

Title: Federal Family and Medical Leave	
Purpose: To provide procedures for consistent application and implementation of the Family and Medical Leave Act (FMLA).	
Issued by: Labor Relations and Training	Date: February 15, 2005
References: Federal Family and Medical Leave Act of 1993 (FMLA), Public Law 103-3, Title 29, Part 825 of the Code of Federal Regulations (CFR)	

I. **PURPOSE**

The purpose of these procedures is to implement the Family and Medical Leave Act of 1993 (FMLA), Public Law 103-3, effective February 5, 1994. FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons.

II. **DEFINITIONS**

“Employee” means a person who has worked for the employer for at least 12 months (need not be consecutive) and had at least 1,250 hours of service during the 12-month period immediately preceding the commencement of leave.

“Employer” means the City and County of Honolulu (City).

“Health care provider” means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services (29 CFR 825.118).

“In loco parentis” means a person acting as a parent with day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary.

“Intermittent leave” means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time.

“Parent” means a biological parent or an individual who stands or stood “in loco parentis” or in the case of an employee, a person who had such responsibility for the employee when the employee was a child. It does not include parent-in-law.

“Reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee.

“Son or daughter” means a biological child, adopted child, or foster child, a step-child, a legal ward, or a child of a person standing “in loco parentis” who is either under the age 18, or age 18 or older and incapable of self care because of a mental or physical disability.

“Spouse” means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. (Note: Hawaii does not recognize common law marriage.)

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves: 1) in-patient care in a hospital, hospice, or residential medical care facility, or 2) continuing treatment by a health-care provider.

III. EMPLOYEE ELIGIBILITY AND ENTITLEMENT

- A. A provides that all eligible employees are entitled to a minimum of 12 weeks of FMLA leave during a calendar year, for the following reasons:
1. The birth of a employee’s child and to care for the newborn child;
 2. The placement with the employee of a son or daughter for adoption or foster care;
 3. The care of an employee’s spouse, son, daughter, or parent with a serious health condition; and
 4. A serious health condition that makes the employee unable to perform the functions of the employee’s job.
- B. When an employee is eligible for family leave under the State Family Leave Law (SFL), it shall run concurrently with the FMLA whenever possible.
- C. An employee is eligible if the employee has worked for the employer for at least 12 months and at least 1,250 hours over the prior 12-month period immediately preceding the family leave (paid and unpaid leaves are not included, except Military Leave). In determining eligibility of employees who work on an intermittent, occasional, or casual basis, any part of a week that an employee is maintained on the payroll is counted as a week and 52 weeks is deemed to be equal to 12 months.
- D. When an employee notifies the department of the need for leave, the department shall inform the employee whether such leave is to be designated as FMLA and counted toward the 12 weeks entitlement. The department’s designation must be made before the leave starts, or before an extension of the leave is granted. The department may not designate leave as FMLA leave after the leave period has ended.
- E. Only the amount of leave actually taken shall be counted towards the 12 weeks of FMLA entitlement. For an employee who takes leave on an intermittent or reduced leave schedule or who works part-time or variable hours, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, an employee who works 5 days a week and takes 1 day for FMLA leave, has used 1/5 of a week of FMLA leave.
- F. Spouses employed by the City are jointly entitled to a combined total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

- G. Leave for birth or placement of a child with the employee for adoption/foster care must conclude within 12 months of the birth or placement.
- H. FMLA leave and workers' compensation leave shall run concurrently, provided the reason for the absence is due to a qualifying serious illness or injury. The Department must properly notify the employee in writing that the leave will be counted as FMLA leave.

IV. GENERAL PROCEDURES

A. Procedural requirements for the application, documentation, and reporting of FMLA leave:

1. Departments shall be responsible for the documentation and record keeping requirements specified under 29 CFR 825.500.
2. For FMLA leave, the following procedures shall apply:
 - a) Employees shall complete the Family Leave Application (HR-LRT 2) and Form DF-88 Application for Leave of Absence form, and submit it to their immediate supervisor.
 - b) Employees can request that the period of FMLA is for leave of absence without pay and that all or any part of the 12-week period is to be charged to vacation or sick leave. Sick leave substitution will only be allowed for an employee's own illness.
 - c) Departments shall inform the employee that the first four weeks of FMLA entitlement will be deducted concurrently with their use of SFL entitlement in every instance where they both can be applied. Upon exhaustion of the entitlement under SFL, the employee may apply the balance of the entitlement of FMLA of eight weeks.
3. Family leave shall be monitored and administered on a calendar year (January – December) basis.
4. The Family Leave Application must be submitted at least 30 days prior to the start of the leave for an expected birth or placement of a child, and for medical treatments. If FMLA leave is unforeseeable, an employee or the employee's representative must give at least verbal notice to the employee's immediate supervisor as soon as the need for FMLA leave arises and complete the Family Leave Application.
5. The Department shall complete the FMLA Employer Response to Employee Form (HR-LRT 9) when employee submits the Family Leave Application.

B. Substitution of Paid Leaves

1. An employee may elect to substitute accrued paid leaves for any period of FMLA, except that sick leave substitution will be allowed only for an employee's own illness. An employee who elects to substitute paid leave must comply with the normal requirements, if any, associated with the leave.

2. If an employee does not elect to substitute paid leaves, the department may require substitution of paid leaves during the period of FMLA. The department shall inform the employee at the time the employee gives notice of FMLA leave, that paid leaves will be substituted.
3. The minimum amount of paid leave that an employee may elect to substitute shall be no less than one (1) hour.

C. Intermittent or Reduced Leave Schedule

1. Request for intermittent or reduced leave schedule may be allowed if based on a medical need, which can best be accommodated through an intermittent/reduced leave schedule.
2. An employee needing intermittent/reduced leave must attempt to schedule the leave so that it does not disrupt the department's operations.
3. An employee needing intermittent/reduced leave for an employee's own serious health condition or to care for a seriously ill child, spouse, or parent, may be assigned to an alternate position with equivalent pay and benefits that better accommodates the intermittent schedule.
4. Intermittent/reduced leave for birth or placement of a child with the employee for adoption or foster care is subject to the department's approval.
5. An employee may be required to provide the reasons intermittent/reduced leave is necessary and the schedule for treatment as applicable.

D. Certification requirements

1. A FMLA leave request based on a serious health condition of an employee or employee's spouse, child, or parent, must be substantiated by a medical certification (HR-LRT 8) and submitted within 20 calendar days from the date of leave notification. If the medical certification is not provided within the 20 calendar days, FMLA leave may be denied until such time that the certification is provided by the employee. If the medical certification is incomplete, the department shall provide the employee a reasonable opportunity to cure such deficiency.
2. The department may require recertification for pregnancy, chronic or permanent/long term conditions under continuing supervision of a health care provider no more often than every 30 days and only in connection with an absence by the employee, unless circumstances described by the previous certification have changed significantly or the department receives information that casts doubt upon the employee's stated reason for the absence.
3. The department may require a second and third health care provider opinion (at the employer's expense) if the department doubts the validity of a medical certification as specified under 29 CFR 825.307.

4. The department may require an employee to periodically report on the employee's status and intent to return to work.
5. An employee on FMLA leave due to the employee's own serious health condition is required to submit a doctor's certificate before returning to work. An employee may be denied restoration to the employee's job until the required certificate is submitted.

E. Maintenance of Health Benefits

1. During the period of FMLA leave, an employee's health coverage will continue on the same terms as if the employee had continued to work.
2. An employee must continue to pay the employee's share of the health insurance premiums in order to continue health coverage.
3. If an employee's health coverage lapses during FMLA leave, the employee is entitled to be reinstated on the same terms prior to taking the leave without any qualifying period, physical examination, etc.
4. An employee is entitled to any new or changed plans or benefits as if the employee were not on leave. An employee must be given notice of any opportunity to change plans, benefits or type of coverage while on FMLA leave.
5. The employer may recover its premium payments from employees who maintained coverage if the employee fails to return to work from FMLA leave as specified under 29 CFR 825.213.

F. Employees shall be covered by the following employment and benefits protection:

1. Upon expiration of FMLA leave, a regular employee shall be reinstated to the employee's former position or to an equivalent position.
2. Upon expiration of FMLA leave, a non-regular employee shall be reinstated to the employee's former position, provided that the status and function of the employee's appointment and/or position remained the same during the employee's absence. In the event that the non-regular employee cannot be reinstated, the employee shall be terminated.
3. An employee shall not lose any employment benefit accrued before the date of leave commencement nor shall the employee be entitled to any employment benefits or position that the employee would not have been entitled had the employee not taken the leave.
4. When an employee unequivocally notifies the department of the intent not to return to work, the employment relationship is deemed terminated. The employee's entitlement to reinstatement, continued leave, and health benefits (subject to COBRA) ceases.
5. An employee who fraudulently obtains FMLA leave is not protected by FMLA's job restoration or maintenance of health benefits provisions.

G. Notice requirements:

1. Posting of notice

The department shall post notices in conspicuous places where employees are employed and where it can be seen by applicants for employment. These notices cannot be smaller than 8-1/2" x 11", must be in legible text, shall contain the FMLA provisions, and provide information on filing a complaint of violation of the FMLA.

Adverse action cannot be taken against an employee for failure to provide advance notice of FMLA leave if the department failed to post the notice.

2. Employer notice requirements

At the time the employee gives notification of FMLA leave, the department shall provide the employee with notice detailing the conditions and obligations of the employee and the consequences of failure to meet these obligations (HR-LRT 9).

3. Employee notice requirements

In a medical emergency, written advance notice pursuant to the department's internal rules and procedures cannot be required.

If substitution of paid leave is elected or being required, an employee must comply with the normal notification and certification requirements, if any, associated with those leaves.

Employee notice may be provided in person, telephone, telegraph, facsimile machine (FAX), or other electronic means. Notice may be given by an employee's representative, if the employee is unable to notify the department personally.

Should an employee fail to give the required 30 days notice for foreseeable leave with no reasonable excuse, the department may delay the leave until 30 days after the employee provides notice.

V. PROHIBITED ACTS

A. It is unlawful for any department to interfere with, restrain, discharge or discriminate against any individual for opposing any practice or deny the exercise or the attempt to exercise any right provided for under the FMLA.

B. It is unlawful for any person to discharge or discriminate against any employee because the individual has:

1. Filed any charge, or instituted or caused to be instituted any proceeding, under or related to the FMLA;

2. Given or is about to give any information in connection to any right as provided in the FMLA; or
 3. Testified or is about to testify in any inquiry or proceeding relating to any right as provided in the FMLA.
- VI. If there is a conflict between this guideline and an applicable collective bargaining agreement, the provisions of the applicable collective bargaining agreement shall prevail.