

SECTION: 6.48

SUBJECT: Family Medical Leave Act

**AUTHORITY: Executive Director, 60L-34 Florida Administrative Code,
Federal Family Medical Leave Act**

Policy:

Each employee and supervisor is expected to understand his or her rights and responsibilities under the Federal Family Medical Leave Act (FMLA). Supervisory responsibilities include notifying the Office of Human Resources when an employee may be eligible for coverage under the FMLA and ensuring standardized periodic review of the continued absence of an employee who has exhausted his or her FMLA leave entitlement. An employee absent due to an illness or injury covered under workers' compensation may be covered under FMLA; however, generally only section 6.48.9 of this IMPP is applicable to workers' compensation absences. Nothing herein is intended to circumvent an employee's rights under State law or Administrative Rules, including but not limited to the State of Florida's *Parental or Family Medical Leave Act*, 110.221, Florida Statute or the *Family Supportive Work Program* provided for in DMS rule 60L-34.0051, Florida Administrative Code.

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Procedure:

6.48.1 FMLA Overview

The Family and Medical Leave Act provides for up to 12 weeks (480 hours) in a 12-month period of job-protected, unpaid leave to an eligible employee for certain family and medical reasons. An employee may request approval to use his or her personal leave or to be placed on leave without pay for an FMLA absence. Whether an employee uses leave or is on leave without pay, the absence counts against the 12-week entitlement. The 12-month period generally begins on the first day the employee is absent from work as a result of the family or medical reason. The requesting employee will be required to

provide agency-specified medical documentation to support his or her need for FMLA leave. The required medical documentation must be returned to the Office of Human Resources within 15 calendar days of receipt of the FMLA notification letter to guarantee coverage will be retroactive to the first day the agency received notice of the need for FMLA leave. An employee who obtains coverage under the FMLA shall not be disciplined for FMLA covered absences. An employee who does not have FMLA coverage is subject to discipline in accordance with IMPP 6.1.6 (B) (19) for Excessive Absenteeism, even if every absence was necessary and excused.

6.48.2 Eligibility Requirements

FTE and OPS employees are eligible for coverage under FMLA if they have been employed with an agency under the State Personnel System of Florida for at least one cumulative year in the past 7 years and physically worked at least 1,250 hours during the previous 12 months. Except for absences due to Military Leave as defined in 6.48.3(A) (6), the 1,250 hours must be actual work time; paid or unpaid leave will not be counted toward the 1,250 hour requirement. Absences under military leave will be counted in determining FMLA eligibility.

6.48.3 Basic Leave Entitlement

- A.** The FMLA requires 12 weeks of unpaid leave to be granted to an eligible employee for any of the following reasons:
- 1.** For a serious health condition that renders the employee unable to perform his or her job duties;
 - 2.** For incapacity due to pregnancy, prenatal medical care or child birth;
 - 3.** For the birth and care of the newborn child of the employee;
 - 4.** For placement with the employee of a child for adoption or foster care;
 - 5.** To care for the employee's spouse, son, daughter or parent who has a serious health condition; or
 - 6.** Military Family Leave for one of the following reasons:
 - a. Qualifying Exigency Leave** - An employee with a spouse, son, daughter or parent on covered active duty or called to covered active duty status in the Regular Armed Forces, National Guard or Reserves in support of a contingency operation may use his or her 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies are defined as short notice deployment, military events and activities, childcare and school activities, addressing financial and legal arrangements, attending counseling sessions, rest and recuperation (limited of a maximum of 15-calendar days), post-deployment activities and parental leave for the military member's parent who is incapable of self-care.
 - b. Military Caregiver Leave** - An employee who is the spouse, son, daughter, parent or next of kin as defined in 29 Code of Federal Regulations (C.F.R.) Section 825.1223(d) of a covered service member is eligible for caregiver leave. The service member must meet the following criteria: was discharged or released under

conditions other than dishonorable in the previous five year period; has a serious illness or injury incurred in the line of duty while on active duty; is, due to the in line of duty injury or illness, undergoing medical treatment, recuperation or therapy, or is otherwise in outpatient status or who is on the temporary disability retired list. The caregiver may take up to 26 weeks of leave to care for the service member in a 12-month period.

6.48.4 Definition of Serious Health Condition

As defined in the Code of Federal Regulations, a serious health or medical condition is 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 an employee from performing the functions of his or her job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions as defined in the FMLA, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider, or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment as courts and federal agencies continue to define the parameters for FMLA coverage.

6.48.5 Notification and Documentation Responsibilities

A. Notification Responsibilities

1. Required Notification By Employee

- a. An employee must provide 30 calendar days advance notice to his or her immediate supervisor of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable.
- b. At least two weeks prior to the scheduled return to work date, the employee must notify the agency of his or her intent to return to full duty or need for further leave.

2. Required Notification By Supervisor

When the supervisor is notified or determines an employee will be absent from the workplace for a reason that may be covered by the FMLA, the supervisor is responsible for ensuring the Office of Human Resources is immediately notified. A supervisor must be alert to the possibility of a FMLA qualifying illness or injury. For example, frequent and/or unplanned medical absences, references by an employee of chronic conditions (e.g., migraines, recurring ear infections, etc.) and similar evidence are signs of a possible need for FMLA leave. An employee is not required to use the term FMLA or invoke his or her right to FMLA to put the agency on notice of the possible need for FMLA protected leave. Supervisors may seek assistance from staff in the

Office of Human Resources to determine whether an employee should receive a FMLA notification.

3. Required Notification by Office of Human Resources

- a. The Office of Human Resources, upon notification from the supervisor, employee or other appropriate person, will provide the employee with written notification explaining his or her rights and responsibilities, a copy of IMPP 6.48, and the Certification of Health Care Provider form.
- b. Upon receipt of a completed medical certification form or similar document, the Office of Human Resources will provide a copy of the employee's medical certification form to the employee's supervisor. The copy provided to the supervisor will be redacted of medical information unless the information is needed for determining the employee's ability to perform his or her assigned duties or for safety of the employee.

B. Employee Medical Documentation Responsibilities

An employee must provide sufficient documentation to support his or her need for FMLA leave and for the Office of Human Resources to determine if the leave qualifies for FMLA protection. An employee who requests FMLA leave is encouraged to have his or her medical practitioner complete the Certification of Health Care Provider form to ensure all required information is provided; however, the medical practitioner may provide the requested information in a different format. The employee should ensure his or her medical practitioner completely answered all the questions to avoid delay of approval of the requested FMLA leave of absence. The following information further clarifies the required supporting documentation and medical certification information that must be provided to the Office of Human Resources.

1. Medical Certification.

A United States Department of Labor Certification of Healthcare Provider Form or a document containing all of the information requested on the certification form when an employee will be out for his or her personal serious health condition, birth of a child, to care for his or her spouse, child, or own parent's serious health condition. The parents of the employee's spouse do not qualify the employee for FMLA coverage. A Medical Certification must also be provided when applying for leave under the Sick Leave Pool or Sick Leave Transfer Plan. In addition to confirming the employee is eligible for FMLA, the certification provides information on the length and duration of the FMLA absence and any restrictions or limitations the employee may have related to their essential job functions.

2. Certification for Serious Injury or Illness of a Covered Service member, Form WH-385.

Required for an employee who is the spouse, son or daughter, parent or next of kin of a covered service member with a serious injury or illness.

-OR-

Certification of Qualifying Exigency for Military Family Leave, Form WH-384.

Required due to a qualifying exigency arising out of the fact that an employee's spouse, son or daughter, or parent is on active duty or called to active duty status in support of a contingency operation as a member of the National Guard or Reserves.

3. Other Non-Medical Supporting Documentation.

An employee who will be on a leave of absence that is not due to medical reasons, but may qualify under Family and Medical Leave Act, must provide documentation based on the reason for the requested absence. For example, if the request is for the adoption of a child, he or she must provide a copy of the adoption paperwork as supporting documentation.

4. Submission of Documentation

All supporting family and medical documentation must be sent to the Family and Medical Leave Act Coordinator in the Office of Human Resources. Note: this supporting family and medical documentation is not a public record in accordance with Chapter 119, F.S., and Confidential Medical Information Exempt from Public Records Disclosure.

C. Medical Documentation after Expiration of FMLA Coverage

In accordance with Section 6.48.6, an employee may be approved for continued absence after expiration of FMLA coverage. If approved, the employee approved for continued absence shall be required to provide sufficient medical documentation from the medical practitioner to support the need for the absence. The agency may waive the requirement for additional documentation if the previously submitted documentation is determined to still be valid.

D. Americans with Disabilities Act (ADA)

The Equal Employment Opportunity cites a leave of absence (paid or unpaid) or intermittent absences as reasonable accommodations under the ADA. This right is applied separate from and in addition to the FMLA. Absences beyond the 12-week FMLA entitlement may be a reasonable accommodation if the leave will not create an undue hardship by creating a negative impact on operations.

6.48.6 Chain-of-Command Responsibility for Monitoring FMLA Usage

The employee's direct supervisor is responsible for monitoring employee's FMLA absences. The continued absence of an employee who has exhausted his or her FMLA coverage is dependent upon the approval of chain-of-command supervisors. Specifically and as outlined in this section, the Section Leader or equivalent may approve an additional 16 weeks of leave. Upon exhaustion of the 16-week approval, the Division/Office director may approve up to an additional 24 weeks. The continued absence of employees who have

been absent for 12 months will require approval of the Assistant Executive Director. For employees who report directly either to the Chief of Staff, Assistant Executive Director or the Executive Director, each chain-of-command approval requirement as outlined in this section shall be the decision of the Executive Director.

A. The supervisor of an employee on FMLA is responsible for:

1. Monitoring the use of FMLA and following the notification process outlined in 6.48.6(A) (2) if applicable. To ensure accurate accounting of FMLA absences, the supervisor, if unclear of the reasons for an absence, must ask the employee who requests to be off or who calls in sick whether the absence is related to his or her FMLA certification. The supervisor must keep a record of the employee's FMLA related absences listing the dates/number of hours used to the quarter hour. The supervisor shall also direct the employee to identify FMLA related absences in the comment section of the employee's timesheet.
2. Notifying by email both his or her Section Leader (or equivalent) and the Director of the Office of Human Resources when an employee on FMLA has either:
 - a. Been out less than the 12-week entitlement but whose return to work date designated on the medical documentation is imminent and the employee notifies the agency they are unable to return to work by the designated date.
 - b. Intermittently been on FMLA and has exhausted his or her 12-week entitlement.

B. Upon notification from the supervisor, the Section Leader (or equivalent) is responsible for:

1. Meeting with staff in the Office of Human Resources to discuss the options available if the employee has exhausted or will exhaust his or her FMLA coverage. The options will be to approve a continued absence or to initiate a medical termination. In determining whether to approve an extension, the Section Leader must consider the impact on operations of the employee's continued absence.
2. Notifying the supervisor of the decision and, if the intended action is an extension, setting the next date by which the supervisor must provide an update of the employee's status. The next notification date may be no more than eight weeks after the initial expiration of the FMLA and the employee shall be required to provide sufficient medical documentation from the medical practitioner to support the need for the continued absence. The agency may waive the requirement for additional documentation if the previously submitted documentation is determined to still be valid.
3. Reviewing the employee's status at the end of the approved period and either approving one additional extension of up to eight weeks or recommending a medical termination to the Division/Office Director. In determining whether to approve an extension, the Section Leader must consider the impact on operations of the employee's continued

absence. The employee shall be required to provide sufficient medical documentation from the medical practitioner to support the need for the continued absence. The agency may waive the requirement for additional documentation if the previously submitted documentation is determined to still be valid.

4. The approval for the additional extension absence will be predicated on the employee entering into a settlement agreement. The agreement will require the employee agree to resign from employment if they are medically unable to return to full duty at the end of any future provided extension. The settlement agreement will include a clause in which the employee waives his or her right to challenge any action of the agency related to the resignation or settlement agreement.
 - a. If the employee declines to enter a settlement agreement, the Section Leader will notify the Division/Office Director and the Director of the Office of Human Resources to initiate a medical termination.
 - b. If the employee enters the settlement agreement, when the Section Leader has exhausted his or her authority under 6.48.6 (B) and the employee is unable to return to work, the Section Leader shall either notify the employee of the resignation effective date or request the Division/Office Director consider an additional extension. The Division/Office Director must adhere to the provisions outlined in 6.48.6 (C).
- C. Upon notification from the Section Leader, the Division/Office Director is responsible for either:
 1. Directing the resignation be made effective and notifying the Office of Human Resources.
 2. Approving a continued absence of up to 24 weeks. In determining whether to approve an extension, the director must consider the impact on operations of the employee's continued absence. The employee shall be required to provide sufficient medical documentation from the medical practitioner to support the need for the continued absence. The agency may waive the requirement for additional documentation if the previously submitted documentation is determined to still be valid. If the employee is unable to return at the end of 12 months, the Director shall notify the Office of Human Resources of the resignation effective date or request an extension as outlined in 6.48.6 (D).
- D. Upon notification from the Division/Office Director, the Assistant Executive Director may extend approval of a medical absence beyond 12 months.
 1. In determining whether to approve the extension, the Assistant Executive Director must consider the following:
 - a. The impact on operations of the employee's continued absence.
 - b. Medical documentation supporting a reasonable presumption the employee will be able to return to full duty within the 12 weeks of the date which the employee had been absent for 12 months.

6.48.7 Multiple FMLA Certifications

An employee may have more than one FMLA certification on file for his or her own multiple covered illnesses and for covered family members illnesses or injuries. Regardless of the number of current certifications on file, the employee is only provided a combined leave entitlement of 12 weeks in his or her designated twelve month period for FMLA absences.

6.48.8 Renewal of FMLA Coverage

For chronic medical conditions or medical conditions lasting more than 12 months, it is the employee's responsibility to apply for a FMLA renewal each year. New medical certification must be submitted prior to the expiration of the current FMLA period if coverage is to be continuous. In addition, the employee must have worked 1250 hours during his or her designated 12 month period to be eligible for continued coverage.

6.48.9 Workers' Compensation

An employee absent due to a work-related injury covered under the Workers' Compensation Program will be placed on FMLA, if eligible, using the medical documentation provided by the state's workers' compensation carrier or the Division of Risk Management. The Office of Human Resources will notify the employee of his or her eligibility if applicable.

Employee's eligible for FMLA during workers' compensation related absences may be directed to work alternative duty until they are medically released to return to his or her normal job duties. The employee may invoke his or her FMLA right to decline alternative duty during the FMLA covered portion of his or her workers' compensation absence; however, doing so will result in cancellation of the 2/3 wage payment from the Division of Risk Management. Declining alternate duty during the FMLA covered portion of the workers' compensation absence will not affect the medical benefit portion of the workers' compensation coverage.

6.48.10 Use of Accrued Leave/Substitution of Paid Leave for Unpaid Leave

Eligibility for FMLA does not automatically entitle an employee to use personal sick leave or family sick leave. To determine whether sick leave may be used refer to Florida Administrative Code, State Personnel Rules, Chapter 60L-34.0042. Annual and compensatory leave may be used without restriction during an approved FMLA absence. Leave may be used continuously, intermittently or on a reduced leave schedule. An employee must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the workplace.

- A.** An employee in the Career Service, Selected Exempt Service or Senior Management Service may request approval or be required to use his or her accrued sick, annual or compensatory leave while on FMLA leave. The employee's supervisor is responsible for ensuring the employee's

People First timesheet is completed, submitted and approved by the required payroll deadline dates.

- B. An employee in the Career Service, Selected Exempt Service or Senior Management Service may request to use Sick Leave Pool and/or Sick Leave Transfer hours if his or her personal leave has been exhausted and he or she meets the eligibility requirements for use of these plans as outlined in Sick Leave Transfer Plan and IMPP 6.25 Sick Leave Pool. The Sick Leave Pool/Sick Leave Transfer Coordinator in the Office of Human Resources should be contacted for assistance in determining if the employee is eligible for pool or transfer hours. An employee who is on FMLA absence due to a workers' compensation illness or injury is not eligible to use donated or sick leave pool hours.
- C. An OPS employee is not eligible for paid leave benefits.

6.48.11 Job Benefits and Protection During FMLA Absences

A. Job Benefits

The agency's contribution to the employee's health coverage, if applicable, will be maintained on the same terms as if the employee had continued to work. The employee will be responsible for continuing payment of his or her portion of the health insurance premium.

1. A FMLA Personnel Action Request must be completed for all OPS employees to prevent a disruption to current and future insurance benefits.

B. Job Protections

1. Upon return from Family and Medical Leave Act leave, with some exceptions, an employee must be restored to his or her original position or an equivalent position with equivalent pay, benefits and other terms of employment.
2. The use of FMLA cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
3. An employee on an FMLA covered absence will not be subject to disciplinary action for excessive absenteeism.

6.48.12 Unlawful Acts by Employers

The Family and Medical Leave Act makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under Family and Medical Leave Act and charge or discriminate against any person for opposing any practice made unlawful by Family and Medical Leave Act or for involvement in any proceeding under or relating to Family and Medical Leave Act.

6.48.13 Enforcement

The United State Department of Labor enforces the provisions of the FMLA. The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

6.48.14 Forms

- Certification of Health Care Provider for Employee's Serious Health Condition
- Certification of Health Care Provider for Family Member's Serious Health Condition
- Certification for Serious Injury or Illness of Covered Service member for Military Family Leave
- Certification of Qualifying Exigency for Military Family Leave

History: Est.: 04/11/2013. Revised 1/19/2015

APPROVED:

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Executive Director or Designee

January 16, 2015

Date