

VDSS HR Guidance Documents – Recommended Changes

Guidance Document Title: Leave & Related Areas



Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Part II: Family & Medical Leave Act (Policy Statement)	---	The Virginia State Board of Social Services establishes this policy to ensure LDSS are compliant with the Family and Medical Leave Act (FMLA). Part II of this chapter describes the requirements for obtaining leave under the FMLA.	New Section
Family and Medical Leave Act [FMLA] (Purpose)	This policy sets forth the requirements for obtaining leave under the Family and Medical Leave Act. More detailed information regarding the Family and Medical Leave Act (FMLA) can be found at the Department of Labor (DOL) FMLA website http://www.dol.gov/whd/fmla/index.htm .	---	Section Removed
Family and Medical Leave Act [FMLA] (Scope)	This policy applies to all employees who meet the eligibility criteria.	This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS. <u>Additional Information:</u> Per § 22VAC40-675-50 of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to the locality policy, provided the deviation is approved by the <u>VDSS HR Policy Team (hr.employeerelations@dss.virginia.gov)</u> as being in substantial conformity with this policy.	Section Rewritten
Family and Medical Leave Act [FMLA] (Definitions)	1. <u>Child (Son or Daughter)</u> A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or	1. <u>Americans with Disabilities Act (ADA) as Amended:</u> A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA	Definitions have been rewritten and relocated to the end of the updated draft version (Glossary).

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	<p>older and incapable of self-care because of a mental or physical disability.</p> <p>2. <u>Employment Benefits</u> All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.</p> <p>3. <u>Equivalent Position</u> One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility and authority</p> <p>4. <u>Covered Servicemember</u> A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is 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 Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.</p> <p>5. <u>Family and Medical Leave Act</u></p>	<p>Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination on the basis of disability in all aspects of employment; and regulates medical examinations and inquiries.</p> <p>2. <u>Child (FMLA)</u>: A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age eighteen (18) or be age eighteen (18) or older and incapable of self-care because of a mental or physical disability.</p> <p>3. <u>Covered Servicemember (FMLA)</u>: A current servicemember or a recent veteran.</p> <p>4. <u>Employment Benefits (FMLA)</u>: All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.</p> <p>5. <u>Equivalent Position (FMLA)</u>: One with the same pay, benefits and working conditions (shift and schedule) and the same or</p>	

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	<p>The Family and Medical Leave Act (FMLA) is a federally mandated program that was signed into law on February 5, 1993 and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee’s family member or for adoption, placement, or the birth of a child, or up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.</p> <p>6. <u>Family Member</u> Child, spouse or parent.</p> <p>7. <u>Health Care Provider</u></p> <p>a. The Act defines “health care provider” as:</p> <p>(1) A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or</p> <p>(2) Any other person determined by the Secretary to be capable of providing health care services.</p> <p>b. Others “capable of providing health care services” include only the following categories of medical professionals as they perform services within the scope of their</p>	<p>substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility, and authority.</p> <p>6. <u>Family Member (FMLA)</u>: A child, spouse, or parent.</p> <p>7. <u>Family and Medical Leave Act (FMLA)</u>: A federally mandated program that was signed into law on February 5, 1993; and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee’s family member or for adoption, placement, or the birth of a child; or up to twenty-six (26) weeks of unpaid leave to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.</p> <p>8. <u>Health Care Provider (FMLA)</u>: The FMLA defines “health care provider” as:</p> <p>a. A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate)</p>	

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	<p>practice as defined under state law:</p> <p>(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);</p> <p>(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants;</p> <p>Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;</p> <p>(3) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and</p> <p>(4) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.</p>	<p>by the state in which the doctor practices; or</p> <p>b. Any other person determined by the Secretary to be capable of providing health care services.</p> <p>Others “capable of providing health care services” include only the following categories of medical professionals as they perform services within the scope of their practice as defined under state law:</p> <p>a. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist).</p> <p>b. Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants.</p> <p>c. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment)</p>	

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	<p>c. The phrase “authorized to practice in the State” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.</p> <p>8. <u>Incapacity</u> Inability to work, attend school, perform other regular daily activities due to a serious health condition.</p> <p>9. <u>Intermittent Leave</u> A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments.</p> <p>10. <u>Key Employees</u> Employees who are among the highest paid 10% of the LDSS workforce.</p> <p>11. <u>Parent</u> Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.</p> <p>12. <u>Qualifying Exigency</u> A reason for taking FMLA leave, arising out of the fact that the employee’s spouse, son, daughter or parent is on active duty in the Armed Forces, or has been notified of an impending call or order to active duty in the National Guard or Reserves. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school</p>	<p>to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.</p> <p>d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.</p> <p>e. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.</p> <p>The phrase “authorized to practice in the state” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.</p> <p>9. <u>Incapacity (FMLA)</u>: The inability to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition.</p> <p>10. <u>Interactive Process (ADA/PWFA)</u>: The Job Accommodation Network (JAN) defines the</p>	

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	<p>related activities, 4) financial and legal arrangements,</p> <p>5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or call to active duty, provided that the employee and agency agree.</p> <p>13. <u>Reduced Schedule</u> A work schedule less than the usual number of hours worked per workweek or per workday.</p> <p>14. <u>Serious Health Condition</u> An illness, injury, impairment or physical or mental condition that involves inpatient care or either:</p> <p>a. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:</p> <p>(1) Treatment two or more times within 30 days by or under the supervision of a health care provider the first of which must occur within seven days of the first day of incapacity; or</p> <p>(2) One treatment by a health care provider, within the first seven days of incapacity, with a continuing regimen of treatment; or</p> <p>b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or</p> <p>c. Any period of incapacity or treatment for a</p>	<p>interactive process as a collaborative process where employers and employees with disabilities who request accommodations work together to come up with accommodations.</p> <p>11. <u>Intermittent Leave (FMLA)</u>: A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments.</p> <p>12. <u>Key Employees (FMLA)</u>: Employees who are among the highest paid 10% of the LDSS workforce.</p> <p>13. <u>Military Caregiver Leave (FMLA)</u>: Allows an eligible employee who is the spouse, child, parent, or “next of kin” of a covered servicemember with a serious injury or illness to use up to a total of twenty-six (26) workweeks of unpaid leave during a “single twelve (12) month period” to provide care for the servicemember.</p> <p>14. <u>Parent (FMLA)</u>: The biological, adoptive, step, or foster parent, or someone who stood in place of the parent to the employee when the employee was a child.</p> <p>15. <u>Pregnancy Discrimination Act (PDA)</u>: A federal statute that amended Title VII of the Civil Rights Act of 1964 to "prohibit sex discrimination on the basis of pregnancy."</p>	

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	<p>chronic serious health condition which continues over an extended period of time, requires periodic visit to a health care provider at least twice a year, and may involve occasional episodes of incapacity.</p> <p>A visit to a health care provider is not necessary for each absence; or</p> <p>d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or</p> <p>e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.</p> <p>15. <u>Spouse</u> The person with whom an individual has entered into marriage as defined and recognized under the laws of the Commonwealth.</p> <p>16. <u>Twelve Month Period</u> For the purpose of calculating FMLA leave, an LDSS may use a calendar, fiscal year, another fixed 12-month period, or a rolling 12-month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating Family Medical Leave Act leave.</p>	<p>The Act covers discrimination "on the basis of pregnancy, childbirth, or related medical conditions."</p> <p>16. <u>Pregnant Workers Fairness Act (PWFA)</u>: A federal statute signed into law in 2023 that requires covered employers to provide "reasonable accommodations" to employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."</p> <p>17. <u>Qualifying Exigency (FMLA)</u>: Occurs when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school related activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or a call to active-duty, provided that the employee and agency agree.</p> <p>18. <u>Reasonable Accommodation (ADA)</u>: A modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with</p>	

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		<p>a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.</p> <p>19. <u>Reasonable Accommodation (PWFA)</u>: Changes to the work environment or the way things are usually done at work for pregnant female employees or female employees recovering from childbirth. The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations including the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities, or</p>	

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		<p>activities that involve exposure to compounds not safe for pregnancy.</p> <p>20. <u>Reduced Schedule (FMLA)</u>: A work schedule less than the usual number of hours worked per workweek or per workday.</p> <p>21. <u>Serious Health Condition (FMLA)</u>: An illness, injury, impairment, or physical or mental condition that involves inpatient care or either:</p> <ul style="list-style-type: none"> a. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes: <ul style="list-style-type: none"> i. Treatment two (2) or more times within thirty (30) days by or under the supervision of a health care provider the first of which must occur within seven (7) days of the first day of incapacity; or ii. One (1) treatment by a health care provider, within the first seven (7) days of incapacity, with a continuing regimen of treatment; or 	

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		<ul style="list-style-type: none"> b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period, requires periodic visits to a health care provider at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated. <p>22. <u>Twelve (12) Month Period (FMLA):</u> Timeframe used for the purpose of calculating FMLA leave. An LDSS may use a calendar year, fiscal year, another fixed</p>	

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		<p>twelve (12) month period, or a rolling twelve (12) month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating FMLA leave.</p>	
<p>Section I: Eligibility & Qualifications for Family & Medical Leave (General Information)</p>	<p>---</p>	<p>This policy provides the eligibility requirements and procedures for the use of leave in accordance with the Family and Medical Leave Act (FMLA) and applies to all LDSS employees who meet the eligibility requirements set forth by the FMLA.</p> <p>FMLA leave is unpaid leave. The LDSS may require, or employees may request, paid leave to run concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate, under each leave policy for absences covered under the FMLA. The LDSS may designate such leave as FMLA leave if the conditions set forth in this policy are met.</p> <p>For instances where paid leave is not required or unavailable, please refer to Part I - Section IV, "Leave without Pay (LWOP)." This section provides information on job restoration when returning from FMLA, and the impact of leave without pay (LWOP) on employee benefits.</p> <p><u>Resources</u></p> <p>The LDSS may need additional support during the FMLA process.</p> <ol style="list-style-type: none"> 1. For questions about the impact to benefits, it is recommended that the LDSS or the employee contact the locality. 2. For general questions about eligibility or interpretation of the Family and Medical 	<p>New Section created using information incorporated from other sections of the current version.</p>

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		<p>Leave Act, contact the VDSS Local HR Support Team.</p> <p>3. For more complicated matters (second or third opinions, failure to return to work, intersection with other federal laws, etc.), contact the locality HR representative or attorney.</p> <p>4. The Department of Labor (DOL) has a Family Medical Leave Act Advisor tool that may also be helpful in addressing questions and issues relating to the determination of eligibility and certification.</p>	
<p>Family and Medical Leave Act [FMLA] (Eligibility Requirements)</p>	<p>To be eligible to take Family Medical Leave Act leave, the following criteria must be met by full time and part time employees:</p> <ol style="list-style-type: none"> 1. The employee must have been employed by the LDSS for a total of at least 12 consecutive or non-consecutive months in the past seven years. 2. For the 12 months immediately preceding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked (paid leave is not counted). a. Employees returning from military service who request Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for the employer during the year to determine if they meet the 1250 hour requirement in the 	<p>To be eligible to take <u>FMLA</u> Family Medical Leave Act leave, the following criteria must be met by <u>full</u>-time and <u>part</u>-time employees:</p> <ol style="list-style-type: none"> 1. The employee must have been employed by the LDSS for a total of at least <u>twelve (12)</u> consecutive or non-consecutive months in the past seven <u>(7)</u> years. 2. The For the 12 months immediately preceding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked <u>for the twelve (12) months immediately preceding the first day of the requested leave</u> (paid leave is not counted). 3. Employees returning from military service who request <u>FMLA leave</u> Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for 	

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	<p>determination of their eligibility for Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).</p> <p>3. Twelve weeks of FMLA leave must not have been used in the current 12 month period.</p> <p>4. For part time employees, the amount of FMLA leave will be equivalent to twelve times their normal workweek, not to exceed 12 weeks.</p>	<p>the employer during the year to determine if they meet the 1250 hour requirement in the determination of their eligibility for <u>FMLA leave</u> Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). <u>See Part I – Section V, “Military Leave,” for additional information.</u></p> <p>4. Twelve <u>(12)</u> weeks of FMLA leave must not have been used in the current <u>twelve (12)</u> month period. <u>The LDSS local board and local director may choose from any of the following options to establish how the twelve (12) month period is calculated.</u></p> <p>a. <u>Calendar Year</u></p> <p>b. <u>Fiscal Year</u></p> <p>c. <u>Another Fixed Twelve (12) Month Period</u></p> <p>d. <u>Rolling Twelve (12) Month Period – A ‘rolling’ period looks back from the date the leave was requested.</u></p> <p>5. <u>The LDSS local board and local director reserve the right to change how the FMLA leave is calculated as long as:</u></p> <p>a. <u>Employees are provided with a minimum of sixty (60) days’ notice of the change, and</u></p> <p>b. <u>The transition takes place in such a way that the employees retain the full benefit of twelve (12) weeks of leave under</u></p>	

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		<p><u>whichever method affords the greatest benefit to the employee.</u></p> <p><u>Under no circumstances may a new calculation method be implemented to avoid the FMLA's leave requirements.</u></p> <p>For part time employees, the amount of FMLA leave will be equivalent to twelve <u>(12)</u> times their normal workweek, not to exceed <u>twelve (12)</u> weeks.</p>	
<p>Helpful Hints: FMLA Intersection with Other Federal Laws</p>	<p>---</p>	<p>There are two additional federal laws, the Americans with Disabilities Act (ADA) as amended, and the Pregnant Workers Fairness Act (PWFA), that may require the employer to grant leave to employees as a reasonable accommodation. A qualifying request to approve leave under the FMLA may also be a qualifying reason under the ADA or PWFA. Please see Section VI; FMLA & Other Federal Laws for more information.</p>	<p>This “Helpful Hint” appears as part of Section I: Eligibility & Qualifications for Family & Medical Leave (see above).</p>
<p>Family and Medical Leave Act [FMLA] (Qualifying Reasons)</p>	<p>Eligible employees may take up to 12 weeks of unpaid Family Medical Leave Act leave per leave year for the following reasons:</p> <ol style="list-style-type: none"> 1. <u>For Family Member’s Care</u> <ol style="list-style-type: none"> a. The birth of a child (to be taken within 12 months of the child’s birth) ; b. The placement of a child with the employee for adoption or foster care (to be taken within 12 months following date of placement); c. Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself. 	<p>Eligible employees may take up to <u>twelve (12)</u> weeks of unpaid FMLA Family Medical Leave Act leave per <u>the established twelve (12) month period of the LDSS leave year</u> for the following reasons:</p> <p>For Family Member’s Care</p> <ol style="list-style-type: none"> 1. <u>A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.</u> 2. <u>Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.</u> 3. <u>3.</u> <u>The birth of a child (to be taken within</u> 	

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	<p>2. <u>For Employee’s Care</u> A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.</p> <p>3. <u>Qualifying Exigency</u> A qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is an active-duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.</p>	<p><u>twelve (12)</u> months of the child’s birth) ;</p> <p>4. The placement of a child with the employee for adoption or foster care (to be taken within <u>twelve (12)</u> months following date of placement);</p> <p><u>Qualifying reasons for employers seeking military family leave under the FMLA are addressed in Section III, “FMLA Military Leave Entitlements”.</u></p> <p>Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.</p> <p>For Employee’s Care</p> <p>A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.</p> <p>Qualifying Exigency</p> <p>A qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is an active-duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.</p>	
<p>Family and Medical Leave Act [FMLA] (Restrictions on Usage)</p>	<p><u>Parental Leave</u> Leave taken for the birth or placement of a child must be used within the 12 months following the birth/placement. If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave. <u>FMLA leave is Not Cumulative</u></p>	<p>1. Parental Leave</p> <p>a. Leave taken for the birth or placement of a child must be used within the <u>twelve (12)</u> months following the birth <u>or</u> placement.</p> <p>b. <u>A combined total of twelve (12) weeks of FMLA leave will be provided in the event</u> If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave.</p>	

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	<p>Any unused leave cannot be carried over to the next 12-month period.</p> <p>Short-Term Conditions</p> <p>FMLA leave may not be used for short-term conditions for which treatment and recovery are brief.</p> <p><u>Appointments with Health Care Provider</u></p> <p>Routine appointments with a health care provider should be scheduled whenever possible during non-work hours.</p>	<p>2. FMLA leave is N<u>o</u>t C<u>u</u>mulative. A<u>n</u>y u<u>n</u>used leave cannot be carried over to the next <u>twelve (12)</u>-month period.</p> <p>Short-Term Conditions</p> <p>3. FMLA leave may not be used for short-term conditions for which treatment and recovery are brief.</p> <p>3.4. When possible, employees are expected to schedule routine appointments during non-work hours. When it is not possible to schedule an appointment during non-work hours, employees should attempt to schedule appointments outside of peak times of operation for the agency.</p> <p>Appointments with Health Care Provider</p> <p>Routine appointments with a health care provider should be scheduled whenever possible during non-work hours.</p>	
<p>Family and Medical Leave Act [FMLA] (FMLA Leave is Unpaid)</p>	<p>FMLA leave is unpaid. The LDSS may require, or the employee may request, the use of paid leave concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under the Family and Medical Leave Act. An agency may designate such leave as Family and Medical Leave Act leave, if it meets the conditions set forth in this policy. See Form WH-382 entitled <i>Designation Notice (Family and Medical Leave Act)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf.</p>	<p>---</p>	<p>Section removed & relevant information relocated to other sections of updated draft.</p>
<p>Family and Medical Leave Act [FMLA]</p>	<p>1. <u>Request from Employee</u></p> <p>The Employee should submit a written request to his/her supervisor at least 30</p>	<p>FMLA Form Access</p> <p>IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms</p>	<p>This section has been rewritten in the updated draft version as multiple subsections within</p>

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(Procedures Regarding Usage)	<p>calendar days in advance or as soon as practicable. (Notice may be given by a family member if employee is unable to provide notice.)</p> <p>2. <u>Notice of Eligibility and Rights & Responsibilities</u></p> <p>The form <i>Notice of Eligibility and Rights & Responsibilities (WH-381)</i> found at http://www.dol.gov/whd/forms/WH-381.pdf must be given to the employee five (5) business days from the request for leave under FMLA. Once all of the required information requested on the form is completed, the Local Department of Social Services (LDSS) must inform the employee within five (5) business days whether or not the leave will be designated as FMLA leave and count towards the employee’s leave entitlement. This determination must be provided using the <i>Designation Notice (WH-382)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf.</p> <p>3. <u>Certification from Health Care Provider</u></p> <p>A request for FML must be supported by either a <i>Certification of Health Care Provider for Employee’s Serious Health Condition (WH-380-E)</i> or a <i>Certification of Health Care Provider for Family Member’s Serious Health Condition (WH-380-F)</i>. These forms can be located at http://www.dol.gov/whd/forms/WH-380-E.pdf and http://www.dol.gov/whd/forms/WH-380-F.pdf. Medical certification shall be</p>	<p>may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear <i>in italicized type</i> to prompt the reader to access the DOL site. A link to the DOL FMLA Forms site will appear in the paragraph where the forms are listed.</p> <p>Request for Initiation of FMLA</p> <p>Advance Notice & Approval</p> <p>Employees are required to notify their supervisor of the need for FMLA-qualifying leave at least thirty (30) calendar days in advance of the absence, or as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, chronic conditions requiring regular or routine medical appointments, pregnancy, and childbirth.</p> <p>LDSS Initiation of FMLA Under Certain Circumstances</p> <p>The LDSS must initiate the FMLA process for an FMLA-eligible employee as soon as there is enough information indicating the employee’s need for leave may be for an FMLA-qualifying reason. The LDSS must also accept notice from an employee’s family member if the employee is unable to provide the notice.</p> <p>Please see Section VI, "FMLA & Other Federal Laws," to determine if the employee’s request may also qualify under the Americans with Disabilities Act (ADA) as amended, or the Pregnant Workers Fairness Act (PWFA).</p>	<p>“Section II: FMLA Certification Process”.</p>

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	<p>obtained by the employee and returned to his/her agency within 15 calendar days of the request or when feasible or upon return to work from an absence that may qualify under the FMLA (absent extenuating circumstances). If an employee fails to provide certification, recertification, or clarification in a timely manner then the agency may deny FMLA leave until the required certification is provided.</p> <p>4. <u>Second and Third Health Care Provider Opinions</u></p> <p>a. <u>Second Opinion</u></p> <p>In general, in any case in which the employer has reason to doubt the validity of the certification provided, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified on the <i>Certification of Health Care Provider for Employee’s Serious Health Condition</i> (WH-380-E) or a <i>Certification of Health Care Provider for Family Member’s Serious Health Condition</i> (WH-380-F). The health care provider designated or approved shall not be employed on a regular basis by the employer.</p> <p>b. <u>Resolution of Conflicting Opinions – Third Opinion</u></p> <p>In general, in any case in which the second opinion differs from the opinion in the</p>	<p>Notice of Eligibility and Rights & Responsibilities</p> <p>The LDSS is required to provide the employee with the <i>Notice of Eligibility and Rights & Responsibilities (Form WH-381)</i> within five (5) business days of the receipt of the request for leave under the FMLA. DOL FMLA Forms.</p> <p>Designation Notice</p> <p>Once the <i>Notice of Eligibility and Rights & Responsibilities (Form WH-381)</i> is completed and returned, the LDSS must inform the employee within five (5) business days whether the leave will be designated as FMLA. This determination must be provided to the employee using the <i>Designation Notice (Form WH-382)</i>. DOL FMLA Forms.</p> <p>Certification Process</p> <p>This subsection covers a more common, full-time FMLA certification process. Subsection F. addresses intermittent FMLA leave requests and Subsection G. addresses the military certification process.</p> <p>Initial Request</p> <p>Employee Responsibility: Certification of a Health Care Provider</p> <p>All requests for FMLA leave must be supported by either of the following forms (DOL FMLA Forms):</p> <ul style="list-style-type: none"> • Certification of a Health Care Provider for Employee’s Serious Health Condition (Form WH-380-E) 	

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	<p>original certification provided, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified.</p> <p>The opinion of the third health care provider concerning the information certified shall be considered to be final and shall be binding on the employer and the employee.</p> <p>4.5. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to FMLA benefits, including maintenance of group health benefits.</p> <p>2.6. If the health care providers' certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave.</p> <p>a. A copy of the second (and third) medical opinions must be provided to the employee if requested. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.</p> <p>b. When an employee is required to obtain a second (or third) opinion the LDSS must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain these opinions.</p> <p>c. The LDSS may not require the employee or family member to travel outside normal commuting distance for purposes of</p>	<ul style="list-style-type: none"> • Certification of Health Care Provider for a Family Member's Serious Health Condition (Form WH-380-F) <p>Once the LDSS provides the employee with the appropriate form, the LDSS must give the employee at least fifteen (15) calendar days to provide the certification.</p> <p>It is the discretion of the LDSS to extend the timeframe if reasonable circumstances prevent the employee from meeting the fifteen (15) calendar day deadline (i.e., inability to get an appointment with a health care provider within fifteen (15) calendar days, delay by the <i>health care provider</i> on the return of the certification form, etc.). All timeframe extensions should be documented.</p> <p>LDSS Responsibility: Response to Employee Request</p> <ol style="list-style-type: none"> a. The LDSS must respond to the employee's request for FMLA leave on the <i>Designation Notice (Form WH-382)</i>. DOL FMLA Forms. b. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request, or within five (5) business days of receiving all the required documentation from the employee. c. The LDSS may conditionally approve absences as FMLA leave without a request from the employee. 	

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	<p>obtaining the second or third medical opinion except in very unusual circumstances.</p> <p>d. Without the written consent of the employee, the LDSS should not discuss with the health care provider the serious health condition of the employee or family member nor should the LDSS require more information than is requested on the certification form.</p> <p>c. <u>Approval of Leave</u> The LDSS must respond to an employee’s request for FMLA leave on the form entitled <i>Designation Notice (WH-382)</i>. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request or within five (5) business days of receiving all of the required documentation from the employee. This form can be found at http://www.dol.gov/whd/forms/WH-382.pdf.</p> <p>5. <u>Provisional Designation of Leave</u> Without a request from an employee, the LDSS may designate provisional absences as FMLA leave if the LDSS has a reasonable basis that such leave qualifies. The LDSS may also designate provisional leave at the request of the employee pending submission of the health care provider’s certification. Such designation may be done even if the employee has been granted permission to use paid leave. Upon receipt of the medical certification, the LDSS must</p>	<p>d. The LDSS may designate up to (5) business days prior to the date of designation as retroactive FMLA leave.</p> <p>Intention to Return to Work The LDSS may require an employee to report periodically on his/her status and intent to return to work.</p> <p>Second & Third Opinions In cases where the LDSS has reasonable doubt about the validity of the employee’s certification, the LDSS may require the employee to obtain the opinion of a second healthcare provider. A third opinion may be required if the first and second opinion differ. The third opinion is final and binding.</p> <p>The DOL has specific requirements related to the selection of the health care provider in each instance and how expenses are covered. It is strongly recommended that the LDSS work with the locality HR representative or attorney if there is a need to request a second or third opinion. The DOL also has a Family Medical Leave Act Advisor tool that may be helpful in addressing questions relating to requiring a second or third opinion.</p>	

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	<p>notify the employee of approval or denial on the form entitled <i>Designation Notice (WH-382)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf.</p> <p>6. <u>Designating FMLA Leave Retroactively</u> The agency may go back 5 business days from the date of designation, to include those 5 business days under FMLA.</p>		
<p>Family and Medical Leave Act [FMLA] (Intention to Return to Work)</p>	<p>The LDSS may require an employee to report periodically during the leave period on intention to return to work. This includes both Intermittent and full-time FMLA leave.</p>	---	<p>This information has been incorporated into “Section II: FMLA Certification Process” (above).</p>
<p>Family and Medical Leave Act [FMLA] (Intermittent Leave or Leave on a Reduced Schedule)</p>	<p>1. <u>Intermittent/Reduced Schedule Leave</u> When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave.</p> <p>2. <u>Advanced Approval for Care of a Newborn or Recently Placed Child</u> Only if approval is granted in advance, may an employee take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. (This does not apply if the leave is taken because of the serious health condition of the child.)</p> <p>3. <u>Reassignment During Intermittent Leave or</u></p>	<p><u>Intermittent/Reduced Schedule Leave</u> When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full-time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave.</p> <p><u>Advanced Approval for Care of a Newborn or Recently Placed Child</u> An <u>Only if approval is granted in advance, may an employee may</u> take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. <u>Advance approval must be granted.</u> (This does not apply if the leave is taken because of the serious health condition of the child.)</p> <p><u>Reassignment During Intermittent Leave or Reduced Schedule Leave</u></p>	

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	<p><u>Reduced Schedule Leave</u></p> <p>An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS’s needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.</p>	<p><u>When an intermittent leave or a reduced leave schedule is granted, the LDSS may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better meets the LDSS’s needs. The alternative position must have equivalent pay and benefits; however, the position does not have to have equivalent duties.</u></p> <p>An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS’s needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.</p>	
<p>Section III: FMLA Military Leave Entitlements (General Information)</p>	<p>---</p>	<p>The purpose of this section is to provide the qualification and certification process for specific military leave entitlements for <i>family members</i> of either covered service members or veterans under the FMLA:</p> <ol style="list-style-type: none"> 1. Military caregiver leave 2. Leave for a qualifying exigency <p>IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear <i>in italicized type</i> to prompt the reader to access the DOL site. A link to the DOL FMLA site will appear in the paragraph where the forms are listed.</p>	<p>New Section</p>

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<p>Family and Medical Leave Act [FMLA] (FMLA Entitlements)</p> <p>Military</p>	<p>Under the FMLA, there are military leave entitlements in the form of qualifying exigency leave and military caregiver leave for a covered service member.</p> <p>1. <u>Qualifying Exigency Leave</u></p> <p>An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation.</p> <p>Employees should submit a complete and sufficient “<i>Certification of Qualifying Exigency for Military Family Leave</i>” (Form WH-384) form to their supervisor.</p> <p>The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member’s active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. This form entitled: <i>Certification for Qualifying Exigency for Military Family Leave</i> can be found at</p>	<p>---</p>	<p>This section has been split into multiple subsections in the updated draft version (see “General Information”, above <u>as well as</u> “Military Caregiver Leave” and “Qualifying Exigency”, below).</p>

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	<p>http://www.dol.gov/whd/forms/WH-384.pdf .</p> <p>2. <u>Military Caregiver Leave</u></p> <p>An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later.</p> <p>Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason.</p> <p>Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child.</p> <p>The employee should submit a completed “<i>Certification for Serious Injury or Illness of Covered Service member</i>” form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.</p>		
Section III: FMLA Military Leave Entitlements (Military Caregiver Leave)	<p><u>Military Caregiver Leave</u></p> <p>An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered</p>	<p><u>Military Caregiver Leave</u></p> <p>An eligible employee is entitled to receive up to <u>twenty-six (26)</u> weeks of unpaid leave during a single <u>twelve (12)</u> month period to care for a</p>	New Section

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	<p>servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later.</p> <p>Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason.</p> <p>Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child.</p> <p>The employee should submit a completed “<i>Certification for Serious Injury or Illness of Covered Service member</i>” form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.</p>	<p>covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member. The single <u>twelve (12)</u> month period commences the first day leave is taken to care for the covered service member and expires <u>twelve (12)</u> months later.</p> <p>Note: An eligible employee is entitled to a combined total of <u>twenty-six (26)</u> weeks of unpaid leave during a single <u>twelve (12)</u> month period. This includes <u>twelve (12)</u> weeks of FMLA leave for any FMLA qualifying reason. <u>For example, An eligible employee may take sixteen (16) weeks of family and medical leave to care for a covered service member and ten (10) weeks of family and medical leave to care for a newborn child.</u></p> <p><u>Military Caregiver Leave Certification Process</u></p> <p><u>An FMLA request for military caregiver leave must be supported by one of the following forms (DOL FMLA Forms.):</u></p> <ul style="list-style-type: none"> <u><i>Military Caregiver Leave of a Current Servicemember (Form WH-385) – use when requesting leave to care for a family member who is a current servicemember with a serious injury or illness.</i></u> <u><i>Military Caregiver Leave of a Veteran (Form WH-385-V) – use when requesting leave to care for a family member who is a</i></u> 	

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		<p><u>covered veteran with a serious injury or illness.</u></p> <p><u>The LDSS may also require:</u></p> <ol style="list-style-type: none"> <u>1. Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any.</u> <u>2. Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration.</u> <u>3. A statement of appropriate facts regarding the servicemember’s health condition sufficient to support the need for FMLA leave.</u> <u>4. Information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed.</u> <u>5. If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care.</u> <u>6. The employee’s name, the name of the covered servicemember, and the employee’s relationship to the servicemember.</u> <u>7. Information on the servicemember’s branch, rank, and unit assignment, or the veteran’s date and type of separation.</u> <p><u>Timeframes for Certification & Approval</u></p>	

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SOCIAL SERVICES



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		<p>The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process."</p> <ol style="list-style-type: none"> 1. The LDSS must give the employee at least <u>fifteen (15) calendar days</u> to provide the certification; and 2. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request, or within five (5) business days of receiving all of the required documentation from the employee. <p><u>Job Restoration</u></p> <p>An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.</p> <p><u>Key Employees</u></p> <p>Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.</p> <p>The employee should submit a completed "Certification for Serious Injury or Illness of Covered Service member" form (U.S. Department of Labor Form WH 385) to his/her</p>	

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<p>Section III: FMLA Military Leave Entitlements (Qualifying Exigency)</p>	<p><u>Qualifying Exigency Leave</u></p> <p>An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation.</p> <p>Employees should submit a complete and sufficient “<i>Certification of Qualifying Exigency for Military Family Leave</i>” (Form WH-384) form to their supervisor.</p> <p>The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member’s active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. This form entitled: <i>Certification for Qualifying Exigency for Military Family Leave</i> can be found at http://www.dol.gov/whd/forms/WH-384.pdf.</p>	<p>supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.</p> <p>A qualifying exigency occurs when a military member is on, called to, or notified of “covered active duty.” Covered active duty occurs when:</p> <ul style="list-style-type: none"> • An LDSS employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces and is deployed to a foreign country. • An LDSS employee whose spouse, son, daughter, or parent is a member of the National Guard or Reserves who has been notified and ordered to active duty in support of a contingency operation. <p>When an LDSS employee’s military family member is on “covered active duty,” any of the following categories are qualifying exigencies (examples are not all-inclusive):</p> <ol style="list-style-type: none"> 1. Short-notice deployment: Notification of a deployment in seven (7) or fewer calendar days prior to the deployment. 2. Military events and related activities: Official ceremonies, programs, informational events or briefings, military family support or assistance programs, etc. 3. Childcare and related activities¹: Arranging childcare; providing emergency, 	<p>New Section</p>

¹ The child does not have to be related to the LDSS employee but must be the child of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

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		<p>non-routine childcare; transferring a child to a new school, etc.</p> <p>4. Care of the military member’s parent²: Arranging alternative care; providing emergency, non-routine care; transfer to a new care facility; meeting with facility staff, etc.</p> <p>5. Financial and legal arrangements: Preparing or executing powers of attorney, enrollment in DEERS, obtaining military ID cards, etc.</p> <p>6. Attending counseling: Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.</p> <p>7. Rest and recuperation: Taking up to fifteen (15) calendar days of leave to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment. The employee’s leave for this reason must be taken while the military member is on rest and recuperation leave.</p>	

² The parent does not have to be related to the LDSS employee but must be the parent of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

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		<p>8. Post-deployment activities: Certain post-deployment activities within ninety (90) days of the end of the military member’s covered active duty (e.g., attending arrival ceremonies, reintegration briefings and events, etc.). Post-deployment activities also include addressing issues arising from the death of a military member, including attending the funeral.</p> <p>9. Other events: Any other event that the employee and employer agree is a qualifying exigency.</p> <p><u>Qualifying Exigency Certification Process</u></p> <p>Qualifying exigency leave allows an employee to take up to a total of twelve (12) workweeks of FMLA leave for qualifying exigencies.</p> <p>An FMLA request for a qualifying exigency must be supported by the following form (DOL FMLA Forms):</p> <ul style="list-style-type: none"> • <i>Certification of Qualifying Exigency for Military Family Leave (Form WH-384)</i> <p>The LDSS may also require:</p> <ol style="list-style-type: none"> 1. A copy of the military member’s active-duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active-duty status. 2. A statement or description of the appropriate facts regarding the qualifying exigency. 	

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		<p>3. The approximate date on which the leave began (or will begin).</p> <p>4. The contact information for any third party the employee is meeting. The LDSS may confirm the nature of the meeting but may NOT request additional information from the contact.</p> <p>Timeframes for Certification & Approval The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process."</p> <p>1. The LDSS must give the employee at least fifteen (15) <u>calendar</u> days to provide the certification; and</p> <p>2. Approval or denial of FMLA leave requests must be given within five (5) <u>business</u> days of receiving the request, or within five (5) <u>business</u> days of receiving all the required documentation from the employee.</p> <p>Job Restoration An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.</p> <p>Key Employees Key employees are those who are within the highest paid 10% of the salaried workforce in the</p>	

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		LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.	
Family and Medical Leave Act [FMLA] (Effect on Employment Benefits)	<ol style="list-style-type: none"> 1. Health Care Coverage <ol style="list-style-type: none"> a. During any FMLA leave, the employee’s participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period. b. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave. <ol style="list-style-type: none"> ii. The failure to timely make premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed. ii. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work as a result of: <ol style="list-style-type: none"> 1. the onset, recurrence, or continuation of serious health conditions that would have entitled the employee to the FMLA leave; or 2. other circumstances beyond the employee’s control. 	---	Information from this section has been incorporated into “Section IV: FMLA Records Management & Impact on Employee Benefits”, below.

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	<p>2. <u>Other Benefits</u></p> <p>Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay.</p> <p>LWOP is to be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee’s years of service may be affected by such absence.</p>		
<p>Family and Medical Leave Act [FMLA] (Workers’ Compensation and FMLA)</p>	<p>When a Workers’ Compensation injury causes an absence that would otherwise qualify under the FMLA, the two leaves may run concurrently and count towards FMLA leave.</p>	---	<p>Information from this section has been incorporated into “Section IV: FMLA Records Management & Impact on Employee Benefits”, below.</p>
<p>Family and Medical Leave Act [FMLA] (Returning From Leave)</p>	<p>1. <u>Job Restoration</u></p> <p>Upon returning from Family and Medical Leave Act leave, an employee is entitled to be reinstated to their original position, or an “equivalent position,” one with comparable duties, terms, conditions, compensation, and privileges of the employee’s previous position.</p> <p>2. <u>Key Employee</u></p> <p>If an employee’s position is determined to be key (within the highest paid 10% of the salaried workforce in the LDSS), job restoration may be denied if the following procedures have been taken:</p> <p>a. The LDSS gives written notice to the key</p>	---	<p>Section removed, however information has been updated and incorporated into “Qualifying Exigency”, above.</p>

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	<p>employee at the time the employee requests FMLA leave or as soon as practicable thereafter that the employee qualifies as a Key Employee. The notice must also state the potential consequences with respect to reinstatement and maintenance of health benefits if the employee is denied job restoration.</p> <p>b. If a determination is made that a substantial and grievous economic injury to the LDSS's operations will result if the Key Employee is reinstated at the end of the leave, the LDSS shall notify the employee in writing of its determination and that it intends to deny job restoration.</p> <p>(1) This notice must be given either in person or by certified mail.</p> <p>(2) This notice must explain the basis for the finding that substantial and grievous economic injury will result.</p> <p>(3) If leave has commenced, the Key Employee must be allowed a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.</p> <p>(4) If a Key Employee does not return to work in response to the notice, the employee continues to be entitled to maintenance of health benefits during the remaining period of FMLA leave and the LDSS must continue payment of its share of health benefit premiums.</p> <p>(5) A Key Employee's rights under FMLA</p>		

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	<p>continue unless and until the employee either gives notice that he or she no longer wishes to return to the position or the LDSS denies the reinstatement at the conclusion of the leave period.</p> <p>c. A Key Employee is entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the notice. At the time of the request, the LDSS must again determine whether there will be substantial and grievous economic injury if the employee is reinstated. If it is determined that substantial and grievous economic injury will result, the employee must be notified in writing, delivered in person or by certified mail of the denial of restoration.</p> <p>d. Although the employee may be denied job restoration, the employee remains on FMLA leave status for the requested period of leave and all benefits of FMLA continue until the end of the leave.</p>		
<p>Family and Medical Leave Act [FMLA] (FMLA Management) Records</p>	<p>Agencies must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years and must include the information listed below:</p> <ol style="list-style-type: none"> 1. Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. 2. Leave designated as FMLA, both paid and 	---	<p>Information from this section has been incorporated into “Section IV: FMLA Records Management & Impact on Employee Benefits”, below.</p>

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	<p>unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)</p> <ol style="list-style-type: none"> 3. Copies of employee’s notices of leave furnished to agency. 4. Any documents (including written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves. 5. Records of premium payments. 6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement. 7. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employee’s family members are to be maintained in separate files/records and treated as confidential medical records except: 8. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations. 9. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment 10. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information 		

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	upon request.		
Section IV: FMLA Records Management & Impact on Employee Benefits	---	<p><u>FMLA Records Management</u></p> <p>LDSSs must make, keep, and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three (3) years and must include the information listed below:</p> <ol style="list-style-type: none"> 1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. 2. Leave designated as FMLA, both paid and unpaid, and the dates leave was taken. FMLA leave taken in increments of less than a day must be noted by the hour. 3. Copies of employee’s notices of leave furnished to agency. 4. Any documents (written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves. 5. Records of premium payments. 6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement. 	

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		<p>7. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employee’s family members are to be maintained in separate files/records and treated as confidential medical records except:</p> <ul style="list-style-type: none"> a. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations. b. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment. c. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request. <p>LDSSs should contact the <u>VDSS HR Policy Team</u> (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney prior to releasing any records. Refer to Chapter 8 of the LDSS Administrative/HR Manual for more information on maintaining files on confidential information.</p> <p><u>FMLA Impact on Employment Benefits</u></p> <p>The locality benefits administrator should be the primary contact for specific questions about the impact of FMLA on employee benefits.</p>	

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		<p>Health Care Coverage</p> <ol style="list-style-type: none"> 1. During any FMLA leave, the employee’s participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period. 2. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave. 3. The failure to make timely premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed. 4. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work because of: <ol style="list-style-type: none"> b. The onset, recurrence, or continuation of serious health conditions that would have entitled the employee to FMLA leave; or c. Other circumstances beyond the employee’s control. <p>Other Benefits</p> <ol style="list-style-type: none"> 1. Employees on unpaid FMLA leave are 	

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		<p>entitled to the same benefits as employees on leave without pay (LWOP).</p> <p>2. LWOP must be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee’s years of service may be affected by such absence.</p> <p>See Part I - Section IV, "Leave Without Pay (LWOP)," for more information.</p> <p>Workers’ Compensation & FMLA</p> <p>When a workers’ compensation-qualified injury causes an absence that would otherwise qualify under the FMLA, both leaves may run concurrently and count towards FMLA leave.</p>	
Family and Medical Leave Act [FMLA] (Violations)	An employee who believes that FMLA benefits have not been applied consistently with the provisions of this policy or the law may make a complaint to the Director and if not resolved may file a complaint with the U.S. Department of Labor, Wage and Hour Division. A non-probationary employee may also initiate a grievance.	---	Section Removed
Family and Medical Leave Act [FMLA] (The Family Medical Leave Act [FMLA], the Americans with Disabilities Act [ADA] as amended, and the	The FMLA, ADA and PDA all require a covered employer grant leave to an employee in certain circumstances. Unlike the FMLA, there is no eligibility period for leave granted under the provisions of the ADA or the PDA. Requests for leave under these provisions should be made to	<p><u>General Information</u></p> <p>Under the FMLA, covered employers may be required to grant leave to an employee in specific circumstances. However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant</p>	Section has been rewritten and expanded upon as “Section V: FMLA & Other Laws”

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Pregnancy Discrimination Act [PDA])	<p>the employee’s supervisor.</p> <p>The ADA requires employers to consider reasonable accommodation requests for qualified employees in order to perform essential job functions. The accommodation can include a modified work schedule and may include leave requests. There is no set leave period mandated. The leave could be granted as requested by the employee unless doing so would result in "undue hardship" to the employer (see Chapter 1 for more information about ADA).</p> <p>The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. The PDA requires that leave be administered in a way that does not discriminate based on gender.</p>	<p>Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation. If you have any questions or need assistance regarding the interaction of these federal laws, please contact the VDSS Employee Relations Team (hr.employeerelations@dss.virginia.gov) or the locality HR representative for guidance.</p> <p><u>The Americans with Disabilities Act (ADA) as Amended</u></p> <p>Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities. The requirement relates to three (3) aspects of employment:</p> <ol style="list-style-type: none"> 3. Ensuring equal opportunity in the application process. 4. Enabling a qualified individual with a disability to perform the essential functions of a job. 5. Making it possible for an employee with a disability to enjoy equal benefits and privileges of employment³. 6. Employers consider possible reasonable accommodations for an employee’s request by engaging with the employee during what is referred to as the “interactive process.” Like an employer’s responsibility to initiate the FMLA process when they become aware of the employee’s need, employers have a 	

³ [42 U.S.C. § 12112.](#)

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		<p>legal obligation to initiate the interactive process when they become aware of an employee's need for an accommodation due to a disability. See “Helpful Hints - The Job Accommodation Network (JAN)” for more information on providing reasonable accommodation under the ADA.</p> <p><u>The Pregnant Workers Fairness Act (PWFA)</u></p> <p>The PWFA took effect in 2023 and is intended to fill in the gaps between Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA); the ADA; and the FMLA. The PWFA differs from the PDA, which focuses on the protection of pregnant employees from discrimination. The PDA did not impose specific accommodation requirements that can assist pregnant employees with the performance of their job duties. Under the PWFA, employees can request accommodation requirements.</p> <p><u>Analysis of Requests for Leave</u></p> <p>Requests for Leave Under the ADA & PWFA</p> <ol style="list-style-type: none"> 1. Requests for leave under either the ADA or PWFA should be made directly to the employee’s supervisor. LDSS are encouraged to develop request forms. Sample forms may be found on the Job Accommodation Network (JAN). 2. When engaging in the interactive process, the LDSS may consider and present other options for accommodation outside of a request for leave. These may include, but are not limited to: 	

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		<ul style="list-style-type: none"> d. Making modifications to an employee’s workspace. e. Modifying a work schedule to allow shorter hours or a later start time. f. Granting additional, longer, or more frequent breaks. g. Making exceptions to food and drink policies. h. Providing closer parking i. Allowing intermittent leave for medical appointments. j. Providing a temporary reassignment. k. Allowing telework. <p>3. Like FMLA, leave approved as a reasonable accommodation under the ADA or PWFA is unpaid leave.</p> <p>4. There is no waiting period for eligibility or an hours-worked requirement for leave granted under the provisions of the ADA or the PWFA.</p> <p>5. Employee requests for these leaves may intersect with employee eligibility under FMLA and vice versa. FMLA may also run concurrently with either the ADA or the PWFA.</p> <p>Establishing a Maximum Leave Policy Leave requested as a reasonable accommodation under the ADA or PWFA does not have a specific</p>	

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		<p>timeframe like leave granted under the FMLA. The LDSS local board and local director may establish a maximum leave allowance for leave approved as a reasonable accommodation under the ADA or PWFA. However, in cases where a maximum leave policy exists, the ADA requires the employer to consider extending leave beyond the maximum leave allowed by policy when additional leave is needed due to a disability-related reason. The same flexibility is recommended for reasonable requests for additional leave beyond the maximum amount in relation to leave approved under the PWFA.</p> <p>Importance of Analysis</p> <p>The FMLA, ADA, and PWFA have distinct differences. When an employee submits a request, and it is unclear to the LDSS if more than one of these laws applies, a separate analysis of the request in relation to each law must be conducted to determine employee eligibility.</p> <p>The LDSS <i>must</i> reach out to either the locality HR representative or attorney or the VDSS Employee Relations Team when:</p> <ol style="list-style-type: none"> 1. There is no formal request from an employee, but there is awareness that an employee may require assistance under either the FMLA, ADA, or PWFA. 2. An Employee requires assistance, but there are questions about the potential intersection of the FMLA, ADA, and PWFA in addressing the employee’s needs. 3. A determination needs to be made as to whether an employee’s request for 	

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		<p>accommodation qualifies as an “undue hardship”. Note: The employer must show that the employee’s request for accommodation would cause <i>significant</i> difficulty or expense to deny the request as an undue hardship.</p>	
<p>Helpful Hints: The Job Accommodation Network (JAN)</p>	<p>---</p>	<p>The Job Accommodation Network (JAN) helps employers recognize the valuable contributions that qualified workers with disabilities add to the workforce by providing accommodation solutions, trusted strategies, and practical guidance on the Americans with Disabilities Act (ADA) as amended.</p> <p>This site offers:</p> <ul style="list-style-type: none"> ◆ Assistance specific to state and local government. ◆ An ADA Library to assist with understanding the ADA’s history and most recent amendments. ◆ An Accommodation Search database with hundreds of recommendations for possible accommodations. ◆ Links to different publications and articles on a number of disabilities, including the “Accommodation and Compliance Series” where JAN discusses specific disabilities and how they may be accommodated in detail. <p>While JAN does not specifically address the PWFA, JAN does offer accommodation solutions for pregnancy in relation to the ADA. A thorough analysis of the employee’s request may be required to understand which federal</p>	<p>This “Helpful Hint” appears at the end of “Section V: FMLA & Other Laws”, above.</p>

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		law(s) and accommodation options apply. It's always a best practice to reach out to the locality HR or attorney or the VDSS Employee Relations Team (<u>hr.employeerelations@dss.virginia.gov</u>) for assistance in these situations.	