

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

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| SUBJECT: | PAGE <u> 1 </u> OF <u> 13 </u> |
| Family Medical Leave Act | Number: 36-LEV-02 |
| RULE/CODE REFERENCE: 29 U.S.C. 2611 et seq. 29 C.F.R. Part 825; OAC 123:1-33 | SUPERSEDES: 36-LEV-02 dated 12/13/13 |
| RELATED ACA STANDARDS: | EFFECTIVE DATE: February 18, 2016 |
| | APPROVED:  |

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to grant family and medical leave to all eligible employees in accordance with the Family Medical Leave Act.

III. APPLICABILITY

This policy applies to all Ohio Department of Rehabilitation and Correction employees.

IV. DEFINITIONS

Covered Active Duty – Duty during the deployment to a foreign country.

Covered Service Member - Current members of the Armed Forces, including members of the National Guard or Reserves, who have serious injuries or illnesses incurred in the line of duty while on active duty that render them medically unfit to perform their duties and for which they are undergoing medical treatment, recuperation, or therapy, or are in outpatient status; or are on the temporary disability retired list. A veteran may also be a covered member if he/she was a member of the Armed Forces, including the National Guard or Reserves, was discharged or released under conditions other than dishonorable and was discharged with the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him/her.

FMLA Tracking Year - DRC uses a rolling calendar year to determine eligibility (1,250 hours of work actually performed in the previous twelve (12) months) and usage (twelve (12) weeks in a twelve (12) month period). For example, if an employee wishes to take FMLA leave on August 1, 2015, DRC will look at the period of August 1, 2014 to August 1, 2015 to determine if: (1) the employee has actually performed 1250 hours of work in the past twelve (12) months; (2) to see if the employee has already exhausted the twelve (12) weeks of FMLA leave allowed.

Incapable of Self-Care - An individual who requires active assistance or supervision to provide daily self-care in three (3) or more of the “activities of daily living” or “instrumental activities of daily living.” Activities of daily living include 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.

Incapacity - The inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

Original Certification - The initial medical certification, Certification of Health Care Provider for Employee’s Serious Health Condition (DRC1024) or Certification of Health Care Provider for Family Member’s Serious Health Condition (DRC1032), for a specific serious medical condition of the employee, spouse, child or parent within a twelve-month tracking period. Original certifications expire as directed by the health care provider, or for chronic intermittent conditions are valid for the FMLA tracking year in which the certification form was received. Regardless of condition, an original certification is valid for a maximum of twelve (12) months.

Parent - Biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child (relationship must have been established prior to age 18 years). Evidence of relationship will be requested for claims of loco parentis. FMLA does not cover parents-in-law.

Qualifying Exigency – Includes activities related to short-notice deployment, attending military events, arranging for alternative care for a child or parent of the deployed military member or attending school activities, addressing financial and legal arrangements, attending counseling sessions, attending post-deployment reintegration briefings and spending time with a covered military member who is on rest and recuperation leave.

Reapplication - Once an employee’s FMLA tracking year is completed (the FMLA tracking year has expired and the employee may or may not have exhausted twelve (12) weeks of FMLA leave in that twelve (12) month period) an employee may re-apply for FMLA certification. The “original” certification process is followed. Note: This is different than the re-certification process that requires a current active FMLA certification.

Re-certification - When an employee has an active FMLA certification and the criteria to require a recertification is met in accordance with the FMLA law, the employer may request that the employee re-certify his or her original FMLA certification. Refer to the FMLA law and/or the section of this policy entitled “Re-Certification” for further clarity. The employer shall utilize Certification of Health Care Provider for Employee’s Serious Health Condition (DRC1024) or Certification of Health Care Provider for Family Member’s Serious Health Condition (DRC1032) when seeking recertification. DRC will not bear the costs of an employee required to re-certify.

Serious Health Condition - In general, an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care (e.g. an overnight stay) in a hospital, hospice, or residential medical care facility, or (b) continuing treatment by a health care provider, which includes: (i) a period of incapacity more than three (3) consecutive, full calendar days, (ii) pregnancy or prenatal care, (iii) a chronic serious health condition, (iv) a permanent or long-term condition, or (v) any absences to receive multiple treatments. Refer to FMLA law and Certification Forms (DRC1024 and DRC1032) for clarity.

Son or Daughter - Biological, adopted, or foster child, a step child, a legal ward or a child or a person standing in loco parentis, who is either under age 18 years, or age 18 years or older and “incapable of self-care because of a mental or physical disability.” Evidence will be requested for claims of loco parentis or claims that the child is incapable of self-care. Inclusion of a child over age 18 years on insurance is not sufficient under the FMLA. *For military family leave, the child may be of any age.

Spouse - Husband or wife as defined or recognized under state or federal law for purposes of marriage, including common law marriages that came into existence prior to October 10, 1991, or ones that came into existence before, or after, October 10, 1991 in another state or nation that recognizes the validity of such marriages.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to grant Family Medical Leave Act leave to all eligible employees in accordance with the Federal Family and Medical Leave Act of 1993.

VI. PROCEDURES

A. Qualifying Event

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to twelve (12) weeks of paid or unpaid leave per twelve (12) month period for a qualifying event. The twelve (12) month period in which eligible employees are entitled to FMLA leave shall be a “rolling” twelve (12) month period. Under the “rolling” twelve (12) month period, each time an employee takes FMLA leave, the remaining entitlement would be any balance of the twelve (12) work weeks that was not used during the preceding twelve (12) months.

1. Basic FMLA qualifying events include:
 - a. Incapacity due to pregnancy, prenatal medical care or birth of the employee’s child;
 - b. Caring for the employee’s child after birth, or placement of a child for adoption or foster care;
 - c. Caring for the employee’s spouse, child, or parent with a serious health condition;
 - d. Serious health condition of the employee that makes the employee unable to perform the employee’s job.
2. Military Family Leave
 - a. Eligible employees with a spouse, child, or parent on covered active duty or call to active duty status may use their twelve (12) week leave entitlement to address qualifying exigencies.
 - b. Employees may also be eligible to take up to twenty-six (26) weeks of leave to care for a covered service member or covered veteran during a single twelve (12) month period. The employee must be the covered service member’s spouse, child, parent or next of kin. The “single twelve (12) month period” begins on the first day the employee takes leave to care for the covered service member and ends twelve (12) months after that date. An employee who is entitled to take leave due to a different FMLA-qualifying reason may take leave during the same single twelve (12) month period in which leave

is taken to care for a covered service member, but the total leave taken for any purpose during the single twelve (12) month period may not exceed twenty-six (26) work weeks overall. The twenty-six (26) weeks of leave is to be applied on a per-covered service member, per-injury basis such that an eligible employee may be entitled to take more than one (1) period of twenty-six (26) work weeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that no more than twenty-six (26) work weeks of leave may be taken within any "single twelve (12) month period."

3. Under FMLA, DRC is responsible for determining whether or not leave requests and leave taken qualify as FMLA leave. Employees are permitted twelve (12) weeks of leave during the twelve (12) month tracking period. (Throughout this policy, the twelve (12) weeks refers to full-time employees only. The twelve (12) weeks is prorated for part-time employees).
4. Should an employee exhaust the twelve (12) weeks, the employee is no longer covered by the FMLA and may be subject to discipline if the employee fails to follow the Standards of Employee Conduct with respect to leave/absences. Once employees have exhausted their twelve (12) weeks of FMLA leave, they may be placed on Physician's Verification Notice (PVN), if appropriate. However, employees who have not exhausted their twelve (12) weeks of FMLA leave may be placed on PVN for absences not related to their active FMLA certification. At the end of the twelve (12) month tracking period, all certifications become inactive. If the employee requests FMLA leave after the initial twelve (12) month period, a new "original" certification is required.

B. Eligible Employees

Employees are eligible for FMLA leave if they:

1. Have been employed by the State for at least twelve (12) months, and
2. Have actually worked (e.g. in "active work status") at least 1,250 hours during the past twelve (12) months immediately preceding the date of leave.
3. Previous employment with the State in which the employee was paid directly by warrant of the Director of Budget and Management shall count toward meeting the twelve (12) month employment requirement. However, if an employee has had a seven (7) year break in service, any service older than seven (7) years old should not be counted unless: 1) the break in service was due to the National Guard or Reserve military service, or 2) a written agreement exists regarding the agency's intention to rehire the employee after the break in service.
4. "Active work status" includes overtime hours worked and is defined as the conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include time spent on workers compensation, disability, occupational injury leave, vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, intersession leave, and cost savings days.

5. For purposes of determining FMLA eligibility, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that a person reemployed under its provisions be given credit for any time he or she would have been employed *but for* the military service. Each month served performing military service counts as a month actively employed by the employer. The employee's pre-service work schedule can generally be used to determine the number of hours that would have been worked during the period of military service.
6. Employees are eligible regardless of gender.
7. If two spouses are both employed by DRC and are eligible for FMLA leave, they are limited to a combined total of twelve (12) weeks of leave during the twelve (12) month period following the:
 - a. Birth of a child or to care for the child after birth;
 - b. Placement of a child for adoption or foster care or to care for the child after placement.
8. Where both spouses use a portion of the total twelve (12) week FMLA leave entitlement for one of the above purposes, each spouse would be entitled to the difference between the amounts he or she has taken individually and twelve (12) weeks for FMLA leave for a purpose other than those mentioned above. For example, if each spouse took six (6) weeks of leave to care for a healthy, newborn child, each could use an additional six (6) weeks due to his or her own serious health condition or to care for a child with a serious health condition.
9. Agencies must notify employees in writing of their eligibility or non-eligibility status within five (5) business days after the first time an employee requests leave for a particular qualifying reason in a rolling twelve (12) month period. This notice only indicates whether the employee is eligible for FMLA leave and should not make a determination as to whether the employee has a FMLA-qualifying absence. Notification of eligibility is provided via the Notice of Eligibility and Rights and Responsibilities form (DRC1025).

C. Request for FMLA Leave

1. Requests for foreseeable FMLA leave must be submitted on the Request for Leave form (ADM4258) at least thirty (30) calendar days prior to taking leave. If the absence is foreseeable and the employee fails to give at least thirty (30) calendar days notice, the employee may not qualify for FMLA leave. Failure to provide at least thirty (30) calendar days notice when leave is foreseeable may result in FMLA leave being denied for up to thirty (30) calendar days.
2. Where a need for leave is unforeseen the employee must give as much notice as "practicable." This notice may be verbal, fax, telephone, or in writing, and in specific circumstances may be given by a "spokesperson" on behalf of the employee. When an employee has an approved certification on file and is requesting to use leave for an FMLA qualifying event, the employee or his/her spokesperson must indicate that the leave requested is for an FMLA qualifying event at the time of the call off. For all FMLA qualifying events a supervisor must complete the call off form completely. Requests for leave that do not meet the call off notice requirements for the employee's position may

result in discipline. The Managing Officer shall consider mitigating circumstances regarding why the employee could not meet the call off requirement.

3. Requests for leave must be submitted by the employee on a Request for Leave form (ADM4258). Employees who know the requested leave is for an FMLA qualifying event should specify that the leave is requested pursuant to the FMLA by checking the appropriate box. It is expected that an employee will give notice to the employer within no more than one (1) or two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.
4. If an employee or employee's spokesperson fails to provide the employer during the initial call off with sufficient information to determine whether the request for leave is due to an FMLA qualifying reason and the employer has no indication that the leave may qualify as FMLA, the employee must notify the supervisor within two (2) business days of returning to work from the absence. Failure to do so shall result in the leave being denied as FMLA qualifying.
5. Requests for FMLA leave must be accompanied or supported by a completed applicable Certification form (DRC1024/DRC1032/DRC1031/DRC1028) or equivalent documentation in the case of an adoption/foster care. These forms are available from the personnel office and are found attached to this policy on DRC's intranet. This certification must be received within fifteen (15) calendar days after the employer requests it. Absent extenuating circumstances, failure to return the completed certification form within fifteen (15) calendar days shall result in denial of FMLA leave. If the certification form is returned within the fifteen (15) calendar days but the certification is incomplete, the employer shall provide the employee an additional fifteen (15) calendar days to cure any such deficiency. In the event the form remains incomplete, the FMLA leave shall be denied.
6. When an employee requests leave via a call off, the employee must explain the leave condition. An employee may not call off "sick" without explaining his/her illness/condition. Failure to provide timely and accurate information could result in disciplinary action, including removal. Based on the information gathered by the employer, the employer may determine the leave requested is for an FMLA qualifying event and require the employee to return the applicable Certification (DRC1024/DRC1032/DRC1031/DRC1028) within fifteen (15) calendar days.
7. Leave for the birth or placement of a child must be taken and completed within one (1) year of the birth or placement.
8. After receiving a complete and sufficient certification, the agency must notify the employee whether the leave will be designated and will be counted as FMLA leave using a Designation Notice (DRC1026). This notice shall occur within five (5) business days after receiving the completed and sufficient certification, absent extenuating circumstances. If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time. Only one (1) notice of designation is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken will be a continuous block of leave or intermittent leave. The notice may be mailed to the employee's address of record or sent electronically.

via e-mail. While DRC shall attempt to notify all employees of FMLA leave designation within these time frames, failure to do so shall not result in additional FMLA leave beyond the allowable twelve (12) weeks. All leave for a condition later determined to be FMLA shall count toward the employee's twelve (12) week balance.

9. If the agency determines the leave will not be designated as FMLA-qualifying, the agency must notify the employee of that determination.
10. The agency must notify the employee of the amount of leave counted against the employee's FMLA entitlement. If the amount of leave needed is not known, then the agency must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a thirty (30) calendar day period and only if leave was taken in that period.

D. Use of Paid Leave and Unpaid Leave

1. Bargaining unit employees must exhaust all available leave balances, excluding compensatory time, in whatever order they choose, before taking unpaid leave under the FMLA. If no designation is made by the employee, the leave shall be automatically deducted in the following order: (1) sick, (2) personal, and (3) vacation. Bargaining unit employees may choose to use compensatory time prior to taking unpaid leave.

Exempt employees must exhaust all available leave balances, including compensatory time, in whatever order they choose, before taking unpaid leave under the FMLA. If no designation is made by the employee, the leave shall be automatically deducted in the following order: (1) sick, (2) compensatory, (3) personal and (4) vacation.

For payroll purposes, if any personal, compensatory and/or vacation time is used, it shall be coded as "in lieu of sick". Any paid leave will run concurrently with FMLA leave.

2. When FMLA leave is used concurrently with disability leave, Workers' Compensation, Occupational Injury Leave, or adoption/childbirth leave, the employee may elect to serve the waiting period unpaid and not supplement the leave. Any leave of absence under one of the above-mentioned programs shall be counted concurrently as FMLA leave.
3. All FMLA-qualifying disability leave, Occupational Injury Leave, leave due to Worker's Compensation, and adoption/childbirth leave shall be counted as FMLA. Any leave of absence for a medical reason or family care, including disability separations, shall be captured as FMLA leave regardless of whether the employee supplements leave with accrued paid leave balances.
4. Whether leave is paid, unpaid, or a combination, and regardless of the number of certifications the employee has on file, the employee is entitled to only twelve (12) weeks per "rolling" year under FMLA. Employees are responsible for designating appropriate leave and knowing when their twelve (12) weeks of FMLA leave has expired. FMLA hours are posted on pay stubs. The employer is not responsible for notifying the employee when the twelve (12) weeks runs out.

5. If an employee is authorized unpaid leave of one (1) pay period or more, an epar must be generated to document the leave on the DAS history screen (EHOC).
6. Leave time does not accrue during any periods of unpaid FMLA leave.
7. Employees will not lose any service credit while on FMLA leave, as FMLA leave shall be treated as continuous service for the purpose of calculating any benefits which are based on length of service.
8. Holidays that occur during a full week of FMLA leave shall count against the employee's FMLA entitlement. However, if an employee is using FMLA leave in increments of less than one (1) week, the holiday shall not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and is expected to work during the holiday.
9. When FMLA leave is used concurrently with Disability Leave, Workers' Compensation, or Adoption/Childbirth Leave, the leave policies for those programs shall override the requirement of this policy for employees to exhaust all of their accrued leave.
10. Employees requesting Workers' Compensation, Occupational Injury Leave, or Disability Leave who are also eligible for FMLA leave shall have up to twelve (12) weeks of the non-working portion of the approved benefit period, including any required waiting period, count concurrently as FMLA leave. Agencies may also grant FMLA leave to employees while their request is being reviewed. The granting of FMLA leave shall have no bearing on the approval or disapproval of employees' requests.
11. Employees requesting Adoption/Childbirth leave benefits who are also eligible for FMLA leave shall have the entire non-working portion of Adoption/Childbirth leave, including the required waiting period, count concurrently as FMLA leave. An employee who is not eligible for FMLA leave (*e.g., the employee has not been in active work status for 1,250 hours during the previous twelve (12) months or has already used his or her twelve (12) work weeks of FMLA leave*) shall retain his or her right to Adoption/Childbirth leave upon meeting the Adoption/Childbirth leave eligibility requirements.
12. Any employee on a leave of absence under FMLA shall not be employed (outside of DRC) while on such leave without the prior written approval of the Appointing Authority. The ability to perform another job may be used as evidence for re-certification or for fraud investigations.

E. Intermittent Leave

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from 1/10 of an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of months, such as for chemotherapy. Employees requesting intermittent leave must follow the same requirements enumerated in Section C, Requests for Leave.

1. Employees are entitled to take intermittent leave when medically necessary to care for the employee's serious health condition or a serious health condition of a parent, son or

daughter, or spouse. Leave due to qualifying exigencies may also be taken on an intermittent basis.

2. To be entitled to intermittent leave or a reduced work schedule, the employee must submit medical certification to establish medical necessity of the leave (e.g. periodic testing and treatments). The physician must specify the treatment needs and expected duration. The Appointing Authority or designee, shall determine whether an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.
3. Employees requiring intermittent or reduced scheduled leave for foreseeable medical treatment must work with their employer to schedule the leave so as not to unduly disrupt the employer's operations. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. The employer may transfer an employee temporarily to an alternative job, shift or good days with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job. For any positions covered by a collective bargaining agreement, moves must be facilitated in consultation with the union.
4. An Appointing Authority or designee may grant intermittent leave for the birth or placement of a child. Employees shall request such leave from their supervisors.
5. Only the amount of leave actually taken on an intermittent/reduced schedule may be charged as FMLA leave.
6. When an employee has an approved FMLA certification for a condition that may periodically render the employee unable to work mandatory overtime, any refused mandatory overtime shall be documented on the Refusal of Mandatory Overtime form (DRC1855E). If the employee's FMLA hours expire, the employee shall be disciplined for refusing mandatory overtime regardless of reason. If an employee is incapable of performing any mandatory overtime, per his/her own serious health condition, involuntary disability separation may be appropriate.
7. Leave must be taken in increments of no less than 1/10 hour, unless it is physically impossible for an employee using intermittent leave to commence or end work mid-way through a shift. In those cases, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement.

F. Health Insurance

1. The agency will continue to pay the employer premiums during any approved FMLA leave.
2. Employees are required to continue paying their portion of health insurance premiums. If the FMLA leave taken is unpaid, employees must submit their portion of the health insurance premium by the first of the month to the site payroll office. Certified checks or money orders should be made out to Treasurer, State of Ohio.
3. Employees shall be given a thirty (30) calendar day grace period from the due date of their health insurance premium. Employees who fail to pay their portion of the health insurance

premium within this grace period may, with a fifteen (15) calendar day written notice from site personnel, be removed from their respective health insurance plan.

4. If an employee chooses not to continue health care coverage during FMLA leave, the employee will be entitled to reinstatement into the benefit plan upon return to work and completion of the Health Benefit Enrollment form. The form must be submitted within thirty-one (31) calendar days of the employee's return to work to the site personnel office.
5. If an employee fails to return to work from FMLA leave, the agency may seek reimbursement of any amounts paid on behalf of the employee. The agency may not seek reimbursement if the reason for the employee failing to return to work is due to the continuation or reoccurrence of the serious health condition or is otherwise beyond the employee's control as defined in the FMLA.
6. If an employee does not return at the end of the leave period, the employee's notification of his/her intent not to return will be the COBRA-qualifying event.

G. Medical Certification and Re-Certification

Requests for FMLA leave shall be accompanied or supported by a complete and sufficient certification on one of the following forms, depending on the nature and condition of the leave requests:

- *Certification of Health Care Provider for Employee's Serious Health Condition (DRC1024)*
- *Certification of Health Care Provider for Family Member's Serious Health Condition (DRC1032)*
- *Certification of Qualifying Exigency for Military Family Leave (DRC1031)*
- *Certification for Serious Injury or Illness of Covered Service member for Military Family Leave (DRC1028)*
- Equivalent documentation in the case of an adoption/foster care.

DRC may contact the employee's health care provider for the purpose of clarification and authentication of the medical certification after the agency has given the employee an opportunity to cure any deficiencies. To make such contact, DRC must use a health care provider, human resources professional, a leave administrator or a management official and must have the employee's prior consent. The employee's direct supervisor may not contact the employee's health care provider.

1. Original Certification

An original medical certification is the initial certification for a specific serious health condition of the employee, spouse, child or parent within a twelve (12) month tracking period. An original certification is time-defined by the health care provider but cannot exceed twelve (12) months. Medical certification shall either contain an end date for treatment or are designated to be ongoing chronic conditions. At most, a medical certification is valid for up to one FMLA tracking year. An original certification must be completed by a qualified health care provider on the applicable Certification form (DRC1024/1032). If DRC questions whether the employee, spouse, child or parent is

really suffering from a serious health condition or whether the employee's, spouse's, child's or parent's condition is qualifying condition under the FMLA, DRC may require a second opinion through an independent medical examination.

- a. The second opinion shall be from a health care provider designated and paid for by the agency. A second opinion can only be required for original medical certifications. If the employee fails to attend the independent medical exam without a valid, verifiable emergency situation prohibiting attendance, the FMLA leave shall be denied and the employee may be disciplined up to and including removal. Additionally, the employee shall pay any no show fees for missed appointments.
- b. If the first and second opinions conflict, the agency may either accept the certification or require a third examination at the agency's expense by a health care provider chosen jointly by the employee and the agency. In choosing the third health care provider, both the employee and the agency must be reasonable and act in good faith. If the employee fails to attend the independent medical exam without a valid, verifiable emergency situation prohibiting attendance, the FMLA leave shall be denied and the employee may be disciplined up to and including removal. Additionally, the employee shall pay any no show fees for missed appointments.
- c. The opinion of the third health care provider is final and binding. A second or third opinion can only be required on an original certification.

2. Re-certification

- a. A re-certification is a request for an update of the employee's FMLA condition. A re-certification is not an original certification even though the applicable Certification (DRC1024/DRC1032) is used. DRC may require a re-certification at any time if:
 - i. The employee requests an extension of leave; or
 - ii. Circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
 - iii. Leave taken by the employee is inconsistent with the circumstances described in the employee's certification.
- b. Absent such circumstances, if the medical certification indicates that the minimum duration of the condition is more than thirty (30) calendar days, DRC must wait until that minimum duration expires before requesting a recertification.
- c. In all cases, DRC may require an employee to provide re-certification of an employee or family member's serious health condition every six (6) months, but only in connection with an absence that has occurred for that medical condition.
- d. A letter from the personnel office indicating the reasons for the request for re-certification, describing the circumstances that have changed, or indicating discrepancies in the doctor's original certification and the amount of leave used may accompany the Applicable Certification (DRC1024/1032) when requesting re-certification.

- e. Second and third opinions are not permitted on re-certifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member or for leave taken because of a qualifying exigency or for leave taken to care for a covered service member.
- f. A re-certification is not an appropriate medical certification when the twelve (12) month tracking year expires. When the twelve (12) month tracking year expires, the employee must obtain an original certification if FMLA is again requested. Management may challenge an original FMLA certification regardless if the condition was approved previously.

H. Reinstatement

1. All employees are entitled to reinstatement to the same or similar position upon return from FMLA leave. Employees are not entitled to the exact shift or good days if disability separated while on any medical leave, including FMLA.
2. If the same job is not available, the Appointing Authority shall determine which similar position has equivalent pay, benefits, and conditions of employment.
3. Employees who take more than three (3) days of leave based upon their own serious health condition shall be required to provide certification from a health care provider that the employee is able to resume work and able to perform all duties of the position. DRC may send an employee to an independent medical examination any time it questions the employee's ability to perform the essential functions of the employee's position, regardless of FMLA status.

I. Records

1. The personnel office shall maintain records of leave balances and FMLA leave used.
2. All medical records accompanying FMLA requests shall be kept separate from personnel files.
3. Medical records related to FMLA leave shall be kept confidential to the extent permitted by law. However, the statement of a medical condition on an FMLA form or general leave form is not generated or maintained in the process of medical treatment and is a non-medical review meaning that information contained on FMLA documentation is subject to the public records statute. DRC will not share information contained in FMLA documentation broadly, but complete confidentiality cannot be assured. The FMLA law provides that chain of command supervisors may be notified of the reason for absences, the expected return date and any other information necessary with respect to operational need. Employees are expected to answer supervisor's questions regarding those issues.
4. Immediate or successive supervisors may obtain general information regarding condition, duration, scheduled treatment and related information necessary to schedule shift coverage and respond appropriately to call offs. Both the personnel office and the supervisors are responsible for approving, monitoring, and documenting FMLA coverage.

J. FMLA and Disability Separations

Employees who cannot perform their job duties may be disability separated pursuant to the Ohio Administrative Code 123:1-30. An employee who has been disability separated has rights to reinstatement as directed by the Ohio Revised Code and Ohio Administrative Code.

Related Department Forms:

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| Request for Leave | ADM4258 |
| Certification of Health Care Provider for Employee's Serious Health Condition | DRC1024 |
| Notice of Eligibility and Rights and Responsibilities | DRC1025 |
| Designation Notice | DRC1026 |
| Certification for Serious Injury/Illness of Covered Service member for Military Family Leave | DRC1028 |
| Certification of Qualifying Exigency for Military Family Leave | DRC1031 |
| Certification of Health Care Provider for Family Member's Serious Health Condition | DRC1032 |
| Refusal of Mandatory Overtime | DRC1855 |