

Family and Medical Leave Guidelines

For more detailed information, consult the [Family and Medical Leave Act \(FMLA\)](#) and relevant federal regulations. ([29 CFR § 825](#)) State government is considered a single employer for the purpose of determining FMLA leave.

1. Eligibility and Reasons for FMLA Leave

- a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours. The required total of 12 months of employment need not be consecutive. An agency can go back 7 years prior to the date of the need for leave to determine if the employee worked a total of 12 months with State government. An agency has the ability to go beyond 7 years if an employee left State employment due to National Guard or Reserve Military obligations or a written agreement reflecting an employer's intention to rehire after a break. ([29 CFR § 825.110](#) and [29 CFR § 785](#))

(1) In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept. ([29 CFR § 825.108](#))

- b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:

(1) For the birth of a son or daughter and to care for that child;

(2) For placement of a son or daughter for adoption or foster care with the employee;

(3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) For a serious health condition that makes the employee unable to perform the functions of the employee's job. ([29 CFR § 825.200](#) and [29 CFR § 825.112](#))

(5) For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation. Qualifying exigencies can include: 1) short notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post-deployment activities; and 8) additional activities not encompassed in other categories but agreed by the agency and the employee.

Note: Reasons (1) and (2) for leave expires 12 months after the date of the birth or placement. ([29 CFR § 825.201](#))

- c. Under the military caregiver leave provisions, an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may be able to take up to a total of 26 workweeks in a single 12-month period to care for the service member.

2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require documentation or certification from a health care provider supporting the need for FMLA leave for a serious health condition. Agencies may also require documentation for certification or serious health condition of a spouse, son, or daughter, a qualifying exigency or to confirm familial relationships. ([29 CFR 825.302](#) and [29 CFR 825.303](#))

3. Use of FMLA Leave

The agency is responsible for declaring leave as FMLA leave based on information provided by the employee. ([29 CFR 825.208](#))

- a. When the agency designates leave as FMLA leave, it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA. ([29 CFR 825.208](#))
- b. Use of FMLA leave shall be calculated by either the actual time or in quarter hour increments. ([29 CFR 825.205](#) and [825.206](#))
- c. The agency should declare any leave taken that qualifies as FMLA leave. The FMLA leave should run concurrently with any other leave, and the leave should be charged against both leave categories' allowances. ([29 CFR 825.208](#))

4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

- a. An eligible employee will be required to substitute his accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or ([29 CFR 825.207](#))
- b. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave. ([29 CFR 825.207](#))

5. FMLA Leave Record

A leave record shall be maintained by the employing agency for each employee subject to the provisions of the FMLA. Such record shall:

- a. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
- b. Indicate the number of FMLA leave hours used in the current calendar year.
- c. Indicate the number of hours in the employee's established workweek. ([29 CFR 825.500](#))

6. Transfer of FMLA Leave

For an eligible employee who [transfers](#) from one agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving agency.