
MANAGEMENT DIRECTIVE

530.2
Amended
Number

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE

Subject:

Sick Leave Without Pay, Parental Leave Without Pay, and Family Care Leave Without Pay

By Direction Of:

Naomi Wyatt

Naomi Wyatt, Secretary of Administration

Date:

March 12, 2008

This amendment changes the scope to exclude employees covered by Management Directive 530.30, *Sick, Parental and Family Care Absence Policy*, and removes references to processes in IPPS.

1. **PURPOSE.** To establish policy and clarify the application of sick leave without pay, parental leave without pay, and family care leave without pay.

- 2. **SCOPE.** Applies to represented employees in agencies under the Governor's jurisdiction whose unions have not adopted the absence provisions outlined in Management Directive 530.30, *Sick, Parental and Family Care Absence Policy*.

3. **POLICY.**

- a. The provisions of this directive shall be consistent with *The Family and Medical Leave Act of 1993 (FMLA)* (29 U.S.C. §2601, *et seq.*) except when more generous benefits are granted by collective bargaining agreements and the Personnel Rules.

b. Specific policies regarding these leaves are contained in applicable collective bargaining agreements and memoranda of understanding; *Management Directive 505.7, Personnel Rules*; and *Manual M530.7, Leave and Holiday Programs*. Policies and procedures for benefits entitlement while on these leaves are contained in applicable collective bargaining agreements and memoranda of understanding; *Management Directives 505.7 and 530.4, State Paid Benefits While on Sick, Parental, or Family Care Leave Without Pay*; and *M530.3, Group Life Insurance Program Administrative Manual*.

c. **Sick Leave Without Pay.** Upon written request and proof of disability or illness, permanent employees shall be granted sick leave without pay for periods of at least two consecutive weeks, or for less than two consecutive weeks if the illness or disability is due to a serious health condition as defined in the FMLA. Medical certification shall include a prognosis and expected date of return. Requests for use of sick leave without pay shall be made in advance if circumstances permit. (**Note:** Some unions require employees to have at least six months of service to be eligible to use this leave.)

(1) The initial sick leave without pay entitlement shall not exceed six months (982.5 hours for employees who normally work a 37.5 hour week or 1,048 hours for employees who normally work a 40 hour week). The hours of entitlement shall be prorated for part-time employees.

(2) Employees are entitled, but not required, to use accrued sick leave before, during, after, or instead of sick leave without pay, provided the leave would qualify as sick leave without pay.

(3) Upon written request, an extension of up to an additional six months of leave shall be granted if the employee can provide proof of continuing disability or illness.

(4) Employees shall not again be eligible for the full sick leave without pay entitlement until six months in an active pay status have elapsed from the last day of sick leave without pay under the initial entitlement, as described in paragraph 3.c.(1).

d. Parental Leave Without Pay. Upon written request, parental leave without pay shall be granted to permanent employees who become parents through childbirth, adoption, or foster care placement. Requests for use of parental leave without pay shall be made at least two weeks in advance if circumstances permit and must state the anticipated duration of leave.

(1) The parental leave entitlement shall not exceed six months (982.5 hours for employees who normally work a 37.5 hour week or 1,048 hours for employees who normally work a 40 hour week). The hours of entitlement shall be prorated for part-time employees.

(2) The leave begins upon the employee's request; however, it may not be used prior to the date of birth, custody, or placement, except when required for adoption or foster care placement to proceed. Sick leave without pay is available prior to birth, if necessary.

(3) Employees are entitled, but not required, to use accrued sick leave for the period that they are unable to work due to childbirth or other reasons as certified by a physician. Leave may not be anticipated. Employees are required to forward the physician certification to the Human Resource Office as soon as possible; it must state the period of disability. Sick leave is not intended to provide employees with time for child rearing.

(4) Parental leave may be extended at the discretion of the agency head for an additional period not to exceed six months. However, no unpaid parental leave shall be granted beyond one year from the date of birth of a natural child, of assuming custody of an adoptive child, or of placement of a foster child.

e. Family Care Leave Without Pay. Upon written request and proof of family member's disability or illness, permanent employees with at least one year of service (total employment, even if the employment was not continuous) shall be granted family care leave without pay. The leave may be taken one day at a time if medically necessary or for less than one day if the illness or disability is due to a serious health condition as defined in The Family and Medical Leave Act of 1993.

(1) The family care leave without pay entitlement shall not exceed 12 weeks (450 hours for employees who normally work a 37.5 hour week and 480 hours for employees who normally work a 40 hour week) every leave calendar year. The hours of entitlement shall be prorated for part-time employees.

(2) The family care leave without pay entitlement cannot be extended.

(3) The documentation necessary for approving family care leave shall include written notification stating the family member's name and relationship to the employee and medical documentation stating at least that the individual needs care from the employee or needs to have care arranged by the employee. The medical documentation must also include the date that the illness or disability began and its anticipated duration.

(4) Family members, for the purpose of family care leave, are defined as spouse, parent, child, or other person qualifying as a dependent under IRS eligibility criteria. A parent can be a biological parent or an

individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18 or 18 years or older and incapable of self-care because of mental or physical disability. Note: The definition of family member for employees represented by some union agreements also includes the employee's domestic partner and the biological or adopted child of the domestic partner.

f. General.

(1) All sick, parental, and family care leave without pay used shall be designated as leave under the provisions of the FMLA.

(2) Benefits entitlements can be different than the leave entitlement and can expire and renew at different times.

(3) Employees are entitled, but not required, to use accrued annual, personal, and when applicable, sick leave before, during, after, or instead of any of these leaves without pay provided the leave would qualify as sick, parental, or family care leave without pay. The use of paid leave shall not be included when calculating the leave entitlement. Employees may not anticipate paid leaves in conjunction with parental leave without pay.

(4) Regardless of other provisions in this directive, compliance with the FMLA must be ensured. Therefore, employees who have been employed at least 12 months (total employment, even if the employment was not continuous) and have worked at least 1,250 hours (includes regular and overtime hours, but excludes holidays and other paid time off) during the previous 12 month period are entitled up to 12 weeks of leave (with or without pay) with benefits in a rolling 12 month period.

Note: The only time that this provision will be applicable is when employees meet the above conditions and the leave without pay with benefits entitlement has expired. Employees who meet these conditions shall be granted up to 12 weeks (minus any FMLA qualifying leave used within the last 12 months) of leave without pay with benefits.

(5) Beginning at any time, but subject to the following conditions, employees may work on an intermittent or reduced-time basis, provided that the leave entitlement has not expired or been depleted.

(a) For sick leave without pay and family care leave without pay, agency heads must approve intermittent or reduced-time leave when requested, medically necessary and due to a serious health condition as defined in the FMLA. Employees should attempt to schedule intermittent or reduced-time leave at times when it is least disruptive to normal operations. For sick leave without pay, intermittent or reduced-time leave shall not be granted after the initial (first six months) leave entitlement expires; however, employees may be changed to a part-time status at agency discretion.

(b) For parental leave without pay, the use of intermittent or reduced-time leave shall be at the discretion of the agency head. If approved, the parental leave entitlement shall expire one year from the date of birth, adoption, or foster care placement, regardless of whether or not the full leave entitlement has been used. Intermittent or reduced-time leave shall not be granted after the initial (first six months) leave entitlement expires; however, employees may be changed to a part-time status at agency discretion.

(c) Employees who work on an intermittent or reduced-time basis before their benefits entitlement expires will continue to earn personal leave as they did before beginning leave, in accordance with the personal leave policies.

(d) Employees who work on an intermittent or reduced-time basis after their benefits entitlement expires (and, therefore, must be coded as part-time employees) will earn prorated personal leave as part-time employees, in accordance with the personal leave policies.

(6) Leave time shall be requested, used, and recorded to the nearest quarter hour.

(7) Hours of leave without pay used shall count on an hour for hour basis against the entitlement. All time in a leave without pay status, including unpaid holidays and intermittent or reduced-time leave, must be recorded as such.

(8) *Title 29, Section 825.300 of The Code of Federal Regulations* requires the posting of a notice explaining the provisions of the federal FMLA. The notice is attached as Enclosure 1. Agencies must distribute copies to all work locations for conspicuous posting. Agencies may duplicate the notice or obtain copies from local offices of the U.S. Department of Labor's Wage and Hour Division.

(9) *Title 29, Section 825.301(a) of The Code of Federal Regulations* requires that any written guidance to employees concerning employee benefits or leave rights, such as employee handbooks, contain information concerning FMLA entitlements and employee obligations under FMLA. Accordingly, agencies which provide employee handbooks or other written guidance to employees must include information on the leave without pay policies of this directive.

(10) As required by *Title 29, Sections 825.301(b) and (c) of The Code of Federal Regulations*, the notices labeled as Enclosures 2, 3, and 4, must be given to any employee who inquires about sick, parental, or family care leave without pay and must also be attached to the letters, labeled as Enclosures 5, 6, 7, and 8, when a leave without pay is approved.

(11) *Title 29, Section 825.500* requires that certain FMLA records be maintained. Records must be maintained for three years. Agencies are responsible for maintaining the following records:

(a) **Copies of employee requests for use of a FMLA related leave.** This could include letters/forms completed by employees requesting FMLA.

(b) **Pertinent medical documentation.** This information should not be filed in the Official Personnel Folder; it should be kept in a confidential medical file.

• (c) **Records showing leave usage.** These records are available in SAP.

• (d) **Records of any disputes regarding a FMLA related request that was denied.** In the event that a dispute occurs, provide information about the dispute to the Bureau of Employee Benefits and Services, Office of Administration.

(12) *Title 29, Section 825.500* also allows for reviews/audits by the Department of Labor at any time. If such a review/audit is requested by the Department of Labor at an agency or field location, notification of such review/audit must be made to the Bureau of Employee Benefits and Services, Office of Administration, so that it can be coordinated centrally.

4. PROCEDURES.

a. System-Related Codes to Effect Sick, Parental, and Family Care Leaves Without Pay.

(1) **Absence Codes.** Used to record absences.

SO - Sick leave without pay with benefits

PO - Parental leave without pay with benefits

FL - Family care leave without pay with benefits

AO - Regular leave without pay with benefits (Use for intermittent or reduced-time leave after benefits entitlement has expired, but only up to 60 calendar days. If longer than 60 days, change the employee to part-time status.)

(2) **PA-40 Actions.** For long-term leaves without pay, those leaves that are expected to be for periods of more than one full pay period of full-time leave, refer to the Business Process Procedures *Begin & Return LWOP w/Benefits, PA40* and *Begin & Return LWOP without Benefits, PA40*, available online at <http://www.ies.state.pa.us/hr/cwp/view.asp?a=537&q=168297>.

b. Agencies are to:

(1) Post, in all work locations, *Your Rights Under the Family and Medical leave Act of 1993*. (See Enclosure 1.)

(2) Upon inquiry about one of the three leaves covered under FMLA, provide the appropriate notice. (See Enclosure 2, 3, or 4.)

(3) Upon notice from an employee, timekeeper, or supervisor that an employee is or will be beginning sick, parental, or family care leave without pay, determine if documentation has been provided to determine if the leave should be approved or denied.

(4) If an employee is absent from work due to a reason covered by FMLA and medical documentation has not yet been provided, send the letter labeled Enclosure 8.

(5) Approve or disapprove leave.

(6) Determine if leave is to be with or without benefits.

(7) Monitor leave without pay quotas and benefits entitlements for employees on leave of absence and change to without benefits status as appropriate.

(8) For employees that work on an intermittent or reduced-time leave status, after a long-term leave without pay, enter a PA-40 action to return employees from leave.

(a) As long as the benefits entitlement has not yet been depleted, enter absences as SO, PO, or FL. **Do not** change the employee to part-time status.

(b) If the benefits entitlement has been depleted, and at agency discretion the employee is permitted to return to work on a part-time basis, enter regular leave without pay (AO) for absences as long as the part-time basis is not expected to continue beyond 60 calendar days. If greater than 60 calendar days, change the employee to part-time. In order for benefits to continue, an employee must work at least 50 percent of time. (See *Management Directive 530.4*.)

(9) Provided the employee was not on an intermittent or reduced-time leave status, upon notification of a full return to work or at the end of the leave entitlement period, input the PA-40 action to return the employee. No PA-40 action needs to be input for employees who were on an intermittent or reduced-time leave prior to the expiration of the leave entitlement.

c. Supervisors are to:

(1) Ensure that the Information Sheet about the FMLA is posted in the work location.
(See Enclosure 1.)

- (2) Notify the Human Resource Office of any sick, parental, or family care leave without pay used or expected to be used. **Note:** A supervisor cannot approve the use of sick, parental, or family care leave without pay without authority from the Human Resource Office.

Enclosures:

- 1 Your Rights Under *The Family and Medical Leave Act of 1993*
- 2 Notice to Employees Sick Leave Without Pay
- 3 Notice to Employees Parental Leave Without Pay
- 4 Notice to Employees Family Care Leave Without Pay
- 5 Letter to Employees Approving Sick Leave Without Pay
- 6 Letter to Employees Approving Parental Leave Without Pay
- 7 Letter to Employees Approving Family Care Leave Without Pay
- 8 Letter to Employees Requesting Medical Documentation
- 9 Notes and Guidelines from *The FMLA Regulations*

- **This directive replaces, in its entirety, *Management Directive 530.2* dated January 13, 1997.**

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year and for 1,250 hours over the previous 12 months.

- **REASONS FOR TAKING LEAVE:** Paid or unpaid leave must be granted for any of the following reasons:
 - To care for the employee's child after birth, adoption, or foster care placement.
 - To care for the employee's spouse, child, or parent, who has a serious health condition.
 - For a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

NOTICE TO EMPLOYEES SICK LEAVE WITHOUT PAY

The *Family and Medical Leave Act of 1993 (FMLA)* requires that the Commonwealth provide at least 12 weeks of leave (with or without pay) with benefits within a rolling 12 month period to employees who have serious health conditions; who become parents through childbirth, adoption, or foster care placement; or who are needed to care for a seriously ill family member, as long as the employee has been employed at least one year (total employment, even if the employment was not continuous) and has worked at least 1,250 hours (which includes regular and overtime hours, but excludes holidays and other paid time off) during the previous 12 month period. Provided below is information about the Commonwealth's sick leave without pay with benefits program. All sick leave without pay used will be designated as leave under the provisions of the FMLA.

Permanent employees are entitled to six months (982.5 hours for employees who work 7.5 hour days, 1,048 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of sick leave without pay for illness or disability due to a serious health condition. To be eligible for this leave, some union contracts require employees to have at least six months of credited service. Leave time is calculated on an hour for hour basis against the hours of entitlement.

Written notification requesting sick leave without pay, along with a doctor's certificate which provides proof of disability, prognosis, and expected date of return to work, must be submitted in advance if circumstances permit. And, upon return to work, employees must provide a doctor's release to perform full duties.

Before, during, after, or instead of sick leave without pay, employees may use accrued annual, personal, or sick leave provided the leave would qualify as sick leave without pay. The use of paid leave shall not be included when calculating the sick leave without pay entitlement.

Employees may use leave on an intermittent or reduced-time basis at any time before the initial sick leave without pay entitlement expires. Contact the Human Resource Office for details regarding this option.

Upon request and certification from a physician which provides proof of continuing disability, prognosis, and expected return to work date, employees who are unable to return to work after the expiration of the initial six month sick leave without pay entitlement, shall be granted an additional six months of sick leave without pay without benefits.

Employees are eligible for a maximum of six months (982.5 hours for employees who work 7.5 hour days, 1,048 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of benefits while on sick leave without pay. The benefit entitlement includes both short and long-term unpaid absences, and is cumulative for both sick and parental leave. The following benefits continue during the entitlement period.

- Group Life Insurance coverage will continue to be state paid.
- Health benefits through the PEBTF will continue as long as the employee continues to pay the applicable employee contributions and buy-ups during the paid/unpaid leave of absence.
 - a.) Employees enrolled in the PEBTF using unpaid SPF Absence will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits.
 - b.) Employees must contact their local Human Resource Office to add any new dependents to medical/hospital and supplemental benefits contracts within 60 days of birth or of assuming custody of a child.

Employees have the right to return to the same position or an equivalent position with regard to pay and skill upon return from leave without pay. Employees who are granted a second six months of sick leave without pay only have the right to return, before or upon the expiration of the second six months, to a vacant position that the employee is qualified for and the agency intends to fill. Failure to return to work following the termination of a leave without pay shall subject the employee to disciplinary action up to and including termination effective on the first day after the leave without pay ends.

Questions concerning sick leave without pay or the benefit entitlements while on a leave without pay may be referred to the Human Resource Office at [telephone number].

NOTICE TO EMPLOYEES – PARENTAL LEAVE WITHOUT PAY

The Family and Medical Leave Act of 1993 (FMLA) requires that the Commonwealth provide at least 12 weeks of leave (with or without pay) with benefits within a rolling 12 month period to employees who have serious health conditions; who become parents through childbirth, adoption, or foster care placement; or who are needed to care for a seriously ill family member, as long as the employee has been employed at least one year (total employment, even if the employment was not continuous) and has worked at least 1,250 hours (which includes regular and overtime hours, but excludes holidays and other paid time off) during the previous 12 month period. Provided below is information about the Commonwealth's parental leave without pay with benefits program. All parental leave without pay used will be designated as leave under the provisions of the FMLA.

Permanent employees are entitled to six months (982.5 hours for employees who work 7.5 hour days, 1,048 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of parental leave without pay upon the birth, adoption, or foster care placement of a child. Leave time is calculated on an hour for hour basis against the hours of entitlement.

Written notification requesting parental leave without pay must be submitted at least two weeks in advance if circumstances permit and must state the anticipated duration of the leave.

When disabled due to childbirth or other disability, employees may use accrued sick leave or sick leave without pay. A doctor's certificate stating the period of disability is required and should be forwarded as soon as possible. Before, during, after, or instead of parental leave without pay, employees may use accrued annual and/or personal leave provided the leave would qualify as parental leave without pay. Paid leave may not be anticipated. The use of paid leave shall not be included when calculating the parental leave without pay entitlement.

At the discretion of the agency, employees may use leave on an intermittent or reduced-time basis at any time before the parental leave without pay entitlement expires. And, at the discretion of the agency, at the end of the initial six month parental leave without pay entitlement, an extension of parental leave without pay without benefits may be granted. Contact the Human Resource Office for details regarding these options.

The entitlement to parental leave without pay expires one year from the date of birth, adoption, or foster care placement regardless of whether or not the full parental leave without pay entitlement was used.

Employees are eligible for a maximum of six months (982.5 hours for employees who work 7.5 hour days, 1,048 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of benefits while on parental leave without pay. The benefit entitlement includes both short and long-term unpaid absences and is cumulative for both sick and parental leave without pay. The following benefits continue during the entitlement period.

- Group Life Insurance coverage will continue to be state paid.

- Health benefits through the PEBTF will continue as long as the employee continues to pay the applicable employee contributions and buy-ups during the paid/unpaid leave of absence.

- a.) Employees enrolled in the PEBTF using unpaid SPF Absence will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits.

- b.) Employees must contact their local Human Resource Office to add any new dependents to medical/hospital and supplemental benefits contracts within 60 days of birth or of assuming custody of a child.

Employees have the right to return to the same position or an equivalent position with regard to pay and skill upon return from leave without pay. Failure to return to work following the termination of a leave without pay shall subject the employee to disciplinary action up to and including termination effective on the first day after the leave without pay ends.

- Questions concerning parental leave without pay or the benefit entitlements while on a leave without pay may be referred to the Human Resource Office at [telephone number].

NOTICE TO EMPLOYEES – FAMILY CARE LEAVE WITHOUT PAY

The *Family and Medical Leave Act of 1993 (FMLA)* requires that the Commonwealth provide at least 12 weeks of leave (with or without pay) with benefits within a rolling 12 month period to employees who have serious health conditions; who become parents through childbirth, adoption, or foster care placement; or who are needed to care for a seriously ill family member, as long as the employee has been employed at least one year (total employment, even if the employment was not continuous) and has worked at least 1,250 hours (which includes regular and overtime hours, but excludes holidays and other paid time off) during the previous 12 month period. Provided below is information about the Commonwealth's family care leave without pay with benefits program. All family care leave without pay used will be designated as leave under the provisions of the FMLA.

Permanent employees with at least one year of service (total employment, even if the employment was not continuous) are entitled to 12 weeks (450 hours for employees who work 7.5 hour days, 480 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of family care leave without pay every leave calendar year to care or arrange care for a family member with a serious health condition. Leave time is calculated on an hour for hour basis against the hours of entitlement.

Family member, for this purpose, is defined as a spouse, parent, child, or other person qualifying as a dependent under IRS eligibility criteria. A parent can be a biological parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child of a person who is standing as a parent (in loco parentis); a child must be under age 18 or 18 years or older and incapable of self-care because of mental or physical disability. Note: The definition of family member for employees represented by some union agreements also includes the employee's domestic partner and the biological or adopted child of the domestic partner.

Written notification stating the name and relationship of the person to be cared for and anticipated duration of the leave must be submitted to request family care leave without pay. Also required is a doctor's certificate stating that the family member has a serious health condition which requires the employee's care or requires the employee to arrange care, the date the illness or disability began, and its anticipated duration.

Before, during, after, or instead of family care leave without pay, employees may use accrued annual, personal, and/or, if applicable, sick family and additional sick family leave provided the leave would qualify as family care leave without pay. The use of paid leave shall not be included when calculating the family care leave entitlement.

Employees may use leave on an intermittent or reduced-time basis at any time before the family care leave without pay entitlement expires. Contact the Human Resource Office for details regarding this option.

Employees are eligible for a maximum of 12 weeks (450 hours for employees who work 7.5 hour days, 480 hours for employees who work 8.0 hour days, or a prorated amount of hours for part-time employees) of benefits while on family care leave without pay. The benefit entitlement includes both short and long-term unpaid absences. The following benefits continue during the entitlement period.

- Group Life Insurance coverage will continue to be state paid.

- Health benefits through the PEBTF will continue as long as the employee continues to pay the applicable employee contributions and buy-ups during the paid/unpaid leave of absence.

a.) Employees enrolled in the PEBTF using unpaid SPF Absence will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits.

- b.) Employees must contact their local Human Resource Office to add any new dependents to
- medical/hospital and supplemental benefits contracts within 60 days of birth or of assuming custody
- of a child.

Employees have the right to return to the same position or an equivalent position with regard to pay and skill upon return from leave without pay. Failure to return to work following the termination of a leave without pay shall subject the employee to disciplinary action up to and including termination effective on the first day after the leave without pay ends.

- Questions concerning family care leave without pay or the benefits entitlements while on a leave without pay may be referred to the Human Resource Office at [telephone number].

LETTER TO EMPLOYEES APPROVING SICK LEAVE WITHOUT PAY

Dear _____:

- As you requested, you have been granted sick leave without pay from [DATE] through [DATE], unless the health care provider certifies you are able to return to work at an earlier date. This leave has been designated as leave under the provisions of *The Family and Medical Leave Act of 1993*.

The enclosed notice will inform you of your rights, benefits, and obligations while on sick leave without pay.

- If you are unable to return to work on the expected date of [RETURN DATE], you must notify this office and provide the following information by [RETURN DATE].

- - A written request to continue the absence.
 - An updated *Serious Health Condition Certification* form completed by the health care provider.

- Failure to return to work and/or provide the required information on or before the end of the approved leave of absence may result in the loss of rights and benefits explained in the *Notice to Employees - Sick Leave Without Pay*, and it may result in disciplinary action.

If you have any questions concerning this leave without pay or the benefits you are entitled to while on a leave without without pay, please contact us at [telephone number].

- Enclosures: Notice to Employees - Sick Leave Without Pay
- Serious Health Condition Certification

- cc: Bureau Director
- Supervisor
- Time Advisor
- Employee File
- Labor Relations

LETTER TO EMPLOYEES APPROVING PARENTAL LEAVE WITHOUT PAY

Dear _____:

- As you requested, you have been granted parental leave without pay from [DATE] through [DATE]. This leave has been designated as leave under the provisions of *The Family and Medical Leave Act of 1993*.

The enclosed notice will inform you of your rights, benefits, and obligations while on parental leave without pay.

Failure to return to work and/or provide the required information at the end of the approved leave of absence may result in the loss of rights and benefits explained in the *Notice to Employees – Parental Leave Without Pay*, and it may result in disciplinary action.

If you have any questions concerning this leave without pay or the benefits you are entitled to while on a leave without pay, please contact us at [telephone number].

Enclosure: Notice to Employees – Parental Leave Without Pay

cc: Bureau Director
Supervisor
Time Advisor
Employee File

LETTER TO EMPLOYEES APPROVING FAMILY CARE LEAVE WITHOUT PAY

Dear _____:

- As you requested, you have been granted family care leave without pay from [DATE] through [DATE]. This leave has been designated as leave under the provisions of *The Family and Medical Leave Act of 1993*.

The enclosed notice will inform you of your rights, benefits, and obligations while on family care leave without pay.

- If you are unable to return to work on the expected date of [RETURN DATE], you must notify this office and provide the following information by [RETURN DATE].

- - A written request to continue the absence.
 - An updated *Serious Health Condition Certification* form completed by the health care provider.

- Failure to return to work and/or provide the required information on or before the end of the approved leave of absence may result in the loss of rights and benefits explained in the *Notice to Employees – Family Care Leave Without Pay*, and it may result in disciplinary action.

If you have any questions concerning this leave without pay or the benefits you are entitled to while on a leave without pay, please contact us at [telephone number].

- Enclosures: Notice to Employees – Family Care Leave Without Pay
- Serious Health Condition Certification

- cc: Bureau Director
- Supervisor
- Time Advisor
- Employee File
- Labor Relations

LETTER TO EMPLOYEES REQUESTING MEDICAL DOCUMENTATION

Dear _____:

We have been advised that you [have been/will be] off work for a reason that may qualify under the provisions of *The Family and Medical Leave Act of 1993*. Under the Act, you are entitled to certain benefits; the enclosed notice will provide you with information about your rights, benefits, and obligations while on leave.

In order for us to determine your eligibility for the leave, please submit documentation to support your absence, as noted in the enclosure, to this office within 15 days. Your failure to provide the documentation will preclude you from receiving the benefits outlined in the enclosure. In the meantime, contingent upon receipt of the required documentation, your absence has been designated as leave under the provisions of *The Family and Medical Leave Act of 1993*.

If you have any questions concerning the leave without pay or your rights, benefits, and obligations while on leave, please contact us at [telephone number].

- Enclosures: Notes and Guidelines from the FMLA Regulations
- Serious Health Condition Certification

- cc: Bureau Director
- Supervisor
- Time Advisor
- Employee File
- Labor Relations

NOTES AND GUIDELINES FROM THE FMLA REGULATIONS
(Federal Register January 6, 1995)

Serious Health Condition

- A serious condition, at a minimum, would include more than three consecutive days of incapacity and at least two visits to a health care provider or one visit followed by a regimen of continuing treatment.

Note: Taking over-the-counter medications, bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not by itself sufficient to constitute a regimen of continuing treatment.

A serious health condition would not include, unless complications arise: the common cold, the flu, earaches, upset stomach, minor ulcers, dental or orthodontia problems, and periodontal disease. Cosmetic surgery is also not a serious health condition, unless complications arise or inpatient care is needed.

A serious health condition can also include episodes of incapacity of less than three days for chronic conditions such as asthma. It may be appropriate to obtain medical certification for these types of short absences.

To be disabled from work, an employee must be either unable to work at all or unable to perform the essential functions of the position within the meaning of the ADA.

Relationship to ADA

Reasonable accommodation is irrelevant for the purposes of FMLA.

When ADA and FMLA overlap, the law that provides the greatest benefit to the employee is used.

The right to reinstatement to the same or an equivalent position is contingent upon the employee's ability to perform all essential functions of the job.

Notice

If an employee is able to return to work earlier than anticipated, the employee should give the employer reasonable advance notice, generally at least two working days.

Providing information to a manager or supervisor is sufficient for meeting the employee's obligations under FMLA.

Designation of leave under the provisions of FMLA must take place up front whenever possible. The employer's notification to the employee of the designation may be oral, but must be confirmed, in writing, no later than the next regular pay day. (If less than a week remains until the next pay day, the notice must be provided by the following pay day.) The notices and letters provided in this directive fulfill this obligation.

If the employer is able to determine that a leave is for a FMLA reason at the time the employee either gives notice of the need or the leave commences, the employer must notify the employee at that time that the leave is being designated as leave under FMLA. If the employer does not notify the employee, the employer may not then designate the leave retroactively. The leave may be designated only prospectively as of the date of notification to the employee. There are two exceptions:

(1) If an employee is on leave and the employer does not learn of the reason for the leave until the employee returns to work, the employer may designate the leave as FMLA promptly (within two business days).

(2) If the employer has provisionally designated the leave FMLA and is awaiting medical certification or other reasonable documentation allowed to confirm that the leave was FMLA.

Only where leave had already begun and the employer had insufficient information to determine whether it qualified as FMLA could it be retroactively designated as FMLA.

The employee is not entitled to the protection of FMLA if notice of the reason for the leave is given later than two days after returning to work.

Medical Certification

If the need for leave does not allow for advance notice, the employer should request the necessary information from the employee in order to approve the leave. The employee must be allowed at least 15 days to provide the necessary information once the employer has requested it.

A health care provider representing the employer is permitted to contact the employee's provider for purposes of clarifying information on the medical certification or confirming that it was provided by the health care provider. Additional information regarding the employee's condition can only be requested with the employee's or family member's permission. (A signed authorization for release of information would be acceptable for requesting additional information if needed.)

Where a certification provides for a minimum duration of greater than 30 days, the employer may not obtain recertification until that minimum period has passed. Exceptions are provided only if circumstances have changed significantly or the employer has reason to believe the employee was not absent for the reason indicated. In other cases, recertification every 30 days may be appropriate.

If the medical certification provided does not verify that the employee or employee's family member has a serious health condition, the employer may request the doctor to provide information to substantiate a serious health condition under the provisions of the FMLA. The Federal Government's Wage and Hour Division of the Department of Labor has created a form that can be used for this purpose.

Return to Work

The employee shall advise the employer if the leave granted needs to be extended. The employer may obtain information from employees through status reports.

An employee should be able to provide reasonable advance notice of changed circumstances affecting the employee's need for FMLA, that notice is two days.

If the employee does not return to work at the conclusion of the planned leave, the employee should give the employer reasonable notice of the need for an extension if less than 12 weeks of FMLA has been used in the last 12 months. If the employee is unable to or does not return to work at the end of 12 weeks of FMLA, all entitlements and rights under FMLA cease at that time; however, the Commonwealth's benefits may still be applicable.

Benefits

There are no limitations on the employee's right to elect to substitute accrued paid vacation (annual) or personal leave for qualifying FMLA, and the employer may not limit the timing during the year in which paid vacation may be substituted for FMLA qualifying absences or impose other limitations.

If, but for being on leave, an employee would have been furloughed or terminated, an employee's right to reinstatement is whatever it would have been had the employee not been on leave.

To the extent that the employee meets all qualifications to receive bonuses or employment benefits up to the point that FMLA begins, the employee must continue to qualify for the entitlement upon returning from FMLA. In other words, an employee may not be disqualified from perfect attendance, safety, or similar bonuses or benefits because of taking FMLA.

The taking of a FMLA qualifying leave may not be counted against the employee under the employer's attendance policy.

If the employee would have lost a "use it or lose it" benefit if the employee had worked and not been on leave, the employee is not entitled to retain the benefit simply because the employee took leave.

An employee cannot be forced to return to work to light duty under FMLA, but failure to return could jeopardize other benefits, such as workers' compensation.

Temporary Clerical Pool

An agency using a temporary clerical pool employee is not responsible for notifying the employee of the employee's rights, benefits, and obligations under the FMLA.

The Bureau of State Employment will be responsible for that notification. An agency should have the employee inform the Office of Administration, Bureau of State Employment, when the agency is aware that the employee is off due to a FMLA qualifying reason.

Miscellaneous

Reasonable documentation may be requested in order to substantiate the need for leave under FMLA, (**example:** copy of a birth certificate or adoption papers). Or, reasonable documentation could be as simple as a signed statement attesting to the relationship and/or need for FMLA.

An employee who marries cannot request FMLA leave for new stepchildren, unless the stepchildren are formally adopted.

FMLA leave cannot be requested to care for a parent-in-law.

Time off during a period of no work (during cyclical leave) for a FMLA qualifying reason cannot be counted against the FMLA entitlement.

Substitution of Paid Leave in Lieu of Leave Without Pay

Nothing in the FMLA requires the employer to provide paid sick leave benefits in any situation in which the employer would not normally provide those benefits.