qualifying leave usage, provided the employee is eligible. The supervisor should immediately notify Human Resources if the employee has exhausted his/her FMLA entitlement and is still unable to return to work.
- M. "Needed to Care For" - FMLA is allowed for an employee needed to care for a family member, including providing physical and/or psychological care.

## VII. PROCEDURES

### A. How Leave May Be Scheduled

Leave may be taken in consecutive days or weeks or it may be taken intermittently or on a schedule that reduces the usual number of hours per workday or workweek when required. Employees on intermittent leave are required by FMLA regulations to make every effort to schedule medical treatments during their off-duty hours and to schedule leave so as not to unduly hamper agency operations.

Leave shall be taken in the same increments as allowed in the LDH's leave policies.

### B. Limitations Regarding Leave Schedules

1. Intermittent or reduced leave schedules following the birth, adoption, or foster care of a child as part of a gradual return-to-work schedule will be allowed provided that the appointing authority determines that such intermittent leave does not interfere with the efficient operation of the organization. The appointing authority may stipulate that leave for these purposes must be taken consecutively if that schedule will provide more business efficiency.
2. When both spouses in a family are employed by the State of Louisiana, they may take a combined total of 12 weeks if they are taking leave for the birth or adoption of a child or to care for a sick parent. This

limitation does not apply to leave taken by one spouse to care for the other who is seriously ill, to care for a child with a serious health condition, or to care for the employee's own serious illness.

3. FMLA leave runs concurrent with other leave entitlements provided under Civil Service Rules and federal, state, and local laws.

C. Usage of Accumulated Leave

While absent for a FMLA eligible event and using FMLA leave, an employee is also required to use any available balance of applicable paid leave (that is, sick leave, annual leave, or compensatory leave). When all available paid leave is exhausted, the employee will be placed on leave without pay for the duration of FMLA eligible event.

D. Calculation of the FMLA Period for Part-time Employees

For part-time employees, FMLA leave is calculated as a percentage of the time actually worked.

E. Determination that an Absence is FMLA Eligible

Per Federal Regulations, the employer has the responsibility to determine when an employee's absence is eligible for FMLA even if the employee does not specifically request FMLA leave. In LDH, Human Resources makes the determination in consultation with the supervisor. The determination that an absence is FMLA eligible must be based only on information the employer solicits from the employee or the employee's spokesperson. The employee must respond to the employer's questions that are posed to determine if the absence is FMLA-qualifying. Failure to respond to such inquiries may result in denial of FMLA protection if Human Resources is unable to determine that the leave is qualifying. In any case, an employee who is absent for more than three consecutive working days for his own illness shall be tentatively placed on FMLA at the beginning of the fourth day of absence. The supervisor shall notify Human Resources immediately that the employee has been absent more than three consecutive days.

F. Confidentiality

All FMLA information and paperwork is to be kept confidential and should be kept separate from an employee's personnel file. Only the employee may choose to share the information with co-workers.

G. Notification to the Employee that His Absence is FMLA Eligible

Once it is known that a qualifying condition might exist, Human Resources shall notify the employee in writing that the absence will be considered FMLA qualifying and deducted from the employee's FMLA balance. Written notice of eligibility for FMLA leave should be provided to the employee within five (5) business days.

If an employee is not eligible for FMLA leave, Human Resources shall provide the employee with written reasons for this determination within five (5) business days of the request.

Should there be a later determination that the absence is not FMLA eligible, the employee shall be so notified and the leave designated as FMLA will be restored to the employee's FMLA quota.

H. Notice from Employee of Need for FMLA Leave

1. Any time that an employee requests leave in any category for a purpose which is eligible under the FMLA (including military caregiver/exigency), the immediate supervisor shall notify Human Resources that the leave requested may be covered by the FMLA. Any questions concerning eligibility should be directed to the Human Resources office. All forms and notices shall be provided to the employee by Human Resources.
2. Foreseeable Need - The employee must provide 30 days advance written notice to the immediate supervisor if possible, when the leave is foreseeable. If 30 days advance notice is not possible, the employee must notify the immediate supervisor as soon as the need for leave is known. The supervisor may inquire as to why the employee was unable to give a 30-day notice.
3. Leave Not Foreseeable - In cases where the employee cannot provide advance notice, the employee or the employee's spokesperson must give notice to the supervisor as soon as practicable.
4. Military Exigency/Military Caregiver - Employees must give 30-days advance notice for this type of FMLA leave, or must notify the immediate supervisor as soon as the need for leave is known. If the immediate supervisor is not available, the notice must be provided to the immediate supervisor's supervisor or section head. This notice must include anticipated time and duration of the leave needed.

I. Completed *Certification of Health Care Provider* Form

1. Requirement - In all cases, the employee is required to provide the completed Certification of Health Care Provider form. The employee must provide the requested Certification of Health Care Provider Form within 15 days after the request has been made, otherwise the employee's request may be denied. Any expense incurred in obtaining Certification of Health Care Provider Form from a health care provider shall be the responsibility of the employee.
2. Second and third opinions - A supervisor may require the employee to obtain a second opinion at LDH's expense. The appointing authority or designee is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider cannot be employed on a regular basis by the state. If the second opinion differs from the first opinion, the appointing authority may require the employee to obtain certification from a third health care provider at LDH's expense. The third opinion shall be final and binding. The third health care provider must be agreed upon jointly by the appointing authority and the employee. If the appointing authority does not attempt in good faith to reach agreement on whom to select for the third opinion, the appointing authority will be bound by the first certification. If the employee does not attempt in good faith to reach agreement on whom to select for the third opinion, the employee will be bound by the second certification. If LDH requires a second or third opinion, the expense shall be incurred by LDH.
3. Re-certification of medical conditions - The supervisor may request subsequent re-certification of medical conditions no more often than every 30 days. If the minimum duration specified on a Certification of Health Care Provider Form by a health care provider is more than 30 days, the supervisor may not request re-certification until that minimum duration has passed unless the employee requests an extension of leave, circumstances described on the previous certifications have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the certification.

Exception: if the employee's serious health condition is a chronic condition with no end date, the supervisor may require a new Certification of Health Care Provider Form every six months in connection with an absence.

J. Clarification of Certification of Health Care Provider Form

Note: This section does not apply to military leave provisions.

If the Certification of Health Care Provider Form contains deficiencies or needs clarification, the employee must be given an opportunity to verify or clarify. Such clarification must involve the Human Resources office and must be in writing. The employee must be given a minimum of seven (7) days to fix any deficiencies or clarify his certification. Human Resources professionals may contact the health care provider directly to clarify information contained in the Certification of Health Care Provider Form. The FMLA expressly prohibits the employee's immediate supervisor from directly contacting the health care provider under any circumstances.

K. Benefits

1. Health and Life Insurance

During any FMLA leave, LDH will maintain the employee's coverage under any health or life insurance plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. If a new health plan/ benefits, or changes in health plans/benefits are provided while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave by the employee's supervisor. Except as required by COBRA, LDH's obligation to maintain health benefits during leave under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave; an employee informs LDH of his or her intent not to return from leave; or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

Should the employee be placed on FMLA/LWOP he must continue to pay the employee share of the health and life insurance premiums to continue his insurance coverage.

2. Miscellaneous Insurance and Dependent Life Insurance

Should the employee be placed on FMLA/LWOP he must continue to pay the entire premium for miscellaneous insurance products in order to maintain coverage and must contact the miscellaneous insurance vendors to make arrangements to do so.

L. Restoration after Leave

1. Upon return from Family and Medical Leave, most employees will be restored to their original or an equivalent position. The use of Family and Medical Leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

An employee returning from a medical FMLA leave shall be required to present a fitness for duty statement signed by the health care provider who signed the original Certification of Health Care Provider Form.

2. Restoration may be denied under certain circumstances, including:
  - a. If it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested;
  - b. The employee fails to provide a required fitness for duty certificate to return to work;
  - c. The employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave; however, the employee will be given a reasonable opportunity to fulfill such conditions upon return to work; or
  - d. The employee is unable to perform the functions of the position because of a physical or mental condition, including the continuation of a serious health condition.

## VIII. EXCEPTIONS

Requests for exceptions to this policy must be justified, documented and submitted in writing to the appointing authority for consideration.

## IX. QUESTIONS

Questions regarding this policy should be directed to the staff of the Human Resources office.

## X. VIOLATIONS

It is unlawful and thus prohibited for any employer, administrator, manager, or supervisor to:

- A. Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- B. Discriminate against an employee in any way for using his FMLA entitlement; or
- C. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.  
Employees found to have violated this policy may be subject to disciplinary action up to and including dismissal and/or denial or delay of requested leave.

## **XI. FORMS**

HR-60 Intermittent Leave Tracking Form

WH-380-E Certification of Health Care Provider for Employee

HR-26 Verification of FMLA Eligibility

HR-31 FMLA Alert Form

WH-380-F Certification of Health Care Provider for Family Member

WH-381 Notice of Eligibility and Rights and Responsibilities

WH-382 Designation Notice

WH-384 Certification of Qualifying Exigency for Military Family Leave

WH-385 Certification for Serious Injury for Illness of a Current Service Member Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

## **XII. REFERENCES**

LDH Policy #28 – Leave for Classified LDH Employees

## **XIII. REVISION HISTORY**

<b>Date</b>	<b>Revision</b>
August 5, 1993	Policy created
July, 17, 1995	Policy revised
June 6, 1999	Policy revised
December 17, 2002	Policy revised
April 7, 2005	Policy revised

June 13, 2011	Policy revised
February 3, 2014	Policy revised
December 4, 2019	Housekeeping Change – Section XI