

**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
POLICY STATEMENT  
ON  
FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Policy 2.1.1  
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## **PURPOSE**

This policy outlines the manner in which discretionary options within the Family and Medical Leave Act (FMLA) will be applied within the Department of Administration.

## **AUTHORITY AND REFERENCES**

The Family and Medical Leave Act of 1993 amended by the National Defense Authorization Act for Fiscal Year 2008 and the National Defense Authorization Act for Fiscal Year 2010; United States Department of Labor Final Rule (29 CFR Part 825) revised effective March 27, 2015; U.S. Department of Labor Interpretation Letter FMLA2019-1-A, Nevada Administrative Code (NAC) 284.581, 284.5811 and 284.5813.

For current information regarding definitions, terminology, eligibility, entitlements and other non-discretionary provisions and requirements, including maternity/paternity coverages, see the [Family and Medical Leave Act Overview](#) found on the Department of Administration, Division of Human Resource Management (DHRM) website in the resources section. Referenced forms throughout this policy may also be found on this website.

## **SCOPE**

This policy applies to all employees working under the authority of or within the Department of Administration.

## **POLICY**

All leave which is FMLA qualifying will be designated as such for FMLA eligible employees.

FMLA is required for any eligible employee as Agency Human Resource Services (AHRS) or the employee's management becomes aware of a qualifying event. Agency management should contact AHRS if uncertain whether an employee's leave event qualifies for FMLA coverage or if a potentially FMLA eligible employee's leave balance is at 10 days or less.

#### A. Medical and Other Certifications

Employees will be required to provide a medical certification if the leave request is:

1. For the employee's own serious health condition;
2. To care for a qualifying family member's serious health condition; or
3. For military caregiver leave.

For the purposes of FMLA, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider under the specific definitions provided in the above-stated authorities.

Employees will be required to provide certification if the leave request is for a qualifying exigency.

If the requested certification is not received by the date in Part B of the form *Notice of Eligibility and Rights and Responsibilities* (NPD-62), it may result in denial of the leave until it is provided. If an employee refuses to provide a certification, his/her leave request may be denied, and the employee may be subject to absences without approved leave (AWOL).

In most cases, one of the approved certification forms for FMLA will be used to substantiate a FMLA qualifying leave event. However, some situations not requiring a certification will still require other appropriate documentation to substantiate the need for leave. In such cases, contact AHRS for assistance. Authentication, clarification and/or second or third opinions may be sought or requested; all of these processes will be administered by AHRS.

#### B. Annual Certifications

If an employee's need for FMLA leave in regard to the serious health condition of the employee or qualifying family member extends beyond a single leave year (12 rolling months), a new medical certification will be required.

#### C. Recertifications

An employer may request a recertification of a medical condition every 6 months in connection with an absence by the employee. Recertification can be requested more frequently than 6 months under some circumstances.

#### D. Release to Return to Duty

Any employee returning from FMLA leave for his/her own serious health condition will need to provide a medical release to return to duty signed by an appropriate health care provider on the form *FMLA Medical Release* (NPD-81), unless for an approved intermittent condition. However, in limited circumstances a medical release to return to duty may be required for intermittent leave.

#### E. Leave

The type of leave used when taking approved FMLA is addressed in NAC 284.5811. An employee taking leave must exhaust all the accrued sick leave, annual leave, compensatory time and catastrophic leave that the employee is otherwise eligible to use before he/she may use leave without pay.

## RESPONSIBILITY

### A. Employees are responsible for:

1. Informing their supervisor or AHRS of the need to take leave for a potentially qualifying event. The request must be submitted in writing on the form FMLA Leave of Absence (NPD-60).
  - a. An employee must provide notice as soon as possible and practical, taking into account all of the facts and circumstances in the individual case. Ordinarily, an employee must provide 30 days' advance notice when the need for leave is foreseeable.
  - b. Failure to comply may result in leave being delayed or denied.
2. Forwarding the completed certification form (if applicable) to AHRS.
3. Making arrangements for payment of his/her portion of health insurance and optional coverage when he/she is on leave without pay (as noted on form NPD-62) to the Public Employee Benefits Program (PEBP).
4. Providing periodic updates to the employee's supervisor (no more frequently than every 2 weeks) while on approved FMLA leave.
5. Notifying his/her supervisor at least 2 days in advance of returning to work (absent unusual circumstances), if the circumstance of the leave changes or the employee is able to return to work before the end of the approved period of leave as stated on the form *FMLA Designation* (NPD-63).
6. Providing a medical release to return to duty to the employee's supervisor, if requested on the NPD-63. Upon returning to work, if leave was taken for the employee's own serious health condition, an employee will need to provide a written release to return to duty from his/her doctor that indicates the employee is able to perform the essential functions of the employee's position with or without accommodation.

Failure to submit required documentation or additional requested information in the timelines established and communicated to the employee may result in the denial of leave. It also may result in an unauthorized absence and being deemed absent without leave (AWOL), which may result in disciplinary action.

Coding of the timesheet must be done using the FMLA approved leave codes located in NEATS and listed on the NPD-62. They can also be obtained by contacting AHRS or your designated payroll clerk.

If the employee fails to return to work for a period of 30 days following utilization of their FMLA entitlement, they will be responsible for the State's portion of PEBP benefits. There may be qualifying exceptions to this requirement, contact AHRS for more information.

### B. Supervisors are responsible for:

1. Notifying the employee that FMLA may be an option for them, when a supervisor receives notice that requested leave is potentially qualifying (typically through an employee requesting leave verbally, calling in to report an absence or through notice of a Workers Compensation claim/incident) and the employee has or has not requested FMLA leave. The supervisor will immediately notify AHRS. The supervisor should direct all future FMLA related discussions and information to AHRS to ensure appropriate

timeliness, that documentation is completed and to maintain confidentiality.

2. Ensuring the timesheet is coded correctly, once AHRS has informed the supervisor if the leave will be designated as FMLA leave pending/following approval.
3. Providing AHRS with an up-to-date list of essential functions for the employee's position.
4. Providing AHRS a copy of any release to duty received from the employee.
5. Monitoring leave use to verify it conforms to the estimate(s) provided by AHRS. If the leave use appears to vary from the provided estimate of frequency of flare-ups and duration of related incapacity the supervisor will document the discrepancy(s) and forward to AHRS.
6. Monitoring FMLA leave use and availability following a rolling calendar year, where necessary. For tools to help track FMLA especially in cases of intermittent leave crossing over the rolling year, contact AHRS.
7. Requesting employee to contact them regarding their status and their intent to return to work, while on leave, no more frequently than once every 2 weeks.

C. AHRS is responsible for:

1. Providing the employee with the following forms as applicable:
  - a. *FMLA Leave of Absence* form (NPD-60)
  - b. *FMLA Notice of Eligibility and Rights and Responsibilities* form (NPD-62) and specific consequences of not completing the requested medical certification
  - c. Appropriate certification form (NPD-83, WH-380-F, WH-384, WH-385, or WH-385-V)
  - d. *FMLA Designation* form (NPD-63)
  - e. *FMLA Medical Release* form (NPD-81)
2. Confirming whether the employee meets the eligibility requirements for FMLA leave, upon notification of a need for leave.
3. Providing the employee with the NPD-62 (and certification form and essential functions, if appropriate) within 5 business days of employee's request for leave, regardless of whether the employee qualifies for FMLA leave.
4. Informing the employee's supervisor and the Department of Administration, Administrative Services Division if, subject to confirmation, the leave will be designated as FMLA leave until it can be determined whether the need for leave is FMLA qualifying.
5. Submitting to the Personnel Analyst for approval or denial.
  - a. Where certification/substantiating documentation is required (see section A), the employee will be allowed at least 15 calendar days to return the completed certification.
    - i. If the employee submits an incomplete certification, AHRS will allow the employee at least 7 calendar days to provide a corrected certification. After a completed certification is submitted, AHRS will submit the NPD-60, a copy of the NPD-62, completed certification form and NPD-63 to the Personnel Analyst. The Personnel Analyst will determine whether the reason for FMLA is qualifying and either approve or deny the leave request.
    - ii. If an employee does not submit a certification on time due to it not being practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, the Personnel Analyst may designate the leave as

FMLA if enough information is available to determine that the leave event is FMLA qualifying.

- iii. If an employee does not submit a certification on time and does not establish that it was due to not being practicable under the particular circumstances to do so despite the employee's diligence, good faith efforts, the Personnel Analyst may deny the leave.
  - iv. If the employee submits a complete certification, AHRS will submit the NPD-60 a copy of the NPD-62, completed certification form and NPD-63 to the Personnel Analyst. The Personnel Analyst will determine whether the reason for FMLA is qualifying and either approve or deny the leave request.
6. Sending the employee the NPD-63 (and NPD-81 and essential functions, if appropriate) within 5 business days of:
    - a. Employee's request for leave (NPD-60), if no certification is required
    - b. Receipt of completed certification, if required
    - c. Receipt of information (such as a physician's release to work) which may change information on NPD-63
    - d. Receipt of other verifying information (i.e., proof of adoption or another qualifying event that would not require medical certification)
    - e. Denial due to insufficient documentation provided.
  7. Providing the supervisor and the Department of Administration, Administrative Services Division with the following information as stated on the certification, as applicable:
    - a. Estimated beginning and ending dates of leave
    - b. Treatment schedule and/or scheduled appointments; time required for treatment/appointment and recovery
    - c. Part-time or reduced work schedule
    - d. Estimate of frequency of flare-ups and duration of related incapacity
  8. Maintaining the NPD-60, certification form (if applicable), NPD-81, and copies of the NPD-62 and NPD-63 in the employee's confidential medical file.
  9. Whenever an employee begins or returns from unpaid FMLA leave, or if on a paid FMLA leave and the employee wants to delete dependents or decline coverage:
    - a. A benefits change request will need to be completed with AHRS and submitted to the Public Employees' Benefits Program (PEBP).
    - b. If leave without pay occurs, complete and submit to the Public Employees' Retirement System (PERS) a Termination from PERS form reflecting the employee's last date of compensation, and upon the employee's return to work a completed PERS Member Enrollment form.
    - c. If the specific information on the NPD-62 changes (e.g. the employee switches from paid to unpaid leave), reissue an amended NPD-62 to the employee within 5 business days from the change or from the employee's first notice of need of FMLA qualifying leave following the change.
    - d. Notify the employee's supervisor of any changes in the nature or duration of the employee's FMLA leave.
    - e. If the supervisor has documented discrepancies with the health care provider's estimates of leave, request clarification from the health care provider.
    - f. Verify receipt of a medical release to return to duty (NPD-81), if applicable.
    - g. If the FMLA qualifying event exceeds a single leave year (12 rolling months) (e.g. lifetime condition), request a new medical certification to be required every 12 months.
    - h. Provide the supervisor or agency liaison with a worksheet for calculating available

FMLA leave balance if advised or made aware that the employee will approach exhaustion of their entitlement.

## TRAINING

Where training needs relating to administration of the FMLA is concerned as outlined in this policy or other aspects of leave under FMLA are concerned, please direct your inquiries to AHRIS to arrange necessary training.

## POLICY COMMUNICATION

This policy will be communicated to all employees and an employee should seek clarification from AHRIS if needed.

## POLICY EXCEPTION

On occasion there are special circumstances that may require an exception to this policy be granted. Exceptions, while not common, require the approval of an AHRIS Personnel Officer.

***This policy is not a substitute for relevant law or regulation, nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with the Family and Medical Leave Act (FMLA), federal regulations, State law, the Rules for State Personnel Administration (NRS 284 & NAC 284) and the Family and Medical Leave Act (FMLA) Overview published by the Department of Administration.***



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