



TITLE	POLICY NUMBER	
Family and Medical Leave Act Policy	DCS 04-25	
RESPONSIBLE AREA	EFFECTIVE DATE	REVISION
Human Resources	May 21, 2018	4

## I. POLICY STATEMENT

This policy provides guidance to Department of Child Safety (DCS) employees regarding the Family and Medical Leave Act (FMLA) of 1993 in order to ensure consistency in its implementation.

## II. APPLICABILITY

This policy applies to full-time, part-time, and temporary employees.

## III. AUTHORITY

<a href="#">29 U.S.C. 2601 et seq.</a>	Family and Medical Leave Act of 1993, as amended
<a href="#">R2-5A-404</a>	Arizona Administrative Code (AAC) Personnel Rule: Overtime
<a href="#">R2-5A-B603</a>	Arizona Administrative Code Personnel Rule: Sick Leave
<a href="#">R2-5A-C602</a>	Arizona Administrative Code Personnel Rule: Leave without Pay
<a href="#">R2-5A-D601</a>	Arizona Administrative Code Personnel Rule: Family and Medical Leave Act (FMLA) Leave

#### IV. DEFINITIONS

Contingency operation: A military operation designated by the Secretary of Defense in which members of the Armed Forces are, or may become, involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force. It may also be an operation that results in the call, order, or retention of active duty members of the uniformed services during a war or national emergency declared by the President or Congress.

Continuing treatment:

1. a period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - a. treatment two or more times by a health care provider, nurse, physician's assistant, or a provider of health-care services (e.g., physical therapist) under orders of or on referral by a health care provider; or
  - b. treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
2. any period of incapacity due to pregnancy or for prenatal care;
3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that:
  - a. requires periodic visits for treatment by a health care provider, nurse, or a physician's assistant under the direct supervision of a health care provider;
  - b. continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - c. may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
4. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease, severe stroke, or the terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health

care provider;

5. any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of or on referral by a health care provider for either of the following:
  - a. restorative surgery after an accident or other injury; or
  - b. a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis), etc.

Covered Service Member for Exigency Leave: An employee's spouse, son, daughter, or parent who is on active duty or called to active duty status in support of a contingency operation as either a member of the reserve components (Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, or Coast Guard Reserve) or a retired member of the regular Armed Forces or Reserve.

Covered Service Member for Service Member Caregiver Leave: An employee who is the spouse, son, daughter, parent, or next of kin (a blood relative who is designated as a caregiver; a blood relative who has been granted legal custody; or brothers/sisters, grandparents, aunts and uncles, and first cousins) of a current member of the Armed Forces, including the National Guard or Reserves who, as a result of a serious injury or illness sustained while on active duty in support of a contingency operation, is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary retired list.

Department or DCS: The Arizona Department of Child Safety.

Health care provider: Doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate), podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray), nurse practitioners, nurse-midwives who provide diagnosis and treatment, and Christian Science Practitioners.

Hours worked: Time actually on the job working. Federal law states that an employee's unworked but paid holiday, vacation, sick, and personal time do not count toward the eligibility requirement that the employee work 1,250 hours in the 12 months preceding the leave.

Incapable of self-care: The individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Intermittent leave: Leave taken in separate blocks of time due to a single illness or injury.

Leave without pay (LWOP): Leave that is unpaid and may be authorized or unauthorized.

Parent: A biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined in this section. This term does not include parents “in-law.” Persons who are “*in loco parentis*” include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Physical or mental disability: A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Reduced work schedule: A schedule that reduces the usual number of hours per workweek or hours per workday of an employee.

Serious health condition: An illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Examples of serious health conditions include but are not limited to the following:

1. heart conditions requiring heart bypass or valve operations;
2. back conditions requiring extensive therapy or surgical procedures;
3. severe respiratory conditions;
4. appendicitis;
5. emphysema;
6. severe nervous disorders;



2. the employee has worked for the State of Arizona for at least 1,250 hours during the 12 months immediately preceding the commencement of FMLA leave. The required 1,250 hours do not have to be worked during consecutive months; however, the 1,250 hours of work requirement must have been met during the 12 months immediately preceding the start of the leave.
3. the employee's absence is, or will be, due to any of the following qualifying reasons:
  - a. to care for the employee's child after birth;
  - b. to care for a child who has been placed with the employee for adoption or foster care;
  - c. to care for the employee's spouse, son, daughter, or parent who has a serious health condition; or
  - d. for a serious health condition that makes the employee unable to perform his/her job.

#### C. Applicability

An eligible employee may request FMLA for any qualifying reason and a qualifying FMLA request must be granted.

#### D. Use of Family Medical Leave

1. An eligible employee is entitled to take up to 12 weeks of paid or unpaid FMLA in a 12-month period.
2. An employee who is placed on FMLA for their own serious condition shall exhaust all available leave balances prior to being placed on unpaid leave.
3. An employee who is placed on FMLA for the care of the employee's spouse, son, daughter, or parent who has a serious health condition must exhaust all available family sick leave up to 480 hours per calendar year, annual leave, and donated annual leave as provided by the [Arizona Administrative Code State Personnel Rules](#) prior to being placed on unpaid FMLA (leave without pay).
4. Employees placed on FMLA for purposes of birth, adoption, bonding,

and/or foster care (within the first 12 months of the birth or placement of the child) must use accrued leave, or a combination thereof, before being placed on leave without pay.

5. Employees may be placed on FMLA for a qualifying exigency that arises while the employee's spouse, son, daughter, or parent is a covered service member on active duty (or has been notified of an impending call or order to active duty in support of a contingency operation).
6. An employee whose family member is a member of the regular Armed Forces is not eligible to take leave for a qualifying exigency.
7. A call to duty for the purpose of leave taken due to a qualifying exigency refers only to a federal call to duty. State calls to duty are not covered unless under the order of the President of the United States.
8. Qualifying exigencies include:
  - a. issues arising from a covered service member's short notice deployment (e.g., deployment on seven or less days of notice) for a period of seven days from the date of notification;
  - b. military events and related activities, such as official ceremonies, programs, or events sponsored by the military, family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered service member;
  - c. certain child care and related activities arising from the active duty or call to active duty status of a covered service member, such as arranging for alternative child care, providing child care on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered service member;
  - d. making or updating financial and legal arrangements to address a covered service member's absence;
  - e. attending counseling provided by someone other than a health care provider for oneself, the covered service member, or the child of the covered service member, the need for which arises from the

















