



Policy and Procedures

Human Resources

FAMILY AND MEDICAL LEAVE POLICY

- I. **PURPOSE.** The New Mexico Department of Finance and Administration's ("DFA") Family and Medical Leave Policy ("Policy") establishes guidelines and procedures for Employees to reasonably balance family obligations and work life using the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA"); Board rule 1.7.7.12 NMAC; DFA Code of Conduct; OFA Leave Request Policy; and DFA Donation of Annual Leave Policy.
- II. **POLICY.** The DFA is committed to: (i) balancing the demands of the workplace with the needs of families, (ii) to promoting stability and economic security of families, and (iii) to promoting national interests in preserving family integrity, in accordance with the FMLA. To this end, DFA's policies are as follows:
 - A. Comply with federal and state laws, regulations, and guidance concerning requests for leave made under the FMLA
 - B. Request and receive information from Employees and appropriate professionals to explain request for FMLA leave;
 - C. Make a determination regarding a request for FMLA leave; and
 - D. Treat all information received in the request for FMLA leave process as Confidential Information.
- III. **WHAT IS FMLA LEAVE?** Under the FMLA, an Eligible Employee may take FMLA leave of up to twelve (12) weeks or four-hundred and eighty (480) hours in a twelve (12) month period for any one, or a combination of, the following:
 1. Serious Health Conditions or Military Exigencies;
 2. The birth and care of an FMLA leave requester's newborn child;
 3. Pre-natal care, appointments and pregnancy related incapacity for a pregnant Employee or the spouse of a pregnant female in order to care for the pregnant spouse;
 4. The placement of a child with the Employee for adoption or foster care or to care for the newly placed child;
 5. The care of the Employee's Family Member;
 6. The Employee's own Serious Health Condition;
 7. Military Exigency Leave;
 8. Military Caregiver Leave; and/or
 9. Any other leave provided for by the FMLA.
- IV. **CONFIDENTIALITY.** All requests for leave under this Policy are Confidential Information. When forwarding a request leave, the request for leave must be forwarded by: (i) hand delivery in a sealed envelope marked "CONFIDENTIAL"; or (ii) email delivery using an



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encrypted email made available by the DFA Information Technology Bureau.

V. NOTIFICATION REQUIREMENTS

- A. **PRE-APPROVAL.** If an Employee knows there exists a need for FMLA leave a month before the leave begins, then the Employee must give the Employee's supervisor at least thirty (30) calendar days advance notice by completing and submitting the WH-381 Form. The WH-381 Form will be returned to the Employee after all required documentation has been submitted.
- B. **FORESEEABLE.** In the case of foreseeable leave, an Employee who fails to provide timely notice may be denied the taking of leave until thirty (30) days after the date the Employee provides notice to the DFA.
- C. **MEDICAL DOCUMENTATION.** If medical certification is required for the type of leave requested, and it is not provided in a timely manner, the DFA may deny the FMLA leave request until the Employee provides the required medical documentation.
- D. **UNFORESEEABLE.** When leave is not foreseeable, the Employee must provide notice, as soon as practicable.

VI. PROCEDURES FOR REQUESTING FMLA LEAVE

- A. **STEP ONE: WH-381 Form.** Submit *DFA's Request for Family and Medical Leave Form* ("WH-381 Form") to the DFA Human Resources Bureau ("HR").
- B. **STEP TWO: WH-381 Notice.** Within five (5) business days, the HR will provide the Employee with a copy of the WH-381 Notice of Eligibility and Rights & Responsibilities ("WH-381 Notice"). The WH-381 Notice will also provide a status of the Employee's request and indicate if further documentation is required.
- C. **STEP THREE: Health Care Provider Certification.** In most cases, the required documentation is a "*Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)*" Form or "*Certification of Health Care Provider for Family Member Serious Health Condition (Family Medical Leave Act)*" Form, available at the HR. These forms must be filled out completely and signed by the applicable Health Care Provider.
- D. **STEP FOUR: Human Resources Review.** The HR will review the entire request for compliance. Upon completion of the review, the HR will forward the request to the Agency Head, including a recommendation for approval or disapproval.



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- E. **STEP FIVE: Form WH-382.** The final determination of eligibility will be indicated on the Designation Notice Form WH-382 (“Notice WH-382”) and provided to the Employee. The entire request is then returned to the HR for processing.
- F. **STEP SIX: Return to Work.** Employees on FMLA leave must provide upon returning to work a written certification from his or her Health Care Provider stating that he or she is able to resume working. This certification must include the date on which work may be resumed, if there are any work restrictions and, if there are, specify the restrictions and the anticipated duration of the restrictions.
- G. **STEP SEVEN: Reporting.** FMLA leave is noted on the *Notice WH-382* and in SHARE Timesheet by denoting “FML” next to the correct time reporting code.

VII. DEFINITIONS

- A. **“Agency”** means an organization which is required to be in compliance with State Personnel Board Rules and Regulations.
- B. **“Agency Head”** means the DFA Cabinet Secretary.
- C. **“Confidential Information”** means all information regarding FMLA leave, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. “Confidential Information” means non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. Confidential Information does not include information communicated between only those individuals directly involved in a leave request made under the FMLA. “Confidential Information” includes communication made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.
- D. **“Covered Service Member”** means a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.



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- E. **"Disciplinary Action"** means any action taken by an Agency to influence change in an Employee's performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and Dismissal. Disciplinary Action includes punitive action taken to change an Employee's performance or behavior to follow the classification description.

- F. **"Eligible Employee"** means an Employee who: (i) has been in the classified service, exempt service, legislative or judicial branch for at least twelve (12) months (which need not be consecutive); (ii) who has worked, as defined by *Section 7 of the FMLA* at least 1,250 hours during the twelve (12) month period immediately preceding the start of FMLA leave, as defined in the FMLA.

- G. **"Employee"** means: (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. "Employee" does not include independent contractors who perform work for New Mexico.

- H. **"Family Member"** means a spouse, parent, or child (foster, adopted, or biological child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability, as defined in the FMLA).

- I. **"Health Care Provider"** means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or any other person determined by the Secretary of Labor (Federal) to be capable of providing health care services.

- J. **"Leave Year"** means the 12 weeks of leave within a 12-month period under the FMLA that begins from the date of the .

- K. **"Military Family Leave Entitlements"** means Eligible Employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12) week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.



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- L. **"Special Leave"** means twenty-six (26) week period of leave available to Eligible Employees to care for a Covered Service Member during a single twelve (12) month period.
- M. **"Reduced Leave Schedule"** means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an Employee, as defined in the FMLA.
- N. **"Serious Health Condition"** means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider, as defined in the FMLA.

VIII. CERTIFICATION

- A. Before the DFA may certify an FMLA leave request, Employees requesting FMLA leave must submit the following:
 - 1. A completed and signed WH-381 Form; and
 - 2. The following documentation:
 - a) For childbirth or care of a newborn, a written request from the Employee stating the reason for the FMLA leave, and the anticipated start and end dates of the FMLA leave. *"Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)"* Form WH-380-E completed and signed by a healthcare provider, stating that the Employee "is unable to perform the functions of his or her position". *Form will be provided and explained to the Employee upon request.*
 - b) For adoptive or foster care, a written request from the Employee stating the reason for FMLA leave, and the anticipated start and end dates of the FMLA leave.
 - c) For care of a family member with a Serious Health Condition, a *"Certification of Health Care Provider for Family Member's Serious Health Condition (Family Medical Leave Act)"* Form WH-380-F must be completed and signed by a Health Care Provider, that the Employee "is needed to care for" a seriously ill family member. *Form will be provided and explained to Employee upon request.*
 - d) For the Serious Health Condition of the Employee, a "Certification



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of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" Form WH-380-E completed and signed by a Health Care Provider, stating that the Employee "is unable to perform the functions of his or her position." *Form will be provided and explained to the Employee upon request.*

- e) All certifications and FMLA requests must be sent directly to the HR Bureau Chief, to maintain confidentiality and ensure compliance with the law.
- f) If the DFA has reason to doubt the validity of the medical certification provided, then the DFA may require a second medical opinion at their own expense. The DFA will designate and/or approve the Health Care Provider to furnish the second opinion.

IX. INTERMITTENT FMLA:

- A. Employees taking leave because of their own or a family member's Serious Health Condition can take their allotment of FMLA leave intermittently or in accordance with a reduced work schedule, if this is medically necessary. When intermittent leave is needed to care for an immediate family member or the Employee's own illness, and is for planned medical treatment, the Employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

X. INTERMITTENT CERTIFICATION:

- A. Certification must be provided on either the "*Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)*" Form or "*Certification of Health Care Provider for Family Member's Serious Health Condition (Family Medical Leave Act)*" Form of the medical necessity for intermittent leave or leave on a reduced leave schedule. To include a specific description, by a physician or other appropriate Health Care Provider, of the treatment regimen that is medically necessary for the Employee or the Employee's immediate family member to undergo. Employees taking leave to care for a newly born or newly placed child are not eligible for intermittent leave unless the employer and the Employee agree otherwise.

XI. BENEFIT ACCRUAL WHILE ON LEAVE

- A. FMLA is *unpaid* unless it is taken together with accrued paid or donated leave. However, Employees on FMLA leave continue to be covered by the DFA's group health benefits plan on the same terms that are applicable for active Employees. FMLA leave does not cause the Employee to lose any previously accrued



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employment benefits. However, whenever there is unpaid leave of more than 50% in a one month period, PERA does not credit members with that month as time served for retirement purposes.

- B. No part of FMLA leave is considered a break in employment, nor will FMLA leave change an Employee's anniversary date.
- C. Employees do not accrue annual or sick leave, but are paid for "observed" holidays, while on unpaid FMLA leave.

XII. RETURN FROM FMLA

- A. Employees released to return to work following a Serious Health Condition must report to the HR Bureau Chief and their immediate supervisor (in that order), prior to returning to work. Employees released to work with modified or limited work assignments should report to the HR Bureau Chief before resuming work activities. Supervisors will also be asked to acknowledge the Employee's work restrictions.

- XIII. Upon return from an FMLA leave of absence, Employees normally are restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. The only exceptions to this restoration period are for certain key Employees, who are notified of their status when they first request FMLA leave. Key Employees who take FMLA leave are reinstated to their former or equivalent positions only if their reinstatement does not cause DFA substantial and grievous economic injury.

XIV. Retention of Benefit Plans:

- A. Retention on any of the State of New Mexico's benefit plans in which an Employee is enrolled is subject to the same conditions that applied before FMLA leave commenced. However, a lapse in benefits coverage or plan participation during a period of non-FMLA leave might affect an Employee's coverage.
- B. If an Employee goes on FMLA leave, then the HR will verify all accrued leave balances. Twenty (20) hours per week are required to maintain PERA contributions. Medical benefit premium amounts will be provided to Employees should FMLA result in unpaid leave.
- C. If an Employee has exhausted all accrued leave, after the approval of the Agency Head, then the Employee may request from the HR Bureau Chief leave donations, pursuant to the DFA policies.

XV. CALCULATION OF FMLA



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- A. The twelve (12)-month period known as the Leave Year will be calculated forward from the date FMLA leave begins.
- B. Employees shall not accrue annual or sick leave while on unpaid FMLA.
- C. Leave may be taken in one discrete block of leave with specific beginning and ending dates or may be taken on an intermittent or reduced work schedule basis. If an Employee takes leave intermittently or on a reduced work schedule basis, then the Employee must attempt to schedule the leave so as not to unduly disrupt DFA's operations.
- D. If both spouses are Employees or employed by the State, then they are together entitled to a combined total of 12 weeks of FMLA leave for the birth or placement of a child or to care for a family member with a Serious Health Condition, or a total of 26 weeks of FMLA leave provided under "Military Caregiver Leave."
- E. An Eligible Employee who misses time from work due to a work-related injury that is also considered a Serious Health Condition, as defined by the FMLA, may avail themselves of the FMLA guarantees by requesting FMLA designation of any time missed from work. Should the Employee fail to do so, DFA may designate the missed time as FMLA time, and so notify the Employee.
- F. All medical records and correspondence relating to Employees and/or their families are Confidential Information.

XVI. VIOLATIONS

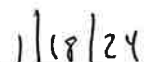
- A. Violations of this Policy may result in Disciplinary Action.

XVII. REVIEW AND APPROVAL

This Policy is effective upon the signature of the DFA Cabinet Secretary.



Wayne Propst, Cabinet Secretary



Date