

Family and Medical Leave Act (FMLA)

General Overview

In compliance with the Family Medical Leave Act (FMLA), the Comptroller's Office provides to eligible employees: (1) unpaid leave from work for a qualified reason; (2) continuation of health care benefits while on leave; and (3) restoration to the same or an equivalent position upon return from leave.

Human Resources (HR) administers FMLA leave in accordance with federal law and regulations. When the agency determines leave is for an FMLA-qualifying reason, HR will designate the qualifying leave as FMLA-protected, and employees are required to code FMLA leave taken on their time sheet. HR will notify the employee, their supervisor, and their time administrator (if assigned) when leave has been designated as FMLA protected leave.

Eligibility Requirements for FMLA

Full-time, part-time, or temporary employees may be eligible for FMLA leave as long as they are on the payroll and meet both of these requirements:

1. The employee has worked for the State for at least 12 months at the time the leave is to begin. (These do not have to be consecutive months.)
2. The employee has worked for the State for at least 1,250 hours during the 12 month period before the leave begins. (These months are consecutive).

Qualifying Reasons for Leave

Eligible employees are entitled to unpaid, job-protected leave during a 12 month period for one of the following reasons:

- The birth and subsequent care of the employee's newborn child;
- Placement of a child with the employee for adoption or foster care, and to care for that child;
- To care for the employee's spouse, child, or parent due to a serious health condition;
- A serious health condition that prevents the employee from performing his or her job duties;
- A "qualifying exigency" as a result of the employee's spouse, child, or parent who is a military member on covered active duty or called to covered active duty (or notified

of an impending call to active duty), or in support of a contingency operation for covered members of a Reserve component, or

- To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the covered servicemember (military caregiver leave).

Employees are entitled to 12 weeks of FMLA protected leave for a qualifying reason. Employees are entitled to 26 weeks of leave if they qualify as military caregivers.

Calculation of Available Leave

Generally, the amount of FMLA leave an employee is entitled to is determined by using a rolling 12 month period. Under the rolling 12 month calculation, the agency reviews the 12 months preceding the first date the employee uses FMLA leave to determine if the employee used any FMLA leave during this time period, and the remaining balance of the 12 week leave entitlement.

For example, if an employee used four weeks beginning February 1, 2018, then another four weeks beginning June 1, 2018, and another four weeks beginning December 1, 2018, the employee would not be entitled to any FMLA leave until February 1, 2019. Beginning February 1, 2019, the employee would be entitled to four weeks (because the four weeks used in February 2018 are no longer part of the previous 12 months).

Serious Health Condition Defined

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential medical care facility, including subsequent care related to the inpatient treatment; or
- Continuing treatment by a healthcare provider.

“Continuing treatment” includes any one of the following:

A period of incapacity of more than three consecutive calendar days (full or partial days), and subsequent treatment related to the same condition, that also involves:

1. two or more in-person visits for treatment by a health care provider (or someone under his or her direction) within 30 days of the first day of incapacity unless extenuating circumstances exist, or
2. at least one in-person visit for treatment by a healthcare provider that results in a regime of continuing treatment under the provider’s

supervision. The first (or only) in-person treatment must occur within 7 days of the first day of incapacity.

- Any period of incapacity because of pregnancy or prenatal care;
- Any period of incapacity for a chronic serious health condition (i.e. asthma, diabetes or epilepsy);
- Permanent or long-term incapacity for treatment that may not be effective (i.e. in the terminal stages of a disease);
- Any period of absence to receive multiple treatments, either restorative surgery after accident or injury or for treatment of conditions such as cancer (chemotherapy) or kidney disease (dialysis).

FMLA Leave Approval

The agency must designate leave as FMLA-qualifying before it can be coded as such. Whether leave is designated as FMLA-qualifying is based on information received from the employee and the employee's health care provider. The employee is responsible for providing sufficient information for the agency to make its determination. HR will notify the employee and his or her management when leave qualifies as FMLA leave. Employees should not code their time in CAPPs as FMLA until HR has designated the leave as FMLA protected.

Certification and Recertification

If the agency is aware that an employee has been absent for a reason that may be FMLA-qualifying, the agency will pre-designate the leave as FMLA and may request medical certification from the employee.

Employees are required to provide medical certification from a health care provider that substantiates the need for FMLA leave. The duration and type of FMLA leave granted (regular, reduced schedule or intermittent) will be determined based on medical information provided.

Once FMLA leave is granted, an employee may be required to provide updated medical information on a periodic basis.

Employee Responsibilities

An employee must alert his or her supervisor and HR of his or her need to take leave that may be FMLA qualifying, including the anticipated timing and duration of leave. The employee may not decline to designate leave as FMLA if the agency determines the leave is for an FMLA-qualifying reason.

When the need for leave is foreseeable, such as a scheduled doctor visit or planned surgery, the employee must provide adequate advanced notice and make a reasonable effort to minimize disruption to business operations due to the leave.

When the need for leave is not foreseeable, the employee must provide notice of the need for FMLA leave as soon as possible. The employee should follow the agency's, division's, and management's normal policy for requesting leave, absent unusual circumstances.

The employee is responsible for ensuring the agency receives complete and sufficient medical certification or recertification when requested by the agency.

Supervisor Responsibilities

A supervisor must immediately notify HR when an employee communicates a need to take leave for a potentially FMLA-qualifying reason. The supervisor may not decline to designate leave as FMLA if the agency determines the leave is for an FMLA-qualifying reason.

The supervisor is responsible for consistently enforcing agency policies and procedures for requesting leave, reporting absences, and entering appropriate time codes into the CAPPS Payroll system. When FMLA leave has been approved for an employee, the supervisor:

- may ask the employee if leave taken is for an FMLA event;
- may not contact a health care provider directly or maintain medical documentation regarding an employee;
- may not allow an employee to return to work or to telework unless HR has received a medical certification or other sufficient documentation to support the employee's ability to work (with or without restrictions);
- must notify HR when an employee does not return to work by the FMLA designated return date.

Medical Information is Confidential

All medical information submitted in connection with a request for FMLA leave is stored in a confidential medical file in HR, separate from the employee's personnel file or other files related to his or her employment.

Designating Family and Medical Leave

The agency will designate leave as FMLA protected once it has sufficient information to make a determination. HR will respond to FMLA requests in writing within five business

days of receipt of a request, unless there are extenuating circumstances that require clarification or additional documentation from employees.

If additional information is required in order for HR to determine whether FMLA should be approved, the agency may conditionally approve FMLA contingent on receiving additional documentation.

If the required documentation is not provided by the prescribed deadline, the absence may not qualify for FMLA and the employee may not receive FMLA protection, or use of FMLA may be delayed.

Absences from work will not be retroactively designated as FMLA unless:

1. the employee was absent for an FMLA-qualifying reason and the agency did not learn of the reason for the absence until the employee's return to duty; or
2. the agency knew of the reason for leave but could not confirm the leave qualified for FMLA until it received appropriate certification.

FMLA Leave Approval – Special Rules for Use

Birth of a Child

FMLA leave for the birth of a child must be completed within 12 months of the date of birth. Medical certification may not be required for the birth mother; however, the employee must have his or her division director's approval to take leave intermittently or on a reduced leave schedule if neither the mother nor the newborn has a serious health condition requiring the employee's care or assistance.

An expectant mother may take FMLA leave before the birth of the child for prenatal care or a condition that makes her unable to work. After the birth of a child, an employee (parents) is only allowed to use sick leave for the period of time the mother is recovering from childbirth, as determined by the mother's health care provider. For the remainder of the 12 weeks, the employee must use other accrued leave or leave without pay unless the mother or newborn is actually sick, as defined by the [Sick Leave Policy](#).

Adoption or Foster Care Placement

FMLA leave for adoption or foster care must be completed within 12 months of the date of placement. An employee may take leave before actual placement or adoption if the absence is required for the placement or adoption to proceed (e.g., to attend court hearings, consult with an attorney, or meet with the doctor for the birth parents).

Military Caregiver Leave

An eligible employee who is a spouse, child, parent or nearest blood relative of a covered servicemember is entitled to up to 26 weeks of unpaid, job-protected leave during any single 12 month period beginning on the day the employee takes leave to care for the servicemember with a serious illness or injury, which was incurred while on active duty and that renders the member unable to perform the duties of his or her office, grade, rank or rating.

An eligible employee who does not use all 26 weeks of leave entitlement to care for a covered servicemember during the single 12 month period forfeits the remaining part of the military caregiver leave entitlement.

An eligible employee entitled to military caregiver leave may take a combined total of 26 weeks of leave for any FMLA-qualifying reason during the single 12 month period, but may not exceed the leave entitlement allowed for each qualifying event. For example, if an eligible employee takes 13 weeks of leave to care for a covered servicemember and the employee also takes FMLA leave to care for a newborn child, the employee does not get to extend leave to care for the newborn beyond the 12 weeks allowed for that qualifying event.

Qualifying Exigency for Active Duty Military Family Members

A “qualifying exigency” as a result of the employee’s spouse child or parent who is a covered military member includes:

- Short notice deployment;
- Military events and related activities;
- Childcare and school activities;
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities;
- Parental care; and
- Additional activities arising out of the military member’s covered active duty or call to covered active duty status.

Please contact HR for any questions regarding qualifying exigency.

Holidays While on FMLA Leave

When a holiday falls during a week in which an employee is taking the full week of FMLA leave, the entire week is counted as FMLA leave.

When a holiday falls during a week when an employee is taking less than the full week of FMLA leave, the holiday is not counted as FMLA leave unless the employee was scheduled and expected to work on the holiday and used FMLA leave for that day.

Intermittent Leave

An employee taking intermittent FMLA leave may make-up time during the same workweek as the leave taken, so long as the employee does not work more than 40 hours in that workweek. The make-up time must be worked during core business hours as established by division/section management. The ability to make-up time is at management discretion and may be denied.

Spouses Employed by the Same Employer

When spouses both work for the same employer, the amount of leave is limited to a combined total of 12 weeks (or a combined total of 26 weeks under military caregiver leave) due to the birth, adoption, or foster care placement of a child or to care for the employee's parent with a serious health condition. Each employee would not be entitled to 12 weeks FMLA leave for this purpose.

The limitation would not apply, however, to any FMLA leave balance each employee is entitled to for another qualifying purpose, such as the employee's own serious health condition. Exceptions may apply when the newborn, or adopted or foster child, has a serious health condition. Please contact the FMLA Coordinator in Human Resources for any specific questions regarding applicable FMLA leave and exceptions.

Substitution of Paid Leave for Unpaid Leave

While on FMLA leave, employees are required to use all available paid leave before the leave is unpaid. This may not apply if an employee is on workers' compensation and has opted not to use their leave.

Sick leave must be used first if the reason for the leave qualifies as sick leave. The employee may then exhaust other forms of leave.

Substitution of paid leave for unpaid leave does not extend the 12 or 26 weeks permitted under the FMLA.

Other Benefits While on FMLA Leave

Health Insurance

An employee's health insurance benefits continue during FMLA leave at the same level and with the same or similar conditions as if the employee was at work. After all paid leave is exhausted, the agency will continue to pay the state-paid portion of the employee's coverage under his or her group health plan. The employee, however, must pay his or her share of the cost above that state-paid portion, or coverage will lapse. Employees are required to arrange payments with the Benefits Coordinator in Human Resources.

Outside Employment or Activities

An employee absent from work for an FMLA-qualifying reason may not engage in any previously approved outside employment, business or activity while on FMLA leave without prior approval from his or her management, after consultation with Human Resources.

Whether it is appropriate for an employee to continue with outside employment, business or other activities depends on the reason for the leave, the type of leave (regular, reduced schedule or intermittent), the duration of the leave and other factors.

Workers' Compensation Benefits

Workers' compensation benefits run concurrently with FMLA leave for qualifying work-related injuries and illnesses.

Return to Work

Employee Status and Intent to Return to Work

The agency may periodically request reports on an employee's status and intent to return to work.

When an employee's own serious health condition is the reason for FMLA leave, the agency will require a medical release to return to work on the first day the employee returns to work.

Ability to Return to Same or Equivalent Position

An employee returning from FMLA leave will return to the same position he or she held when the leave began, or to an equivalent position, if the employee continues to be able to perform all the essential functions of the job.

If the employee is unable to perform all of the essential functions, he or she may be entitled to a reasonable accommodation. The employee should contact HR to discuss options.

Inability to Return From Leave

An employee who exhausts his or her FMLA leave entitlement may request an additional unpaid leave of absence. This unpaid leave may or may not be considered a reasonable accommodation. Each request for additional time off is reviewed based on the circumstances of each case. The employee should contact HR to discuss their needs and the approval process.

The Comptroller's Office may terminate the employment of an employee who is not granted additional approved leave, and does not return from FMLA leave when released to return to work by the doctor or when the FMLA leave expires. These employees may re-apply with the Comptroller's Office when they are able to return to work.

Reasons to Deny Return to Work

An employee returning to work has no greater rights to the job or to benefits than if the employee had not taken the leave. For example, an employee who would have been terminated for misconduct or laid off had he or she been at work does not have the right to be reinstated.

The agency may not allow an employee to return to work if he or she has not provided a medical release when one is required, or if the agency learns the employee fraudulently obtained the leave.

Prohibited Acts

Under the FMLA, it is unlawful for the Comptroller's Office to:

- Interfere with the exercise of any right under the Act;
- Terminate or in any other way discriminate against any person for opposing any practice that is unlawful under the Act;
- Retaliate against a person who has filed a complaint, provided information, or testified in relation to a complaint filed concerning a right under the Act.

If you believe you have been subjected to conduct that may violate the FMLA, please contact an Employee Relations Specialist in Human Resources.

Authority

29 U.S.C. § 2601 et seq.

29 C.F.R Part 825

Public Law No. 110-181 (2008)

Texas Government Code §661.912