



Family and Medical Leave Act (FMLA) Refresher

As part of its responsibilities under state law, the Department of Administrative Services, Human Resources Administration (HRA) conducts an annual HR Assessment to monitor agencies' compliance with state and federal employment laws and policies. Recent assessments have revealed a need for more information regarding the federal Family and Medical Leave Act (FMLA). To refresh your knowledge and to assist with policy review and revision, HRA Policy has compiled the following explanation of recurring FMLA issues.

Definitions

In some agency policies, the definition of "spouse" is narrow and does not match the definition used in federal FMLA regulations. Under the regulations ([29 C.F.R. § 825.102](#)), "spouse" means as a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. State Personnel Board Rule 23, [Family and Medical Leave](#), was revised in 2015 to align with this definition.

Administration of FMLA leave must rely on the definitions used in federal regulation ([29 C.F.R. § 825.102](#)) and SPB Rule 23. When agency FMLA policies include definitions, care should be taken to align them with the definitions contained in federal regulation and in SPB rule.

Retroactive Designation of FMLA Leave

Agency policies that discuss retroactive designation of FMLA leave sometimes fail to address that such designation must not bring harm to the employee.

FMLA regulations ([29 C.F.R. § 825.301\(d\)](#)) and SPB Rule 23, [Family and Medical Leave](#), provide that FMLA leave can be retroactively designated unilaterally by the employer only when there will be no harm or injury to the employee. Otherwise, both the employer and employee must mutually agree to the retroactive designation. Consider, for example, an employee who takes time off to care for his or her child with a serious health condition. If the employer did not promptly designate FMLA leave, the employee might believe that the

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leave entitlement had been reduced, the employee might be able to show that he or she would have made alternate caregiver arrangements for the child.

If an employer's failure to timely designate leave causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. When determining whether retroactive designation is appropriate, the facts should be considered on a case-by-case basis. Consultation with your legal counsel may be warranted.

[Spousal Limitation on the Number of Weeks of FMLA Leave Available to Employees](#)

Information gathered during the HR assessment process has revealed some misunderstanding of the spousal limitation on the number of weeks of FMLA leave available to employees.

Under federal regulations ([29 CFR § 825.108](#)), state agencies are considered a single employer for purposes of the FMLA. This provision is also stated in Section (4) (a) of SPB Rule 23, [Family and Medical Leave](#). This limitation operates both in the context of FMLA leave for birth or adoption of a child and in context of FMLA military caregiver leave. If an employee's spouse is also a state employee, the couple is limited to a combined total of 12 workweeks of FMLA leave during the rolling 12-month period for any one of the following qualifying reasons:

- to care for the employee's parent with a serious health condition;
- for the birth of the employee's child, including care for the child after birth; and
- for the placement of a child with the employee for adoption or foster care, including care for the child after placement.

If an employee's spouse is also a state employee, the couple is limited to a combined total of 26 workweeks of military caregiver FMLA leave during a 12-month period. Each spouse is entitled to use the remainder of his or her individual FMLA leave entitlement for other qualifying reasons.

These limitations are stated in Section 5 (d) of SPB Rule 23, [Family and Medical Leave](#), which reflects the provisions of federal regulations ([29 C.F.R. § 825.120 \(a\)\(3\)](#) and [29 C.F.R. § 825.127 \(f\)](#)).

[Recordkeeping Required Under Federal FMLA Regulations](#)

Federal FMLA regulations ([29 C.F.R. § 825.500](#)) require employers to keep certain records relating to FMLA leave. Those records, which include notices related to FMLA leave as well as dates and hours (when leave is taken in less than full-day increments) of leave taken, must be maintained for at least three years. Agency policies and practices should reflect these requirements.

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If you have questions about the information in this advisory, please contact a member of the HRA Policy team or send an email to hrapolicy@doas.ga.gov.

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