



Family Medical Leave Act (FMLA) Policy

Purpose

The purpose of this Family and Medical Leave Act Policy (FMLA) is to inform the Ohio Department of Agriculture (ODA) employees of their rights and obligations under the FMLA and circumstances under which they may become eligible for such leave and the process to apply for such leave.

Scope

This Policy applies to all ODA employees.

Authority

- a. 29 CFR § 825 The Family and Medical Leave Act.
- b. Ohio Admin. Code 123: 1-47-01
- c. State of Ohio Family and Medical Leave Policy

Definition

“Active work status” means conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include, vacation pay, bereavement leave, disability leave, sick leave, compensatory time, holidays, and personal leave.

“Covered Servicemember” means an employee’s spouse, child, parent or next of kin, who is a current member of the Armed Forces, including a member of the National Guard or Reserves, who incurred a serious injury or illness in the line of active duty that renders the servicemember medically unfit to perform his or her duties and for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or on the temporary retired list.

“Qualifying Exigency Leave” includes leave for activities related to short-notice deployment, attending military events, arranging for alternative childcare or attending school activities, addressing financial and legal arrangements, attending counseling sessions, attending post-employment reintegration briefings, and spending time with a covered military member who is on rest and recuperation leave.

“Serious Health Condition” is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Eligibility



Employees who have been employed by the state for at least twelve (12) months and have actually worked (i.e., in "active work status") at least 1,250 hours during the past twelve (12) months are entitled to FMLA leave regardless of gender. 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-month employment requirement.

For the 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. Therefore, 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.

Qualifying Events

FMLA allows eligible state employees to take leave for the following qualifying events:

- a. Standard Qualifying Event
 - i. The birth and care of a child of the employee;
 - ii. Placement with an employee of a child for adoption or foster care;
 - iii. Caring for a spouse, child, or parent with a serious health condition; or
 - iv. The serious health condition of the employee.

- b. Exigency Leave

Eligible employees with a spouse, child, or parent on federal active duty or call to federal active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12) week leave to address qualifying exigencies.

- c. Military Caregiver Leave

Eligible employees may take leave to care for a covered servicemember.

Entitlement

- a. Basic Qualifying Events and Exigency Leave
 - i. An eligible employee is entitled to twelve (12) workweeks of FMLA leave within a twelve (12) month period. The twelve (12) month period begins on the first date FMLA leave is taken. Based on a forty (40) hour work week, full time employees are entitled to 480 hours of FMLA leave within the twelve (12) month period. Part time employees will be prorated based on the average workweek in the twelve (12) weeks prior to the leave being taken.



- ii. ODA tracks FMLA on a “rolling” twelve (12) month period. This means that each time an employee takes FMLA leave, the remaining entitlement would be any balance of the twelve (12) weeks which was not used during the preceding twelve (12) months.
 - iii. FMLA leave taken for the birth, adoption, or foster care placement of a child must be taken within twelve (12) months of the birth or placement.
- b. Military Caregiver Leave
- i. Employees may be eligible to take up to twenty-six (26) weeks of leave to care for a covered servicemember during a single twelve (12) month period.
 - ii. The twenty-six (26) weeks of leave is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any “single twelve (12) month period.”
 - iii. The “single twelve (12) month period” begins on the first day the employee takes leave to care for the covered servicemember and ends twelve (12) months after that date.
 - iv. An employee is entitled to take leave during the same single twelve (12) month period in which leave for Basic Qualifying Events and Exigency Leave is taken to care for a covered servicemember, but the total leave taken for any purpose during the single twelve (12) month period, may not exceed twenty-six (26) workweeks overall.

Requesting FMLA Leave

- a. If the need for leave is foreseeable, employee requests must be submitted to Human Resources at least thirty (30) days prior to taking leave or, if this is not possible, as soon as practicable.
- b. Requests must be submitted in OAKS Time and Labor System. Employees who know the requested leave is for an FMLA-qualifying event shall specify that the leave is requested pursuant to the FMLA by selecting the appropriate option and indicating the condition assigned number in the comments box of each FMLA related leave request.
- c. Leave must be taken in increments of no less than 1/10 hour.
- d. Requests must include one of the following completed and sufficient certifications or equivalent documentation in the case of an adoption/foster care:
 - i. Certification of Health Care Provider for Employee's Serious Health Condition
 - ii. Certification of Health Care Provider for Family Member's Serious Health Condition



- iii. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave
- iv. Certification of Qualifying Exigency for Military Family Leave
- e. The certification form shall be maintained by Human Resources separately in a confidential manner.

Designation Notice

- a. Within five (5) business days after receiving enough information to determine whether the leave is taken for a FMLA-qualifying reason (e.g., after receiving a complete and sufficient certification), ODA Human Resources must notify the employee whether the leave will be designated and will be counted as FMLA leave. Only one notice of designation is required for each FMLA-qualifying reason per applicable twelve (12) month period.
- b. If ODA Human Resources determines that the leave will not be designated as FMLA-qualifying, ODA Human Resources must notify the employee of that determination.
- c. ODA Human Resources upon request will provide the employee their FMLA entitlement balance, but not more often than once in a thirty (30) day period.

Use of Paid Leave

- a. Employees shall exhaust all accrued sick, vacation, and personal leave balances, as appropriate, prior to going on unpaid leave.
- b. 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.
- c. Whether leave is paid, unpaid, or a combination, the employee is entitled to only twelve (12) workweeks of FMLA leave within a rolling twelve (12) month period.
- d. ODA may designate paid or unpaid leave as FMLA leave, whether the employee designates it as such or not if all of the following apply:
 - i. ODA has compelling reason based on information provided by the employee that leave was taken for an FMLA-qualifying event; and
 - ii. The employee is properly notified of his or her FMLA rights.
- e. ODA shall notify employees of their FMLA rights:
 - i. Verbally within two (2) days of ODA counting the leave as FMLA leave; and
 - ii. In writing by the payday following the date leave is designated as FMLA leave.
- f. If the following payday is less than one (1) week from the date leave is designated as FMLA leave, ODA shall provide written notice to the employee by the next payday.



Workers' Compensation, Occupational Injury Leave, and Disability Leave

Employees requesting Workers' Compensation, Salary Continuation, 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, concurrently as FMLA leave. ODA may grant FMLA leave to employees while their request is being reviewed; however, the granting of FMLA leave shall have no bearing on the approval or disapproval of employees' requests.

Adoption / Childbirth Leave

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 months or has already used his or her twelve workweeks of FMLA leave*) shall retain his or her right to Adoption/Childbirth leave upon meeting the Adoption/Childbirth leave eligibility requirements.

Intermittent FMLA Leave

- a. Employees are entitled to take intermittent leave for the employee's serious health condition or due to the serious health condition of a parent, spouse, or child.
- b. To be entitled to intermittent leave, the employee must submit certification to establish the medical necessity of the leave (*e.g., periodic testing and treatments*). In reviewing the request, the FMLA Coordinator, in ODA's Human Resources Office, shall determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.
- c. ODA may require employees to provide recertification of the medical necessity for intermittent leave no more than once every thirty (30) days in conjunction with an employee's absence, unless:
 - i. The employee requests an extension of leave;
 - 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. ODA receives information that casts doubt upon the continuing validity of the certification.
- d. ODA may grant employees intermittent leave for the birth or placement of a child. Intermittent leave for the birth or placement of a child shall be upon approval of the employee's supervisor and the FMLA Coordinator. Employees should request such leave from the Human Resources Director.

Benefits

- a. ODA will continue to pay the employer's portion of health insurance premiums during approved FMLA leave provided the employee continues to pay their portion of the premiums.



- b. Employees are required to continue paying the employees' portion of health insurance premiums. Information on how health insurance premiums are to be paid while on FMLA leave may be obtained from the Human Resources Administrator.
- c. Employees will be given a thirty-day grace period from the due date of their health insurance premium.
- d. ODA may seek reimbursement for any health insurance premiums paid on behalf of the employee if the employee fails to return to work from FMLA leave. However, ODA will not seek reimbursement of premiums from the employee if the reason for the employee failing to return to work is due to the continuation or recurrence of the serious health condition or is otherwise beyond the employee's control as defined in the FMLA.
- e. Employees who are reinstated will not lose any service credit and FMLA leave will be treated as continuous service for the purpose of calculating any benefits that are based on length of service.

Medical Certification or Recertification

- a. In addition to the certification required with a request for leave that qualifies as a serious health condition, ODA may require a second opinion from a second health care provider designated by and paid for by ODA.
- b. If the first and second opinions conflict, ODA may require the employee to submit to a third examination, at ODA'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 ODA must be reasonable and act in good faith. The opinion of the third health care provider is final and binding.
- c. ODA may require the employee to report their health status and intent to report to work no more than once every thirty (30) days. If ODA has reason to believe that the employee's health status has changed such that the employee may no longer be eligible for FMLA leave, ODA may require the employee to get a second or third opinion as outlined.
- d. All FMLA conditions must be recertified at least once per year.

Reinstatement

- a. Upon return from leave, employees are entitled to reinstatement to the same or similar position.
- b. If the same job is not available, the Human Resources Director will determine in which similar position (i.e., equivalent pay, benefits, and conditions of employment) the employee should be placed.
- c. Employees who take leave due to their own serious health condition will be required to provide certification from a health care provider that they are able to perform the essential functions of their position.

Recordkeeping



- a. ODA Human Resource’s Division will maintain records through OAKS HCM and tracking logs regarding leave balances and FMLA leave usage.
- b. Medical records accompanying FMLA requests will be kept separate from personnel files in a confidential manner.

Contact

Employees who have questions or need to request assistance regarding the provisions of this Policy should address those to the FMLA Coordinator or the Human Resources Director.

Revision History

Date	Description of Change
3/2004	Initial Policy Issued
8/2012	Revisions to Policy Issued
10/2012	Revisions to Policy Issued
7/2015	Revisions to Policy Issued

