

PERSONNEL
TRAINING FOR
HR
PROFESSIONALS
IN THE
STATE
PERSONNEL
MANAGEMENT
SYSTEM


Understanding Leave & Leave Events Part I



Leave topics to be discussed:

- ❖ FMLA, paid and unpaid
- ❖ Military for training and active duty
- ❖ Disciplinary Suspension Without Pay
- ❖ Leave of Absence without pay for medical or personal reasons
- ❖ Organ & Bone Marrow Donation Leave
- ❖ Disaster Service
- ❖ Public Health
- ❖ Leave Bank/Employee to Employee Leave Donations
- ❖ Accident Leave and Temporary Total Disability (TTD)*

***More in-depth details are included in the Accident Leave Presentation.**



Other Leave Information is available at the end of the presentation for you to reference.

FMLA, Paid and Unpaid



What is FMLA?

- ❖ The federal Family and Medical Leave Act (FMLA or the Act) took effect on August 5, 1993 and was last updated October 28, 2009. The Act is intended to balance the demands of the workplace with the needs of families by allowing leave for certain medical reasons. FMLA was established to benefit employers as well as their employees.
- ❖ The Department of Budget and Management (DBM) strongly encourages managers and supervisors to use the provisions of the States FMLA Guide to acquaint themselves with the basic provisions and requirements of the FMLA and related State law.

FMLA, Paid and Unpaid




- ❖ Federal law which requires certain employers, including the State of Maryland, to grant job-protected leave to employees who meet FMLA's eligibility requirements
- ❖ Entitles eligible employees, with a serious medical condition, to an absence of up to 12 workweeks of unpaid leave in any 12-month period.
- ❖ All applicable paid leave must be used while on FMLA, prior to going without pay
- ❖ Employees may also care for an immediate family member, with a serious medical condition, such as spouse, parent or child (includes foster, legal ward and/or adopted).

FMLA, Paid and Unpaid



What's Covered?

An employee may request FMLA for the following reasons:

- ❖ the birth of a child, and to care for the newborn child;
 (If both spouses work for the State, they may each be eligible for up to 12 weeks)
- ❖ the placement of a child for adoption or foster care;
- ❖ necessary care for the employee's spouse, child, or parent with a serious health condition, or an adult child who cannot care for himself or herself;
- ❖ a serious health condition that temporarily makes an employee unable to perform the functions of the employee's job; or

FMLA, Paid and Unpaid

What's covered? (cont'd)

An employee may also request FMLA for a:

- ❖ **Qualifying exigency**, which entitles an eligible employee up to 12 weeks of paid or unpaid leave, arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on (or has been notified of an impending call to) "covered active duty" in the Armed Forces.
- ❖ **Service member Family Leave or Military Caregiver Leave**, entitles an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member *to an absence of up to a total of 26 workweeks of paid or unpaid leave* to care for a family member in the Armed Forces, or a veteran who is undergoing medical treatment or is seriously injured or ill.

Note: State employees can only use sick leave in accordance with State laws and regulations



FMLA, Paid and Unpaid

Employee Eligibility:

- ❖ An employee who is eligible for FMLA: 1) has worked a continuous period of 12 months and 2) has at least 1,250-work hours during the preceding 12 months of the request. The required 12 months of employment does not need to be consecutive months, as long as any break in service is less than 7 years.
- ❖ Contractual and temporary employees with 12 or more months of service are also eligible after meeting FMLA criteria.
- ❖ If both spouses work for the State, they are limited to a combined total of 26 workweeks for Service member Family Leave or Military Care Giver Leave.
- ❖ An employer may designate other approved leave (e.g. Leave Bank, Emp-to-Emp, etc) as FMLA, even without an FMLA request from employee.

FMLA, Paid and Unpaid

Continuous and Intermittent FMLA

- ❖ FMLA may be taken for a continuous period of time for up to 60 days/480 hours; or,
- ❖ On an intermittent basis (separate blocks of time for the same illness during a specified frequency); a reduced work schedule may be an option if acceptable medical documentation, which supports the medical necessity, is submitted by the employee, and can be accommodated.
- ❖ FMLA Requests are subject to approval based on the review of employee eligibility, medical condition and the submission of sufficient medical information.

Note: All information submitted is considered confidential and shall be treated as such.

FMLA, Paid and Unpaid

- ❖ FMLA allows an employee to be on an approved unpaid leave status; however, the **State of Maryland employees are required to use their accrued sick leave, or other available leave;** Although 12 weeks of FMLA can be used for birth of a child, employees can only use up to 6 (or 8) weeks of sick leave.
- ❖ If the employee uses paid leave under circumstances which do not qualify as FMLA leave (toothache, cold, physicals, etc.), the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled.
- ❖ An employee continues to accrue leave, service credits, and other benefits during **paid** leave according to the policies that govern that leave. *Different types of paid leave will be discussed further.*

FMLA, Paid and Unpaid

Benefits:

- ❖ Under FMLA leave, employee health benefits will continue without interruption **during any portion of unpaid leave.**
- ❖ Should the employee not be able to pay their portion of their benefits due to unpaid leave under FMLA, the employee will be responsible for paying their portion upon returning to work. Should the employee not return, they may be responsible for the full portion of the benefits paid (including the State portion) depending on the reason they do not return.
- ❖ Retirement Benefits may also be protected by completing a SRA Form 46 - **QUALIFIED LEAVE OF ABSENCE REQUEST.**

FMLA, Paid and Unpaid

What should the employee do?

- ❖ An employee shall provide **30 days advance notice** to the employer when FMLA absence is foreseeable. The Agency requires the medical certificates to be as up to date as possible and therefore should not be dated more than 30 days from the date of the qualifying effective date (when foreseeable).
- ❖ If an FMLA is **not foreseeable**, the employee shall provide the medical documentation **within three business days** from the effective date of the qualifying absence.
- ❖ Unless there is a qualifying exigency, the employee is required to give notice as soon as both possible and practical.
- ❖ Employees must follow normal leave and/or call out procedures.

Note: Employees should contact their HR Office for guidance or questions regarding their FMLA request.



FMLA, Paid and Unpaid

Supervisor's Role:

- ❖ Supervisors can determine possible eligibility by reviewing the information under “**What's Covered?**” of this document.
- ❖ Although provisional FMLA designation is no longer allowed, if the supervisor is aware of an employee's serious medical condition, he/she must advise the employee to complete an FMLA Request (if eligible) and contact HR for guidance; forms should be provided whenever possible, or go to [www.dbm.maryland.gov/State Employees](http://www.dbm.maryland.gov/State_Employees).
- ❖ Supervisors/Managers should advise employees of any consequences should they not comply with the completion of FMLA paperwork.
- ❖ Supervisors **CANNOT** ask the employee about their medical condition. This would be a HIPAA violation.
- ❖ Employees **CANNOT** be referred to the State Medical Director while on FMLA.

FMLA, Paid and Unpaid

Supervisor's Role:

- ❖ Supervisors **CANNOT** contact the employee's physician or require employees to submit FMLA forms to them. FMLA Requests must be submitted to an HR Coordinator for review and to determine eligibility.
- ❖ The HR Coordinator will review and provide a determination within five business days. Supervisors and Administrators will be notified whether approved or not, in addition to any other information they need to know (e.g. approved dates, frequency for intermittent, etc.)
- ❖ Upon employee's release, they must be restored to their same or equivalent position



FMLA, Paid and Unpaid

- ❖ Under FMLA, State employees are required to use paid leave when available.
- ❖ Employees should be encouraged to save their sick leave for medical care and/or true medical emergencies.
- ❖ Employees accrue up to 120 hours of sick leave per year and can rollover sick leave every year. The Employer shall require an employee to provide an original certificate of illness or disability only in cases where an absence is for five (5) or more consecutive workdays.
- ❖ Sick Leave should be the first leave used under FMLA; other available leave, such as Annual, Personal and/or comp may be used in the event the employee has exhausted their sick leave.

FMLA, Paid and Unpaid

- ❖ In the event of a birth of a child, employees can only use up to 6 (or 8) weeks of sick leave; depending on type of birth. This includes leave from the leave bank or emp to emp.

State Personnel and Pensions Article, Section 9-505, allows an employee to use up to 30 days of accrued sick leave, without certification of illness or disability, to care for and nurture a child immediately after birth or placement for adoption.

- ❖ They must use other types of paid leave, if available, for the remainder of the FMLA period if they request the whole 12 weeks.
- ❖ Process as a leave of absence event: Paid or Unpaid, and Continuous or Intermittent
- ❖ If continuous and paid, time card should be completed to reflect type of leave used. DO NOT DESIGNATE AS FMLA ON TIMESHEET FOR THE SAME DATES OF CONTINUOUS FMLA
- ❖ If intermittent paid, time sheet should be coded as zFMLA and type of leave being used.

Military for training and active duty

Military Administrative Leave for Active Duty Armed Forces

- ❖ Non-temporary employees are eligible to be provided leave/compensation to supplement their military income while on active duty (NOT TRAINING).
- ❖ The employee is entitled to leave in an amount sufficient to compensate the employee for the difference between the employee's active duty base salary paid by the federal government and the employee's State base salary.
- ❖ Compensation may not exceed an employee's State base salary.
- ❖ Employees will continue to accrue annual and sick leave while on paid administrative military leave, based on the number of hours being paid each pay period.
- ❖ Employees do not need to exhaust their own leave prior to getting Military Adminn Leave
- ❖ Employee must provide a copy of the military orders and military salary information
- ❖ Military Admin Leave does NOT apply to Active Duty Training
- ❖ The required form and instructions for calculating are available on DBM's Website
Send completed form to DBM, Personnel Services, Room 705
- ❖ DO NOT COMPLETE TIME SHEET
- ❖ Process Leave of Absence Event – Unpaid>Military Administrative
- ❖ Process compensation change: Enter amount of bi-weekly compensation as an allowance

Military for training and active duty

Military Leave for Training

- ❖ Employees are entitled to use paid military leave for up to 15 days for military training or active military duty in a reserve unit of the armed forces or in the organized militia.
- ❖ Documentation is required
- ❖ Employee will receive full pay for up to 15 days per year
- ❖ Process Leave of Absence Event:
 - ✓ Paid>Military for continuous absence (do not complete timesheet)
 - ✓ Paid>Intermittent Time Off Approval Range (complete time sheet as Military - Intermittent)

Military for training and active duty

Armed Services Leave Without Pay (30 days or less)

- ❖ Employee may go on Leave Without Pay when military leave for training is exhausted, and the employee is not eligible for Military Administrative Leave
- ❖ Up to 2 years of continuous unpaid leave of absence for armed services leave
- ❖ Benefits coverage will continue for first 30 days of approved unpaid military leave of absence; employee is only responsible for regular share of cost during first 30 days.
- ❖ If absence exceeds 30 days, Workday will automatically update the new Leave Event to reflect 31 or more days.

Military for training and active duty

Armed Services Leave Without Pay (31 days or more)

- ❖ If the employee is out on a leave of absence for Armed Services Leave for a period more than 30 days, Workday will automatically update the leave of absence to reflect 31 days or more.
- ❖ Employee will need to pay full cost of benefits through the direct pay process

Disciplinary Suspension Without Pay

- ❖ One of the disciplinary actions an appointing authority may take against an employee is a disciplinary suspension without pay.
- ❖ Suspension must be issued within 5 days of knowledge
- ❖ Must start on a Wednesday and be in 5 day increments if employee is exempt
- ❖ Form is required
- ❖ Process as a continuous, unpaid, Leave of Absence Event

Leave of Absence without Pay – Medical or Personal Reasons

- ❖ In the event a full-time employee has exhausted all of their leave, AND is not a member of the Leave Bank, AND does not receive employee-to-employee donations, or did not have a work injury, they may be eligible for unpaid, job protected FMLA for up to 60 days.
- ❖ Employees who are not approved for FMLA must have written approval by their Appointing Authority to be placed on an approved leave without pay status.

Leave of Absence without Pay – Medical or Personal Reasons

Medical

- ❖ Up to 6 months*
- ❖ Medical documentation required
- ❖ Must have a return date
- ❖ No leave will accrue
- ❖ Will not be paid for holidays
- ❖ Retirement protected if form is completed (SRA Form 46)
- ❖ Employee is responsible for full cost of benefits

*Federal ADA law supercedes State Law; seek advice from your agency ADA coordinator for guidance.

Personal

- ❖ Up to 30 days
- ❖ Subject to approval
- ❖ Must return within 30 days
- ❖ No leave will accrue
- ❖ Will not be paid for holidays
- ❖ No protection
- ❖ Employee is responsible for full cost of benefits

Leave of Absence without Pay – Medical or Personal Reasons

- ❖ Leave of Absence Event MUST be processed
- ❖ No time sheet is required
- ❖ Be sure to process return in Workday when employee returns to work
- ❖ If employee does not return within the approved period, process termination effective the last day the employee was on a paid status

Organ & Bone Marrow Donation Leave

- ❖ An employee or the employee's authorized representative may request organ donation leave by submitting a form to the employee's appointing authority. The form and criteria are on DBM's Website
- ❖ MEDICAL DOCUMENTATION IS REQUIRED.
- ❖ The employee's appointing authority shall render a decision on requests for organ donation leave within 5 working days of receiving the request.
- ❖ If an employee must make the donation before receiving approval, the leave shall be provided retroactively upon approval.
- ❖ In any 12-month period, an employee may use up to:
 - (1) 7 days of organ donation leave to serve as a bone marrow donor; and
 - (2) 30 days of organ donation leave to serve as an organ donor.
- ❖ Process as a Leave of Absence: If continuous, timecard should be left blank; if intermittent, timecard must be completed.

Organ & Bone Marrow Donation Leave

Criteria for Organ Donation Leave:

- ❖ Requests shall be denied only if the employee fails to provide medical documentation establishing the employee as an organ or bone marrow donor.
- ❖ If there is a question about medical documentation, the documentation shall be immediately forwarded to the State Medical Director for review.
- ❖ Organ donation leave may only be used for the actual donation procedure, the preparation for the donation procedure, and recovery from the donation procedure.
- ❖ Leave may be used in increments of 1 hour or more.

REMINDER: Medical documentation submitted with the request for organ donation leave, as well as all medical related documentation, shall be treated as confidential medical information and shall be disclosed only to those individuals who need to know its contents as part of the review, evaluation, and approval process. An employee who fails to maintain the confidentiality of medical information is subject to disciplinary action, up to and including termination.

Disaster Service

- ❖ Disaster Service Leave is not a common type of leave.
- ❖ An employee is entitled to up to 15 days of paid disaster service leave in any 12-month period if:
 - ❑ the employee obtained approval from the employee's appointing authority, AND,
 - ❑ the employee is certified by the American Red Cross as a disaster service volunteer, AND,
 - ❑ the American Red Cross requests the services of the employee during a disaster that is designated at Level II or above in the regulations and procedures of the National Office of the American Red Cross.
- ❖ Process as a Leave of Absence: Paid > / Disaster Service; leave time card blank.

NOTES:

1. Employee must provide supporting documentation
2. For purposes of workers' compensation and the Maryland Tort Claims Act, while an employee is using disaster service leave, the employee is deemed **NOT** to be a State employee.

Public Health

- ❖ An employee is entitled to receive appropriate health care to be provided by the appointing authority and up to 90 days leave with pay if:
 - (1) the employee has a positive tuberculin skin test result on a test taken by the employee at the direction of the employee's appointing authority; and
 - (2) the Secretary of Health determines that, for public health reasons, the employee should not work for a given period of time.
- ❖ Process as a Leave of Absence: Paid>Public Health; timecard should be left blank.

Leave Bank/Employee-to-Employee Leave Donations

- ❖ In the event an employee has or will exhaust all of their leave, and they are a member of the Leave Bank Program, they can request leave from the Bank by completing the required request forms.
- ❖ Each request is subject to review and approval by the State Medical Director.
- ❖ If not a member of the leave bank, employees may request leave donations from other employees, subject to agency approval.

Leave Bank/Employee-to-Employee Leave Donations

LEAVE BANK

- ❖ Must be a member to receive leave from the Leave Bank
- ❖ Employee must donate 8 hours to be a member; membership is for 2 years
- ❖ Employees may join during open enrollment or within 60 days of employment
- ❖ There's a 90 day waiting period for initial enrollment
- ❖ **Supervisor, HR and Timekeeper MUST be involved and must continue COMMUNICATE status**
- ❖ Forms must be completed with sufficient medical information to prevent denial or delays in processing; requests are denied for administrative reasons or due to insufficient medical documentation

Leave Bank/Employee-to-Employee Leave Donations

LEAVE BANK

- ❖ Employee must be paid Leave Bank once submitted to DBM for review while a decision is pending; Timekeeper must add leave
- ❖ Employee earns leave while in a paid status; leave must be used as earned before applying Leave from the Bank
- ❖ If denied, allow 2 weeks for employee to appeal
- ❖ If employee appeals and is still denied, employee must pay back with half of sick leave earned each pay

If denied, DO NOT correct timecard to reflect without pay time. Timekeeper must adjust leave accrual.

Leave Bank/Employee-to-Employee Leave Donations

Employee-to-Employee Leave Donations

- ❖ Employee does not need to be a member of the Leave Bank to get donations from other employees
- ❖ Same medical criteria applies to Leave Bank and Employee Donations
- ❖ Forms are required
- ❖ Agency makes determination; if denied, appeals are sent to DBM for a determination
- ❖ Leave adjustments are required for both the employee donating and receiving leave
- ❖ Employee earns leave while in a paid status; leave must be used as earned before applying donations

Accident Leave and Temporary Total Disability

Accident Leave

- ❖ Paid leave when an employee has a disabling work injury, that would be compensable under the Maryland Worker's Compensation Act.
- ❖ Granted pending the determination by IWIF.
- ❖ Accident Leave may run concurrent with FMLA.
- ❖ Employees' sick leave should not be used for a work injury.
- ❖ Non-taxable; paid at 2/3 the employee's base salary

Accident Leave and Temporary Total Disability

- ❖ Accident Leave may be approved for up to 6 months; and additional 6 months may be approved
- ❖ After 1 year, if the employee is still unable to return to work, Temporary Total Disability may be approved by IWIF.
 - ✓ Employee should be placed on a leave of absence without pay
 - ✓ Employee will be paid by IWIF, NOT by Central Payroll
- ❖ If the injury is believed to be non-compensable, the employee may be placed on sick, annual, or other available leave prior to receipt of a determination by IWIF.
- ❖ For additional information, refer to State Personnel and Pensions Article, Sections 9-701 through 9-705, Annotated Code of Maryland and COMAR 17.04.11.07; or, refer to your Agency's policies and procedures.

Register to attend the Accident Leave Training on Mon, Dec. 18th for more detailed information & pay-back instructions.

QUESTIONS?????



Other Leave Information for you to reference

Annual Leave

- ❖ Annual Leave = Vacation
- ❖ Each employee in the State Personnel Management System, except a temporary employee, is entitled to annual leave with pay
- ❖ Employees may not use annual leave until the employee has completed 6 months of State service (probation is not a factor)
- ❖ Annual Leave (AL) may be used for any purpose and should be approved for use in advance of the need for it
- ❖ AL is earned based on "Total State service"
- ❖ "Total State service" includes any previous State service, regardless of amount of time separated.

Annual Leave – How much is accrued

- ❖ 10 workdays, not to exceed 80 hours, a year for an employee whose total State service is less than 5 years;
- ❖ 15 workdays, not to exceed 120 hours, a year for an employee whose total State service is at least 5 years but less than 10 years;
- ❖ 20 workdays, not to exceed 160 hours, a year for an employee whose total State service is at least 10 years but less than 20 years; and
- ❖ 25 workdays, not to exceed 200 hours, a year, for an employee whose total State service is 20 years or more.

Annual Leave – Accrual and Payment

- ❖ Employees may carry over from 1 year to the next year up to 75 days or 600 hours of unused annual leave may be carried over into the new calendar year (the “new calendar year” means the first day of the first pay period that starts in the new year.
- ❖ Unused annual leave in excess of 75 days or 600 hours shall be forfeited at the beginning of the first full pay period of the next calendar year.
- ❖ Employees will be paid for unused annual leave upon separation of regular employment, in accordance with the following:
 - ❑ Up to 400 hours of unused annual leave from the previous calendar year, PLUS,
 - ❑ Any unused annual leave accrued during the calendar year in which the employee's regular State employment terminates.

USE FIRST IN, FIRST OUT, RULE: Deduct used leave from older balance first.

Compensatory Leave for Exempt and Non-Exempt Employees

- ❖ Employee must have approval to work beyond regular scheduled hours
- ❖ Earned by hourly contractual employees at the rate of time and $\frac{1}{2}$
- ❖ Earned by regular exempt employees who have worked at least $\frac{1}{2}$ hour beyond the employees' regular workday.
- ❖ Must be used within 1 year of the date on which it was accrued.
- ❖ Compensatory leave can be used for any purpose with prior approval from the employee's supervisor.



Examinations and Interviews for State Positions

An employee may be granted up to 4 hours leave to take examinations and attend interviews for State positions.

Holiday Leave

- ❖ Employees receive at least 11 paid holidays per year.
- ❖ An additional holiday is observed during each statewide election day.

Jury Service Leave

- ❖ Granted when an employee is required to serve as a member of a jury, and only when the employee's jury service occurs on the employee's scheduled workday.
- ❖ Regular and Contractual employees may receive paid jury service leave



Legal Actions Leave

Granted an employee who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition, and is neither a party to the action nor a paid witness.

Personal for Regular and Temp Employees

REGULAR (NON-TEMPORARY)

- ❖ Personal Leave (PL) may be used for any purpose after notice to the employee's immediate supervisor
- ❖ It should not be denied unless approval would result in a critical shortage of staff.
- ❖ Current employees will be allotted 6 days, not to exceed 48 hours at the beginning of the first full pay period of the calendar year
 - ❑ In a leap year, non-temporary employees will be allotted 7 days, not to exceed 56 hours at the beginning the first full pay period of the calendar year.
- ❖ New Employees will be allotted PL as follows:
 - ❑ 6 days, not to exceed 48 hours, if employment begins Jan 1st through the end of February (7 days or 56 hours, during a leap year);
5 days, not to exceed 40 hours, if employment begins March 1st through April 30th;
 - ❑ 4 days, not to exceed 32 hours, if employment begins May 1st through June 30th; or
 - ❑ 3 days, not to exceed 24 hours, if employment begins on or after July 1st.

NOTE: Unused PL is forfeited if not used prior to the first pay period in the new calendar year, or when employment ends.

Personal for Regular and Temp Employees

Temporary Employees

- ❖ Temporary Emergency and Contractual Employees are eligible to earn leave
- ❖ Earned after employee works 120 days
- ❖ Employee earns 1 hour for every 30 hours worked
- ❖ Maximum of 40 hours earned in a calendar year
- ❖ Up to 40 hours of unused leave may be rolled over into a new calendar year
- ❖ Unused leave will be forfeited if employee separates from State employment or transfers to a regular (non-temp) position

Religious Observances

An employee, including a temporary employee, may elect to work overtime to earn compensatory time for an absence for a religious observance.

Sick Leave

Sick Leave can be used for the following reasons:

- ❖ For illness or disability of the employee;
- ❖ For death, illness or disability of a member of the employee's immediate family;
- ❖ Following the birth of the employee's child;
- ❖ When a child is placed for adoption;
- ❖ Or for a medical appointment of the employee or a member of the employee's immediate family.
- ❖ Employees earn sick leave at the rate of 15 days per year.
- ❖ Employees must notify their supervisor when using this leave.
- ❖ There is no limit to the number of sick leave days an employee may accrue or carry over into a new calendar year.

Sick Leave

- ❖ A maximum of 5 working days may be charged to sick leave in the event of a death of a member of the employee or spouse's immediate family.
 - An employee may elect to receive up to 3 days of bereavement leave instead of using 3 of the 5 sick days that an employee is allowed to use upon the death of members of the employee's immediate family.
- ❖ A maximum of 1 working day may be charged to sick leave for the death of other designated family members

SEE COMAR 17.04.11.06 for additional information