



HUMAN RESOURCES

Georgia Building Authority / State Properties Commission / Georgia State Financing & Investment Commission

HR-09: Family and Medical Leave Policy (effective: 4/2009)

Purpose

The Family and Medical Leave Act (FMLA) provides job-protected leave without pay to eligible employees for the birth and care of their newborn child, placement of a son or daughter for adoption or foster care, to care for an immediate family member with a serious health condition or for their own qualifying serious health condition. Federal law entitles eligible employees to a maximum of twelve (12) work weeks of unpaid family and medical leave (FML) each year. It is the policy of The Georgia Building Authority (GBA), The Georgia State Finance and Investment Commission (GSFIC) and the State Property Commission (SPC) to designate up to twelve (12) weeks of family and medical leave during any rolling 12-month period, measured backward from the first day of each approved instance of family/medical leave, in accordance with the Family and Medical Leave Act of 1993 (FMLA), 29 CFR § 825.

Use of Paid Leave

The GBA, GSFIC and SPC permit its employees to use available annual, sick, and/or personal leave, if appropriate, while on FML in order to remain in pay status. If sick leave is requested, absences must be for reasons that qualify for sick leave usage.

NOTE: Under Federal regulations, FLSA compensatory time **cannot** be counted toward the twelve (12) work weeks of FML.

Use Of Family And Medical Leave

Human Resources cannot deny the use of FML when the provisions of this policy have been met. It is unlawful to interfere with, restrain, or deny the exercise of (or attempts to exercise) any right provided by the FMLA. Further, it is unlawful to discharge or discriminate against employees for opposing any practice made unlawful by the FMLA or for involvement in any proceeding relating to the FMLA. This policy does not, however, insulate any employee from disciplinary action based on conduct or performance deficiencies.

Qualifying Reasons:

- Pregnancy and birth of the employee's child;
- Care of the employee's newborn child;
- The placement of a child with the employee for adoption or foster care, and to care for the child after placement;
- A serious health condition which makes the employee unable to perform the essential functions of the position;
- Care of the employee's child (son or daughter), spouse or parent who has a serious health condition. ("Child" means a biological child, adopted or foster child, stepchild, legal ward, or a child of an employee standing in "*in loco parentis*" who is either under age 18 or is age 18 or older and incapable of self-care because of mental or physical disability.)("Parent" means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child under age 18. "*In loco parentis*" means having day-to-day responsibilities to care for and financially support a child. "Parent" does not include parents-in-law.)

Eligible Employees

In order to be eligible for FML, employees must:

- Have been employed with **State government** for a minimum of twelve (12) months (The twelve (12) months do not need to be consecutive; there can be a break in service;
- Have been **present at work** for a minimum of 1,250 hours during the twelve (12) months immediately before the beginning of FML
 - Time spent by reservists on active duty in the U.S. Armed Forces should be included in calculating hours worked to determine eligibility for Family and Medical Leave.
 - FML does not include holidays or time away from work on paid or unpaid leave; and,



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- Have a qualifying reason for taking FML
 - In accordance with Federal regulations, **when both husband and wife are eligible State employees**, they are limited to a combined total of twelve (12) work weeks of FML in any rolling 12-month period, for the birth, care of the employee's child, placement of a child with employee for adoption or foster care; and care of the employee's parent with a serious health condition.
 - Each spouse is entitled to use the difference between the amount of FML he or she has taken individually for the twelve (12) work week maximum for other qualifying reasons.

Military Family Leave

- Eligible employees are entitled to up to 12 weeks of leave because of any qualifying exigency arising out of the fact the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.
- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the servicemember.

Procedure And Process

- Employees are responsible for notifying supervisors or Human Resources of the need for FML.
- Employees must give supervisors or Human Resources adequate notice (usually thirty (30) calendar days) when FML is foreseeable.
 - When thirty (30) calendar days advance notice is not possible, employees must give supervisors or Human Resources notice as soon as they become aware that FML is necessary. FML may be delayed when adequate notice is not provided.
 - If FML is foreseeable based on planned medical treatment, employees must make a reasonable effort to schedule the FML, subject to the approval of the attending health care provider, to ensure that the operations of the work unit will not be unduly disrupted.
- When requesting FML, employees are to provide a completed ***FAMILY AND MEDICAL LEAVE REQUEST*** form (***Attachment 1***) to supervisors or Human Resources, unless submitting this form is not possible. The following information must be provided: beginning and ending dates of requested FML; request for use of annual, sick and/or personal leave or leave without pay; and, reason for the FML. The reason for the absence must be explained in order to determine whether the absence qualifies for FML. (If employees request to use paid leave while on FML, they are to submit the appropriate leave request forms in addition to the ***FAMILY AND MEDICAL LEAVE REQUEST FORM***.)
- Employees requesting FML due to a serious health condition, pregnancy, or child birth are to provide to supervisors or Human Resources the completed ***CERTIFICATION OF SERIOUS HEALTH CONDITION*** form (***Attachment #2***) or other medical statement with similar information, completed by the attending health care provider. When a single serious health condition requires multiple absences (e.g., asthmas, chemotherapy, etc.), a separate medical statement is not required for each absence.
 - When FML for a serious health condition is foreseeable, this certification should be provided before the absence begins. When it is not possible to provide this certification before the absence begins, employees must provide the certification within fifteen (15) calendar days of the date it is requested.



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- Employees requesting FML due to adoption or foster care are to provide to supervisors or Human Resources the completed ***CERTIFICATION OF ADOPTION OR FOSTER CARE*** form (*Attachment 3*) or similar form, whichever is appropriate. This form needs to be submitted only one time, unless the circumstances regarding placement change to the extent that updated information is needed.
- Employees requesting FML due to a qualifying exigency must provide to supervisor or Human Resources a ***CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE*** form (*Attachment #4*) to be completed by employee.
- Employees requesting FML due to a serious injury or illness of a covered servicemember must provide to supervisors or Human Resources a ***CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICEMEMBER*** form (*Attachment #5*), Section I to be completed by the employee and Section II to be completed by a United States Department of Defense (DOD) Health Care Provider or a Health Care Provider who is either: (1) a U.S. Department of Veterans Affairs health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider.

Response

- Human Resources officials are to respond to FML requests in writing within five (5) calendar days of receipt of the requests, unless there are extenuating circumstances that require clarification or additional documentation from employees.
- Approval notices must specify the terms and conditions of the FML and advise employees of their right to return to work.
- If an employee is not eligible for FML, the employee must be notified in writing; and the notice must include the reason why they are not eligible.
- If sufficient information is not available to determine whether FML should be approved, Human Resources may conditionally approve the FML contingent upon receiving required documentation.
- If the request is based on a serious health condition, the conditional approval notice is to include a statement that a completed ***CERTIFICATION OF SERIOUS HEALTH CONDITION*** form; ***CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICEMEMBER***; or other medical statement with similar information must be submitted to supervisors or Human Resources within fifteen (15) calendar days from the day of the conditional approval notice.
- When the required documentation is received, employees will be advised if the FML is approved or if they are ineligible.
- If the required documentation is not provided by the deadline date, the absence will not qualify for FML and the employee will not receive the protection of FML, or the use of FML may be delayed. If timely notices are not provided by supervisors or Human Resources, employees are **NOT** entitled to additional time beyond the maximum amount of twelve (12) work weeks for FML; or twenty-six (26) weeks for Military FML.
- If there is a question as to the validity of the certification for FML, **and ONLY** with the approval of the Director of Human Resources, the employee may be required to obtain a second opinion from a health care provider chosen by GBA, GSFIC or SPC and paid for by GBA, GSFIC or SPC.



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- Supervisors or Human Resources personnel who do not comply with the requirements of this policy are subject to disciplinary action up to and including separation.

Concerns With Process

Employees who believe that their FML requests have not been processed correctly should discuss their concerns with supervisors or Human Resources.

Designating Family And Medical Leave

It is the responsibility of supervisors or Human Resources to designate FML as appropriate. If FML is determined appropriate, employees are to be placed on FML **even when they do not submit a request**. Supervisors or Human Resources may learn that an absence or part of an absence, from work qualifies for FML either during or after the period of absence. In these circumstances, FML should be designated as follows:

- When supervisors or Human Resources learn that an employee is eligible for FML during a period of absence, any portion of the absence from work that qualifies for FML should be designated as such. When FML is designated, medical certification is still required to confirm that the absence qualifies as FML.
- Generally, absences from work may not be retroactively designated as FML after an employee has returned to work. However, FML may be designated retroactively under the following circumstances:
- When the employee was absent for an FML reason and GBA, GSFIC or SPC did not learn of the reason for the absence until the employee's return. The retroactive designation must be made within fifteen (15) calendar days of the employee's return to duty.
- When GBA, GSFIC or SPC knows the reason for leave but has not been able to confirm that the leave qualifies under FMLA. In such cases, the FML designation must be made promptly upon receipt of appropriate certification.
- When the reason for the absence is known beforehand by GBA, GSFIC or SPC (e.g., pregnancy/child birth), employees are **NOT** to be retroactively placed on FML after they return to work.

Pay Status Benefits

- Employees may use paid leave (annual, sick, or personal), if appropriate, take leave without pay, or use a combination of both to cover the absence from work. Use of paid leave must comply with the Leave Policy of GBA, GSFIC and SPC (e.g., sick leave can only be used for reasons that qualify for sick leave).
- Absences due to morning sickness and other pregnancy related absences (including the two (2) weeks immediately before delivery) generally qualify for use of sick leave by female employees.
- The first six (6) weeks following the birth of a child generally qualify for use of sick leave by female employees. Additional use of **sick leave** due to the birth of a child must be supported by a medical statement (e.g., serious health condition of the mother or child). Fathers (male employees) would generally be eligible to use sick leave if their presence is needed due to the serious health condition of the mother or child.
- Absences related to adoption when the employee's presence is required for health-related reasons qualify for use of sick leave. Other FML absences related to adoption qualify for use of annual or personal leave or authorized leave without pay.



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- Since leave donations are credited to recipients' sick leave balances, employees who are on FML can only use donated leave for absences that qualify for use of sick leave.
- While on FML, employees who have health insurance benefits through the State Health Benefit Plan are entitled to maintain this health insurance coverage at the employee rate. If premiums change while employees are on FML, they are responsible for paying the new premiums.
- In order to maintain health insurance and any benefits through the Flexible Benefits Program (e.g., Accidental Death and Dismemberment Insurance, Dental Insurance, etc.), employees on FML **with** pay (those using sick/donated, annual or personal leave) shall continue to pay premiums through payroll deductions.
- Employees on FML **without** pay will be advised of the cost for maintaining health insurance and any benefits through the Flexible Benefits Program, arrangements for making payments and consequences for not making timely payments.
- Employees on FML **without** pay must complete and submit the following forms to the human resource office to continue health insurance benefits:
 - ***REQUEST TO CONTINUE HEALTH BENEFITS DURING LEAVE OF ABSENCE WITHOUT PAY (Form MS66-003 – Attachment #6): and***
 - ***DISABILITY CERTIFICATION (Form MS66-005 – Attachment #7), if appropriate.***
- Employees with at least one (1) year of participation in the Group Term Life Insurance Program under the Employees' Retirement System (ERS) may retain coverage while on FML without pay. A request to continue coverage must be made in writing to ERS prior to beginning the FML without pay. Coverage terminates if this written request is not received.

Recertification

Employees on FML due to a serious health condition may be required to provide recertification of the serious health condition on a reasonable basis. Recertification cannot be required more often than every thirty (30) calendar days.

Intermittent/Reduced Leave Schedule

FML may be taken intermittently or on a reduced leave schedule under certain circumstances. FML cannot exceed 480 hours in a calendar year.

Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason (e.g., morning sickness, prenatal examinations).

Return To Work

Employees who have complied with the terms and conditions in the FML approval notice are entitled to return to the same position, or an equivalent position with the same pay and grade, benefits and comparable working conditions, at the expiration of FML.

Employees do not retain this entitlement if at the expiration of FML they are unable to perform the essential functions of the position, with or without reasonable accommodation, due to physical or mental condition.



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Employees on FML do not have greater rights to return to work than they would have if they had continuously remained at work. For example, employees who are on FML during a staff reduction do not have a right to return to work if they are laid off due to the staff reduction.

Employees returning from FML due to their own serious health condition will be required to provide a **PHYSICIAN'S RELEASE TO RETURN TO WORK** form (**Attachment #8**) or similar statement from the attending health care provider prior to returning to work. This statement must certify that the employee is capable of performing the essential functions of the position, with or without reasonable accommodation. Employees who do not provide a required statement or have restrictions that cannot be reasonably accommodated **will not** be allowed to return to work.

The Family and Medical Leave Act is a complex Federal Law that is used often and must be applied accurately. Any questions or concerns should be directed to the Office of Human Resources at (404) 463-5664.

Attachments:

- Attachment # 1 – Family and Medical Leave Request Form
- Attachment # 2 – Certification of Serious Health Condition
- Attachment # 3 – Certification of Adoption or Foster Care
- Attachment # 4 – Certification of Qualifying Exigency for Military Family Leave
- Attachment # 5 – Certification for Serious Injury or Illness of Covered Servicemember
- Attachment # 6 – SHBP–Request to Continue Health Benefits During Leave of Absence
- Attachment # 7 – SHBP-Disability Certification
- Attachment # 8 – Release to Return to Work