

# Colorado State Personnel System

## *Your Rights and Responsibilities Under Family/Medical Leave*

Revised September 2014

*Striking a balance between work demands and personal needs is critical if we are to preserve the stability, security, and integrity of our families.*

As an employer, the State of Colorado has been involved in helping our workforce strike a balance between work and personal needs by offering family/medical leave since 1990. In return, the effectiveness and productivity with which we deliver our products and services is expected to benefit. The passage of the Family and Medical Leave Act of 1993 (FMLA) affected our family/medical leave program. This brochure presents general information on your family/medical leave rights and obligations as an employee in the state personnel system. The term “department” means principal department or higher education institution.

### ➤ *Eligibility*

You are eligible for up to 13 weeks (520 hours) of family/medical or active duty family leave in a single 12-month period measured by a rolling backwards calendar if you have worked for the State for at least 12 months, not necessarily consecutively. A temporary employee must also have worked at least 1,250 hours in the past 12 months. Employees in the Reserves or National guard are entitled to count active military duty absences as time worked to establish eligibility (like other employees on the payroll even if on an unpaid leave). The FMLA was expanded in January 2009 to include military caregiver leave for a single period of up to 26 weeks (1040 hours) in one 12-month period, which begins on the date the leave begins.

The hours are prorated for part-time employees. Eligibility is calculated from the date leave will begin.

Your appointing authority may approve additional time beyond the family/medical leave. Any approved additional leave is treated the same as any other type of paid or unpaid leave.

### ➤ *Reasons for Family/Medical Leave*

Family/medical leave may be taken for the following.

- Birth and care of **your** child. The leave must be completed within one year of the birth.
- Placement and care of a child from adoption or foster care. The leave must be completed within one year of the placement.
- Physical care or psychological comfort for a child, parent, or spouse with a serious health condition. Child is defined as under the age of 18 or over the age of 18 and disabled. Disabled means incapable of self care due to a mental or physical disability at the time leave is to commence.
- You own serious health condition.
- When an employee’s child, parent, or spouse in the armed forces experiences a qualifying exigency directly related to being deployed to a foreign country. Examples of qualifying exigency include short-notice deployment, military events and related activities, short-term childcare and school activities due to the exigency, financial and legal arrangements due to the exigency, non-medical counseling, post-deployment activities, and additional activities mutually agreed upon by the employee and the appointing authority.

- Care for an employee's child, parent, spouse, or next of kin who suffers a serious injury or illness in the line of duty while on active duty. This leave also covers employees whose parent, child, spouse, or next of kin is a veteran undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during the 5-year period preceding the date on which the veteran underwent medical treatment, recuperation, or therapy. Next of kin means nearest blood relative other than the covered service member's spouse, parent, son or daughter, in the following priority order: relatives granted legal ward or custody through court order, brother and sister, grandparents, aunts and uncles, and first cousins. If the service member has declared a next of kin, only that individual is considered next of kin. If the service member has not declared a next of kin, all those mentioned above are considered next of kin and eligible for the leave, e.g., all siblings are eligible and if none, all grandparents are eligible and so on.

A serious health condition is an illness, injury, impairment, physical or mental condition requiring inpatient care or continuing treatment by a health care provider. A serious illness or injury under military caregiver leave is one that renders the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

The appointing authority may require documentation confirming the family relationship.

#### ➤ ***Requesting Family/Medical Leave***

As with any type of leave, advance notice and approval is expected, except in emergencies. When the leave is foreseeable you must give at least 30 days advance written notice (including electronic leave systems) before leave starts. If you become aware of the need for leave less than 30 days in advance you shall notify your supervisor of the need for leave either the same day or the next business day after the need arose. If you do not provide timely notice, the start of your FML may be delayed for up to 30 days after notice is received.

The ***State of Colorado Leave/Absence Request and Authorization*** form or equivalent should be used to request leave. The form is available from your appointing authority or HR office. The appointing authority is responsible for determining if the leave qualifies for family/medical leave. It is your responsibility to explain and provide sufficient reasons for the leave so that the appointing authority can make this determination. You cannot waive your rights under the FMLA nor can you interfere with the State's obligations under the FMLA.

#### ➤ ***Intermittent Leave & Reduced Schedule***

In the case of a serious health condition involving medically necessary treatment, your family/medical leave will be granted on an intermittent (blocks of time) or a reduced work schedule (reducing normal work hours) if medically necessary. If you are on family/medical leave, the appointing authority may temporarily transfer you to another position that better accommodates your need or may temporarily reduce your schedule. When you reduce your work schedule in this situation, your salary and leave accruals will also be reduced proportionately.

You must work with your appointing authority to establish a mutually satisfactory planned medical treatment schedule that does not unduly disrupt business and meets your (or the patient's) medical needs. If you fail to consult with your appointing authority, you may be requested to reschedule treatments, subject to the approval of the health care provider.

When family/medical leave is used for reasons where intermittent/reduced schedules are not medically necessary, you may still request such a schedule. However, the appointing authority has the discretion to approve or deny the request.

#### ➤ ***FMLA Certification Forms***

In the case of a health-related absence involving you or a family member, you must supply a *State of Colorado Medical Certification form – Employee's Health Condition* or *State of Colorado Medical Certification Form – Family Member's Health Condition* from a health care provider for any absence of more than three consecutive, regularly scheduled, full working days. A medical certificate may also be requested for an absence of less than three days to determine if FML applies or when the appointing authority has a reasonable basis for suspecting abuse of leave.

If an incomplete medical certificate is submitted, you will be granted an additional seven days to obtain complete information from your health care provider. After the seven days, or sooner with your permission, if the medical certificate needs to be verified for authenticity or clarified as to the content, **ONLY** the HR Director or FMLA coordinator in the human resources office may contact your health care provider.

The appointing authority has the right to require a second opinion and select the health care provider. If the second opinion and the original certificate conflict, a third opinion will be sought from a health care provider you select together. The third opinion is final and binding. The department is responsible for the expenses connected with second and third opinions, including any reasonable “out-of-pocket” expenses you incur.

The appointing authority may also request additional certifications at reasonable intervals during family/medical leave. Typically, it will be no more often than 30 days or the date in the original certificate, whichever is longer, unless circumstances change or new medical information is received. Certification can be requested every six-months regardless. Certifications may also be requested for the first FML leave request each 12-month period.

All forms are available from your appointing authority or HR office. Your appointing authority will notify you of the need for any certifications and when they are due, normally within 15 calendar days. Failure to provide the required certification(s) will result in delay or denial of family/medical leave and possible corrective or disciplinary action. All medical information will be maintained in confidence, as required by law.

A **fully completed** *State of Colorado Certification of Qualifying Exigency for Military Family Leave* form will satisfy the certification requirements for active duty family leave. The *State of Colorado Certification for Serious Injury or Illness of Covered Service member for Military Family Leave* form will satisfy the certification requirements for military caregiver leave. Invitational travel orders (ITO) or invitational travel authorizations (ITA) can be submitted in lieu of the certification form. You cannot be required to submit additional certification beyond an ITO or ITA.

#### ➤ ***Fitness-To-Return***

At the end of your family/medical leave for your own serious health condition, a fitness-to-return certificate may be required, prior to returning to work, to verify your ability to return to work. A fitness-to-return certificate is required if you are absent for more than 30 days. The appointing authority may also require it for an absence of 30 days or less based on the nature of your health condition in relation to your job assignment. You may also be asked to provide a fitness-to-return certificate every 30 days while you are on intermittent FML if there are reasonable safety concerns regarding your ability to perform your duties. Failure to provide a fitness-to-return certificate could result in a delay in your returning to work, a request for a new medical certificate, or administrative discharge for exhaustion of leave.

#### ➤ ***Periodic Communication***

Communication between you and your appointing authority is a vital part of making sure you receive all of your rights under family/medical leave. It should begin at the point you are aware of your need for leave and continue through the conclusion of your family/medical leave. You and your appointing authority are expected to work out a mutually satisfactory check-in schedule during your absence, including updates on your current status and your intent to return to work.

#### ➤ ***Substitution of Paid Leave***

Family/medical leave is a guaranteed period of leave with job protection. The amount of paid or unpaid family/medical leave depends on your individual situation and the amount of your accrued leave and compensatory time. You will be required to use your accrued sick leave (as permitted by leave policies), annual leave, and compensatory time, unless receiving STD benefits, before you are placed on unpaid family/medical leave. Holidays, bereavement, injury leave, make whole, and short-term disability leave that also qualify for family/medical leave will be counted toward your family/medical leave. In other words, all types of leaves and compensatory time run concurrently and do not extend the time you are entitled to under family/medical leave. During any **paid** leave, you will continue to earn annual and sick leave that will be available for use at the beginning of the next month after it was earned. During any **unpaid** leave, you

will not earn annual and sick leave and you will not receive service credit for retirement purposes. If you are in trial service or in a probationary period, that time period may be extended by the number of days you are on unpaid leave.

➤ ***Benefits***

Your insurance coverage will continue while you are on approved family/medical leave. If your family/medical leave is paid, your share of the premiums will continue to be paid through normal payroll deduction. If your family/medical leave is unpaid and you elect to maintain your coverage, you must pay your portion of the premium (the amount deducted from your pay). If you fail to make your payment when due, your coverage may be cancelled retroactive to the last month for which full payment was made. Should you owe any amount of a premium upon return, repayment is required when you return to work for at least 30 days, retire within 30 days, or terminate your employment. Any amount owed will not be recovered when you are unable to return to work due to a continuation, recurrence, or onset of a new serious health condition or for other circumstances beyond your control. If you elect not to maintain your coverage during unpaid family/medical leave (subject to Section 125 requirements), your coverage will be reinstated upon your return to work. Contact your department payroll or benefits office for specific information and arrangements.

If open enrollment occurs while you are on family/medical leave, you will still have an opportunity to participate. The materials will be sent to your home address. You will need to meet the deadlines given in those materials, unless there are special extenuating circumstances.

➤ ***Job Protection***

When you return to work, you will be restored to your position or an equivalent one, subject to the provisions of the Family and Medical Leave Act of 1993. An equivalent position is one with the same pay grade, benefits, work schedule proximate geographic location, and other terms and conditions of employment. This does not apply if your employment would have otherwise been terminated had you not taken family/medical leave, such as lay off or disciplinary termination.

➤ ***Additional Information***

There are a number of other sources available for additional information: your department human resources office, State of Colorado Employee Handbook (as amended), Personnel Director's Rules (as amended), and the Statewide FMLA Coordinator in Division of Human Resources, Department of Personnel and Administration.

Every attempt is made to keep this information updated. For additional information, refer to the State Personnel Board Rules and Director's Administrative Procedures (rules) or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.