



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;

7. injuries caused by serious accidents on or off the job;
8. pregnancy, complications, or illnesses related to pregnancy such as severe morning sickness, the need for prenatal care, childbirth, and recovery from childbirth.

Son or Daughter: A biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis*, who is either under age 18 or over 18 and “incapable of self-care because of a physical or mental disability.”

Spouse: As defined or recognized under Arizona law for purposes of marriage.

Twelve-month period: A 12-month period measured backward from the date leave is taken and is continuous with each additional leave day used. Following is an example of how the rolling 12-month period is calculated: If an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken during that 12-month period. If an employee used four weeks beginning February 1, 2022, four weeks beginning June 1, 2022, and four weeks beginning December 1, 2022, the employee would not be entitled to any additional leave until February 1, 2023. However, on February 1, 2023, the employee would be entitled to four weeks of leave, and on June 1, the employee would be entitled to an additional four weeks, etc.

## V. POLICY

### A. General

It is the policy of the Department of Child Safety that employees who meet the eligibility criteria of the Family Medical Leave Act (FMLA) will be granted all rights as provided by the act.

### B. Eligibility

Any full-time, part-time, or temporary employee in a nonexempt or exempt position as defined in [A.A.C. R2-5A-101](#) is eligible for FMLA if:

1. the employee has worked for the State of Arizona for at least 12 months including previous state service if the employee separated from state service and returned. The 12 months do not have to be 12 consecutive months, but must be within the last seven years from the date of request;

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

- active duty or call to active duty status of the covered service member;
- f. taking up to five days of leave to spend time with a covered service member who is on short-term temporary rest and recuperation leave during deployment;
  - g. attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered service member's active duty status, and addressing issues arising from the death of a covered service member;
  - h. any other event that the employee and employer agree is a qualifying exigency.
9. For cases where both spouses are state employees, each spouse may use a maximum of 12 workweeks (equal to 480 hours) of FMLA leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. And each spouse can use up to 26 work weeks of leave to care for an eligible military service member with a serious injury or illness.
  10. In accordance with the FMLA of 1993 as amended, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 24-month period to care for the service member who is undergoing medical treatment, recuperation, or therapy or is in outpatient status or on the temporary disability retired list for a serious injury or illness incurred in the line of duty while on active duty. An eligible employee may not take leave under this provision to care for former members of the Armed Forces, National Guard and Reserves, or for members on the permanent disability retired list.
  11. If spouses are both employed by the State of Arizona and each wish to take leave for the care of a qualified service member, each spouse who is eligible and has been approved for FMLA may use a maximum of 26 workweeks of leave to care for a covered service member with a serious injury or illness
  12. An employee on FMLA will be required to furnish the DCS Human



Resources FMLA Coordinator with periodic reports advising of the employee's condition and intent to return to work. The required frequency of the reports will vary from person to person and will be appropriate for each particular situation.

13. FMLA is not a separate paid leave category. All leave under the qualifying absence as defined in Section V.B.3, whether paid as sick leave, annual leave, donated annual leave, industrial leave, or leave without pay will run concurrently with approved FMLA.
14. When an employee requires that an approved sick or annual leave absence be continued under FMLA, then the prior paid leave will be counted against the employee's available 12-week FMLA leave bank if it is a qualifying condition as defined in Section V.B.3.
15. In all circumstances, it is the responsibility of DCS to designate leave, paid or unpaid, as FMLA-qualifying and to give the employee notice of the designation.

#### E. Intermittent Leave or Leave on a Reduced Work Schedule

The FMLA defines "intermittent leave" as leave taken in separate blocks of time due to a single illness or injury. Examples include leave taken on an occasional basis for doctor appointments; leave taken several days at a time for chronic conditions like asthma; or leave taken for multiple treatments such as chemotherapy, dialysis, or physical therapy.

1. An eligible employee may take intermittent leave or work a reduced schedule not to exceed 12 weeks (480 hours) leave in any 12-month period.
2. Eligible full-time employees may take up to 480 hours of intermittent leave in a 12-month period. The total number of hours that part-time employees may take intermittently will be calculated on a prorated basis according to the hours they are normally scheduled to work each week.

Example: An eligible part-time employee works 25 hours each week year-round. Therefore, during any 12-week period, the employee works a total of 300 hours. In this case, the employee may take up to 300 hours of intermittent FMLA in a 12-month period.

3. A "reduced work schedule" is a change in the employee's work schedule

for a period of time, normally from full-time to part-time. For instance, an employee, with the employer's agreement, works part-time after giving birth.

Example: Under a "reduced work schedule," a full-time employee with a qualifying serious health condition is assigned to work four hours each day instead of eight. The employee is entitled to a total of 480 hours of FMLA during the 12-month period.

4. Employees who are on approved FMLA and are exempt from earning overtime under the Fair Labor Standards Act (FLSA) do not lose the FLSA exemption by receiving unpaid FMLA leave. DCS will make deductions from the employee's salary for any hours taken as intermittent or reduced schedule FMLA leave within a workweek without affecting the exempt status of the employee.
5. When medically necessary because of an eligible employee's own serious health condition or the serious health condition of a child, spouse, or parent, an employee may take FMLA intermittent leave or work a reduced work schedule. An employee may be required to provide medical certification indicating that intermittent leave or a reduced work schedule is necessary. Intermittent leave may be taken for chronic conditions such as diabetes or asthma. An employee may take intermittent leave for the birth or placement for adoption or foster care of a child. Intermittent leave may also be used for multiple treatments such as chemotherapy or radiation for cancer, dialysis for kidney disease, physical therapy for severe arthritis, and restorative surgery after an accident.

#### F. Limitations

FMLA may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and outpatient surgical procedures with expected brief periods of recuperation. FMLA does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu. Coverage for these conditions continues to be authorized under the provisions of [A.A.C. R2-5A-B603](#), *Sick Leave*.

#### G. Group Health Insurance Coverage

An employee who is on FMLA will maintain coverage under the state's group health insurance plan. The level of coverage will be the state coverage that was in

effect at the time the FMLA was granted. The employee must continue to pay the employee portion of the insurance premium.

1. When employees are using paid annual or sick leave under the provisions of FMLA, the payroll deductions for their portions of the premiums for health insurance continue to be deducted from their paychecks as if they were working.
2. When an insured employee is on unpaid FMLA, the employee's portion of the premium for health insurance shall be paid by the employee.
3. When an insured employee is on FMLA, the state's portion of the premium for health insurance shall be paid by the state for the duration of the FMLA.
4. If an employee is on unpaid FMLA and is unable to return to work at the end of the FMLA, the employee may continue to participate in the group health insurance plan under the conditions of [A.A.C. R2-5A-C602](#), *Leave Without Pay*, if this leave has been approved.
5. After an employee exhausts FMLA, provisions of [A.A.C R2-5A-C602](#), *Leave Without Pay*, may apply. The employee will be responsible for paying both the employee and employer costs of their health insurance coverage.
6. If an employee terminates state service employment either during or at the conclusion of an approved FMLA, the employee may be required to reimburse the state for the health insurance premiums paid by the state during the employee's approved Family Medical Leave without pay.

#### H. Retirement Contributions

Retirement contributions will be made for any pay period in which qualifying compensation has been received by the employee.

#### I. Annual and Sick Leave Accrual

An employee on FMLA will accrue annual leave and sick leave at the employee's regular accrual rates for a bi-weekly pay period if the employee is in pay status for at least one-half of the employee's scheduled work hours in that pay period, according to [A.A.C. R2-5A-B603](#), *Sick Leave*, for any period in which the employee is in pay status.

## J. Privacy Concerns

1. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members, created for FMLA purposes, must be maintained as confidential medical records in separate files. FMLA medical records may be disclosed to:
  - a. first aid and safety personnel as appropriate in the event emergency treatment is required;
  - b. government officials investigating FMLA compliance.
2. Medically necessary restrictions on the employee's duties will be discussed with Supervisors and Managers for purposes of evaluating accommodations.

NOTE: If any conflicts exist between this policy, the FMLA, Arizona Revised Statutes, or any other state rules, the FMLA, Arizona Revised Statutes or rules will prevail.

## VI. PROCEDURES

### A. Leave Request Procedures

Under no circumstances shall DCS procedures for requesting FMLA be more restrictive than the requirements for requesting other types of leave, nor shall the required medical certification be more stringent. The following procedures shall be followed when an employee requests FMLA.

1. Employees may request FMLA by completing the [Family and Medical Leave Request Form](#). An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment, must submit an application for leave at least 30 days before the leave is to begin. If the leave is to begin within 30 days, an employee must give notice to the DCS Human Resources FMLA Coordinator as soon as the necessity for the leave arises.
2. In the case of a medical emergency requiring leave because of the employee's own serious health condition, or to care for a family member with a serious health condition, the employee or the employee's spokesperson should contact the DCS Human Resources FMLA

Coordinator in person, by telephone, or other means as soon as possible.

3. The DCS Human Resources FMLA Coordinator will issue the employee Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act and/or an FMLA packet (if eligible) within 5 business days of the receipt of the [Family Medical Leave Act Request Form](#).
4. Within 15 days after the request for leave, the employee or the employee's spokesperson must complete one of the following:

- a. [FMLA packet for Employee's Serious Health Condition under the Family Medical Leave Act](#); or

Note: Appropriate healthcare provider must complete the Certification of Health Care Provider form.

- b. [FMLA packet for Family Member's Serious Health Condition under the Family Medical Leave Act](#); or

Note: Appropriate healthcare provider must complete the Certification of Health Care Provider form.

- c. [FMLA packet for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act](#).

Note: Form must be completed by authorized health care provider of the covered service member or by a copy of an Invitational Travel Order (ITO) and/or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family. When leave is taken because of a qualifying exigency, the employee must provide a copy of the covered service member's active duty orders or other documentation issued by the military which indicates that the covered service member is on active duty or call to active duty status in support of a contingency operation, and a completed [WH-384 Certification for Military Family Leave for Qualifying Exigency](#) form.

5. DCS Human Resources FMLA Coordinator may direct the employee to submit additional facts and/or documentation. DCS may also require the employee to obtain a second medical opinion at the expense of DCS.
6. DCS Human Resources FMLA Coordinator will complete [WH-382](#)

[Designation Notice Under the Family Medical Leave Act Form](#) and will send a copy to the employee, the employee's immediate supervisor, any other employees that the DCS Human Resources FMLA Coordinator designates within 5 business days of receipt of the completed FMLA packet.

7. If an employee requests FMLA or if a supervisor believes that an employee is requesting annual leave, sick leave, or any other leave for a reason that may qualify as FMLA, the supervisor is required to notify the DCS Human Resources FMLA Coordinator within 3 days.
8. Conditions that need recertification include:
  - a. an employee on intermittent leave will require recertification every six months unless otherwise stated by the healthcare provider. DCS may request a new medical certification each leave year for medical conditions that last longer than one year. Such new medical certifications are subject to second and third opinions;
  - b. if the employee has taken fewer than 12 weeks of FMLA in the preceding 12 months, the employee must request continuation of the FMLA by providing recertification from the health care provider in support of the need to continue the leave. Such recertification is required upon the expiration of the health care provider's prior certification.
9. Employees are required to submit a new certification when leave is requested for a new qualifying condition as defined in section V.B.3.

#### B. Employer Designation

The immediate supervisor or any other supervisor or manager in the chain of command shall inform the DCS Human Resources FMLA Coordinator within two days of acquiring knowledge that a leave of absence may qualify for FMLA. The DCS Human Resources FMLA Coordinator will inform the employee in writing that the time off is counted towards FMLA Leave. The notice must be provided as soon as the employer becomes aware that the reason for leave qualifies for FMLA eligibility. Normally the employee will be notified of the approval via the [Designation Notice Under the Family and Medical Leave Act](#) form.

The Department may not designate leave as FMLA leave after an employee has returned to work with two exceptions:

1. If the employee was absent for an FMLA reason and the Department did not learn the reason for the absence until the employee's return (e.g., where the employee was absent only a brief period), the Department may, upon the employee's return to work, promptly (within three business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If the employee desires that the leave be counted as FMLA leave, the employee must notify the DCS Human Resources FMLA Coordinator within two business days of returning to work of the reason for the leave. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.
2. If the Department knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or if the Department has requested medical certification which has not yet been received, or the parties are in the process of obtaining a second or third medical opinion, the Department shall make a preliminary designation and so notify the employee, at the time leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or the medical certification that confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the Department will withdraw the designation (with written notice to the employee).

FMLA shall run concurrently when an FMLA-eligible employee is on worker's compensation, annual leave, donated annual leave, or sick leave for a qualifying condition as defined in section V.B.3.

#### C. Return to Work

1. At the end of the FMLA taken for the employee's own serious health condition, an employee will be required to provide the form [DCS 1253A Health Status Report](#) five (5) days prior to returning to work.
2. An employee who takes FMLA is entitled to return to the same position the employee held when the leave started or, if the position has been filled or abolished, to an equivalent position. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and

status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

## **VII. FORMS INDEX**

[DCS-1253A Health Status Report](#)

[DCS-1082A Medical Leave Act Employee Application](#)

[Family and Medical Leave Request Form](#)

[FMLA packet for Employee's Serious Health Condition under the Family Medical Leave Act](#)

[FMLA packet for Family Member's Serious Health Condition under the Family Medical Leave Act](#)

[FMLA packet for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act](#)

[WH-382 Designation Notice Under the Family and Medical Leave Act](#)

[WH-384 Certification for Military Family Leave for Qualifying Exigency](#)