
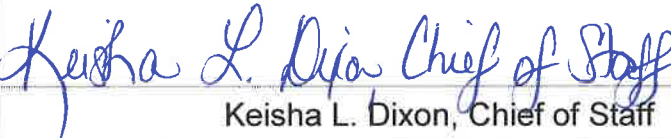




**GEORGIA DEPARTMENT OF PUBLIC HEALTH  
POLICY # HR-03431  
FAMILY AND MEDICAL LEAVE POLICY**

Approval:	 William Lee Rudd, Chief Workforce Management Officer	5-3-18 Date
	 Keisha L. Dixon, Chief of Staff	05/09/18 Date

**1.0 PURPOSE**

Family and Medical Leave is a benefit and entitlement intended to assist eligible employees with balancing work/life demands by providing unpaid, job-protected time off from work for qualifying reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

This policy contains guidelines for the provision and use of The Family Medical Leave Act (FMLA).

**2.0 AUTHORITY**

The Department of Public Health (DPH) Family and Medical Leave Policy is published under the authority of DPH and in compliance with the following:

- 2.1. Federal Family and Medical Leave Act (FMLA) 29 USC 2601 *et seq*
- 2.2. U.S. Department of Labor 29 CFR Part 825
- 2.3. Rules of the State Personnel Board

**3.0 SCOPE**

This policy applies to all employees of the DPH.

**4.0 POLICY**

The policy of DPH is that the Family and Medical Leave Act (FMLA) provides job-protected leave without pay to eligible employees for the birth and care of their newborn child, placement of a son or daughter for adoption or foster care, to care for an immediate family member with a serious health condition, or for their own qualifying serious health condition.

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FMLA also provides for job-protected leave without pay to eligible employees due to a family member's call to active duty in the Armed Services or to care for an injured service member.

## 5.0 GLOSSARY

5.1. DPH - Georgia Department of Public Health

5.2. HR - DPH Division of Workforce Management, Office of Human Resources

5.3. FMLA - Family and Medical Leave Act

5.4. **A Serious Health Condition** - An illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any further treatment in connection with the inpatient care; or continuing treatment by a health care provider which includes one or more of the following:

- 5.4.1. Any period of incapacity of more than three consecutive calendar days, and any additional treatment or period of incapacity relating to the same condition that also involves treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or other referred health care services provider; or treatment by a health care provider at least once that results in a regimen of continuing treatment (e.g., prescription medication) under the supervision of the health care provider.
- 5.4.2. Any period of incapacity due to pregnancy is considered a serious health condition under FMLA. All pregnancy related absences from work (e.g., morning sickness, prenatal examinations, birth, etc.) qualify for FMLA.
- 5.4.3. Any period of incapacity or treatment due to a chronic serious health condition that requires periodic treatment, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, migraines, etc.).
- 5.4.4. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease).
- 5.4.5. Any period of absence to receive multiple treatments (including recovery period) either for restorative surgery after an accident or other injury or for a condition that would likely result in incapacitation of more than 3 calendar days if not treated (e.g., chemotherapy for cancer, dialysis for kidney disease, etc.).

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5.4.6. Substance abuse may meet the criteria for a serious health condition. FMLA leave may be taken for substance abuse treatment or to care for a child, spouse or parent who is receiving substance abuse treatment. FMLA leave for substance abuse treatment does not prevent the Department from taking appropriate disciplinary action against an employee for conduct or performance deficiencies.

5.4.7. A serious injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. This includes 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.

**5.5. Family member** - The employee's spouse, child or parent.

5.5.1. **Spouse** - A husband or wife which may be same sex or opposite sex including "common law" marriage in states where it is recognized.

5.5.2. **Child** - A biological child, adopted or foster child, step-child, legal ward, or a child of an employee standing *in loco parentis* who is either under age 18 or is age 18 or older and incapable of self-care because of mental or physical disability.

5.5.3. **Parent** - A biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child under age 18. "Parent" does not include parents-in-law.

5.5.4. **In Loco Parentis** - Having day to day responsibility ties to care for and financially support a child.

**5.6. Military Exigency (Event)** - Military Leave under FMLA taken for any qualifying event arising out of the fact that a covered military member is on active duty or call to active duty status.

5.6.1. **Next-of-Kin** - The closest blood relative of the injured or recovering service member other than the covered service member's spouse, parent, son or daughter.

5.6.2. **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 of FMLA eligibility.

## 6.0 EMPLOYER RESPONSIBILITIES

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- 6.1. DPH Division of Workforce Management, Office of Human Resources Office (HR) is responsible for issuing and updating procedures to implement this policy.
- 6.2. HR will determine FMLA eligibility on behalf of the employer.
- 6.3. Medical information related to FMLA is confidential and is available to individuals on a "need to know" basis only.

## 7.0 EMPLOYEE RESPONSIBILITIES

- 7.1. Employees are responsible for notifying HR and their Supervisor of the need for FMLA no later than 30 days prior to the need for FMLA.
- 7.2. Employees are responsible for notifying HR of any changes in their Family and Medical Leave status (e.g., returning to work, compensation, discrepancies, receiving Short Term Disability benefits, etc.).
- 7.3. Employees are responsible for notifying HR if they have not received a written notice of their eligibility to take Family and Medical Leave within five business days of their initial request, unless there are extenuating circumstances that require clarification or additional documentation from employees.
- 7.4. Employees are prohibited from performing work related duties while on Family and Medical Leave.
- 7.5. Employees on a continuous FMLA leave for their own serious health condition must submit a Fitness For Duty statement from their health care provider one week prior to returning to work.
- 7.6. Employees are responsible for entering absences due to FMLA on their timesheet.

## 8.0 SUPERVISOR RESPONSIBILITIES

- 8.1. Supervisors are responsible for informing HR of any changes to their employees' FMLA leave or when the employee returns to work.
- 8.2. Although limited contact is permitted while on FMLA, HR will assist with making reasonable contact arrangements. Please consult HR before contacting employees on FMLA.
- 8.3. Supervisors are responsible for ensuring the employee's FMLA absences are entered and approved on the employee's timesheet.

## 9.0 PROCEDURES

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**9.1. USE OF FMLA**

- 9.1.1. It is the policy of DPH to grant up to 12 workweeks/480 hours of FMLA leave during a 12-month period to eligible employees or up to 26 workweeks/1,040 hours of military caregiver leave to care for a covered service member with a serious injury illness.
- 9.1.2. Authorized officials cannot deny the use of FMLA leave when the provisions of this policy have been met. This policy does not insulate any employee from disciplinary action based on conduct or performance deficiencies.
- 9.1.3. FMLA leave is leave without pay; yet it can run concurrent with pay when the employee has leave available. DPH requires employees on FMLA to use available leave during their absence. Sick leave must be used first. If an employee's sick leave has been exhausted, then available compensatory time, annual leave or personal leave must be used. If none of these are available the employee will be placed into leave without pay status to cover the absence from work.
- 9.1.4. Spouses employed by the same employer may be limited to a combined total of 12 workweeks of family leave.

**9.2. QUALIFYING REASONS**

Both male and female employees may be eligible for FMLA leave for any of the following reasons:

- 9.2.1. Pregnancy and birth of the employee's child;
- 9.2.2. Care of the employee's newborn child;
- 9.2.3. The placement of a child with the employee for adoption or foster care, and to bond with that child;
- 9.2.4. A serious health condition which makes the employee unable to perform the essential functions of the position;
- 9.2.5. Care of the employee's child (son or daughter), spouse or parent who has a serious health condition.
- 9.2.6. A qualifying event arising out of a covered family member's active duty or call to active duty in the Armed Services in support of a contingency operation.

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9.2.7. An eligible employee may take FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent (the covered military member) including members of the National Guard and Reserves and the Regular Armed Forces is on covered active duty and requires deployment to a foreign country, or has been notified of an impending call or order to active duty in support of a contingency operation.

**9.3. Qualifying exigencies (events) include:**

9.3.1. Short notice deployment

9.3.2. Military events and related activities

9.3.3. Childcare and school activities

9.3.4. Financial and legal arrangements

9.3.5. Counseling

9.3.6. Rest and recuperation

9.3.7. Post-deployment activities and additional activities to address other events that arise out of the covered service member's active duty or call to active duty status, provided that DPH and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave. The leave may commence as soon as the individual receives the call-up notice.

9.3.8. Eligible employees may take leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

9.3.8.1. Care of an injured service member who is the employee's family member or nearest blood relative.

9.3.8.2. An eligible employee may take up to 12 workweeks of leave for reasons related to or affected by the family member's call-up or service when it constitutes a qualifying event.

9.3.8.3. The amount of time an eligible employee may take for Rest and Recuperation qualifying events is a maximum of 15 calendar days.

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9.3.8.4. An employee may take up to 26 workweeks of FMLA in a 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

9.3.8.5. For purposes of qualifying events, an employee's son or daughter on covered active duty refers to a child of any age.

#### **9.4. ELIGIBILITY REQUIREMENTS:**

9.4.1. Employees must have been employed with the State of Georgia for a minimum of 12 months. The 12 months do not need to be consecutive; there can be a break in service. In general, only employment within 7 years is counted unless the break in service is due to an employee's fulfillment of military obligations, or governed by a collective bargaining agreement or other written agreement.

9.4.2. Time worked for the State of Georgia through a temporary services agency may count toward the 12 months minimum requirement if all other conditions are met.

9.4.3. Have been in a non leave status for a minimum of 1,250 hours during the 12 months immediately before the beginning of the FMLA leave (does not include holidays or time away from work on paid or unpaid leave);

9.4.4. Eligibility for FMLA leave to care for a newborn child begins on the date of birth and ends 12 months after the date of birth.

9.4.5. Eligibility for FMLA leave due to the placement of a child with the employee for adoption or foster care may begin prior to the date of placement if absence from work is needed for the placement to proceed. Eligibility ends 12 months after the date of placement.

9.4.6. FMLA leave for a serious health condition is limited to the time determined to be medically necessary by the attending health care provider up to 12 months. If FMLA leave is still needed for the same health condition after 12 months, then the leave must be re-certified.

9.4.7. FMLA leave to care for a family member with a serious health condition ends if the family member dies. The date of death is the last day that qualifies for FMLA leave.

#### **9.5. TIME FRAMES**

9.5.1. Eligible employees are entitled up to 12 workweeks of FMLA leave during a rolling 12-month period, measured backward from the date an employee

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first uses any Family and Medical Leave or up to 26 workweeks of military caregiver leave. For example, if the FMLA start date is February 1, 2018, the period measured will be February 1, 2017 to January 31, 2018.

9.5.2. FMLA leave calculations are based on an employee's regular work schedule. For example, full-time employees who regularly work five days per workweek will be charged one workweek of FMLA leave for every five days absent from work. Similarly, part-time employees will be charged for the days taken. When a holiday falls during a week in which an employee is taking the full week of FMLA, the entire week is counted as FMLA leave.

9.5.3. The leave year is based on a single 12-month period and begins with the first day the employee takes leave. Any FMLA already taken for other FMLA circumstances will be deducted from the total weeks available.

## **9.6. EMPLOYEE REQUEST**

9.6.1. When the need for Family and Medical Leave is foreseeable, an employee must provide HR with at least 30 calendar days of advance written notice of the requested leave.

9.6.2. When 30 calendar days advance notice is not possible, employees must notify HR as soon as they become aware that FMLA is necessary. In these situations FMLA paperwork must be submitted within 15 days of notifying HR of the need for FMLA. FMLA may be delayed when adequate notice and supporting documentation is not provided.

9.6.3. If FMLA is foreseeable based on planned medical treatment, employees must make a reasonable effort to schedule the FMLA, subject to the approval of the attending health care provider, when the operations of the work unit will not be unduly disrupted.

9.6.4. When requesting FMLA, employees are to provide the following information to HR:

9.6.4.1. A completed Family and Medical Leave Request Form # HR-03431A;

9.6.4.2. The beginning and ending dates of the requested FMLA;

9.6.4.3. The reason for the absence must be explained in order to determine whether it qualifies for FMLA.

9.6.4.4. Employees requesting FMLA due to their own serious health condition must provide HR a *WH-380-E – Certification of Health*



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*Care Provider for Employer's Serious Health Condition* form, completed by the attending health care provider.

- 9.6.4.5. Employees requesting FMLA for the care of a family member must provide HR a *WH-380-F – Certification of Health Care Provider for Family Member's Serious Health Condition*, form completed by the attending health care provider
- 9.6.4.6. Employees requesting FMLA for the adoption of a child or foster care are required to provide HR a letter from the agency indicating when the adoption or foster care will take place. FMLA in this case is for the first 12 months after placement and any preliminary proceedings required prior to placement.
- 9.6.4.7. Employees requesting FMLA for a qualifying military exigency are to provide HR with a *WH-384 Certification of Qualifying Exigency For Military Family Leave* form along with a copy of the military member's covered active duty orders.
- 9.6.4.8. Employees requesting FMLA for the care of a current military service member are to provide HR with a *WH-385 Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave* form completed by the attending health care provider.
- 9.6.4.9. Employees requesting FMLA for the care of a veteran are to provide HR with a *WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave* form completed by the attending health care provider.
- 9.6.4.10. Employees who are absent from work due to work-related injuries, illness and/or exposures to occupational disease covered under workers' compensation may be placed on unpaid FMLA.
- 9.6.4.11. When a single serious health condition requires multiple absences (e.g., asthma, chemotherapy, etc.), a separate medical statement is not required for each absence.

## **9.7. HUMAN RESOURCES RESPONSE**

- 9.7.1. HR will respond to FMLA requests in writing within 5 business days of receipt of the requests, unless there are extenuating circumstances that require clarification or additional documentation from employees.

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- 9.7.2. When the required documentation is received, employees will be advised if the FMLA is approved, or if they are ineligible.
- 9.7.3. If an employee is not eligible for FMLA, the employee will be notified in writing; and the notice will include the reason why they are not eligible.
- 9.7.4. Approval notices will specify the terms and conditions of the FMLA and advise employees of their right to return to work.
- 9.7.5. If sufficient information is not available to determine whether FMLA should be approved, authorized officials may conditionally approve the FMLA contingent upon receiving required documentation.
- 9.7.6. If the request is based on a serious health condition, the conditional approval notice is to include a statement that a completed *Certification of Serious Health Condition* or other medical statement with similar information must be submitted to HR within 15 calendar days.
- 9.7.7. If the required documentation is not provided by the deadline date, the absence may not qualify for FMLA and the employee may not receive the protection of FMLA, or the use of FMLA could be delayed.
- 9.7.8. If timely notices are not provided by an employee, they are NOT entitled to additional time beyond the maximum amount of 12 workweeks for FMLA.
- 9.7.9. If there is a question as to the validity of the certification for FMLA, and ONLY with the approval of HR, the employee may be required to obtain a second opinion from a health care provider chosen by and paid for by DPH.

## **9.8. DESIGNATING FAMILY AND MEDICAL LEAVE**

- 9.8.1. Generally, absences from work may not be retroactively designated as FMLA after an employee has returned to work. However, FMLA may be designated retroactively under the following circumstances:
  - 9.8.1.1. When the employee was absent for an FMLA reason and DPH did not learn of the reason for the absence until the employee's return. The retroactive designation must be made within 15 calendar days of the employee's return to duty.
  - 9.8.1.2. When DPH knows the reason for leave but has not been able to confirm that the leave qualifies under FMLA. In such cases, the FMLA designation must be made promptly upon receipt of appropriate certification.

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9.8.2. If DPH did not notify the employee that the absence was being designated as FMLA leave when the reason for the absence is known beforehand by DPH (e.g., pregnancy/child birth), employees are not to be retroactively placed on FMLA after they return to work.

## **9.9. EMPLOYEE BENEFITS**

9.9.1. DPH requires employees on FMLA to use available leave during their absence. Sick leave must be used first. If an employee's sick leave has been exhausted, then available compensatory time, annual leave or personal leave must be used. If none of these are available the employee will be placed into leave without pay status to cover the absence from work.

9.9.2. Since leave donations are credited to recipients' sick leave balances, employees who are on FMLA can only use donated leave for absences that qualify for use of sick leave.

9.9.3. Employees receiving Short Term Disability (STD) or Long Term Disability (LTD) benefits must use sick leave during the waiting periods, if available. Sick leave, donated leave, special injury leave or any other salary continuation are not allowed to be used while receiving STD or LTD payments. Once STD or LTD payments begin employees can use annual leave, if available. If not, they will go on leave without pay.

9.9.4. While on FMLA, employees who have health insurance and/or flexible benefits are eligible to maintain benefits coverage at the employee rate. It is the responsibility of the employee to pay insurance premiums.

9.9.4.1. Employees on FMLA with pay will continue to pay premiums through payroll deductions.

9.9.4.2. Employees on FMLA without pay will be advised of how to maintain health insurance and any benefits through the Flexible Benefits Program. Instructions are contained on the Notice of Eligibility and Rights & Responsibilities (DOL Form WH-381).

9.9.4.3. Employees with at least one year of participation in the Group Term Life Insurance Program under the Employees' Retirement System (ERS) may retain coverage while on FMLA without pay. A request to continue coverage must be made in writing to ERS prior to beginning the FMLA without pay. Coverage terminates if this written request is not received.

## **9.10. INTERMITTENT/REDUCED LEAVE SCHEDULE**

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- 9.10.1. FMLA may be taken intermittently or on a reduced leave schedule under certain circumstances. FMLA cannot exceed 480 hours in a calendar year.
- 9.10.2. FMLA hours for eligible employees that work reduced work schedules will coincide with their weekly work hours. For example, if an employee works 32 hours per week they will have 384 hours of FMLA available to take, if approved.
- 9.10.2.1. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason (e.g., morning sickness, prenatal examinations, and therapy sessions).
- 9.10.2.2. A reduced leave schedule reduces employees' normal work hours per workweek or per workday.
- 9.10.3. FMLA may be taken intermittently or on a reduced leave schedule when medically necessary or to provide care or psychological comfort to a qualifying family member with a serious health condition. A medical statement is not required for each absence when FMLA is taken intermittently. Documentation is required initially, and recertification is required after the doctor's time stated on form has expired, or if the condition exceeds one year.
- 9.10.4. FMLA may be taken intermittently or on a reduced leave schedule to care for a newborn child or for placement of a child for adoption or foster care.
- 9.10.5. Employees who request FMLA on an intermittent or reduced leave schedule basis may be required to temporarily transfer to an available alternative position that better accommodates recurring periods of absence.
- 9.10.5.1. The alternative position must have equivalent pay and benefits, but is not required to have equivalent duties.
- 9.10.5.2. Employees must not be transferred to alternative positions in order to discourage the use of FMLA or to positions that represent a hardship (e.g., employees may not be transferred to a less desirable shift).
- 9.10.5.3. When the need for intermittent leave or a reduced leave schedule ends and employees are able to return to their normal work schedules, they must be returned to their former positions or equivalent positions.

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9.10.6. Only the amount of leave actually taken on an intermittent or reduced leave schedule basis may be counted toward the 12 workweeks of FMLA.

9.10.7. Employees on intermittent FMLA due to a serious health condition are required to provide recertification of the serious health condition yearly. Recertification can be required every 12 workweeks.

## **9.11. RETURN TO WORK**

9.11.1. Employees who have complied with the terms and conditions in the FMLA approval notice are entitled to return to the same position, or an equivalent position with the same pay and grade, benefits and comparable working conditions, at the expiration of FMLA.

9.11.1.1. Employees do not retain this entitlement if at the expiration of FMLA they are unable to perform the essential functions of the position, with or without reasonable accommodation, due to physical or mental condition.

9.11.1.2. Employees on FMLA do not have greater rights to return to work than they would have if they had continuously remained at work. For example, employees who are on FMLA during a staff reduction do not have a right to return to work if they are laid off due to the staff reduction. The fact that an employee has taken FMLA leave will not be considered in deciding how or when to make any staff reductions.

9.11.2. Employees returning from FMLA due to their own serious health condition are required to submit a Fitness for Duty statement from the attending health care provider prior to returning to work. This statement must certify that the employee is capable of performing the essential functions of the position, with or without reasonable accommodation. This statement should be submitted to HR one week prior to an employee's scheduled return date.

9.11.3. Employees who do not provide the required Fitness for Duty statement or have restrictions that cannot be reasonably accommodated should not be allowed to return to work. In the event that an employee reports to work in lieu of providing the required Fitness for Duty statement, the employee will be sent home and their absence could be unexcused.

9.11.4. Employees that exhaust FMLA that would like to be considered for further employment need to provide a written request for authorized leave without pay or contingent leave. Please see DPH Policy *HR-03422 Absences from Work* for further clarification of these options.

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9.11.5. Employees that do not return to work at the expiration of approved FMLA leave are subject to disciplinary action up to and including separation.

## 9.12. REVISION HISTORY

REVISION #	REVISION DATE	REVISION COMMENTS
0	February 11, 2012	Initial Issue
1	July 24, 2012	Annual review and update. Reformat to new template.
2	October 28, 2013	Annual review and update.
3	August 24, 2015	Annual review and update.
4	December 8, 2017	Annual review and update.
5	May 1, 2018	Update of leave usage requirements.

## 10.0 RELATED FORMS

- *HR03431-A Family and Medical Leave Request Form*
- *WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition*
- *WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition*
- *WH-381 Notice of Eligibility and Rights & Responsibilities*
- *WH-382 Designation Notice*
- *WH-384 Certification of Qualifying Exigency For Military Family Leave*
- *WH-385 Certification for Serious Injury or Illness of Covered Service member -- for Military Family Leave*
- *WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave*