



## FAMILY MEDICAL LEAVE ACT (FMLA)

### Directive 4-105

Date of Issue: October, 2015    Amends/Cancel: 4-105, July 2013

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#### I. PURPOSE

The purpose of this Directive is to provide guidance on the entitlement of eligible employees for federally mandated Family Medical Leave Act (FMLA) benefits.

#### II. POLICY

All members of the Department of General Services Maryland Capitol Police (DGS-MCP) should familiarize themselves with the procedures set forth in this Directive. The FMLA is a federal law which requires employers, including the State of Maryland, to grant job-protected leave to employees who meet FMLA's eligibility requirements.

#### III. PROCEDURES

##### A. EMPLOYEE ELIGIBILITY

1. To qualify under the FMLA, an employee must have actually worked at least a total of 12 months for the State and at least 1,250 work hours during the preceding 12 months.
2. The employee may be employed in any capacity, including that of a contractual.
3. Overtime hours are included as part of the 1,250 hour requirement.
4. Paid and unpaid leave are not included as part of the 1,250 hour requirement.
5. If a husband and wife both work for the State, they are limited to a combined total of 12 weeks of FMLA absence for the birth or the placement of a child for adoption or foster care, the serious health condition of a child under age 18, or an adult child who cannot care for himself or herself.
6. The State requires each agency to run available paid leave concurrent with FMLA. This includes paid accrued annual, personal, compensatory, or sick leave. Paid sick leave may be used to the extent the circumstances meet the employer's usual requirements for the use of sick leave.

##### B. EMPLOYEE ENTITLEMENT

1. The law entitles eligible employees to an absence of up to a total of 12 workweeks of unpaid leave (a covered employer may allow for paid or unpaid leave) in any 12-month period for any of the following reasons:

- a. the birth of a child and to care for the newborn child
  - b. the placement with the employee of a child for adoption or foster care
  - c. necessary care for the employee's spouse, child, or parent with a serious health condition, or an adult child who cannot care for himself or herself
  - d. a serious health condition that makes an employee unable to perform the essential functions of the employee's job.
2. Service Member Family Leave entitles an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member to an absence of up to a total of 26 workweeks of paid and/or unpaid in a single 12-month period to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or is a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if the veteran was a member of the Armed Forces at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

### C. SERIOUS HEALTH CONDITION

1. The FMLA permits an employee to use FMLA leave for a serious health condition of the employee, the employee's child, spouse, or parent.
2. A "serious health condition" is defined as an illness or injury that requires:
  - a. inpatient, an overnight stay, in a hospital, hospice, or residential medical care facility, or
  - b. continuing treatment by a health care provider.
3. An episode of inpatient hospitalization is covered regardless of duration. Otherwise, a period of incapacity must be for more than three consecutive calendar days and must also involve one or more of the following:
  - a. treatment two or more times by a health care provider
  - b. treatment by a health care provider at least once which results in a regimen of continuing treatment under the health care provider's supervision.
4. A serious health condition also includes any period of absence or incapacity due to any of the following:
  - a. pregnancy or prenatal care
  - b. treatment for a chronic
  - c. a permanent or long-term illness requiring supervision by a health care provider where treatment may not be effective
  - d. multiple treatments of an illness, restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.

### D. EMPLOYEE RESPONSIBILITIES

1. FMLA requires that whenever the necessity for an FMLA absence is foreseeable, the employee shall provide not less than 30 day notice before the absence is to begin. As a general rule, 30-day notice shall be required in cases involving the birth, foster care, or adoption of a child or planned medical treatment for an employee or an employee's immediate family member's serious health condition.
2. In those cases where 30 day notice is not practical, an employee, or a representative of the employee (in situations where the employee cannot reasonably be expected to request the leave) is required to give notice no later than one or two business days after learning of the need for the absence.
3. If an employee is unable to give advance notice because the need was not foreseeable, but gives notice within two business days of returning to work, the time off may be treated as an FMLA absence.
4. Absent unusual circumstances, employees must also follow the usual and customary call-in procedure for reporting an absence.

#### E. MEDICAL CERTIFICATION REQUIRED

1. The employee is responsible for providing medical certification of a serious health condition by having the health care provider complete the appropriate FMLA Certification of Health Care Provider (Form 380E or 380F).
3. The employee must provide the requested FMLA Certification of Health Care Provider Form within 15 calendar days after the request, unless it is not practicable.
4. An employee may be required to report periodically to the MCP on his status and intention to return to work.

#### F. EMPLOYER RESPONSIBILITIES

1. Upon receipt of adequate information, verbal or written, it is the employer's responsibility to designate leave as FMLA qualifying, and to give prompt notice of the designation to the employee.
2. After the employer receives notice of a FMLA qualifying leave, the employer must advise the employee of his rights under FMLA.

#### G. QUESTIONS

All questions regarding FMLA should be directed to the DGS Human Resources Division.