



HRM Monthly Checkup for Units FAMILY MEDICAL LEAVE ACT (FMLA)

The following checklist is designed to help you maintain compliance with federal, state, Civil Service, LSU System, and AgCenter requirements in the area of Family Medical Leave Act (FMLA). This checklist will serve as a useful reminder for employees who have been performing this function for some time. For employees who are relatively new to this function, it will help ensure that you were properly trained on and are maintaining all required procedures. Please take a few moments to complete the checklist and review the explanatory material included with it. You are not required to return the checklist to this office. It is for self-audit purposes only. Questions should be directed to Torii Freeman (225/578-4640), Sharon Salzer (225/578-4643), or Ann Coulon (225/578-6787).

BASIC PROVISIONS

The FMLA refers to an *eligible employee's* right to be absent from work for a qualifying event. *It is not a separate kind of leave.* During the absence, the employee must take the appropriate type of leave authorized by the LSU System and/or Civil Service rules – annual, sick, compensatory or leave without pay – in accordance with normal regulations.

- An **eligible employee** is one who has been employed by the State at least 12 months (not necessarily consecutive: prior service counts) and has worked at least 1250 hours in the last 12 months. Both of these criteria must be met before an employee is eligible for FMLA.
- A **qualifying event** is normally a serious illness of the employee; the need to care for the employee's seriously ill child, parent or spouse; pregnancy/pre-natal care; or to care for a newborn child (including a newly placed foster or adopted child).
- Up to **12 weeks** of FMLA covered leave may be taken in a **12-month period**, consecutively or intermittently, except intermittent leave for care of a new child is not permitted.
- The 12-month period is calculated under a "**first usage**" year: the 12-month period beginning the first time the employee uses FMLA-covered leave, running 12 months from that date, then beginning again the next time the employee uses FMLA-covered leave.
- An employee should be notified within five work days of his absence from work (on sick, annual, compensatory, or LWOP) if his leave has been designated as FMLA-covered. Except for this five-day period, leave may not be designated retroactively.
- Employees on FMLA-covered leave continue to have the employer portion of their medical insurance premiums paid when on leave without pay.
- When a husband and wife both work for the state, the entitlement is only for the combined total of 12 weeks leave to care for a child or parent (but not parent-in-law). Each then may use the balance of their 12 weeks for personal qualifying medical reasons.
- An employee may not be penalized for taking FMLA leave.
- Louisiana has its own state law covering maternity and pregnancy leave. Employers are to treat pregnant and non-pregnant employees the same for all employment-related purposes if the employees are similar in their ability or inability to work. This law also states that six weeks

of leave must be granted for a normal pregnancy and up to four months for a more serious disabling pregnancy.

NEW MILITARY FAMILY LEAVE ENTITLEMENTS

- **Military Caregiver Leave:** A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness up to a total of **26 work weeks** of **unpaid** leave during a “single 12-month period” to care for the service member.
- A **covered service member** is a current 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.
- An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA qualifying reason other than to care for a covered service member.)
- **Qualifying Exigency Leave:** A covered employer must grant an eligible employee up to a total of **12 workweeks** of **unpaid** leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty OR has been notified of an impending call or order to active duty, in support of a contingency operation.
- Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard. It does not extend to family members of military members in the Regular Armed Forces.
- Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a “single 12-month period” if the leave is to care for a covered service member with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

RECORD-KEEPING

- The FMLA Notification Form must be completed and returned to the Human Resource Management Office. The employee is not required to sign the form, but the date the employee was provided a copy of the form must be supplied. This form also provides the employee with their rights and responsibilities under the FMLA law.
- If medical certification is required, the Medical Certification form for sick and/or FMLA covered leave under AgCenter PS-34 should be completed and sent to the Human Resource Management Office.
- When leave is taken, the proper leave slips must be used with FMLA-covered leave noted in the remarks.
- If the employee goes into Leave Without Pay (LWOP), remember to submit a Personnel Action Form (PER2) putting the employee on LWOP and then another one returning the employee when they return to work.

COMMON QUESTIONS

- ❑ **What is the point of using FMLA leave if the employee has plenty of leave?** FMLA is not a separate kind of leave. It must be taken in conjunction with the regular categories of leave provided by the AgCenter: annual, sick, compensatory leave or leave without pay. These types of leave are designated as FMLA-covered if the reason for the leave is covered by the FMLA. The FMLA gives an eligible employee the right to be absent from work.
- ❑ **Who decides if the leave is FMLA covered leave?** It is the supervisor's responsibility to designate the leave as FMLA-covered. If the supervisor has sufficient information to know that the leave is FMLA-covered, the employee must be given the time off regardless of whether the employee mentions FMLA.
- ❑ **What is a qualifying event?** A qualifying event is normally the birth of a child and to care for the newborn child, placement of a child for adoption or foster care, to care for a spouse, child or parent with a serious health condition, or a serious health condition which makes the employee unable to perform the functions of the employee's job. **Under the new military leave provisions: a qualifying event will also include caring for a current member of the Armed Forces who has suffered a serious injury or illness in the line of duty; and/or qualifying exigencies that arise in preparing and handling situations that arise for the covered service member who has been called to active duty.**
- ❑ **Does the employee need to provide any documentation?** As per AgCenter PS-34, medical certification is required on the official AgCenter medical certification form when the employee is on leave for more than 5 consecutive work days or on leave consistently and repeatedly.
- ❑ **Someone I supervise has been out for 6 weeks for a serious health condition and I haven't designated it as FMLA leave. What should I do?** Fill out the FMLA Notification form to be effective now, mail a copy to the employee and send the original to the Human Resource Management Office. You may not back date FMLA coverage to 6 weeks ago, but any leave from this point forward will be considered FMLA-covered. If the employee hasn't provided medical certification, request they do so.

LINKS

- ❑ FMLA Information Sheet (<http://www.lsuagcenter.net/hrm/Documents/fmlainfo.pdf>)
- ❑ FMLA Notification Form (<http://www.lsuagcenter.net/hrm/Documents/MedNot.pdf>)
- ❑ AgCenter PS 34: Medical Certification (includes Medical Certification Form) (<http://www.lsuagcenter.com/MCMS/RelatedFiles/{C8671BAA-48C8-4C08-AB4C-B07E3665301D}/ps34.pdf>)

MOST COMMON MISTAKES

- ❑ Forgetting to check whether the employee is eligible (they must meet both criteria).
- ❑ Not designating qualifying events as FMLA-covered.
- ❑ Not notifying the employee that leave is designated as FMLA.
- ❑ Not ensuring that leave slips have "FMLA leave" noted in the remarks.
- ❑ Not requiring medical certification as outlined under AgCenter PS-34.
- ❑ Denying non-FMLA leave because the employee has been out for FMLA leave.