



# RULES OF THE STATE PERSONNEL BOARD

## 478-1-.23 Family and Medical Leave

### (1) Introduction:

Family and Medical Leave is a benefit and entitlement intended to assist eligible employees with balancing work/life demands by providing job-protected time off from work for qualifying reasons. State agencies shall administer Family and Medical Leave in accordance with the federal Family and Medical Leave Act (FMLA) and related regulations. Any updates to applicable federal law or regulation take precedence over provisions within this Rule that are found to be in conflict.

- (a) State employers will not interfere with, restrain, or deny the rights provided to an employee by the FMLA, but shall be entitled to require appropriate medical certification and/or validation of family member status to determine eligibility for Family and Medical Leave.
- (b) State employers will not discriminate or retaliate against an individual for exercising any FMLA right.
- (c) Nothing in this Rule or the FMLA shall be construed as limiting an agency's right to discipline, terminate, or otherwise manage its employees as it deems appropriate. However, the use of Family and Medical Leave cannot be considered as a negative factor in any employment decision.

### (2) Applicability:

The policies and procedures within this Rule apply to all agencies of the executive branch, excluding authorities, public corporations, and the Board of Regents of the University System of Georgia.

### (3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02 (*Terms and Definitions*):

- (a) "Child" means a biological, adopted, or foster child, stepchild, legal ward, or a child of an employee standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of mental or physical disability. This age limit does not apply for purposes of military Family and Medical Leave (i.e., leave for a qualifying exigency or to care for a covered service member.)
- (b) "Covered active duty" means deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or

## Rules of the State Personnel Board

Reservist military duty in support of a contingency operation (typically during a war or declared national emergency).

- (c) "Healthcare provider" means a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation shown on X-ray), nurse practitioner, nurse midwife, clinical social worker, physician assistant, Christian Science Practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts, and other provider to whom the State Health Benefit Plan will pay benefits.
- (d) "*In loco parentis*" means having day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary.
- (e) "Intermittent leave" means leave taken in separate blocks of time, rather than continuous time off.
- (f) "Key employee" means a salaried employee among the highest-paid 10% of the agency's total workforce.
- (g) "Parent" means a biological, adoptive, step, or foster father or mother or any other individual who stands or stood *in loco parentis* to an employee when the employee was a child. "Parent" does not include a parent-in-law.
- (h) "Qualifying exigency" means an activity that requires leave because the employee's spouse, child, or parent is a military member on covered active duty or on notice of upcoming covered active duty.
- (i) "Reduced schedule leave" means using leave to reduce the number of hours worked each workday or each workweek.
- (j) "Rolling 12-month Period" or "Rolling Year" is the 12-month period measured backward from the date an employee uses any Family and Medical Leave. Under the "rolling year," each time an employee takes Family and Medical Leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.
- (k) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:
  - 1. An overnight stay in a hospital, hospice, or residential medical facility and any period of incapacity or treatment related to the reason for inpatient care; or,

# Rules of the State Personnel Board

2. Continuing treatment by a health care provider that involves at least one of the following:
  - (i) Incapacity of more than three consecutive days, plus treatment that includes at least two medical examinations or one examination followed by treatment under the healthcare provider's supervision;
  - (ii) Prenatal care or incapacity because of pregnancy;
  - (iii) Periodic treatment or incapacity for a chronic serious health condition that:
    - (I) Requires periodic visits (at least twice per year) to a health care provider for treatment,
    - (II) Continues over an extended period of time, and
    - (III) May cause episodic rather than continuing periods of incapacity;
  - (iv) Permanent or long-term condition for which treatment may not be effective; or,
  - (v) Absence to receive multiple treatments for:
    - (I) Restorative surgery following an accident or other injury, or
    - (II) For a condition that, if left untreated, would likely result in incapacity of more than three consecutive days (i.e., chemotherapy, dialysis, etc.).
- (l) "Spouse" means a husband or wife in a lawful marriage.
- (m) "Workweek" means the number of hours an employee typically works during a seven day period. Most full-time employees have a 40-hour workweek. Appropriate pro rata adjustment is made for part-time employees. Employees required to work overtime, may have a workweek of more than 40 hours.

## **(4) Employee Eligibility:**

- (a) For purposes of determining an employee's eligibility for Family and Medical Leave, the state is considered one employer.

# Rules of the State Personnel Board

- (b) To be eligible, an employee must meet all of the following four (4) criteria as of the date the Family and Medical Leave is to start:
1. Have been employed by the State of Georgia for a total of at least 12 months, whether consecutive or non-consecutive, within the past seven (7) years. (See Section (4)(e), below).
  2. Have worked at least 1,250 hours for the State of Georgia in the 12 months immediately preceding the start date of Family and Medical Leave. Holidays and time spent on paid or unpaid leave or suspension do not count toward the 1,250 hours worked. An exception exists for military leave as outlined in (4)(d), below.
  3. Have a qualifying reason for the absence (as outlined in section (5) of this Rule).
  4. Have not already exhausted the available Family and Medical Leave entitlement for the 12-month period.
- (c) Time worked for the State of Georgia in any employment capacity will count toward meeting the eligibility requirements in (4)(b)1 and (4)(b)2, above. Such employment includes: full-time, part-time, temporary, seasonal, and sporadic employment, whether paid on a salaried or hourly basis, and previous employment with a temporary services agency on assignment with the state.
- (d) Absences covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count toward meeting the eligibility requirements in (4)(b)1 and (4)(b)2, above.
- (e) State employment that occurred before a break in service of seven (7) years or more will not contribute toward meeting the 12 months of employment eligibility requirement in (4)(b)1, above, unless the break was for the purpose of fulfilling service covered by USERRA.
- (f) Agencies are not to extend Family and Medical Leave benefits to ineligible employees.

## **(5) FMLA Qualifying Reasons & Leave Entitlement:**

- (a) An eligible employee is entitled to take up to 12 workweeks of Family and Medical Leave during a rolling 12-month period, measured backward from the date an employee uses any Family and Medical Leave, for any one or combination of the following reasons:

# Rules of the State Personnel Board

1. Birth of the employee's child, including care for the employee's child during the first 12 months after birth;
2. Placement of a child with the employee for adoption or foster care, including care for the newly placed child during the first 12 months after placement and any preliminary proceedings required prior to placement;
3. Care for the employee's spouse, child, or parent (not including in-laws) who has a serious health condition;
4. The employee's own serious health condition that makes him or her unable to perform one or more of the essential functions of the job; and,
5. Any qualifying exigency arising because the employee's spouse, child, or parent (not including in-laws) is a military member on covered active duty or on notice of upcoming covered active duty. "Covered active duty" means deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty in support of a contingency operation (typically during a war or declared national emergency). A qualifying exigency refers to any of the following activities that may be required because of the military member's covered active duty:
  - (i) Addressing issues resulting from the military member receiving short-notice of deployment (seven days or less advanced notice);
  - (ii) Attending military events, family support or assistance activities, or information briefings related to the deployment;
  - (iii) Arranging for care of the military member's child or parent incapable of self-care;
  - (iv) Making or updating financial or legal arrangements;
  - (v) Attending non-medical counseling;
  - (vi) Spending time with the military member while on rest and recuperation leave (maximum of 15 calendar days);
  - (vii) Engaging in post-deployment activities; and,

# Rules of the State Personnel Board

- (viii) Other activities related to the military duty as agreed upon by the employer and employee.

(b) Military Caregiver Family and Medical Leave:

1. An eligible employee is entitled to take up to 26 workweeks of Family and Medical Leave during a single 12-month period to care for a covered service member undergoing medical treatment, recuperation, therapy, or outpatient services, or who is otherwise on the temporary disability retired list, for a serious injury or illness received or aggravated in the line of active military duty.
  - (i) The single 12-month period begins on the first day the employee takes leave to care for the covered service member and ends 12 months later.
  - (ii) The 26 workweeks are reduced by any Family and Medical Leave for other qualifying reasons used during the single 12-month period.
2. To qualify for Military Caregiver Family and Medical Leave, the employee must be the spouse, child, parent, or next of kin (nearest blood relative other than a spouse, child, or parent) of the covered service member. In-law relationships do not qualify.
3. The service member may be either a member of the Armed Forces (including the National Guard and Reserves) or a veteran
  - (i) Military Caregiver Family and Medical Leave is not available to care for a dishonorably discharged veteran.
  - (ii) Military Caregiver Family and Medical Leave for a veteran must typically begin within five (5) years of the veteran's discharge or release from the military. Exception: In accordance with federal regulation, the period between October 28, 2009, and March 8, 2013, does not count toward this 5-year period.
4. Military Caregiver Family and Medical Leave is to be applied on a per-covered-service member, per-serious-injury/illness basis. An eligible employee with multiple qualifying reasons for Military Caregiver Family and Medical Leave is limited to a combined total of 26 workweeks in any single 12-month period.

# Rules of the State Personnel Board

(c) Family and Medical Leave for Military Caregivers and for the Serious Health Condition of the employee, spouse, child, or parent, is limited to the time determined medically necessary by the attending healthcare provider.

(d) Spousal Limitation:

1. If an employee's spouse is also a state employee, the couple is limited to a combined total of 12 workweeks of Family and Medical Leave during the rolling 12-month period for any one of the following qualifying reasons:
  - (i) To care for the employee's parent with a serious health condition;
  - (ii) For the birth of the employee's child, including care for the child after birth; and,
  - (iii) For the placement of a child with the employee for adoption or foster care, including care for the child after placement.
2. If an employee's spouse is also a state employee, the couple is limited to a combined total of 26 workweeks of Military Caregiver Family and Medical Leave during a 12-month period.
3. Each spouse is entitled to use the remainder of his/her individual Family and Medical Leave entitlement for other qualifying reasons.

## **(6) Intermittent/Reduced Schedule Leave:**

- (a) Eligible employees are entitled to take Family and Medical Leave on an intermittent or reduced schedule basis under the following conditions:
1. When certified as medically necessary for a serious health condition of the employee, spouse, child, or parent;
  2. When certified as medically necessary to care for a covered service member's serious injury or illness;
  3. For a qualifying exigency arising out of a spouse's, child's, or parent's military duty;
  4. When required for preliminary activities needed for an adoption or foster care placement to proceed.

# Rules of the State Personnel Board

- (b) An agency has the discretion to permit its eligible employees to use Family and Medical Leave on an intermittent or reduced schedule basis for other FMLA qualifying reasons (such as for care of a healthy newborn or newly placed child), provided such permission is granted in a consistent manner to staff.
- (c) An agency may temporarily reassign an employee to a different position for which the employee is qualified and that better accommodates the recurring absences while the employee uses Family and Medical Leave on an intermittent or reduced schedule basis for any of the following reasons:
  - 1. Planned medical treatment, including recovery;
  - 2. Birth of the employee's child, including care of the newborn child; and,
  - 3. Adoption or foster care, including care of the newly placed child.
- (d) While in the temporary position, the employee will receive pay and benefits equivalent to the original position; however, the duties need not be equivalent. An employee will not be assigned to a temporary position that represents a hardship for the employee. The agency will return the employee to the original position or an equivalent position at the end of the temporary assignment. The employee will not be required to continue in the temporary assignment beyond the date on which the employee is able to resume the regular work schedule.

## **(7) Notice and Certification Requirements:**

- (a) Employee Notice Requirements:
  - 1. When the need for Family and Medical Leave is foreseeable (e.g., childbirth, adoption, planned medical treatment, etc.), an employee is expected to provide the agency with at least 30 calendar days advance notice of the requested leave. When the need for FMLA leave is not foreseeable 30 days in advance, the employee is expected to provide the maximum notice practicable, generally within one to two business days from the date the employee becomes aware of the need for and timing of the leave. When the need for FMLA leave arises suddenly, and the absence is unplanned, the agency may require the employee to follow customary call-in procedures.
  - 2. Employees must make a reasonable effort to schedule medical treatments so as not to unduly disrupt the agency's operations whenever possible.

# Rules of the State Personnel Board

3. An employee's notice of leave does not need to specifically mention the FMLA, but must include, at a minimum, an FMLA-qualifying reason for the leave, the anticipated start date, and the anticipated duration.
4. If an employee is unable to communicate, then an agency may receive notice of the need for Family and Medical Leave from a responsible spokesperson (e.g., spouse, doctor, etc.)
5. An employee's failure to provide timely notice with no reasonable excuse, as determined by the agency, may result in delay of Family and Medical Leave protection.

## (b) Supporting Documentation:

1. An agency may require its employees to submit appropriate supporting documentation for the use of Family and Medical Leave. Examples of supporting documentation include:
  - (i) The attending healthcare provider's certification of a serious health condition serving as the basis for Family and Medical Leave;
  - (ii) The attending healthcare provider's certification of a covered service member's serious injury or illness;
  - (iii) Certification of qualifying family relationship; and,
  - (iv) Copy of the spouse's, child's, or parent's orders for covered active duty that supports the qualifying exigency.
2. If an employee does not submit supporting documentation when giving notice of the need for Family and Medical Leave, the agency may request such documentation. The agency must allow the employee at least 15 calendar days from the date of the agency's request to provide the requested documentation.
3. To ensure compliance with the Genetic Information Nondiscrimination Act (GINA), when requesting supporting documentation from an employee's healthcare provider, the agency must specify that it is not seeking genetic information. If an agency receives genetic information from a request for supporting documentation, such information must be treated as a confidential medical record and stored separately from the employee's personnel file.

# Rules of the State Personnel Board

4. Failure to submit timely, complete, and sufficient supporting documentation may result in delay or denial of Family and Medical Leave.

5. Clarification & Authentication of Medical Certification:

An agency may designate one or more officials to contact the certifying healthcare provider, when needed, to clarify or authenticate a Family and Medical Leave medical certification. The employee's direct supervisor is not permitted to contact the certifying healthcare provider.

6. An agency that reasonably doubts the validity of a medical certification may require the employee to obtain a second opinion at the expense of the agency. The healthcare provider will be designated, but not employed, by the agency.
7. When a second opinion differs from the initial medical certification, the agency may require the employee to obtain a third opinion at the expense of the agency. The healthcare provider must be jointly approved by the agency and employee. The opinion of the third healthcare provider will be considered final and binding.
8. An agency may require a second or third opinion for Military Caregiver Family and Medical Leave only when the original certification was completed by a healthcare provider not affiliated with the Department of Defense, Department of Veterans Affairs, or TRICARE.

(c) Recertification:

1. An agency may require reasonable recertification of a medical condition in connection with an employee absence. Typically, such recertification may be required no more often than every 30 calendar days or after the minimum duration of the condition identified on the previous certification expires, whichever occurs later. An agency may require an earlier recertification for the following reasons:
  - (i) The employee requests an extension of leave;
  - (ii) The circumstances (e.g., duration or frequency of absences) described within the previous certification change significantly; or,
  - (iii) The employer receives information that casts doubt on the continuing validity of the previous certification.

# Rules of the State Personnel Board

2. In any case, even for lifetime conditions, an agency may require recertification every six (6) months.

## (d) Employer Notice Requirements:

Agencies are responsible for meeting all employer notice requirements for Family and Medical Leave. Requirements include: a posted notice in the workplace, a general notice to employees, an Eligibility, Rights, & Responsibilities notice to each employee who requests Family and Medical Leave or whose leave may qualify for FMLA protection, and a Designation notice for each employee whose absence is being considered for FMLA protection.

### 1. Posted & General Notices:

- (i) Posted Notice – Each agency will post and keep posted in conspicuous places where notices to employees and applicants are typically posted, notice explaining the provisions of the Family and Medical Leave Act and how to file a complaint.
- (ii) General Notice – In addition to the posted notice, each agency must include the information from the FMLA poster in its handbook or other written material on leave and benefits, or distribute such information to new employees upon hire.
- (iii) Both the posted and general notices may be posted or distributed electronically to meet these requirements.

### 2. Eligibility, Rights, and Responsibilities Notice:

Once an employee requests Family and Medical Leave, or once the agency becomes aware that an employee's leave may qualify for Family and Medical Leave, the agency must notify the employee, within five (5) workdays (unless extenuating circumstances, such as an emergency office closure, delay notice) of the following:

- (i) Whether the employee meets the employment eligibility criteria for Family and Medical Leave;
- (ii) Whether the employee has any remaining Family and Medical Leave available; and,

# Rules of the State Personnel Board

- (iii) The employee's rights and responsibilities for taking Family and Medical Leave.
  - (iv) If the employee did not submit supporting documentation with a request for Family and Medical Leave, the agency should include in this notice any requirement to provide such documentation and give a deadline for submission that is at least 15 calendar days after the notice is provided to the employee.
3. Designation Notice:
- Once an agency has sufficient information to determine whether the leave qualifies for Family and Medical Leave Protection (e.g., after receiving supporting documentation), the agency must notify the employee within five (5) workdays (unless extenuating circumstances, such as an emergency office closure, delay notice) whether the leave will be designated as Family and Medical Leave and count against the employee's entitlement.
4. The Designation Notice can be combined with the Eligibility, Rights, & Responsibilities Notice if the agency has sufficient information to designate the leave as Family and Medical Leave at the time it becomes aware of the employee's need for leave.
5. A Family and Medical Leave denial must include at least one reason for denial.

## **(8) Charging FMLA:**

- (a) Each agency is responsible for charging time off that qualifies for Family and Medical Leave protection against an employee's entitlement.
- (b) Only the amount of leave actually taken may be counted toward the employee's FMLA entitlement.
  - 1. When calculating the amount of intermittent or partial workweek absences for Family and Medical Leave, an agency must use the shortest increment used to account for other types of leave. (Refer to Rule 478-1-.16(1)(a) [Absence from Work] for applicable provisions.)
  - 2. Employees will not be required to remain on leave longer than necessary, unless an exception for flight crews or employees of primary or secondary schools is authorized by Family and Medical Leave regulations.

# Rules of the State Personnel Board

(c) Holidays:

1. If a holiday falls within a full week of Family and Medical Leave, then it counts toward the Family and Medical Leave entitlement as if it were a workday.
2. If a holiday falls within a week during which an employee used Family and Medical Leave for only part of the week, then the holiday does not count toward the Family and Medical Leave entitlement.

(d) Retroactive Designation:

1. An agency may retroactively designate time off as Family and Medical Leave with appropriate notice to the employee, provided the failure to timely designate the leave does not harm the employee.
2. In all cases where leave would qualify for Family and Medical Leave protection, the agency and employee can mutually agree to designate the leave retroactively as Family and Medical Leave.
3. Retroactive designation of Family and Medical Leave should be applied consistently across an agency's workforce.

## **(9) Use of Paid Leave during FMLA Leave:**

- (a) The Family and Medical Leave Act provides job-protected leave for specified family and medical reasons, but does not provide pay.
- (b) An eligible employee is entitled to use available paid leave, State compensatory time, or FLSA compensatory time to continue to receive compensation from the agency during Family and Medical Leave. Use of paid leave must comply with Rule 478-1-.16 (Absence from Work). Any period of Family and Medical Leave not covered by available paid leave or compensatory time will be without pay.
- (c) An agency may, by written policy, require an employee to use any available paid leave and/or compensatory time during Family and Medical Leave. Such policy must apply uniformly to all Family and Medical Leave, and the use of available paid leave must comply with Rule 478-1-.16 (Absence from Work). The following two exceptions apply:

# Rules of the State Personnel Board

1. If an absence qualifies for Workers' Compensation wage loss benefits, the employee may choose to receive such benefits rather than use paid leave or compensatory time during Family and Medical Leave.
  2. An employee will not be required to use paid leave and compensatory time while receiving short-term or long-term disability insurance payments.
- (d) Any paid leave or compensatory time used by the employee will run concurrently with Family and Medical Leave.
- (e) An employee on paid Family and Medical Leave is eligible to accrue paid leave in accordance with Rule 478-1-.16 (Absence from Work).

## **(10) Return to Work/Fitness-for-Duty:**

- (a) Typically, at the expiration of Family and Medical Leave, an employee is entitled to reinstatement to the same or equivalent position held prior to the leave, provided the employee is able to perform the essential functions, with or without reasonable accommodation, and has complied with the terms of the Family and Medical Leave.
1. An equivalent position has substantially similar duties and responsibilities and equivalent pay, benefits, terms, and conditions of employment.
  2. If an employee cannot perform the essential job functions, the agency is responsible for meeting any obligations it may have for accommodation under the Americans with Disabilities Act, as amended.
- (b) Family and Medical Leave does not provide any greater right to reinstatement than if the employee had remained at work, rather than take the leave. For example, an employee whose position is eliminated through staff reduction is not entitled to return to work at the expiration of the Family and Medical Leave.
- (c) An employee who fraudulently obtains Family and Medical Leave is not entitled to reinstatement.
- (d) A "key employee" may be denied reinstatement if the agency determines that reinstatement would cause substantial and grievous economic injury to its operations and the employee was given the proper notice and failed to return to work by the timeframe identified in such notice.
- (e) Fitness-for-Duty Certification:

# Rules of the State Personnel Board

1. An agency may require as a condition for reinstatement that employees returning to work from a continuous period of Family and Medical Leave for their own serious health condition submit a fitness-for-duty certification from the same attending healthcare provider that certified the Family and Medical Leave. The medical documentation must certify that the employee is able to resume work and perform the essential functions of the job, with or without reasonable accommodation.
2. An agency may require fitness-for-duty certification as a condition of reinstatement following use of intermittent or reduced schedule Family and Medical Leave for an employee's own serious health condition only if the agency has a reasonable belief that reinstatement could pose significant risk of harm to the individual employee or others. Such certification may not be required more often than every 30 calendar days.
3. The need for fitness-for-duty certification must be established at the time an agency designates Family and Medical Leave.
4. An agency may delay and/or deny reinstatement to an employee who does not provide required fitness-for-duty certification.
5. Any fitness-for-duty certification requirement must be applied uniformly to all similarly situated employees (e.g., all in the same job, all with the same serious health condition).

## **(11) Record Maintenance:**

- (a) Any documentation that includes personal health information must be maintained confidentially.
- (b) Agencies are to retain records related to Family and Medical Leave for three years, in accordance with statewide retention schedules.

### **Authority:**

O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

### **Federal References:**

29 USC 2601, et seq. – Family and Medical Leave Act  
29 CFR Part 825 – US DOL Family and Medical Leave Regulations  
29 CFR Part 1630 – EEOC Americans with Disabilities Act Regulations

# Rules of the State Personnel Board

---

29 CFR Part 1635 – EEOC Genetic Information Nondiscrimination Act Regulations