

State of Kansas



Department of Administration

DIVISION OF
PERSONNEL
SERVICES



Office of the Director
Room 252
Landon State Office Bldg.
Topeka, KS 66612-1251
(785) 296-4278

BULLETIN NO. 09-03

1.0 SUBJECT: FMLA Guidelines for the State of Kansas

2.0 EFFECTIVE DATE: April 5, 2009

3.0 DISTRIBUTION: State HR Directors

4.0 FROM: George Vega, Director **DATE:** March 25, 2009

5.0 PURPOSE: This Bulletin is being issued to update and replace Bulletin 05-06 due to changes and clarifications in the Amended Family Medical Leave Act, effective January 16, 2009. Bulletin 05-06 is hereby revoked.

6.0 BACKGROUND:

Bulletin 09-03 sets out the statewide policy with respect to the FMLA. That policy had formerly been set out in regulation but at the suggestion of a team of state human resource personnel, the FMLA policy had been transferred to a Bulletin since the basic protections and rights afforded by the FMLA are set out in federal law.

The FMLA specifies: "a State is a single employer". With that in mind it is the official position of the State of Kansas that all state agencies will administer the FMLA in a uniform and consistent manner in compliance with the federal law as outlined below.

7.0 PROCEDURES:

7.1 Pursuant to 29 U.S.C. 2601 et seq., each eligible employee is entitled to 12 workweeks of paid or unpaid leave during any 12-month period, beginning the first day leave is taken.

7.2 In order to be eligible for leave under the FMLA, an employee must have:

a) been employed by the State of Kansas for at least 12 months; and

1) the 12 months an employee must have been employed by the state of Kansas need not be consecutive months.

b) worked for the State of Kansas for at least 1,250 hours during the 12-month period immediately preceding the beginning of the leave designated as FMLA leave.

1) for the purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months", the employee must have been in pay status for any part of a week for at least 52 weeks, including any period of paid or unpaid leave during which other benefits or compensation were provided to the employee.

7.3 Circumstances for which an employee would be eligible for FMLA leave include the following:

a) the birth of the employee's child and the care of the child within the 12 months

immediately following birth;

b) the placement of a child with the employee for adoption or foster care within the 12 months immediately following placement;

c) physical or psychological care due to a serious health condition of any of the following individuals:

1) the employee's spouse;

2) a child of the employee who meets one of the following criteria:

A) the child is under age 18; or

B) the child is 18 or older and incapable of daily self-care because of a mental or physical disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.;

3) the employee's parent;

4) the employee's own serious health condition that prohibits the employee from performing all or part of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act, or

5) Qualifying Exigency Military Leave

A) For employees whose spouse, child, or parent is on active duty or call to active duty (members of regular armed services are not included);

B) Short term deployment issues, can be used for a period of 7 calendar days beginning on the date of notification;

C) Military event and related activities;

D) Counseling;

E) Financial and legal arrangement;

F) Rest and recuperation;

G) Post-deployment activities

6) Leave to care for a covered service member with a serious injury or illness

A) Injury or illness is incurred in the line of duty on active duty

B) Employee must be a spouse, child, parent, or next of kin of the covered service member

7.4 For purposes of the FMLA, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

a) inpatient care; or

b) continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care professional shall involve at least one of the following:

1) a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, if it involves either of the following:

A) treatment two or more times by a health care provider or a provider of health care

services under orders of the health care provider; or

B) at least one treatment by a health care provider that results in a regimen of continuing treatment under the health care provider's supervision;

2) any period of incapacity due to pregnancy or for prenatal care;

3) any period of incapacity or treatment for incapacity due to one of the following chronic serious health conditions:

A) a condition that requires periodic treatment by a health care provider;

B) a condition that continues over an extended period of time; or

C) a condition that causes episodic incapacity rather than a continuing period of incapacity;

4) a period of incapacity that is permanent or long-term and is due to a condition for which treatment may not be effective; or

5) any absence to receive multiple treatments by a health care provider for one of the following:

A) restorative surgery after an accident or other injury; or

B) a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment.

7.5 As the US Department of Labor views the State of Kansas as one employer, the state's official position is that the administration of the FMLA will be uniform and consistent for all state agencies.

a) The agency should begin the FMLA notification within five days after a request for leave is submitted by the employee, or of the date the employer becomes aware of a potential FMLA event, regardless of whether the employee does or does not have paid leave time available. The agency must provide the employee with written notice detailing the specific expectations and obligations of the employee under the FMLA, a copy the appropriate federal Certification form and an explanation of any consequences of a failure to meet these obligations.

b) If the employee has paid leave time available, the FMLA will run concurrently. If the employee does not have paid leave to cover the FMLA absences, the FMLA leave will be leave without pay.

c) The federal FMLA forms should be used for all FMLA notifications. A list of these forms is as follows:

1) Notice of Eligibility and Rights and Responsibilities - WH-381

2) Certification of Health Care Provider for Family Member's Serious Health Condition – WH-380-F

3) Certification of Health Care Provider for Employee's Serious Health Condition – WH-380-E

4) Certification of Qualifying Exigency for Military Family Leave – WH-384

5) Certification for Serious Injury or Illness of Covered Service member for Military Family Leave – WH-385

6) Designation Notice – WH-382

7.6 Once an agency has determined that the employee is eligible for leave and the reported condition qualifies as a "serious condition" under the FMLA, the agency must notify the employee that the requested leave has been designated as FMLA leave.

a) The agency's notice to the employee that the leave has been designated as FMLA

leave may be orally or in writing.

b) If the notice is oral, it must be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday).

c) The written notice may be in any form.

Note – Examples of documents that can be used to satisfy the notice requirements set out in sections 7.5 and 7.6 can be found at the following link:

<http://www.dol.gov/esa/whd/fmla/finalerule.htm>

7.7 All time away from work that is taken due to circumstances that qualify under subsection 7.4 must be approved by the agency and must count against the employee's 12 workweek leave entitlement, beginning with the first day that the agency has knowledge of a possible situation that may qualify for FMLA leave.

a) Exempt employees are still required to use sick, shared and vacation leave, as well as any holiday compensatory time, in half or full day increments and leave without pay in full day increments.

b) In accordance with recommendations of US DOL, exempt employees using leave without pay for FMLA purposes are to use leave without pay only in full-day increments.

c) Only the actual time spent away from work may be counted against an employee's 12 workweek leave entitlement.

d) If an employee is on unpaid FMLA leave for greater than 30 days, their length of service will not be negatively affected by such absence. Unpaid FLMA leave will continue to count toward the employee's length of service.v

7.8 An employee must receive intermittent leave or a reduced work schedule when medically necessary for the employee's serious health condition or to care for a family member with a serious health condition. An employee may receive intermittent leave or a reduced work schedule for the birth of the employee's child or for the placement of a child with the employee for adoption or foster care.

a) The exempt status of an exempt employee shall not be affected if deductions are made from the employee's salary for any hours taken as intermittent leave or a reduced work schedule within a work week.

b) The appointing authority may transfer any employee to an available position with equivalent pay and benefits during a period of intermittent leave or a reduced work schedule.

c) Any employee returning from intermittent leave or a reduced work schedule must be returned to the same or equivalent position with equivalent pay, benefits, and terms and conditions of employment, in accordance with K.A.R. 1-9-6.

7.9 The appointing authority shall require an employee to provide a certification containing evidence necessary to establish that the employee is entitled to leave under the FMLA. The employee must be given a written notice of the requirement. The first certification shall be at employee expense. The appointing authority may require a second certification at agency expense when the validity of the first certification is in doubt. A third certification may be required at agency expense when the first and second certifications differ, and the third certification shall be final and binding. Employees must be allowed at least 15 calendar days to provide the requested certification.

7.10 The agency may require the employee to provide no more than one recertification

opinion for each qualifying condition every 30 days in conjunction with an absence, at employee expense, for long-term conditions under continuing supervision of a health care provider except that a recertification opinion may be required before the end of 30 days if circumstances described by the previous medical certification have changed significantly or the agency receives information that casts doubt upon the employee's reason for the absence.

7.11 Each agency shall maintain the employee's group health insurance coverage during an employee's 12 workweek FMLA leave entitlement under the same conditions and with the same agency contributions as provided when no leave is taken.

7.12 Each agency must post a notice that provides information regarding the FMLA in a conspicuous place accessible to employees and applicants.

7.13 The agency's obligations under the FMLA shall cease when the employee gives notice of the employee's intent not to return to work.

8.0 REFERENCES:

29 U.S.C 2601 et seq. The FMLA may be viewed in its entirety, at the following website.
<http://www.dol.gov/esa/whd/fmla/finalrule.htm>

9.0 CONTACT PERSONS:

Pat Writt at pat.writt@da.ks.gov or by telephone at (785) 296-4352.