

F.T.H.R.A.



**PERSONNEL
POLICY MANUAL**

LEAVE (FAMILY & MEDICAL LEAVE ACT POLICY-FMLA)

GENERAL PROVISIONS

It is the policy of the Agency to grant up to 12 weeks of family and medical leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy.

ELIGIBILITY

In order to qualify to take family and medical leave under this policy, the employee must meet all of the following conditions:

- 1. The employee must have worked for the Agency at least 12 months or 52 weeks. The twelve months, or 52 weeks, need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week, or if the employee is on leave during the week.**
- 2. The employee must have worked at least 1250 hours during the twelve-month period immediately before the date when the leave would begin.**
- 3. The employee must work in an office or worksite where 50 or more employees are employed within 75 miles of that office or worksite.**

TYPE OF LEAVE COVERED

In order to qualify as FMLA leave under this policy, the employee must be taking the leave for one of the reasons listed below.

- 1. The birth of a child.**
- 2. The placement of a child for adoption or foster care.**

Employees who have been employed by the same employer for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable, referred to as "leave" in this section. With regard to adoption, the four-month period shall begin at the time an employee receives custody of the child.

 - o The applicable text of the TCA provisions for "Leave for adoption, pregnancy, childbirth and nursing an infant" can be found in Appendix A {Pgs. 51-52} of this Personnel Policy Manual.**
- 3. To care for a spouse, child or parent with a serious health condition.**
- 4. The serious health condition (described below) of the employee.**

5. *Also See Support for Injured Servicemembers Act {Pg. 28}*

A serious health condition is defined according to the FMLA as an illness, injury or impairment (physical or mental) that involves any of the following:

- Inpatient care (*i.e.*, overnight stay) in a hospital, and any incapacity or subsequent treatment in connection with the inpatient care.
- Incapacity of more than three consecutive calendar days, AND two visits to a health care provider or one visit followed by a regimen of continuing treatment under supervision of a health care provider.
- Any period of incapacity due to pregnancy or for prenatal care.
- Any absences for treatment of serious, chronic health conditions continuing over a period of time and which require periodic visits for treatment by a health care provider – even if the chronic condition never results in hospitalization or incapacity of more than three consecutive days.
- A permanent or long term incapacity due to a condition for which there is no effective treatment; *e.g.*, Alzheimer’s, severe stroke, etc.
- Treatment of substance abuse conditions by health care professionals is included, but not mere absences due to substance use, *i.e.*, without being in treatment.
- Any absence to receive multiple treatments by a health care provider for a condition likely to result in more than three days absence in the absence of such treatment; *e.g.*, chemotherapy, dialysis.

The common cold, flu, earaches, upset stomach, non-migraine headaches, routine dental work, etc. are normally not serious health conditions.

The Agency may require an employee to provide a doctor’s certification of the serious health condition of the employee or close relative. The certification requirements are outlined under Workers’ Compensation and FMLA Leave later in this policy.

An eligible employee can take up to 12 weeks of leave under this policy during any 12-month period. The 12-month period will be measured forward from the date the employee’s first FMLA leave begins. Each time an employee takes leave, the Agency will compute the amount of leave the employee has taken under this policy and subtract it from the 12 weeks of available leave – the balance remaining is the amount the employee is entitled to take at that time. If a husband and wife both work for the Agency and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care or to care for a parent (but not a parent “in-law”) with a serious health condition, the husband and wife may only take a total of 12 weeks of leave.

EMPLOYEE STATUS & BENEFITS DURING LEAVE

While an employee is on leave, the Agency will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If the employee chooses not to return to work for reasons other than a continued serious health condition, the Agency will require the employee to reimburse the Agency the amount it paid for the employee's health insurance premium during the leave period.

Under current Agency policy, the employee pays a percentage of his or her own and dependent's health care premium. While on paid leave, the Agency will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave the employee must continue to make this payment either in person or by mail. The payment must be received in the Accounting Department by the first of each month following the start of the leave. If the payment is more than 30 days late, the employee's dependent health care coverage will terminate and may be reinstated only in accordance with Agency policies and insurance company requirements.

Under current Agency policy, the employee is allowed to voluntarily participate in a variety of deferred compensation and insurance policies on a discounted group and/or pre-tax basis. According to FMLA regulations, the Agency is under no obligation to continue this benefit. However the Agency will continue these benefits under the following conditions. While on paid leave, the Agency will continue to make payroll deductions to collect these voluntary premiums. While on unpaid leave the employee must continue to make their voluntary payments either in person or by mail. These voluntary payments must be received in the Accounting Department by the first of each month following the start of the leave. If the payment is more than 3 days late, the employee's voluntary benefits will be dropped and the employee will not be allowed to re-enroll until the next anniversary date. Any loss of deferred compensation or voluntary insurance benefits due to cancellation due to non-payment will be entirely the responsibility of the employee.

EMPLOYEE STATUS AFTER LEAVE

An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, leave benefits, health benefits and other employment terms. The position will be the same one, which entails substantially equivalent skill, effort, responsibility and authority.

USE OF PAID AND UNPAID LEAVE

Any available paid leave must be taken concurrently with FMLA leave, except in cases where the leave is because of a workers' compensation covered condition.

INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year), or under certain circumstances may use the leave to reduce the work week or work day, resulting in a reduced hourly schedule. In all cases, the leave may not exceed a total of 12 weeks over a 12-month period without extraordinary, extenuating circumstances and prior permission.

The Agency may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

For the birth, adoption or foster care of a child, the Agency and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hourly schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Agency before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The Agency may require certification of the medical necessity.

CERTIFICATION OF THE SERIOUS HEALTH CONDITION

The Agency may ask for certification of the serious health condition. The employee should respond to such request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of leave.

Certification of the serious health condition shall include the date when the condition began, and its expected duration, and a description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The Agency has the right to ask for a second opinion if it has reason to doubt the certification. The Agency will pay for the employee to get a certification from a second doctor, which the Agency will select. If necessary to resolve a conflict between the original certification and the second opinion, the Agency will require the opinion of a third doctor. The Agency and the employee will jointly select the third doctor, and the Agency will pay for the opinion. The third opinion will be considered final.

WORKERS' COMPENSATION AND FMLA LEAVE

Work related injuries that trigger Workers' Compensation related leave, and qualify as a serious illness under the FMLA must run concurrently with FMLA leave. An employee who is on FMLA/Worker's Compensation leave, is not required to use sick and vacation leave but may elect to do so to supplement Workers' Compensation benefits to bring the employee up to his usual compensation.

PROCEDURE FOR REQUESTING LEAVE

Except where leave is not foreseeable, all employees requesting leave under this policy must submit the request in writing to their immediate supervisor, with a copy to the Human Resources Department. When an employee plans to take leave under this policy, the employee must give the Agency 30 days' notice. If it is not possible to give a 30 day notice, the employee must give as much notice as is practicable. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruption to the Agency's operations.

If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice. While on leave, employees are requested to report periodically to the Agency regarding the status of the medical condition and their intent to return to work.

LEAVE (ABSENCE WITHOUT PAY/LWOP)

Every person who is employed by the FTHRA may be allowed a short term leave of absence without pay, by the Executive Director, not to exceed five (5) working days. Every person who has been in continuous employment of the FTHRA for six full months, except temporary or seasonal employees, may be allowed a long-term leave of absence without pay of up to three months upon the approval of the Executive Director. Leave requests for longer than three months may be made upon the recommendation of the Executive Director with the approval of the Governing Board. An employee shall not be entitled to receive any employee benefits while on such leave, except those authorized by federal or state law. An employee returning from long-term leave of absence will be placed in a position as nearly comparable as possible to the position formerly held. Leave without pay must be requested by the employee. An employee cannot be placed on LWOP by the employer, except as a disciplinary measure. LWOP is not a right and will be granted only for reasons that are beneficial to both the employee and the employer.

Except in cases of emergency, LWOP must be requested in advance, and must be pre-approved by the Ex Director.

Examples of instances when this type of leave might be authorized are:

1. For educational purposes when the course of study being pursued is related to the employee's work and will enhance the employee's value to the Agency.
2. After all annual, sick or family and medical leave has been exhausted, to provide uninterrupted authorized absence to an employee.
3. Any time an employee's physical or mental condition hampers his or her work performance, he or she may request a leave of absence or the Agency may initiate such action.

LEAVE (MILITARY)

Agency employees who are members of any reserve component of the armed forces of the United States, including members of the Tennessee Army and Air National Guard, shall be entitled to leave of absence from work without loss of pay, regular leave or vacation, impairment of efficiency rating or any other rights or benefits to which they are otherwise entitled, for all periods of military service for duty or training. Employees while on such leave shall be paid their full regular salary not to exceed fifteen (15) days in any one (1) calendar year. Employees called to extended active duty will be eligible for reinstatement and continuation of benefits in accordance with applicable law plus additional days as may result from any call to active state duty.

To qualify for paid military leave, the employee must present copies of official military orders. If an employee participates in additional military time, vacation leave or LWOP may be taken.

It is the employee's responsibility to notify the FTHRA immediately when called or scheduled for required military leave. The employee is required to work with the Executive Director, within the limits of military necessity, in scheduling of such leave. A detailed Military Leave Policy is available for review in the Executive Director's Policy Binder's in the Administrative Office. Copies will be made upon request.

SUPPORT FOR INJURED SERVICEMEMBERS ACT

Active Duty Family Leave - Employees with a spouse, parent, or child who is on or has been called to active duty in the Armed Forces may take up to 12 weeks of FMLA leave when they experience a "qualifying exigency."

Injured Servicemember Leave - Employees who are the spouse, parent, child, or next of kin of a servicemember who incurred a serious injury or illness on active duty in the Armed Forces may take up to 26 weeks of leave in a 12-month period (including regular FMLA leave).