



**Office of Human Resources
Standard Operating Procedure
HR SOP #608**

Subject: Family and Medical Leave (FML)

Effective Date: April 1, 2020

Policy Statement:

The Department of Natural Resources (DNR) will administer Family and Medical Leave (FML) in accordance with the Family and Medical Leave Act (FMLA) and State Personnel Board (SPB) Rules. DNR allows eligible employees to be provided with:

- Up to 12 workweeks of job-protected leave for certain family and medical reasons during a 12-month rolling period; and/or
- Up to 26 workweeks of leave for the care of a Covered Service Member, during a single 12-month period.

Qualifying Reasons for Leave:

Eligible employees can take leave for any of the following reasons:

- The birth of a son or a daughter of the employee and to care for such son or daughter;
- The placement of a son or daughter with the employee for adoption or foster care;
- To care for the spouse, son, daughter or parent of the employee, if such spouse, son, daughter or parent has a Serious Health Condition;
- A Serious Health Condition that makes the employee unable to perform the essential functions of his/her position;
- Care of a Covered Service Member, who is the employee's spouse, son, daughter, parent or next of kin of a Covered Service Member, who is recovering from a serious illness or injury sustained in the line of duty on active duty in the Armed Forces; or
- A qualifying exigency arising out of the fact the spouse, son, daughter or parent of the employee is called to or is on active duty in a foreign country.
- Because of a qualifying need related to a public health emergency. (effective 4/1/2020 and ends 12/31/2020).

Eligible employees will be able to maintain any qualifying pre-existing health coverage during the period of authorized leave. At the end of a qualifying leave period, covered employees are entitled reinstatement to employment except as otherwise provided by law.

Although FML is unpaid, employees may choose to use paid leave to run concurrently with Family and Medical Leave. Accumulated Holiday Deferral and FLSA Compensatory Leave balances are to be exhausted prior to use of any other type of leave.

Definitions:

Appointing Authority/Designee: For the Department of Natural Resources (DNR), including the Environmental Protection Division (EPD), the designee for FML is the Department Human Resources Director.

Child Care Provider: A provider who receives compensation for providing child care services on a regular basis.

Covered Active Duty: Deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty in support of a contingency operation (typically during a war or declared national emergency).

Covered Service Member:

- A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a qualifying serious injury or illness incurred in the line of duty on active duty in the Armed Forces or an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces; or
- A veteran who is under-going medical treatment, recuperation, or therapy, for a qualifying serious injury or illness incurred in the line of duty on active duty and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the 5-year period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy. (This definition applies only to Military Caregiver FML.)

Eligible Employee: Any DNR employee, who has been employed for a minimum of twelve months by the State of Georgia within the previous seven years; and who has worked for the State of Georgia for at least 1,250 hours in the twelve months preceding the commencement of FML. Holidays and time spent on paid or unpaid leave or suspension do not count toward the 1,250 hours worked. An exception exists for some military leave. (The twelve months do not need to be consecutive; there may be a qualified break in service. Time worked for State government through a temporary services agency may count toward the 12-month minimum requirement if all other conditions are met.) To be eligible, the employee has to have a qualifying reason for the absence and must not have already exhausted the available FML entitlement for the twelve month period.

NOTE: Military members will be given credit regarding eligibility for FML for all time absent from work due to or necessitated by service covered by the Uniformed Services Employment and Reemployment Rights Act.

NOTE: In regard to leave taken because of a qualifying need related to a public health emergency, the term eligible employee is an employee (part time or full time) who has been employed for at least 30 calendar days prior to the designated leave.

Emergency Paid Sick Leave: Leave provided employees who are unable to work or telework for specific reasons related to COVID-19 as provided by the Families First Coronavirus Response Act.

Family and Medical Leave (FML): Leave taken by an eligible employee in accordance with the provisions of this Standard Operating Procedure. FML is limited to twelve workweeks in any rolling 12-month period except for Military Caregiver FML, which may be approved for up to 26 workweeks in a single 12-month period.

Health Care Provider: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; any podiatrist, dentist, clinical psychologist, optometrist, or chiropractor authorized to practice in the state and performing within the scope of his or her practice under appropriate state law; physician's assistants, nurse practitioners, nurse midwives and clinical social workers authorized to practice under state law and performing within the scope of their practices as defined under appropriate state law.

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. (NOTE: In these instances, the Appointing Authority/Designee may require a second and/or third medical opinion by a non-Christian Science practitioner.)
- A Health Care Provider as defined above who practices in a country other than the United States and who is licensed to practice in accordance with the laws and regulations of that country.
- Any Health Care Provider to whom the State Health Benefit Plan will pay benefits.

In Loco Parentis: Having day to day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary. (NOTE: For Military FML purposes, the son or daughter may be of any age.)

Intermittent Leave: Leave taken in separate blocks of time, rather than continuous time off, due to a single qualifying reason.

Military Member: A current member of the regular Armed Forces, National Guard or Reserve components who is on active duty or called to or on active duty in a foreign country. (This definition applies only to Qualifying Exigency Leave.)

Next Of Kin: The nearest blood relative other than the Covered Service Member's spouse, parent, son or daughter, in the following order of priority: a blood relative who has been designated in writing by the Covered Service member as the next of kin for FMLA; blood relatives who have been granted legal custody of the Covered Service Member; siblings; grandparents; aunts/uncles and first cousins.

Parent: The employee's biological, adoptive, step or foster parent. Parent includes an individual who stands or stood in loco parentis to an employee when the employee was a child. A biological or legal relationship is not necessary. This term does not include a parent-in-law.

Public Health Emergency: An emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Reduced Schedule Leave: Using leave to reduce the number of hours worked each workday or each workweek.

School: Elementary or secondary school.

Qualifying Exigency: An activity that requires leave because the employee's spouse, son, daughter or parent is a military member on covered active duty or on notice of upcoming covered active duty.

Qualifying Need Related to a Public Health Emergency: If the employee is unable to work or telework due to a need for leave to care for the son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

Rolling 12-Month Period: A "rolling" 12-month period measured backward from the date an employee uses any FML. The employee's FMLA entitlement is the difference between twelve weeks and any FML taken in the past twelve months.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves:

- An overnight stay in a hospital, hospice or residential medical facility and any period of incapacity or treatment related to the reason for inpatient care; or,
- Continuing treatment by a Health Care Provider that involves at least one of the following:
 - Incapacity of more than three consecutive days, plus treatment that includes at least two medical examinations or one examination followed by treatment under the healthcare provider's supervision;
 - Prenatal care or incapacity because of pregnancy;
 - Periodic treatment or incapacity for a chronic serious health condition that:
 - Requires periodic visits (at least twice per year) to a Health Care Provider for treatment,
 - Continues over an extended period of time, and
 - May cause episodic rather than continuing periods of incapacity;
- Permanent or long-term condition for which treatment may not be effective; or,
- Absence to receive multiple treatments for:
 - Restorative surgery following an accident or other injury, or
 - For a condition that, if left untreated, would likely result in incapacity of more than three consecutive days (i.e., chemotherapy, dialysis, etc.).

Substance abuse may meet the criteria for a Serious Health Condition.

Single 12-Month Period: As defined with Military Caregiver FML, begins on the first day the employee takes leave to care for the covered service member and ends twelve months later.

Son or Daughter: A biological, adopted or foster child, stepchild, legal ward, or a child of an employee standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of mental or physical disability.

Spouse: A husband or wife in a lawful marriage.

Workweeks: Shall be determined by the schedule of the individual to whom a specified time limit applies.

Procedure:

Request:

Employees requesting FML should provide the Appointing Authority/Designee with the completed DNR Initial Request for FML (Attachment 1) when learning of the need for an absence that may be FMLA eligible. However, the employee's notice of the need to take leave can be verbal, and does not have to specifically mention FMLA. Supervisors must notify the Office of Human Resources (OHR) immediately. The employee should provide notice at least thirty days prior, when the leave is foreseeable and as soon as practicable when it is not.

NOTE: Employee requesting FML through OHR, who intend to use paid leave, must ensure that they also make the request for leave through their supervisor in accordance with agency leave request procedures.

If the employee is eligible for leave protected by FMLA, the Appointing Authority/Designee will respond within five business days (of receiving notice of the leave or the beginning of the leave) with the Notice of Eligibility and Rights and Responsibilities form (Attachment 2) and the appropriate Certification form (Attachments 3, 4, 5, 6, 7, or 8) for the type of FML being requested. If the employee is ineligible for leave under FMLA, only the Notice of Eligibility and Rights and Responsibilities will be returned.

Any employee absence that is considered by the Appointing Authority/Designee as qualifying as FML (see policy statement) will be designated/approved as FML (with or without pay), regardless of the employee's desire for FML. Such employees will receive both the Notice of Eligibility and Rights and Responsibilities form and the appropriate Certification form.

If determined/designated to be FMLA eligible, employees have up to fifteen calendar days to return the completed forms. If the forms are returned incomplete or inconclusive, the employee will be given an additional seven days to submit correct forms.

Separate FML request forms and certification forms are not needed to cover multiple absences for each qualifying event. These forms need to be submitted only one time, unless the circumstances change to the extent that updated information is needed.

NOTE: Eligible employees who have been incapacitated due to an injury compensable under Workers' Compensation must also complete FML paperwork. Workers' Compensation and Family and Medical Leave will run concurrently for those employees that are receiving Workers' Compensation benefits and are approved for Family and Medical leave.

FML and Disability Insurance:

DNR employees are permitted to use leave while on FML; however, employees with disability insurance through the State of Georgia benefit plan cannot receive disability benefits and the following types of leave at the same time:

- Sick Leave;

- Donated Leave;
- Personal Leave;
- FLSA Compensatory Time; or
- GA Compensatory Time.

NOTE: The above types of leave can be used during the waiting period for disability benefits.

Employees can use annual leave during the waiting period and while receiving disability benefits.

Reasons for Leave:

Serious Health Condition:

Entitlement to FMLA leave for a Serious Health Condition of the employee begins on the date the employee becomes unable to perform the essential functions of the employee's position.

Entitlement to FMLA leave for a Serious Health Condition of a qualifying family member begins on the date the employee's presence is necessary to care for the qualifying member.

If FML is foreseeable, based on planned (pre-scheduled) medical treatment, the employee must make a reasonable effort, in cooperation with the appropriate Health Care Provider, to schedule the treatment so as not to unduly disrupt the operations of the work unit.

When requesting or designating absences as FML for a Serious Health Condition of the employee or family member, medical certification of the health condition is required (Attachments 3 & 5).

The Appointing Authority/Designee may require that the employee obtain subsequent recertification when the certification does not indicate an end date. Recertification may not be requested more often than every thirty days, except under certain extenuating circumstances. However, DNR may require recertification every six months for employees, even for lifetime conditions. The cost of providing recertification (medical updates) is the responsibility of the employee.

FML for a Serious Health Condition is limited to the time determined to be medically necessary by the attending Health Care Provider.

FML to care for a family member with a Serious Health Condition ends upon the death of the family member. The date of death is the last day that qualifies for FML.

NOTE: The employee's supervisor may approve leave after the date of death of an employee's family member in accordance with the State Personnel Board Rules. A leave of absence without pay may also be considered.

If both spouses are employed by the state, both are entitled to leave to care for their sick parent but are limited to a total of twelve workweeks during the rolling 12-month period. If both spouses take less than twelve workweeks for this purpose, either may take the remainder of the twelve workweeks for other qualifying events.

Childbirth, Adoption or Foster Care:

A mother is entitled to leave for incapacity due to pregnancy, for prenatal care or her own Serious Health Condition following the birth of a child. Circumstances may require that FML begin before

the actual date of birth of the child. Use of sick leave must be limited to the period of incapacity/illness as designated by the physician.

Leave can be used for bonding by both spouses without medical certification. However, leave to bond can only be considered FML if used within twelve months of the date of birth or placement of a child with the employee for adoption or foster care. Employees cannot use sick leave for purposes of FML associated with bonding following the birth or adoption of a child, or for placement of a child in foster care.

If both spouses are employed by the state, both are entitled to leave for childbirth or adoption/foster care but are limited to a total of twelve workweeks during the rolling 12-month period. If both spouses take less than twelve workweeks for this purpose, either may take the remainder of the twelve workweeks for other qualifying events.

Military Caregiver Family and Medical Leave (FML):

Employees who are the spouse, son, daughter, parent or next of kin of a Covered Service Member may use Military Caregiver FML to care for a Covered Service Member undergoing medical treatment, recuperation, therapy, or outpatient services, or who is otherwise on the temporary disability retired list who has incurred a serious illness or injury that was incurred or aggravated in the line of active military duty.

Eligible employees may use up to 26 workweeks of Military Caregiver FML to care for a Covered Service Member. Employees are limited to a combined total of 26 workweeks for any FMLA qualifying event during a single 12-month period. If an employee's spouse is also a state employee, the couple is limited to a total of 26 workweeks of Military Caregiver FML during a single 12-month period. Only twelve workweeks may be used for reasons other than to care for a Covered Service Member.

For the purpose of leave to care for a Covered Service Member, the single 12-month period is a rolling twelve months, beginning on the first day leave is taken to care for a Covered Service Member, regardless of the method used to determine the 12-month period for other FMLA qualifying events.

When taking leave to care for a Covered Service Member or a veteran, certification may be required (Attachment 6 or 7). Second/third opinions and recertification may not be requested for Military Caregiver FML unless the original certification was completed by a non-military affiliated Health Care Provider. Invitational Travel Orders will be accepted in lieu of certification.

Qualifying Exigency Leave:

Employees who are the spouse, son, daughter or parent of a Covered Service Member on Covered Active Duty may take FML for the following qualifying exigencies:

- Short Notice Deployment; (Leave taken for this purpose may be used for a period of up to seven calendar days, beginning on the date of notification.)
- Military Events and Related Activities;
- Childcare and school related activities, such as making arrangements for alternative care, providing care on a non-routine, urgent, immediate need basis, or enrolling a child in a new school;

- Care of the military member's parent incapable of self-care, such as making arrangements for care or providing care on a non-routine, urgent, immediate need basis;
- Financial and Legal Arrangements;
- Counseling;
- Rest and Recuperation - Eligible employees may take up to fifteen days to spend time with a Covered Service Member on short-term rest and recuperation;
- Post-deployment activities within ninety days of the end of Covered Active Duty;
- Additional activities as agreed upon by the Appointing Authority and the eligible employee.

FML taken for any of the above reasons may only be approved if the qualifying exigency arises due to the Covered Service Member being called to or on active duty in a foreign country. A copy of the orders, a copy of the Rest and Recuperation leave orders if applicable, and a completed Certification of Qualifying Exigency for Military Family and Medical Leave (Attachment 8) may be required.

Emergency Family and Medical Leave: An employee may take up to 12 weeks of leave if the employee is unable to work or telework due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

The first 10 days of Emergency Family Medical Leave (EFML) related to the public health emergency are unpaid. However employees have two options to be compensated for the first 10 days of EFML.

- Employees may request to use EPSL. (See SOP 602-A Emergency Paid Sick Leave) during the first 10 unpaid workdays of the Emergency Family and Medical Leave.
- Employees may use accrued annual leave, personal leave, holiday deferral leave, or compensatory time rather than Emergency Paid Sick Leave to compensate the first 10 days of unpaid workdays of Emergency Family and Medical Leave.

After the first 10 days of EFML full time employees will be paid at two thirds the regular rate of pay limited to \$200 per day and \$10,000 total. Part-time employees will be paid based on the number of hours that they work based on the average number of hours that they would normally be scheduled to work for the six months prior to taking leave. The pay will be at two thirds the regular rate of pay limited to \$200 per day and \$10,000 total.

Response:

Approval and/or designation of FML must be in writing and conform to the requirements of this policy.

Upon receipt of a request (or knowledge of a potentially qualifying event) the Appointing Authority/Designee must, within five business days, provide the employee with a Notice of Eligibility and Rights and Responsibilities (Attachment 2) and request that the appropriate certification form be completed and returned (Attachments 3-8). The employee has up to fifteen

calendar days to return the certification form. If the certification form is returned incomplete or if it does not contain sufficient information to determine whether the event is FMLA qualifying, then up to an additional seven calendar days must be provided to the employee to correct the form.

Upon receipt of a completed certification form, the Appointing Authority/Designee must provide the employee with a Designation Notice (Attachment 9) within five business days, indicating approval or denial of the employee's FML request. A designation should only occur once sufficient information has been obtained to confirm the presence of a qualifying event. The Designation Notice should include the terms and conditions of the leave.

If a request is denied, the Appointing Authority/Designee's response must be included with the Designation Notice (Attachment 9) indicating the specific reason for the denial.

In accordance with federal regulations and State Personnel Board Rules, the Appointing Authority/Designee may not disapprove a request for the use of accrued paid leave for a Family and Medical Leave absence. However, FLSA Compensatory and accumulated Holiday Deferral balances should be exhausted prior to use of accrued sick, personal, annual or state compensatory leave balances.

Intermittent/Reduced Schedule Leave:

FML for a Serious Health Condition of an employee may be taken on an intermittent basis or on a reduced schedule basis when deemed medically necessary by a Health Care Provider.

FML may also be taken intermittently or on a reduced schedule to provide care or psychological comfort to a qualifying family member with a Serious Health Condition or a Covered Service Member with a serious illness or injury.

A medical statement is not required for each absence when FML is taken intermittently. Documentation is required initially, and recertification may be required no more often than every thirty calendar days.

Only the amount of leave actually taken on an intermittent or reduced schedule basis may be counted toward the twelve workweeks of FML.

Return to Duty:

As a condition to return to duty from his or her own serious health condition, the employee will be required to provide certification from their Health Care Provider that the employee is able to resume work and the limitations, if any. The Health Care Provider must complete the Release to Return to Work form (Attachment 10). The Georgia Activity Analysis (GAA) in SOP **HR508**, Return to Work (Attachment 1) is also required if the employee is released to return to work with restrictions. If it is anticipated that the employee may return to work with restrictions, the supervisors should complete the GAA and provide it to the employee prior to the employee going to the Health Care Provider. See SOP **HR508**, Return to Work, for the process required to return an employee to work with a transitional employment plan.

Upon expiration of a period of FML, the employee will be returned to their former position, OR, to a position of equal grade and pay for which the employee is qualified, without loss of any

rights, provided the employee has complied with the terms of the leave. An employee who otherwise would not have been employed at the time of the request for reinstatement (such as due to layoffs) and key employees (as defined by law) whose return to work will cause substantial and grievous economic injury to DNR are not entitled to job restoration.

Upon return to duty status, an employee who has been absent due to FML will be treated the same as an employee who returns from regular leave without pay, or any approved leave with pay.

Note: So as to not further burden the healthcare system employees will not be required to complete a Release to Return to Work for absences associated with COVID-19.

Leave and Personnel Action Request (PAR) Processing:

If a holiday falls within a full week of FML, it counts toward the FMLA entitlement as if it were a workday. If a holiday falls within a week during which an employee used FML for only part of the week, the holiday does not count toward the FMLA entitlement.

Local leave keepers will enter all leave deductions in PeopleSoft until the employee returns to work. When necessary, the OHR FML Coordinator will communicate with Division HR Representatives and/or local leave keepers to ensure that leave used by all employees on approved FML is accounted for in PeopleSoft. Local personnel representatives are responsible for completing and processing all PARs to place an employee on, or return an employee from, leave without pay, or FML with or without pay, as applicable.

Summary of Employee Rights:

Employee Rights Under the Family and Medical Leave Act (Attachment 11) contains a brief summary of FMLA rights for eligible employees.

Attachments:

Attachment 1 – Initial Request for Family and Medical Leave

Attachment 2 – Notice of Eligibility and Rights and Responsibilities

Attachment 3 – Certification of Health Care Provider for Employee's Serious Health Condition

Attachment 4 – Certification of Childbirth, Adoption or Foster Care

Attachment 5 – Certification of Health Care Provider for Family Member's Serious Health Condition

Attachment 6 – Certification of Serious Illness or Injury of Covered Service Member

Attachment 7 – Certification of Serious Illness or Injury of a Veteran

Attachment 8 – Certification of Qualifying Exigency for Military Family and Medical Leave

Attachment 9 – Designation Notice

Attachment 10 - Release to Return to Work

Attachment 11 - Employee Rights Under the Family and Medical Leave Act