

YOUTH SERVICES POLICY

Title: Family and Medical Leave of Absence Next Annual Review Date: 03/17/2018	Type: A. Administrative Sub Type: 2. Personnel Number: A.2.5
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References: The Family and Medical Leave Act of 1993 (Public Law 103-3 as amended by the National Defense Authorization Act (NDAA) and the Airline Flight Crew Technical Corrections Act (AFCTCA) for FY 2008 Public Law 110-181) Section 585(a); FMLA 29 U.S.C. §2615; Title 29, Part 825 of the Code of Federal Regulations; United States Code, Title 10, Subpart A, Section 101(a) (13) (B); as amended for FY 2010 and the FMLA Final Rule of the U.S. Department of Labor, Wage and Hour Division (WHD) in 2013; Americans with Disabilities Act; U.S. Department of Labor, Wage and Hour Publication 1420 revised February 2013; Fair Labor Standards Act; Department of Defense (DOD) 7000.14-R Financial Management Regulation, Volume 9; Civil Service Rules, Chapter 11; Civil Service General Circular #2013-006; La. Employment Discrimination law (La. R.S. 23:301 et seq.); YS Policies A.2.1 "Employee Manual", A.2.3 "Outside Employment, Second Jobs", A.2.13 "Americans with Disabilities Act"; A.2.28 "Return to Work"; A.2.49 "Worker's Compensation" and A.2.55 "Time and Attendance"	
STATUS: Approved	
Approved By: <i>Mary L. Livers, Deputy Secretary</i>	Date of Approval: 03/17/2016

I. AUTHORITY:

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

II. PURPOSE:

To outline the conditions under which an employee may request leave from work for a limited period of time with job protection, group health and life coverage, and no loss of accumulated service in accordance with requirements described in the federal "Family and Medical Leave Act" (FMLA) of 1993, as amended in 2008, 2010 and 2013 under Section 585 of the "National Defense Authorization Act", the U.S. Department of Labor (DOL), Wage and Hour Division (WHD) and in Civil Service Rules. (YS Policy No. A.2.55 describes procedures regarding employee leave and attendance.)

For further clarification, the FMLA was amended in 2008 to provide employees with family members serving in the Armed Forces, National Guard and Reserves with FMLA leave for reasons related to their family members' military service.

In 2010, the FMLA was again amended, expanding the military related leave protections, as well as to include a special eligibility provision for airline flight crew employees.

In announcing the Final Rule of 2013, the U.S. DOL, WHD—provided expanded protections for military families and airline flight crew employees.

Final Rule updates are available on WHDs website: <http://www.dol.gov/whd>.

The FMLA optional-use forms and the poster have been removed from the regulations and are available on the above-mentioned website, as well as the local Wage and Hour district offices.

III. APPLICABILITY:

Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Deputy Assistant Secretary, General Counsel, Regional Directors, Facility Directors, Regional Managers, all other personnel who are authorized to approve leave for employees under their jurisdiction, and all employees eligible for leave under the Family Medical Leave Act, as amended.

It is the responsibility of each Unit Head to ensure that all necessary procedures are in place for proper management and administration of this policy.

IV. DEFINITIONS:

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 age 18 or age 18 or older and is “incapable of self-care because of a mental or physical disability.”

COBRA – (Consolidated Omnibus Budget Reconciliation) allows workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

Continuing Treatment – 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 conditions; a regimen of continuing treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines or salves; or bed-rest, drinking fluids, exercise, and similar activities that can be initiated without a visit to a health care provider.

Covered Active Duty – Duty under a call or order to active duty under Title 10, Section 101(a) (13) (B) of the United States Code and requires deployment to a foreign country.

Covered Veteran - An individual who was discharged or released 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 FY 2010 NDAA in 2009 and the effective date of the 2013 Final Rule is excluded in the determination of the five-year period for covered veteran status.)

Essential Functions Form (EFF) - A form generated by YS' HR Liaisons that lists the fundamental job duties of a position. Before an applicant can be hired and before an employee can return to work after an illness or injury, they must have the EFF filled out completely and signed by their physician.

Equivalent Position – An equivalent position has 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 will be at the same or a geographically proximate work site as that to which the employee had previously been assigned.

Fair Labor Standards Act (FLSA) – The federal law that sets the minimum wage and requires the payment of overtime under certain conditions.

FMLA - Family and Medical Leave Act of 1993.

GINA - “Genetic Information Non-Discrimination Act” – Prohibits genetic information discrimination in employment.

Health Care Provider -

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;
- 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) authorized to practice in the State and performing within the scope of their practices as defined under State law;
- 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 practices as defined under State law;
- Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts;
- Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
- A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulation of that country; or

- For a covered military member, the list of health care providers who are authorized to complete a certification for military caregiver leave has been expanded to include health care providers, as defined in Title 29, Part 825.125 of the Code of Federal Regulations, who are not affiliated with DOD, VA, or TRICARE.

Human Resource (HR) Liaison – The staff person designated by the Unit Head with the responsibility for collecting and retaining documents pertaining to employee's personnel records.

Incapable of Self-Care - The individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "instrumental activities of daily living" (i.e., caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones, using post office, etc.).

Incapacity - The inability to work, attend school, perform the duties of military office/grade, rank or rating, or perform other regular daily activities due to the treatment or recovery of a serious health condition.

Intermittent Leave - Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from a half-hour or more to several weeks [i.e., leave taken on an occasional basis for medical appointments or several days at a time spread over a period of six (6) months].

In Loco Parentis - Those individuals with day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary; however, documentation of the responsibility shall be required, i.e., an affidavit signed by a notary and/or two (2) witnesses, income tax returns, etc.

ITA/ITO – (Invitational Travel Authorization/Invitational Travel Orders) - Authorization for travel of a person, not a government employee, in connection with certain assignments directly related to activities and in the interests of the Department of Defense.

Military Member – Includes a member of the National Guard or Reserves, or the Regular Armed Forces, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, has a condition that was incurred in the line of duty while on active duty which prevents the performance of military duties, or is otherwise on the temporary disability retired list for a serious injury or illness. This also includes a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Serious injury or illness includes injuries or illnesses that existed before the beginning of the member's active duty in the Armed Forces.

Military Member Family Leave – An eligible employee who is the spouse, son, daughter, parent, or next of kin of a military member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member. The leave shall only be available during a single 12-month period.

NDAA – “National Defense Authorization Act” for FY 2008 (Public Law 110-181), which permits a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a member of the Regular Armed Forces and provide employees with family members serving in the Armed Forces, National Guard and Reserves with FMLA leave for reasons related to their family members’ military service, 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.

Next of Kin – The closest blood relative, as defined for this policy under the “National Defense Authorization Act” for FY 2008.

Outpatient Status – With respect to a covered service member, the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command control of members of the Armed Forces receiving medical care as outpatients.

Outside or Supplemental Employment – Full-time or part-time employment other than the employee’s job with YS, whether or not that other employment has been previously disclosed and approved of in accordance with YS Policy No. A.2.3.

Parent - The biological parent of an employee or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. The term does not include parents "in-law."

Physical or Mental Impairment - An impairment that substantially limits one or more of the major life activities of an individual as defined by the “Americans with Disabilities Act” (ADA).

Qualifying Exigency – A number of broad categories for which military employees can use FMLA leave are as follows:

- (a) Short-notice deployment;
- (b) Military events and related activities;
- (c) Childcare and school activities;
- (d) Financial and legal arrangements;
- (e) Counseling;
- (f) Rest and recuperation;
- (g) Post-deployment activities;
- (h) Parental Care; and
- (i) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

The qualifying exigency leave related to a military member's Rest and Recuperation (R&R) leave is a maximum of 15 calendar days. Information which is required includes a copy of the military member's R&R leave orders or other documentation issued by the military, setting forth the dates of the military member's leave.

Reduced Work Schedule - Leave that reduces the usual number of hours per workday or workweek of an employee.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves one of the following:

- Hospital Care - Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- Absence Plus Treatment - A period of incapacity of more than three (3) consecutive calendar days (including any subsequent treatment period of incapacity relating to the same condition), that also involves:
 - a. Treatment two (2) or more times 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 (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Pregnancy - Any period of incapacity due to pregnancy or for prenatal care. Ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery from childbirth are considered serious health conditions.
- Chronic Condition Requiring Treatment - A chronic condition which:
 - a. Requires periodic visits 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 episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).
- Permanent/Long-term Conditions Requiring Supervision - 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 disease, a severe stroke or the terminal stages of a disease.

- Multiple Treatment (Non-Chronic Conditions) - 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 or more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

- Serious Health Conditions may include the following:
 - a. Appendicitis;
 - b. Back conditions requiring extensive therapy or surgical procedures;
 - c. Emphysema;
 - d. Heart attacks, conditions requiring bypass surgery and valve operations;
 - e. Injuries caused by accidents including restorative dental surgery after an accident;
 - f. Most cancers and removal of cancerous growths;
 - g. Ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery;
 - h. Pneumonia;
 - i. Severe arthritis, nervous disorders and respiratory conditions;
 - j. Severe illness but not receiving continuing active care from a doctor such as Alzheimer's disease and late-stage cancers;
 - k. Strokes;
 - l. Treatment for a serious, chronic health condition which, if left untreated, would likely result in an absence of more than three (3) days;
 - m. Treatment for substance abuse if inpatient treatment is required; and
 - n. In the case of a member of the Armed Forces, National Guard or Reserves, an injury or illness incurred by the member in line of duty on activity duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

- Examples of Serious Health Conditions for Intermittent or Reduced Leave Schedule When Medically Necessary:
 - a. A course of medication or therapy to resolve a condition;
 - b. Treatment for early stage cancer (chemotherapy);
 - c. Physical therapy after a hospital stay or because of severe arthritis; and
 - d. Prenatal care.

Serious Injury or Illness for a Covered Veteran – 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.

Spouse - A husband or wife as defined or recognized under State law for purposes of marriage.

Treatment - For the purpose of this policy, medical care that includes examination to determine if a health condition exists and evaluation of the condition, and does not include routine physical examinations, eye examinations, or dental examinations.

Unit Head - Deputy Secretary, Facility Directors and Regional Managers.

YS Central Office - Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Deputy Assistant Secretary, General Counsel, Regional Directors, and their support staffs.

V. POLICY:

It is the Deputy Secretary's policy to grant family and medical leave to those employees whose family and/or individual medical needs require their absence from work and who are eligible for such leave. Due to the sensitive and personal nature of FMLA requests, all related information shall only be shared with those employees who have a business need to know, and shall be confidential at all levels. It is the policy of YS:

- A. To provide up to 12 workweeks, or 26 workweeks in a case under the "National Defense Authority Act" for FY 2008, of job-protected, paid or unpaid leave during any 12-month period to eligible employees for certain specified family and medical reasons;
- B. To maintain eligible employees' group health and life insurance coverage at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave;
- C. To restore eligible employees to their same or equivalent positions at the conclusion of their leave as provided by the "Family and Medical Leave Act" of 1993, as amended; and
- D. That an employee on FMLA leave for self shall not participate in any form of outside or supplemental employment while on FMLA, regardless of whether or not that other employment has been previously disclosed and approved of pursuant to YS Policy No. A.2.3.

- E. That an employee on FMLA leave for self shall not participate in any form of work related duties (i.e. answering emails, telephone calls, reviewing / signing paperwork, etc.) while on FMLA, regardless of the duration of the activity or from whom the request for such activity is being made. Work-related activity while in FMLA status is prohibited under U.S. DOL laws.

VI. PROCEDURES:

In order for YS to consistently administer the FMLA regulations, the following procedures have been developed for managers, supervisors, and all individuals charged with the responsibility of FMLA leave administration.

If the need for FMLA leave *is foreseeable*, an employee should provide their supervisor at least 30 days advance notice before FMLA leave is to begin based on the expected birth, placement of child with employee for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member.

If the need for FMLA leave *is not foreseeable*, an employee should give notice of the need for FMLA leave as soon as practical under the facts and circumstances of the particular case. The employee is expected to give written notice within two (2) working days of learning of the need for leave.

- A. Employees wishing to request FMLA shall consult with the unit's Human Resource (HR) Liaison, who shall provide the employee with the following:
 - 1. A copy of YS Policy No. A.2.5;
 - 2. The "FMLA Employee Request Form" [see Attachment (a)]; and
 - 3. The appropriate medical certification form listed below, which is to be completed and returned to the OSHCM located at the Department of Public Safety (DPS) within 15 calendar days of receipt:
 - a. "Certification of Health Care Provider for Employee's Serious Health Condition" (Form WH-380-E Expires May 31, 2018);
 - b. "Certification of Health Care Provider for Family Member's Serious Health Condition" (Form WH-380-F May 31, 2018);
 - c. "Certification of Qualifying Exigency for Military Family Leave" (Form WH-384 Expires May 31, 2018);
 - d. "Certification for Serious Injury or Illness of a Current Service Member for Military Family Leave" (Form WH-385 Expires May 31, 2018); or
 - e. "Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave" (Form WH-385-V Expires May 31, 2018).

The completed form may be faxed to the OSHCM at DPS at 225-925-3970, or mailed to the following address:

OSHCM at DPS Human Resources
P.O. Box 66614
Baton Rouge, LA 70896-6614

Questions regarding the form should be directed to OSHCM at DPS at 225-925-6067.

4. "FMLA Release to Return to Work" form [see Attachment A.2.5 (b)], to be completed by the employee's health care provider in order for the employee to return to work at the conclusion of FMLA.
 5. Employee's "Position Description" (SF-3) and/or "Essential Functions Form" (EFF), to be reviewed by the health care provider when completing the "FMLA Release to Return to Work" form.
- B. The employee must complete either the leave request screen in LEO or the hardcopy "SF-6 Application for Leave" (leave slip). This will provide the necessary basic information needed to determine the reason(s) for FMLA leave.

If the employee refuses to sign the "FMLA Employee Request Form", the "SF-6 Application for Leave" will serve as the FMLA request. The employee's supervisor shall make notation that the leave is FMLA in the remarks section of the SF-6 and initial the comments.

- C. If the requested leave appears to meet the criteria of FMLA, the Unit's HR Liaison must complete the following within three (3) business days of the request, and forward a copy of all three (3) documents to PSS HR at the time of completion:
1. "FMLA Eligibility Checklist" [see Attachment A.2.5 (c)];
 2. "Verification of FMLA Entitlement" form [see Attachment A.2.5 (d)];
 3. The "Memorandum of FMLA Status" form [see Attachment A.2.5 (e)] notifying the employee of their current status pending confirmation from the OSHCM at DPS.

A copy of all three (3) documents noted shall be forwarded to the OSHCM at DPS at the time of completion by the HR Liaison.

If an employee specifically requests leave under FMLA, and after completing Section VI. A of this policy, the leave request is determined as not qualifying or the employee is determined ineligible, the OSHCM at DPS shall notify the employee in writing that the requested leave is not an FMLA Qualifying Event.

- D. If the employee did not request FMLA prior to beginning FMLA leave, the Unit's HR Liaison shall tentatively designate the employee as being on FMLA leave after the employee has been out three (3) consecutive days, by mailing or providing the employee with the documents listed in VI.A above. The employee is required to provide the requested medical certification, included in the documents provided, within 15 calendar days of receipt to the OSHCM at DPS.
- E. Once the medical certification form is received from the health care provider, the OSHCM at DPS shall review and determine whether the certification meets the FMLA criteria. If so, the OSHCM at DPS shall immediately confirm to the employee that the leave shall be designated as FMLA.

If medical certification was requested but not received within 15 days of the request made by the unit's HR Liaison, the OSHCM at DPS shall make a determination as to what action shall be taken.

- F. Any aforementioned documents received by the unit's HR Liaison shall be immediately forwarded to the OSHCM at DPS.
- G. Upon exhaustion of any unpaid FMLA entitlement, the unit's HR Liaison shall issue the "FMLA Alert Form" [see Attachment A.2.5 (f)], notifying the employee of their placement in "Leave of Absence Without Pay" (LWOP) status, and their responsibility to reimburse the agency for their portion of premiums for health and life insurance coverage paid by the agency, upon their return to work, as well as the recoupment process through the OSHCM at DPS.

Upon exhaustion of the 12-workweek FMLA entitlement or the 26-workweek entitlement under NDAA, the unit's HR Liaison shall issue the "FMLA Alert Form" notifying the employee that the FMLA entitlement has ended and that any additional leave must be applied for, and shall be evaluated pursuant to standard Civil Service rules and regulations, and YS policy and procedures.

It is critical that a copy of the completed "FMLA Alert Form" is forwarded to the OSHCM at DPS immediately to ensure the appropriate entries are made in the LaGOV OSHCM System to maintain the employee's benefits.

The OSHCM at DPS shall maintained the official FMLA medical files on all YS employees to comply with the record-keeping requirements established by the U.S. DOL.

VII. EMPLOYEE ELIGIBILITY:

To be eligible to request FMLA, an employee must meet the following criteria:

- A. Have been employed by the State of Louisiana for at least 12 months. The 12 months of employment need not be consecutive months. If an employee is maintained on the payroll for any part of a week, that week counts as a week of employment; and
- B. Have worked at least 1,250 in state hours during the 12-month period immediately preceding the commencement of the leave. "Fair Labor Standards Act" (FLSA) hours-worked principles shall be applied in determining whether an employee has worked 1,250 hours. Therefore, all hours, including overtime and on-call time, meet the FLSA hours-worked requirements.

VIII. LEAVE ENTITLEMENT:

Employees may request up to a total of 12 workweeks or 26 workweeks of FMLA under the NDAA, in accordance with the following.

- A. An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one (1) or more of the following reasons:
 - 1. The birth of a son or daughter, and to care for the newborn;
 - 2. Placement with the employee of a child 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 the employee's position;
 - 5. To deal with deployment or return of a family member on Active Duty under NDAA, under the term "qualifying exigency" in the NDAA, for non-medical demands or circumstances as defined and outlined in the amended FMLA of 1993; or
 - 6. To care for a parent who is incapable of self-care as outlined in the Final Rule of 2013, necessitated by the covered active duty of a military member.
- B. An eligible employee shall be entitled to a total of 26 workweeks of leave during any 12-month period to care for a spouse, son, daughter, parent or next of kin, who is a member of the National Guard or Reserves or the Regular Armed Forces and who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness.
- C. The right to take FMLA leave applies equally to male and female state employees, as indicated in Section XI.A of this policy. A father, as well as a mother, can take leave for the birth, adoption or foster care placement of a child.
- D. Employees working a reduced workweek shall be granted FMLA leave on a pro-rated basis when working less than 40 hours per week. (Example: 32 hrs/wk x 12 weeks = 384 hours; 32 hrs/wk x 26 weeks = 832 hours)

IX. GENERAL PROVISIONS:

- A. The 12-month FMLA entitlement period is measured forward from the date of first use.
- B. YS requires the use of accrued paid leave (annual, sick and, whenever applicable, hour-for-hour compensatory leave and time and a half compensatory leave) for FMLA leave purposes.
- C. Accrued paid leave shall run concurrently with any FMLA leave granted to an eligible employee.
- D. Rules under Title 29, Part 825.207 of the Code of Federal Regulations allow government employers to use time and a half compensatory leave (1.5K) for an FMLA absence, and count that absence against the employee's FMLA leave entitlement.
- E. An employee who has exhausted all sick leave but is unable to return to work cannot be terminated for that reason if the employee has not used all of the employee's 12-workweek FMLA entitlement or the 26-workweek leave allowed under NDAA.
- F. Leave in excess of the FMLA entitlement may be granted by the Appointing Authority pursuant to Civil Service Rules and YS Policy No. A.2.55.
- G. The Appointing Authority or the OSHCM at DPS may require an employee on FMLA leave to report every 30 days on the employee's status and intent to return to work. The employee may also be required to present a current medical certification. Failure to adhere to this process may result in disciplinary action.
- H. When accrued paid leave balances are insufficient to meet the FMLA leave entitlement, unpaid leave shall be granted.

X. DESIGNATING FMLA LEAVE:

- A. It is the OSHCM at DPS' responsibility, in all circumstances, to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee. The designation must be based on information received from the employee or the employee's spokesperson (spouse, adult child, parent, doctor). A copy of the designation shall be forwarded to the unit's HR Liaison by the OSHCM at DPS.

- B. If the employee has provided advance notice as required, the OSHCM at DPS shall designate the leave prior to beginning FMLA if possible, but no later than five (5) business days after the employee begins FMLA leave, with written notification to the employee. The employee shall consult with their supervisor prior to scheduling of leave so as not to disrupt the operations of the unit.
- C. An employee absent from work for a non-qualifying FMLA event shall be placed in the appropriate leave status.
- D. The OSHCM at DPS may not designate FMLA leave after an employee has returned to work except for the two (2) conditions listed below.
 - 1. If an employee was absent for an FMLA reason and the OSHCM at DPS did not learn the reason for the absence until the employee's return, the OSHCM at DPS may designate [within two (2) business days of the employee's return to work] the leave retroactively with appropriate written notice to the employee. Similarly, an employee may request retroactive designation within two (2) business days; otherwise the employee may not assert FMLA protection for the absence.
 - 2. If the OSHCM at DPS knows the reason for the leave, but has not been able to confirm that the leave qualifies under FMLA, or the requested medical certification is delayed or a second or third medical opinion has been requested, the OSHCM at DPS shall make a preliminary designation and so notify the employee. Upon receipt of the requisite information, the OSHCM at DPS shall confirm in writing the preliminary designation as FMLA-qualifying. If the requisite information fails to confirm that the reason was FMLA-qualifying, the OSHCM at DPS must withdraw the designation.

XI. SPECIAL PROVISIONS BY LEAVE ENTITLEMENT:

- A. Birth of Child -
 - 1. Ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery from childbirth are considered serious health conditions, and leave taken for these conditions is counted toward the total 12 workweek entitlement.
 - a. FMLA leave for the birth of a child expires at the end of the 12-month period beginning on the date of the birth; and
 - b. FMLA leave taken in relation to pregnancy, severe morning sickness and prenatal care prior to the birth of the child is included in the 12-workweek entitlement.

2. Sick leave shall be granted for the conditions described in A.1.a and A.1.b Annual leave, hour-for-hour compensatory leave, time and a half compensatory, and/or leave without pay shall be granted for the care of a child after the recovery process to meet the 12-workweek FMLA entitlement.

Accrued time and a half compensatory leave shall be taken prior to accrued compensatory leave earned at the hour-for-hour (straight time) rate, annual leave or leave without pay.

Time and a half compensatory leave and hour-for-hour compensatory leave may be taken in lieu of sick leave if requested by the employee and approved by the Appointing Authority.

3. A medical certification from a health care provider is required to substantiate the anticipated date of delivery and the duration of the recovery process.
4. Unless the employee's supervisor agrees, leave may not be utilized intermittently or on a reduced leave schedule for FMLA entitlement due to a birth of a healthy newborn child.
5. If both the father and the mother are state employees, the father and mother are limited to sharing a combined total of 12 workweeks for the birth of the child. The father shall be granted time and a half compensatory leave, hour-for-hour compensatory leave, annual leave, or leave without pay.

B. Placement of Child with the Employee for Adoption and Foster Care

An eligible employee shall be entitled to 12 workweeks for placement of a child for adoption or foster care.

1. FMLA leave for the placement of a child with an employee for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.
2. FMLA leave may begin before actual placement if an absence from work is required for placement to proceed. Leave taken to attend counseling sessions, appear in court, consult with an attorney or the doctor representing the birth parent, or submitting to a physical examination is counted toward the total 12-workweek entitlement.
3. Except for medical reasons involved in the placement of a child for adoption or foster care, annual leave, hour-for-hour compensatory leave, and leave without pay shall be granted to meet the 12-workweek entitlement. Accrued compensatory leave earned at time and a half and the straight-time rate shall be taken prior to the granting of leave without pay.

4. If both parents are employed by the state, the total entitlement for both parents combined is 12 workweeks, as noted in Section XI.A.5.
5. Unless the employee's supervisor agrees, leave shall not be utilized intermittently or on a reduced leave schedule after the placement of a child with the employee for adoption or foster care.
6. There is no age limit on a child being adopted or placed for foster care for determining leave eligibility.
7. The source of an adopted child is not a factor in determining leave eligibility.
8. Foster care must involve a state action in the removal of a child from parental custody rather than just an informal arrangement for care of another person's child.

C. Care for Spouse, Child or Parent, and "Next of Kin" under NDAA

1. Leave shall be granted under the FMLA to an eligible employee who is needed to care for a spouse, son, daughter or parent with a serious health condition and/or who qualifies as next of kin under "Military Member Family Leave" as defined herein under Section IV.
2. The term "needed to care for" encompasses both physical and psychological care, to include the following situations which are counted toward the total 12-workweek entitlement or 26-workweek under NDAA.
 - a. The family member is incapable of self care;
 - b. Providing psychological comfort and reassurance which are deemed beneficial to a seriously ill child, spouse or parent receiving inpatient care;
 - c. The employee is needed to fill in for others who are caring for a family member or to make arrangements for changes in care, such as transfer to a nursing home;
 - d. The employee is needed intermittently, such as instances where other care is normally available, or care responsibilities are shared with another member of the family or a third party; and/or
 - e. A covered military member is otherwise on the temporary disability retired list.
3. Medical certification from a health care provider is required to substantiate the need for such care.

4. Annual leave, hour-for-hour compensatory leave, time and a half compensatory leave, and leave without pay shall be granted to care for a family member, with the exception that any accrued hour-for-hour compensatory leave shall be taken prior to the granting of annual leave or unpaid leave to meet the 12-workweek entitlement or 26-workweek under NDAA.
 5. Leave shall be granted under the FMLA to an eligible employee to care for a spouse, child, parent or next of kin as follows:
 - a. To care for a spouse, 12 workweeks (or 26 under NDAA) are allowed for each employee regardless of whether or not the spouse is employed by the state;
 - b. To care for a child, 12 workweeks are allowed for each parent (FMLA entitlement does not cover the care of a son-in-law/daughter-in-law);
 - c. Twelve (12) workweeks combined shall be allowed to care for a parent if both employees (siblings) work for the state (FMLA entitlement does not cover the care of a mother-in-law/father-in-law); and
 - d. When two state employees utilize a portion of the total 12-workweek entitlement for the birth of a child, adoption, foster care or to care for a parent, each shall be entitled to the difference between the amount that either has taken individually for the above purposes, and the 12 workweeks FMLA leave allows for purposes of personal illness or to care for a spouse or sick child.
 6. When medically necessary, leave may be taken intermittently or on a reduced work schedule. Employees must try to schedule their intermittent leave so as not to unduly disrupt the employer's business.
 7. The employee's supervisor may require the employee to report every 30 calendar days on the status and intention of the employee to return to work. He may also request a current medical certification.
 8. Unmarried domestic partners do not qualify for FMLA leave to care for their partners.
- D. Employee Serious Health Condition -
1. FMLA entitlement shall be granted to an eligible employee for their own "serious health condition" as defined in Section IV of this policy.
 2. Medical certification from a health care provider is required to substantiate the serious health condition.

3. A serious health condition does not cover short-term conditions for which treatment and recovery are for a short period of time. Therefore, leave taken for a non-serious health condition is not counted toward the 12-workweek entitlement.
4. Sick leave shall be granted to an employee with a serious health condition. Also, accrued time and a half compensatory leave, accrued hour-for-hour compensatory leave, annual leave, and LWOP, shall be granted to meet the 12-workweek FMLA entitlement. Accrued time and a half compensatory leave shall be taken prior to the granting of hour-for-hour compensatory leave, annual leave or unpaid leave.
5. As stated in Section XI.C.6 of this policy, intermit and/or a reduced leave schedule may be used during an employee's serious health condition absence. Supervisors may change the employee's shift, reassignment or may require planned treatment around work schedule.
6. Spouses who are both employed by the state are both entitled to 12 workweeks of FMLA leave each for their own illnesses.
7. As stated in Section XI.C.7 of this policy, the employee's supervisor/PSSHR may require the employee to report every 30 days on the status and intention of the employee to return to work.

For conditions certified as having a minimum duration of more than 30 days, YS must wait until the specified time period has past to request recertification.

Leave code rolls in the ISIS system are as follows:

FMLA Self = LB (sick) > 1.5 K > ST K (straight comp.) > Annual>LWOP

FMLA Family = 1.5 K > ST K (straight comp.) > Annual>LWOP

FMLA Workers Comp = LB (sick) > 1.5 K > ST K (straight comp.) > Annual>LWOP

XII. FITNESS-FOR-DUTY STATEMENT:

- A. As a condition of restoring an employee whose FMLA leave was initiated by the employee's own serious health condition, YS requires an employee to obtain and present the completed "Release to Return to Work" form from the employee's health care provider that the employee is able to resume work.

The fitness-for-duty certification shall contain only information regarding the particular condition that caused the employee's need for FMLA leave. An "Essential Functions Form" furnished by YS must be completed by the health care provider at the same time the "Release to Return to Work" (a.k.a. "fitness-for-duty) form is obtained.

For those employees who qualify as disabled under the "Americans with Disabilities Act" (ADA) (refer to YS Policy No. A.2.13), fitness-for-duty examinations must be job-related and consistent with business necessity. The FMLA does not allow second or third fitness-for-duty certifications.

- B. The DOL's Final Rule amended the fitness-for-duty to allow an employer to require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. Where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.
- C. Information concerning an employee's return to work following an injury or illness is covered in YS Policy No. A.2.28.

XIII. REINSTATEMENT RIGHTS:

- A. An employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.
- B. The right to reinstatement exists even if the employee's position has been restructured to accommodate the employee's absence or the employee was replaced. However, an employee is entitled to no greater right to reinstatement than he would be if he were not on leave. For example, if the employee's position is affected by a layoff, the employee is subject to the same layoff provisions as employees not on leave.
- C. If an employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no rights to restoration to another position, subject to any overriding requirements of the ADA.

XIV. BENEFITS:

- A. During FMLA leave, YS shall maintain the employee's group health plan coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

- B. If a new health plan, benefits or changes in health benefits or plans 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 was not on leave. It is the employee's responsibility to contact the OSHCM at DPS to make changes to their plan or benefits should changes to either occur by the provider during their absence.
- C. Except as required by the "Consolidated Omnibus Budget Reconciliation Act" (COBRA), YS' obligation to maintain health benefits during leave under FMLA ceases if the following occurs:
 - 1. The employment relationship would have terminated if the employee had not taken FMLA leave;
 - 2. The employee informs YS of his/her intent not to return from leave; or
 - 3. The employee fails to return from leave or continues on leave after exhausting his/her FMLA leave entitlement in the 12 month period.
- D. In cases where employees are on unpaid FMLA leave (LWOP), YS shall continue to pay the following insurance premiums:
 - 1. Both the employer's and employee's share of health insurance premiums, including employee + child/children, employee + spouse or family; and
 - 2. The employee's life insurance premium.
- E. Prior to exhausting unpaid FMLA entitlement, the HR Liaison shall notify the employee of their responsibility to resume payment of such premiums, and that failure to comply could result in loss of health insurance coverage by issuing the "FMLA Alert Form". The FMLA requires that an employee on FMLA leave must reimburse their employer for any insurance premiums the employer paid while he was on FMLA leave.

XV. EMPLOYER NOTICES:

All YS statewide offices and facilities, are required to post, and keep posted on the premises, a notice explaining the FMLA provisions, and to provide information concerning the procedures for filing complaints of violations of the FMLA with the U.S. DOL "Wage and Hour Division". The notice must be posted prominently where it can be readily seen by employees and applicants for employment. (See attached WHD Publication 1420 – Revised February 2013.)

XVI. MEDICAL CERTIFICATION REQUIREMENTS:

- A. An employer may require that-

1. Leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders, a certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.
2. Leave to care for a covered military member with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an "Invitational Travel Order" (ITO) or "Invitational Travel Authorization" (ITA) issued to any member of the covered service member's family.

- B. YS may require the employee to obtain a second opinion at YS' expense, if there is reason to doubt the validity of the original medical certification. 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 YS' 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 who to select for the third opinion, the Appointing Authority shall be bound by the first certification.

If the employee does not attempt in good faith to reach agreement on who to select for the third opinion, the employee shall be bound by the second certification.

- C. If an employee fails to provide a requested medical certification in a timely manner to substantiate the need for FMLA due to a serious health condition, the employee's supervisor shall consult with Legal Services.

If an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee 15 calendar days to cure the deficiency.

If an employer has not received the required certification on the 16th calendar day following the request, Legal Services shall request the required information from the health care provider in writing, with a copy to the OSHCM at DPS.

The employee may be placed on LWOP until such time as the certification is produced. Failure to produce said certification may result in disciplinary action, up to and including termination.

XVII. RECORDS:

- A. FMLA provides that the OSHCM at DPS shall make, keep, and preserve records pertaining to their obligation under the Act pursuant to the record keeping requirements of Section 11 (c) of the "Fair Labor Standards Act" (FLSA). Records must be maintained no less than three (3) years and be available for inspection, copying and transcription by representatives of the U. S. DOL upon request.
- B. Medical certifications, recertification, or medical histories of employees or employees' family members shall be maintained in separate files and be treated as confidential.
- C. Federal regulations require employers to maintain records that disclose the following:
 - 1. Basic payroll and identifying employee data, including name, address, occupation, rate or basis of pay and terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, and total compensation paid;
 - 2. Dates FMLA leave is taken by employee;
 - 3. The hours of leave, if FMLA leave is taken in increments of less than one (1) full day;
 - 4. Copies of employee notices of leave (application for leave shall indicate FMLA in "Remarks" section);
 - 5. Any documents describing employees' benefits or employer policies and practices regarding the taking of paid and unpaid leave;
 - 6. Premium payments of employee benefits;
 - 7. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave; and
 - 8. Records showing compliance with the confidentiality requirements of the "Genetic Information Non-Discrimination Act" (GINA).

XVIII. FMLA AND OTHER LAWS:

FMLA does not supersede any state or local law that provides greater family or medical leave rights than those provided by FMLA, nor does it modify or affect other federal or state laws such as the ADA and Workers' Compensation (refer to YS Policy No. A.2.49). Leave taken under other federal or state laws which meets the criteria of FMLA shall run concurrently with FMLA leave.

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The "Louisiana Employment Discrimination Law" (LA R.S.23:301 et seq.) requires employers with more than 25 employees to allow a female employee affected by pregnancy, childbirth or related medical conditions to take leave on account of pregnancy for a "reasonable period of time" not to exceed four (4) months. "Reasonable period of time" means that period during which the employee is disabled on account of pregnancy, childbirth or related medical conditions.

The U.S. DOL is not responsible for enforcing state laws, nor may a state enforce the federal FMLA.

The employee who believes that YS has violated the FMLA may either file a complaint pursuant to YS Policy No. A.2.1, or file a private lawsuit in federal court.

The OSHCM at DPS should be consulted when encountering these situations.

Previous Regulation/Policy Number: A.2.5

Previous Effective Date: 11/20/2013

Attachments/References:

A.2.5 (a) FMLA Employee Request Form Nov2013

A.2.5 (b) FMLA Return to Work Nov2013

A.2.5 (c) FMLA Eligibility Checklist Nov2013

A.2.5 (d) Verification of FMLA Entitlement Nov2013

A.2.5 (e) Memo of FMLA Status Nov2013

A.2.5 (f) FMLA Alert Form Nov2013

WH-380-E Certification of Health Care Provider - Employee's Serious Health Condition

WH-380-F Certification of Health Care Provider - Family Member's Serious Health Condition

WH-384 Certification of Qualifying Exigency

WH-385 Certification for Serious Injury or Illness of a Current Service Member

WH-385-V Certification for Serious Injury or Illness of a Veteran

WHD Publication 1420 Revised Feb 2013