REVIEW/REVISION HISTORY:

Effective: 7/30/99
Revised: 2/3/05
Revised: 4/6/08
Revised: 7/1/13
Revised: 6/16/14

SUMMARY OF REVISION/REVIEW:

IV.C. - Adjusted language for clarification
Added IV.C.1. on use of accrued sick leave during Parental Leave
VII.A.1. - Adjusted certification form use requirements

APPROVED:

Signature on file

BERNARD WARNER, Secretary
Department of Corrections

6/5/14
Date Signed
POLICY

FAMILY AND MEDICAL LEAVE

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 49.78; WAC 296-130; WAC 357-31; DOC 830.100 Leave; DOC 830.200 Workers’ Compensation/Return to Work Program; Family and Medical Leave Act of 1993

POLICY:

I. The Department recognizes the need to balance workplace demands with family needs, promote the stability and economic security of families, and promote national interests in preserving family integrity. The Department will comply with applicable WACs, federal laws, and collective bargaining agreements regarding Family and Medical Leave (FML). The Family and Medical Leave Act is a federal law with provisions that may run concurrent with leave provisions under WAC 357-31 and WAC 296-130.

II. All employees involved in the FML process will maintain confidentiality to the extent possible.

DIRECTIVE:

I. Eligibility

A. An employee is eligible for FML if s/he has:

1. Worked for the state of Washington for a total of 12 months, and
2. Actually performed work, not including leave taken, or was on military leave at least 1,250 hours during the 12 months before the start of FML.

II. Family Medical Leave Entitlement

A. FML requires Appointing Authority/designee approval.

B. The Appointing Authority/designee will designate up to a total of 12 workweeks (i.e., 480 hours) of paid/unpaid FML during the 12 month period following the first day of FML, provided the absence is for one or more of the following reasons:

1. Birth or adoption of a child, or foster care placement of a child with the employee.
   a. FML may be used in addition to any leave taken for sickness or temporary disability due to pregnancy or childbirth per RCW 49.78.
   b. FML must conclude within 12 months of the birth, adoption, or foster care placement.
2. Care for a child, spouse, state registered domestic partner, or parent (i.e., the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child) with a serious health condition. The Appointing Authority/designee may require employees to provide reasonable documentation to confirm the family relationship.

   a. Leave taken to care for a state registered domestic partner per RCW 49.78 will not count against an employee’s federal Family and Medical Leave Act entitlement, but will count against his/her state Family Leave Act entitlement.

3. An employee’s serious health condition that prevents the employee from performing one or more of the essential functions of the job.

4. A qualifying exigency arising because the employee’s spouse, child, or parent is a service member on active duty, or has been notified of an impending call to covered active duty, in support of a contingency operation.

   a. If the spouse/child/parent is a member of the regular armed forces (i.e., United States Army, Navy, Air Force, Coast Guard, or Marine Corps, excluding reserves and National Guard), the active duty deployment must be to a foreign country.

   b. Exigency leave may be taken for the following reasons when the need is directly related to the spouse/child/parent’s covered active duty:

      1) Short notice deployment,
      2) Military events and related activities,
      3) Childcare and school activities,
      4) Financial and legal arrangements,
      5) Counseling,
      6) Rest and Recuperation (R&R) during deployment, limited to 15 days from the date R&R commenced,
      7) Post-deployment activities,
      8) Parental care of the service member’s parent who is incapable of self-care, and/or
      9) Additional activities approved by the Appointing Authority/designee, including timing and duration.
5. Care for a covered service member or veteran with a serious injury or illness if the employee is the service member/veteran’s spouse, child, parent, or next of kin.

C. The Appointing Authority/designee may consider any employee absence for 3 or more consecutive days due to a work-related injury or illness as FML, if the injury or illness meets the criteria of a serious health condition.

D. The Appointing Authority/designee will designate up to a total of 26 workweeks of paid/unpaid FML during a single 12 month period to provide care for a covered service member or veteran who is suffering from a serious illness or injury arising from injuries incurred in the line of duty or aggravated by line of duty service.

1. Covered service members include the employee’s spouse, child, parent, or next of kin.

2. Covered veterans include the employee’s spouse, child, parent, or next of kin who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that occurred any time during the 5 years before treatment began.

3. During the single 12 month period, an employee is limited to a combined total of 26 workweeks for Military Family Leave and leave for other FML qualifying reasons.

E. The employee’s next FML year will begin the first time FML is taken after completion of the previous 12 month period.

III. Intermittent Family and Medical Leave

A. Intermittent leave or leave on a reduced schedule will be granted:

1. For an eligible employee’s own serious health condition, if medically necessary,

2. To care for a spouse, state registered domestic partner, child, or parent with a serious health condition or covered service member or veteran with a serious injury or illness, if medically necessary, or

3. For a qualifying exigency arising because the employee’s spouse, child, or parent is a service member on active duty, or has been notified of an impending call to covered active duty, in support of a contingency operation.
B. Intermittent leave to care for a newborn/foster/adopted child will be considered on a case-by-case basis. Before such intermittent leave is taken, the Appointing Authority/designee must approve the schedule to be worked.

C. An employee requiring a reduced schedule will consult with his/her supervisor to arrange a schedule that meets the employee’s needs while not unduly disrupting office operations.

D. The Appointing Authority/designee may temporarily reassign an employee on intermittent FML to an alternate position or assignment, for which the employee is qualified, if the position would better accommodate the employee’s planned medical treatments and the Department’s needs. The employee will continue to receive equivalent pay and benefits while in the alternate position.

IV. Parental Leave

A. Employees who qualify for FML are eligible to take up to a total of 6 months of paid/unpaid Parental Leave during the first 12 months following the birth or adoption of a child or the foster care placement of a minor/dependent child with the employee.

1. The Appointing Authority/designee may deny leave requests for non-medically necessary Parental Leave beyond 12 weeks on the basis of operational necessity (e.g., critical recruitment and staffing problems, unmet specific qualifications for the position, etc.).

   a. Denials will be in writing to the employee within 10 days and will inform the employee of the reason for the denial.

B. Parental leave exceeding 6 months may be approved at Appointing Authority/designee discretion.

C. Employees will be allowed to use their accrued leave during Parental Leave.

   1. Use of accrued sick leave will be limited to 12 weeks or the period of time covered by the FML entitlement, whichever is less.

D. Use of periodic leave (i.e., leave which can be taken in separate periods of time) or a reduced work schedule (i.e., a work schedule which reduces the normal work schedule by a number of hours per week or weekday) for Parental Leave is subject to Appointing Authority/designee approval.
V. Management Responsibilities

A. When an employee has been absent from work for more than 3 days for an apparent FML qualifying condition or situation, his/her supervisor will notify the Human Resources Office, which will advise the Appointing Authority whether the condition meets the criteria for FML.

B. The Appointing Authority or designee will document the absence as FML as soon as possible after the circumstances that qualify for FML are known.

1. The Appointing Authority/designee may provide only one notice to advise employees of approval of periodic leave or a reduced work schedule unless the circumstances change regarding the FML.

2. The written notice will:
   a. Specify the beginning date of the FML, which may include leave taken for a qualifying condition before the written designation.
   b. Include specific expectations and obligations of the employee, and notice of whether a medical release will be required before returning to work.

C. The supervisor/designee will track an employee’s use of FML.

D. The supervisor/designee will notify Timekeeping and the Human Resources Office when the employee returns to work following FML.

VI. Employee Responsibilities

A. The employee will provide the Appointing Authority/designee 30 days’ advance notice of the need to take FML when the need is foreseeable. When the need is unforeseen, the employee will provide notice as soon as practicable.

B. When requested, the employee will provide certification of the medical need for FML within 15 calendar days and cooperate in obtaining a completed certification form if the original form is incomplete. Failure to meet the 15 day deadline or provide a reasonable explanation for the delay may result in the loss of FML protection for the leave and/or the leave being deemed unauthorized.

C. The employee will inform the Appointing Authority/designee before scheduling medically required periodic treatment in order to work out a treatment schedule that best suits the needs of both the Department and the employee. The employee will, upon request, provide the reasons why the periodic leave or reduced work schedule is necessary and the schedule for treatment.
D. The employee’s spouse, state registered domestic partner, adult family member, or legal guardian may provide notice of the need for FML if the employee is medically unable to do so personally.

E. If the employee is able to return to work earlier than the stated return to work date, the employee will notify the supervisor/designee as soon as possible of the new return to work date.

F. If requested, the employee will provide a medical release before or upon returning to work.

VII. Certification

A. The employee will provide written medical certification by an authorized health care provider, supporting the need for leave due to a serious health condition affecting the employee or qualifying family member.

1. Certification may be submitted using the appropriate U.S. Department of Labor form. If an alternative format is used, the employee will be responsible for ensuring it contains equivalent information:

   a. Form WH-380-E Certification of Health Care Provider for Employee’s Serious Health Condition

   b. Form WH-380-F Certification of Health Care Provider for Family Member’s Serious Health Condition

   c. Form WH-385 Certification for Serious Injury or Illness of a Current Service Member – for Military Family Leave

   d. Form WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

2. The Department may require the employee to obtain a second opinion at the Department’s expense and/or request verbal or written clarification from the health care provider who is providing the first or second opinion.

3. During medically necessary FML, the employee will inform the supervisor/designee of his/her status and intent to return to work. Status updates must be made at least every 30 days, regardless of the anticipated length of absence, unless the supervisor approves a longer update period.

4. The Appointing Authority/designee may request medical certification no more than every 30 calendar days for conditions under the continuing
supervision of a health care provider, unless circumstances change significantly or abuse is suspected.

B. The employee will provide written certification supporting the need for exigency leave related to a military service member using Form WH-384 Certification of Qualifying Exigency for Military Family Leave.

VIII. Job Status and Benefits

A. During FML, the Appointing Authority/designee may begin the interactive reasonable accommodation process.

B. The Appointing Authority/designee may offer modified duty during FML for Labor and Industries injuries or illnesses per DOC 830.200 Workers’ Compensation/Return to Work Program. Employees using FML may decline the modified duty assignment. However, industrial insurance time loss benefits will not continue once a modified duty assignment has been refused.

C. Upon the conclusion of FML, an employee will be restored to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions that s/he had when the FML began.

1. If the employee is unable to perform the essential functions of the position, the interactive reasonable accommodation process may begin while an employee is covered by FML.

2. If a disability separation is necessary, the disability separation notice period may run concurrently with the employee’s FML entitlement.

D. The Department will continue the employee’s existing employer-paid group health insurance benefits during FML at the level and conditions of coverage that would have been provided if the employee had been at work continuously. An employee on leave without pay during FML must make arrangements with the Payroll Office to pay any employee-paid portion of health care premiums.

E. The employee is not entitled to additional benefits or seniority while on unpaid FML. The employee may maintain benefits beyond his/her employer-paid health insurance at his/her own expense. An employee wishing to do so must contact his/her Payroll Office immediately to determine the amount to be paid. Failure to do so within 31 days will require re-enrollment but not re-qualification for these benefits.

F. Employees may elect to use accrued vacation leave, sick leave, shared leave, compensatory time, and personal holiday, or take leave without pay to cover
some or all of the FML. Use of leave will be in accordance with WAC 357-31 and DOC 830.100 Leave.

1. Employees on FML who received shared leave donations must use the donated leave while on FML.

G. The Department may recover premiums paid to maintain health coverage from an employee who fails to return to work if the failure to return is:

1. Not due to illness or circumstances beyond the employee’s control, or
2. For reasons other than the continuing serious health condition.

H. Failure to comply with FML procedures may result in withdrawal of FML designation, denial of continuation of FML, and/or disciplinary action. The Appointing Authority/designee will notify the employee in writing of any denial or withdrawal of FML.

I. Should a layoff occur during FML and the employee’s position is eliminated, layoff rules and policies will apply in the same manner as if the employee were still on the job. When a separation from state service occurs as a result of layoff, FML and all employment benefits will cease.

IX. Records

A. Documents relating to FML medical certifications for employees or their family members will be maintained as confidential medical records in the Employee Occupational Health Record.

B. Records relating to FML will be maintained for a minimum of 3 years. These include, but are not limited to:

1. Attendance records maintained in Payroll Offices, and
2. Personnel records and Employee Occupational Health Records maintained in Human Resources Offices.

X. Violations

A. Employees may report perceived violations of the Family and Medical Leave Act to a Department Human Resources Office or the federal Department of Labor.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Health Care Provider, Serious Health Condition, Spouse, Workweek. Other words/terms appearing in this policy may also be defined in the glossary.
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