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Office of the Commissioner

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STATEWIDE PERSONNEL POLICY NO. 4

EFFECTIVE DATE: June 1, 2026

SUBJECT: Family and Medical Leave Act (FMLA)

AUTHORIZATION:

Signed by:
Taylor F. Barras

Taylor F. Barras, Commissioner of Administration

I. POLICY

The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid, job-protected leave for up to 12 workweeks during a 12 month period for any one or more qualifying events.¹ The FMLA balances the demands of the workplace with the needs of employees and their families, promotes the stability and economic security of families, and preserves the integrity of the family unit.

Uniform compliance with the provisions of the FMLA by all agencies accommodates the interests of the State of Louisiana as an employer and ensures equal employment opportunities. Compliance also reassures employees, when a need arises, that they will not be forced to choose between continuing their employment or meeting their personal obligation to tend to their own or their family's compelling needs.

The State of Louisiana affords the full benefits of the FMLA to its eligible employees. Specific situations not covered by this policy will be resolved via reference to and in compliance with the FMLA.

II. PURPOSE

Through this policy, employees are informed of their rights and responsibilities regarding the use of FMLA leave for personal and family reasons, the circumstances under which FMLA leave may be taken, and the process for requesting and utilizing FMLA leave.

III. APPLICABILITY

This policy applies to all eligible employees of the State of Louisiana.

¹ The FMLA provisions applicable to covered military servicemembers are separately set forth in Addendum "A".

IV. DEFINITIONS

A. Family Relationships:

1. **Son or daughter:** A biological, adopted or foster child, stepchild, legal ward, or child of a person standing in loco parentis (in place of a parent) who is under age 18 or, under specific circumstances, age 18 or older² and incapable of self-care because of a mental or physical disability at the time FMLA leave commences.
2. **Parent:** A biological, step, adoptive or foster mother or father, or other person who stood in loco parentis to an employee when the employee was a child. This does not include an employee's mother-in-law or father-in-law.
3. **Spouse:** The person with whom an employee entered into marriage as defined or recognized under state law where the marriage took place.

B. **Serious Health Condition:** 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 the employee from performing the functions of their job, or prevents the qualifying family member from participating in work, school, or other daily activities.

C. Continuing Treatment:

1. **Incapacity and treatment:** A period of incapacity of more than 3 consecutive, full calendar days and any subsequent treatment or period of incapacity related to the same condition, that also involves:
 - a. In-person treatment³ by a health care provider 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist. The first in-person treatment must take place within 7 days of the first day of incapacity; or
 - b. In-person treatment by a health care provider on at least 1 occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within 7 calendar days of the first day of incapacity.
2. **Pregnancy or Prenatal Care:** Any period of incapacity due to pregnancy or prenatal care. This includes morning (NVP) sickness or pregnancy complications that make it impossible or inadvisable for the employee to work, as well as leave for prenatal appointments and tests.

² The FMLA qualifying requirements applicable to adult children are set forth in Addendum "B".

³ The Wage and Hour Division of the US Department of Labor considers a telemedicine visit to be an in-person visit for purposes of the "Continuing Treatment" requirements of the FMLA (Field Assistance Bulletin 2020-8).

3. **Chronic Condition:** A serious health condition which:
 - a. Requires periodic visits (at least twice a year) for treatment by a health care provider;
 - b. Is continuous over an extended period of time, including recurring episodes of a single underlying condition; and
 - c. May cause episodic, rather than a continuing period of incapacity (migraines, asthma, diabetes, epilepsy, etc.).
4. **Permanent or Long-Term Condition:** 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 (Alzheimer's, severe stroke, terminal stages of a condition, etc.).
5. **Conditions Requiring Multiple Treatments:** Any period of absence to receive multiple treatments (and recovery therefrom) from a health care provider for:
 - a. Restorative surgery after an accident or injury; or
 - b. A condition that would likely result in a period of incapacity of more than 3 consecutive, full calendar days in the absence of medical treatment or intervention, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), kidney disease (dialysis).

D. Health Care Provider:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;
2. 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);
3. Nurse practitioners, nurse midwives, clinical social workers, licensed professional counselors, and physician assistants who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
4. Christian Science practitioners (with restrictions as outlined in the federal regulations);
5. Any health care provider from whom an employer or the employer's group health plan's benefits manager accepts certification of the existence of a serious health condition to substantiate a claim for benefits; and

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6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of their practice as defined under such law.
- E. **Treatment:** Includes the examination for, evaluation of, and regimen of care for a serious health condition. The term "treatment" does not include routine physical, eye, or dental examinations, cosmetic or other elective procedures (unless in-patient hospital care is required or complications develop), nor over-the-counter medications (aspirin, antihistamines, salves, etc.), bed rest, fluids, exercise, and similar activities that can be done without a visit to a health care provider.
- F. **12-Month Period:**
1. For all qualifying events, the 12-month entitlement period begins on the date FMLA leave is first taken by the employee for the event.
 2. For purposes of bonding with a child after birth or placement, the 12-month entitlement expires at the end of the 12-month period beginning on the date of birth or placement.
 3. An employee may be eligible for FMLA leave for more than one qualifying event at the same time. However, during any single 12-month period, the employee's total FMLA entitlement for all qualifying events is limited to 12 workweeks.
- G. **Intermittent Leave:** Leave taken in separate periods of time due to a single condition, illness, or injury, rather than for one continuous, extended period of time, and may include leave for periods of less than 1 hour or up to several weeks. Examples include leave taken on an occasional basis for medical appointments, and leave taken several days at a time spread over a period of months, such as for physical therapy or migraines.
- H. **Reduced Leave Schedule:** An authorized work schedule that reduces the number of hours worked per workweek or workday.
- I. **Needed to Care For:** Includes physical and/or psychological care or comfort provided by an employee to a qualifying family member.
- J. **Equivalent Position:** A position that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including locale, privileges, perquisites, and status. The position includes the same or substantially similar duties and responsibilities which entail substantially equivalent skill, effort, authority, and responsibility.

V. ELIGIBILITY

To be eligible, an employee must have:

- A. Been employed by the State in any capacity within the past 7 years for a total of at least 12 months on the date FMLA leave is to commence. Employment with the State beyond

7 years prior to the date of the employee's most recent hiring shall not be considered except where the break in service occurred because of the employee's military service; and

- B. Actually worked for the State for at least 1,250 hours over the 12-month period immediately preceding commencement of the FMLA leave.

VI. QUALIFYING EVENTS:

The FMLA provides up to 12 workweeks of unpaid, job-protected leave during any 12-month period to eligible employees for any one or more of the following qualifying events:

- A. The birth of a son or daughter of the employee, and to care for the newborn child;
- B. The placement with an employee of a son or daughter for adoption or foster care;
- C. For the employee to care for their spouse, son, daughter, or parent with a serious health condition; and
- D. For the employee's own serious health condition that renders them unable to perform the essential functions of their job.

VII. HOW FMLA LEAVE MAY BE TAKEN

A. Leave Schedules:

As deemed medically necessary by the employee's health care provider, FMLA may be scheduled as:

1. **Continuous:** The absence extends for consecutive days or weeks at a time. When used in this manner, holidays and office closures that occur during the employee's continuous FMLA absence count against the employee's FMLA entitlement.
2. **Intermittent:** The absences are limited to short blocks of time (minutes/hours/days) on a periodic, as-needed basis. When used in this manner, employees must ensure that they comply with the agency's customary leave procedures, to include:
 - a. Timely communicating with supervisors regarding scheduled and unscheduled leave needs;
 - b. Complying with designated call-in procedures;
 - c. Producing medical certifications in support of leave requests, when required; and
 - d. Accurately and timely coding absences for payroll purposes.

3. **Reduced Leave Schedule:** The employee's authorized absences are regularly recurring such that they reduce the usual number of hours per workweek or hours per workday that the employee is required to work.

B. Limitations on Leave Usage:

1. **Birth and Placement of a Child:** Leave for the birth of a child and to care for the child, and leave for the placement of a child with the employee for adoption or foster care, cannot be taken by the employee intermittently or on a reduced leave schedule unless the employee and agency otherwise agree. Leave for these purposes customarily and preferably is taken on a continuous basis.
2. **Pregnancy through Childbirth:** Mothers are initially required to utilize sick leave for absences due to prenatal care and medical appointments, and for any period of incapacity/recovery during pregnancy through birth of the child. During this period, if sick leave is exhausted, mothers are required to utilize compensatory leave and then annual leave.
3. **Caring for Newborn Child:** After the birth of a child, for any continuing FMLA-qualifying leave need related to pregnancy or childbirth, mothers are required to utilize accrued sick, compensatory, and then annual leave. Alternatively, during the 12 weeks (84 calendar days) immediately following the birth of a child, eligible mothers are authorized to utilize parental leave in accordance with Civil Service Rule 11.36.⁴ This provision provides up to 240 hours of paid leave at 100% of the full-time employee's hourly rate of pay which may be used intermittently or on a continuous basis during the 12-week period.
4. **Medical Release of Mother:** Once medically released to return to work by her health care provider, and upon expiration of the designated hours authorized for use of parental leave, mothers are required to use accrued compensatory and then annual leave if additional time off is requested to care for and/or bond with the newborn child. If the child is experiencing medical complications, employees may be authorized to utilize sick leave in lieu of annual leave (LBIF), at the discretion of their Appointing Authority, in accordance with Civil Service Rule 11.13(b).

To ensure proper leave usage, mothers are required to notify Human Resources upon release to return to work by their health care provider for purposes of properly coding any continuing FMLA-qualifying absence from sick or parental leave to compensatory or annual leave.

5. **Spouses Working for the State of Louisiana:** When both spouses are employed by the State, the FMLA limits the spouses to sharing a combined total of 12 weeks of leave in a 12-month period for purposes of:

⁴ Parental leave is also available to a father of a newborn child, and to adoptive and foster parents caring for and bonding with the child for whom leave is taken. Such leave runs concurrently with the use of FMLA leave. Employees should consult Human Resources for a thorough understanding of the use of parental leave.

- a. The birth of a child and bonding with the newborn child;
- b. The placement of a child for adoption or foster care; and
- c. The care of a parent with a serious health condition.

This limitation does not apply to leave taken by one spouse:

- a. To care for the other spouse who has a serious health condition;
 - b. To care for a child who has a serious health condition; or
 - c. To care for the employee's own serious health condition.
6. **Use of Accrued Leave:** While on FMLA leave for a qualifying event, employees are required to substitute applicable accrued paid leave for unpaid FMLA leave. For an employee's own serious health condition, the employee is required to use available sick, compensatory, and annual leave. For family-related FMLA-qualifying events, the employee is required to use available compensatory and annual leave and may, with Appointing Authority pre-approval, use accrued sick leave as authorized by Civil Service Rule 11.13 (b). When all available paid leave is exhausted, the employee may continue on FMLA leave, but in leave without pay status.

VIII. RESPONSIBILITIES

A. Agency/Human Resources Responsibilities:

1. Agencies are required to prominently post in conspicuous places upon its premises, including field and satellite locations, a notice that explains the provisions of the FMLA and the procedure for filing complaints of violations of the FMLA with the U.S. Department of Labor, Wage and Hour Division.
2. Agencies, through Human Resources, have responsibility for determining whether an employee's absences are FMLA-qualifying. This determination shall be made upon the information and documentation provided by the employee and the employee's (or family member's) health care provider. Human Resources' duty to make this determination exists even if the employee does not request or objects to using FMLA leave, or refuses to participate in the review process. In this latter situation, the determination may be made based upon the information known to Human Resources, if sufficient.
3. Human Resources personnel have the right and duty to make reasonable and necessary inquiries⁵ of employees regarding leave needs, including in those situations in which management personnel report concerns regarding an employee's absences from duty.

⁵ Any such inquiries must be limited solely to the leave need and associated medical condition(s), and shall be compliant with HIPAA, FMLA, and ADA requirements.

B. Employee Responsibilities:

1. Communication and Documentation

Employees have a duty to respond to inquiries by Human Resources personnel and produce required medical documentation to facilitate the determination of whether a leave need is FMLA-qualifying. Failure to cooperate likely will result in the delay or denial of FMLA leave. Employees are encouraged to contact Human Resources to better understand the provisions of the FMLA as such relate to their leave needs.

2. Notice Requirements

a. General:

Except for emergency situations, FMLA leave shall be requested in advance and used in compliance with the agency's customary leave policy and procedure. Supervisors are to be notified by the employee when a leave need is for a FMLA-qualifying event, and the absence shall properly be coded as such.

For planned medical treatment, in consultation with supervisory personnel, employees should make every reasonable effort to schedule the treatment so as to not unduly disrupt the agency's business operations, subject to approval of the employee's health care provider.

b. Foreseeable FMLA Leave:

When the need for leave is foreseeable such as for an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or family member, advance notice of 30 days is required. If not possible, notice must be given as soon as practicable. When leave is foreseeable, yet notice is not timely given, the agency still may approve FMLA leave, but has the option of placing the employee in leave without pay status.

c. Unforeseeable FMLA Leave:

When the approximate timing of the need for leave is not foreseeable, employees must provide notice to supervisory personnel as soon as practicable given the facts and circumstances of each particular situation. In the least, notice must be provided within the time prescribed by the agency's customary leave policy or practice.

C. Management Responsibilities:

Supervisors and managers should contact Human Resources regarding employee absences that may be FMLA-qualifying. Circumstances that should prompt contact with Human Resources include:

1. An employee's inpatient care requiring an overnight stay in a hospital, hospice, or residential care facility;
2. An employee's absence for more than 3 consecutive, full calendar days;
3. An employee's repeated intermittent absences for the same health condition; or
4. An employee's recurring absences to care for a qualifying family member.

Upon being so informed, Human Resources should review the employee's leave usage and, as warranted, discuss with the employee whether such leave is appropriate for designation as FMLA-qualifying.

IX. REQUESTS AND DETERMINATIONS:

A. **Eligibility:**

Like all leave needs, FMLA leave must be requested and approved. Once a potentially qualifying leave need is identified, the process begins with a determination by Human Resources of the employee's eligibility in accordance with the criteria set forth in Section V of this policy.

- **If ineligible**, Human Resources shall provide written notice to the employee within 5 business days, citing the reason for this determination.
- **If eligible**, Human Resources shall so advise the employee within 5 business days and provide Notice of Eligibility, Employee Rights and Responsibilities, and Certification of Healthcare Provider ("Certification") forms to the employee.

B. **Qualifying Event:**

Within 15 calendar days of the date of an agency's request, eligible employees shall return to Human Resources the fully completed Certification form to enable Human Resources to determine whether the requested leave is for a FMLA-qualifying event. If the Certification is incomplete, insufficient, or needs clarification, Human Resources shall notify the employee, specifying in writing the identified deficiency(s), and afford the employee a minimum of 7 calendar days to remedy the deficiency(s).

Upon receipt of a fully completed and sufficient Certification, Human Resources will determine whether the leave request is FMLA-qualifying.

- **If non-qualifying**, Human Resources shall provide written notice to the employee within 5 business days, citing the reason for this determination.
- **If qualifying**, Human Resources shall so advise the employee within 5 business days. This notice shall also inform the employee that accrued paid leave shall be substituted for unpaid FMLA leave, and that the employee is required to provide a

Fitness for Duty certification to be restored to active duty if the requested FMLA leave usage is for the employee's own serious health condition.

C. Retroactive Designation:

Human Resources is required to designate leave requests as qualifying or non-qualifying within 5 business days of receipt of required documentation. If Human Resources is not initially aware of an employee's leave usage or otherwise fails to timely render a designation, Human Resources may, with appropriate notice to the employee, retroactively designate the absence as FMLA leave provided that the failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protection, the employee and agency can mutually agree that absences be retroactively designated as FMLA leave.

X. MEDICAL CERTIFICATIONS

A. Initial Certification:

Agencies shall require that a FMLA leave request to care for the employee's qualifying family member or due to the employee's own serious health condition be supported by a Certification from a qualifying health care provider. In most cases, agencies should request that the medical Certification be provided at the time the employee gives notice of the need for leave or within 5 business days thereafter or, in the case of unforeseen leave, within 5 business days after the leave commences. Unless impracticable, this Certification, obtained at the employee's expense, is to be provided within 15 calendar days of the agency's request.

The Certification must include information sufficient to allow the agency to determine whether the employee's request for FMLA leave should be approved. To satisfy this requirement, the Certification must be complete and sufficient. "Incomplete" means that one or more of the applicable entries have not been completed. "Insufficient" means that the information provided is vague, ambiguous or non-responsive.

Where warranted, agencies shall advise the employee in writing, through Human Resources, that the Certification is incomplete or insufficient and identify the additional information required. The employee shall be provided 7 calendar days to cure any deficiencies. If the additional information is not provided in the resubmitted Certification, the employee's request for FMLA leave may be denied. Note: a Certification that is not returned to Human Resources is treated as a failure to provide the required Certification, not as an incomplete or insufficient one.

It is the employee's responsibility to either provide a complete and sufficient Certification or to furnish the health care provider with any necessary authorization from the employee (or the employee's family member) for the health care provider to release a complete and sufficient Certification to the agency to support the employee's FMLA request.

B. Authentication and Clarification of Medical Certifications:

If the employee submits a complete and sufficient Certification, the agency may not request additional information from the health care provider. However, the agency may contact the health care provider for clarification or authentication of the medical Certification (whether initial or recertification) after the employee has been given the opportunity to correct any deficiencies. To make such contact, the agency must use a Human Resources professional, health care provider, or management official. Under no circumstance may the employee's direct supervisor contact the health care provider.

“Authentication” means asking the health care provider to verify that the Certification was completed or authorized by the health care provider. “Clarification” means having the health care provider clarify handwriting or the meaning of a response on the Certification. Under no circumstance shall the contact with the health care provider seek information beyond that needed for authentication or clarification of the Certification.

C. Recertifications:

1. **General Rule:** An agency may request recertification no more than every 30 calendar days and only in connection with an absence by the employee. However, if the Certification indicates that the minimum duration of leave for the condition is more than 30 days, the agency must wait until that minimum duration expires before requesting a recertification.
2. **Exceptions:** An agency may request recertification in less than 30 days if:
 - a. The employee requests an extension of leave;
 - b. Circumstances described in the previous Certification have changed significantly (duration or frequency of absences⁶, nature or severity of the illness, complications arise, etc.); or
 - c. The agency receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the Certification.
3. Requested recertifications must be provided at the employee's expense within the timeframe requested by the agency. The agency must allow the employee at least 15 calendar days to produce the recertification.
4. Second and third opinions on a recertification are not permitted.

XI. CHALLENGING INITIAL CERTIFICATIONS

- A. **Second Opinions:** An agency having a legitimate reason to doubt the validity of a medical Certification may require that the employee obtain a second medical opinion at

⁶ In a request for recertification, an agency may provide the health care provider with a record of the employee's absence pattern and ask the provider if the serious health condition and need for leave are consistent with such a pattern.

the agency's expense. The agency is permitted to select the health care provider that furnishes the second opinion. This provider may not be employed by nor under contract with the State on a regular basis. Pending receipt of the second (and third) medical opinion, the employee is provisionally entitled to FMLA leave.

- B. **Third Opinions:** If the opinions of the employee's and agency's health care providers differ, the agency may require, at its own expense, that the employee obtain a Certification from a third health care provider. This provider must be approved jointly by the employee and agency. This opinion shall be final and binding in determining the employee's entitlement to FMLA leave.
- C. **Good Faith Cooperation:** Employees and family members are required to authorize their health care provider to release all relevant medical information pertaining to the serious health condition under consideration upon request of the health care provider designated to provide the second (or third) medical opinion. Failing to do so, the employee may be denied FMLA leave.

The agency and employee each must act in good faith to reach agreement on whom to select for the third opinion. If the agency does not do so, the agency shall be bound by the initial Certification. If the employee fails to do so, the employee shall be bound by the second Certification.

XII. EXCLUDED CONDITIONS

The following list of non-covered medical conditions is not all-inclusive, but provides insight as to the ordinary conditions, barring complications, that Congress did not contemplate being qualified as serious health conditions: common colds, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, periodontal disease, and conditions for which cosmetic treatments are administered (most acne treatments or plastic surgery).

Certain conditions which may be classified as serious health conditions under certain circumstances include restorative dental or plastic surgery after injury or removal of a cancerous growth, mental health concerns, allergies, and substance abuse.

XIII. SUBSTITUTION OF PAID LEAVE

- A. FMLA leave is unpaid. However, agencies shall require that employees utilize applicable paid leave concurrently with unpaid FMLA leave.
- B. Employees approved for FMLA leave are required to comply with all procedural requirements of the agency's customary paid leave policy such as requesting leave in advance, satisfying call-in requirements, timely coding leave usage, etc. If the employee fails to comply with such requirements, the employee is not entitled to substitute accrued paid leave, but remains entitled to take unpaid FMLA leave.

XIV. INSURANCE

A. **Group Health and Life Coverage:** For the duration of FMLA leave, the employee's existing group health and life insurance coverages must be maintained at the same level and under the same conditions as was provided prior to commencement of the leave usage. If the State provides a new health plan or benefits, or changes health plans or benefits while an employee is off from work on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee had never taken leave. If premiums are raised or lowered, the employee is required to pay the new premium rate.

B. **Premium Payments:** Because group health and life coverages must be maintained continuously throughout the FMLA leave period, the portion of plan premiums which have been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.

If the employee is receiving regular wages by substituting paid leave throughout the FMLA leave period, the employee's portion of premiums are to be paid in customary fashion via payroll deduction. If the FMLA period is unpaid because the employee has no available applicable leave, arrangements are to be made with the employee for payment of the employee's portion of the premium.

C. **Non-Payment of Premiums:** If the employee is on unpaid FMLA leave and unable to pay the employee portion of group health/life premiums, the agency shall pay the employee's portion of the premium (in addition to its own employer portion). The agency's obligation to maintain coverage by paying the employee's portion of the premium exists only through conclusion of the FMLA leave period. Upon exhaustion of the FMLA entitlement, the employee is responsible for paying the entire premium (employee and employer portions) to maintain coverage.

D. **Recoupment of Premiums Paid:** For premium payments made on behalf of the employee under the circumstances described in Subsection "C" above, the agency is entitled to recover the employee portion of the premiums paid upon the employee's return to active duty. This recoupment entitlement shall be made clear to the employee upon commencement of the FMLA leave period.

In addition to the foregoing recoupment entitlement, the agency may also recover from the employee the employer portion of group health/life premiums paid during the period of unpaid FMLA leave if the employee fails to return to work after the employee's FMLA entitlement is exhausted. However, this entitlement does not apply if the employee's failure to return to work is due to the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or circumstances beyond the employee's control preclude the employee's return to work.

When an employee fails to return to work, any premiums paid that are subject to recoupment by the agency are deemed to be a debt owed to the State. The agency may recover the premiums subject to recoupment through deduction of any sums due to the employee (unpaid wages, vacation pay, overtime pay, etc.). The agency also may initiate legal action against the employee to recover such premiums.

- E. **Coverage Obligation Ceases:** The agency is not required to maintain coverage by paying the employee portion of the group health/life premiums when:
1. The employment relationship with the employee would have terminated if the employee had not taken leave (required layoff, project ends, funding ceases, etc.);
 2. The employee notifies the agency of his intention of not returning to active duty from FMLA leave; or
 3. The employee fails to return from leave or continues to be absent on leave beyond the FMLA entitlement.
- F. **Supplemental Insurance:** In those circumstances during which payroll deduction is unavailable due to the employee's inability to substitute paid leave for FMLA leave, premiums for supplemental insurance (accident, disability, vision, dental, life, etc.) must be timely paid directly and entirely by the employee. Premiums are not to be paid for such coverage by the agency under any circumstance.

XV. RIGHT TO REINSTATEMENT

Upon completion of FMLA leave, an employee generally is entitled to be returned to the same position held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. This reinstatement entitlement applies even if the employee has been replaced or the position has been restructured to accommodate the employee's absence. However, reinstatement may be denied if:

- A. The agency shows that the employee would not otherwise have been employed at the time reinstatement is requested. For example, the employee's position was legitimately subject to layoff during the period of FMLA usage, funding for the position or program was withdrawn or exhausted, or the employee was hired for a specific term that has expired;
- B. The employee is unable to perform the essential functions of the position because of a mental or physical condition, including the continuation of a serious health condition;⁷
- C. The employee fails to produce a Fitness for Duty certification after being directed to do so; or
- D. The employee is no longer qualified for the position due to the inability to attend a necessary course, renew a license, etc. because of the FMLA leave usage or mental/physical limitations.

⁷ In this instance, for classified employees, agencies must also take into consideration the employee's remaining sick leave balance.

XVI. CONFIDENTIALITY

For privacy reasons, information and records regarding an employee's medical condition must be maintained in strict confidence. To satisfy this requirement, all FMLA documentation is to be provided directly to and maintained by Human Resources.

FMLA requests and documents related to the FMLA process are to be viewed as protected, confidential medical records and maintained in separate files/records from the employees' personnel record.

Supervisors, managers, and timekeepers are in need-to-know positions that necessarily require that they be informed of an employee's FMLA entitlement and expected leave usage. However, particulars regarding the employee's medical condition, medication, treatment regimen, etc. shall not be disclosed.

XVII. PROHIBITIONS AND VIOLATIONS

- A. It is unlawful and thus prohibited for any agency, through an administrator, director, manager, supervisor, or other employee, to:
1. Interfere with, restrain, or deny an employee's exercise or attempt to exercise any right provided under the FMLA;
 2. Dismiss, discipline, or discriminate against an employee for exercising any right provided under the FMLA;
 3. Dismiss, discipline or discriminate against an employee for opposing any practice made unlawful under the FMLA; and
 4. Dismiss, discipline or discriminate against an employee for involvement or participation in any proceeding under or related to the FMLA.
- B. It is unlawful and therefore prohibited for an employee to:
1. Knowingly misrepresent facts or provide false information or documentation in support of a request or use of FMLA leave; or
 2. Misuse or abuse the privilege of FMLA leave.

Any employee found to have violated the prohibitions of this policy will be subject to corrective action, including the possibility of dismissal.

XVIII. FORMS

For consistency purposes, the following forms are to be utilized by agencies in processing requests for FMLA leave. These forms are available from Human Resources or from the U.S. Department of Labor Wage and Hour Division (www.dol.gov/agencies/whd/fmla).

- Form WH-381: Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act

- Form WH-382: Designation Notice under the Family and Medical Leave Act
- Form WH-380-E: Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act
- Form WH-380-F: Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act
- Form WH-384: Certification for Military Family Leave for Qualifying Exigency under the Family and Medical Leave Act
- Form WH-385: Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act
- Form WH-385-V: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave under the Family and Medical Leave Act

XIX. ADA IMPLICATIONS

In addition to being serious health conditions under the FMLA, medical conditions may also be disabling and qualify for reasonable accommodation under the Americans with Disabilities Act (ADA). As with the FMLA, agencies are required to comply with the requirements of the ADA. Human Resources personnel should be consulted to determine the possible application of the ADA to an employee's FMLA request.

XX. RELATED PROVISIONS

- A. **La. R.S. 23:342:** Unpaid, job-protected leave for up to 6 weeks is available to a female employee for a normal pregnancy, childbirth, or related medical condition. Such leave can be extended for up to 4 months if the employee is disabled because of the pregnancy, childbirth, or related medical condition. Any leave taken under this provision runs concurrently with the use of FMLA leave.
- B. **Civil Service Rule 11.36 – Parental Leave:** Eligible employees are entitled to up to 240 hours of paid parental leave (without deduction of accrued annual, sick or compensatory leave) for a qualifying purpose related to an employee's child born or placed with the employee for adoption or foster care. Human Resources personnel are available to discuss the eligibility, qualifying purposes, duration, and limitations of the parental leave benefit. Such leave likewise runs concurrently with the use of FMLA leave.
- C. **Worker's Compensation:** Absences due to a job-related injury or illness may be compensable under Louisiana's Worker's Compensation Law. Any leave taken in accordance with the disability provisions of this law runs concurrently with the use of FMLA leave.

XXI. EXCEPTIONS

Exceptions to this policy or deviations from the requirements of the FMLA must be compelling and justified. Requests for exceptions should be submitted, in writing, to Human Resources for consideration in collaboration with the Appointing Authority. Exceptions will be granted only for justifiable reasons permissible under or supportive of the purposes and intent of the FMLA.

XXII. QUESTIONS

Questions regarding this policy or any provision of the FMLA should be directed to Human Resources.

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ADDENDUM “A” MILITARY FAMILY LEAVE

I. ELIGIBILITY

- A. **General Requirements:** To be eligible for Military Family Leave authorized by the FMLA, an employee must have:
1. Been employed by the State for at least 12 months; and
 2. Actually worked for the State for at least 1250 hours over the 12-month period immediately preceding commencement of the FMLA leave.
- B. **Military Caregiver Leave:** To be eligible, the employee must be the spouse, parent, son, daughter, or next-of-kin of the covered servicemember.
- C. **Military Exigency Leave:** To be eligible, the employee must be the spouse, parent, son or daughter of the covered servicemember.

II. MILITARY CAREGIVER LEAVE

- A. Eligible employees may take up to 26 workweeks of unpaid, job-protected leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. The 12-month period begins on the first day the eligible employee takes FMLA leave to care for the servicemember and ends 12 months after that date.
- B. **Definitions:**
1. **Covered Servicemember** includes:
 - a. A current member of the Armed Forces, including the National Guard or Reserves, who, because of a serious illness or injury, is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list; and
 - b. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury. To be covered, the veteran must have been a member of the Armed Forces, including the National Guard or Reserves, and was discharged or released from service under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
 2. **Serious Injury or Illness:**
 - a. Covered Servicemember: An injury or illness that was incurred by the

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servicemember in the line of duty on active duty in the Armed Forces, or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that renders the servicemember medically unfit to perform the duties of their office, grade, rank, or rating; and

b. **Covered Veteran:** An injury or illness that was incurred in the line of duty on active duty that renders the veteran medically unfit to perform required military duties, qualifies the veteran for certain benefits from the Department of Veteran Affairs, or substantially impairs the veteran's ability to secure or follow a substantially gainful occupation. This includes injuries or illnesses that were incurred or aggravated in the line of duty on active duty, but that did not manifest until after the veteran left active duty.

3. **Next-of-Kin:** A servicemember's nearest blood relative (other than a spouse, parent, son, or daughter) in the following order of priority: blood relatives who have been granted legal custody of the servicemember, brothers/sisters, grandparents, aunts/uncles, and first cousins. However, if the servicemember specifically designated in writing another blood relative as his nearest blood relative for purposes of military caregiver leave, the designated individual shall be deemed the servicemember's only next-of-kin.

III. MILITARY EXIGENCY LEAVE

A. Eligible employees may take up to 12 workweeks of unpaid, job-protected leave during a single 12-month period for a qualifying exigency that arises when a servicemember is on covered active duty or has been notified of an impending call or order to covered active duty.

B. **Definitions:**

1. **Qualifying Exigencies:** Non-medical need for leave caused by or related to the servicemember's deployment or notice of impending deployment. Matters requiring leave include those resulting from short-term deployment, to attend military events/activities, address children and school activities, to make financial and legal arrangements, for counseling, for rest and recuperation, for post-deployment activities, and parental care.¹

2. **Covered Active Duty:**

a. For members of the Armed Forces, duty during deployment to a foreign country; and

¹ Employees should consult with Human Resources to obtain complete information regarding the nature and limitations upon leave to address qualifying exigencies.

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- b. For members of the Reserve components of the Armed Forces, duty during deployment to a foreign country in support of contingency operations. Reserve components include the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. A call to active duty refers to a federal call to active duty and not a state call to active duty, unless ordered by the President of the United States.

IV. LIMITATIONS ON LEAVE USAGE

- A. **Combined 26-Weeks:** During any single 12-month period, an employee's total leave entitlement under the FMLA, including Military Family Leave, is limited to a combined 26 workweeks for all qualifying events. For example, an employee utilizing the full 26 workweeks of military caregiver leave has no entitlement to use regular FMLA leave for any other qualifying event. However, an employee could use 16 weeks of leave to care for a covered servicemember and then 10 weeks of leave to care for a newborn child or for the employee's own serious health condition.
- B. **Spouses Working for the State of Louisiana:** When both spouses are employed by the State, the FMLA limits the leave entitlement to a combined total of 26 workweeks during the single 12-month period.

ADDENDUM “B” ADULT CHILDREN

I. ELIGIBILITY

The FMLA entitles an eligible employee to take up to 12 workweeks of unpaid, job-protected leave during a 12-month period to care for a son or daughter with a serious health condition. The FMLA defines “son or daughter” to include a person under age 18 or, 18 years or older who:

- A. Has a physical or mental disability (as defined by the ADA), regardless of the age of onset or duration of impairment;
- B. Is incapable of self-care due to the disability;
- C. Has a serious health condition; and
- D. Is in need of care due to the serious health condition.

It is only when all 4 requirements are met that an eligible employee is entitled to FMLA leave to care for an adult son or daughter.

II. DEFINITIONS

- A. **Disability:** An impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

Some impairments generally qualify as disabilities because, by their nature, they substantially limit at least one major life activity. Examples: deafness, blindness, intellectual disability, missing limbs or mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, muscular dystrophy, multiple sclerosis, major depressive disorder, bipolar disorder, obsessive compulsive disorder, and schizophrenia.

Conditions that are episodic or in remission are considered disabilities if the condition would substantially limit a major life activity when active. Examples: cancer, asthma, multiple sclerosis, epilepsy, diabetes, lupus, and post-traumatic stress disorder.

- B. **Major Life Activities:** These include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, interacting with others, breathing, learning, reading, concentrating, thinking, communicating, and working. The definition also includes operation of a major bodily function such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- C. **Incapable of Self-Care:** For an adult child, in addition to having a disability, the FMLA

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requires that the child be “incapable of self-care” because of the disability. This means that the adult child requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” or “instrumental activities of daily living”. This determination of whether an adult child is incapable of self-care is a fact-specific determination based on the individual’s condition at the time the leave is requested. This determination must also consider all relevant factors that might impact the ability of the child to perform routine daily activities without active assistance or supervision.

- D. **Substantially Limits:** Does not require that the impairment totally prevent nor severely or significantly restrict the performance of a major life activity. The term is to be construed broadly and without consideration of the use of mitigating measures that minimize the effects of an impairment, other than the use of eyeglasses or contact lenses.
- E. **Activities of Daily Living:** As illustrations, these include adaptive activities such as caring appropriately for one’s grooming and hygiene , bathing, dressing, and eating.
- F. **Instrumental Activities of Daily Living:** As illustrations, these include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.