

State Personnel System



Job Aid for Processing Leaves of Absence Authorized Under the Federal Family and Medical Leave Act (FMLA)

Division of Human Resource
Management

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TABLE OF CONTENTS

INTRODUCTION	3
BACKGROUND.....	3
OVERVIEW OF FMLA	4
SPS PRACTICES	4
GENERAL INFORMATION FOR ADMINISTERING FMLA LEAVE.....	4
ELIGIBILITY REQUIREMENTS	5
CREDITABLE SERVICE FOR ESTABLISHING ELIGIBILITY	5
RESEARCHING CREDITABLE SERVICE	6
POLICIES RELATED TO LEAVE WITHOUT PAY (LWOP) STATUS.....	6
POLICIES FOR SUBSTITUTED ACCRUED LEAVE (SALARIED EMPLOYEES)	7
POLICY RELATED TO USE OF INTERMITTENT FMLA LEAVE.....	8
ADMINISTRATION OF FMLA LEAVE IN THE PEOPLE FIRST SYSTEM	8
GENERAL NOTES ON USING PERSONNEL ACTION REQUESTS FOR FMLA LEAVES.....	8
GENERAL NOTES ON MEDICAL LWOPs RELATED TO WORKERS' COMPENSATION (W/C) COMBINED WITH FMLA.....	8
SYSTEM PROCEDURES FOR SALARIED EMPLOYEES.....	9
SYSTEM PROCEDURES FOR OPS EMPLOYEES.....	10

I. INTRODUCTION

The federal Family and Medical Leave Act (FMLA) of 1993, as currently amended, provides job protected unpaid leave to employees who meet certain eligibility criteria, when the reason for the leave is covered by this federal law.

A key protection provided by FMLA leave is that, upon returning to work within the prescribed timeframes, the employee must be restored to the same job or to an “equivalent” job that is virtually identical in terms of pay, additives, benefits, and other conditions of employment. Additionally, employees may continue their coverage under the employer’s group health insurance for the duration of the leave under the same terms and conditions as if the employee had not taken leave.

II. BACKGROUND

Continuing the employer contribution toward the health insurance premium for the duration of the FMLA protected leave has been a requirement of the federal law since its inception in 1993. This should not be confused with similar state group insurance program statutory provisions enacted in 1991 under section 110.123(4)(a), Florida Statutes (F.S.), whereby the employer contribution is paid specifically for medical and parental leaves of absence for up to six months. The two provisions differ as follows:

- The FMLA provisions for continuing the employer health contribution for the duration of the authorized FMLA period apply to all forms of unpaid FMLA leave, whether medical (e.g., self- care and family) or non-medical (e.g., parental and military exigency leave), whereas:
- The statutory provisions for continuing the employer contribution for up to six months is a feature of the state group insurance program purposely created to complement the six months of unpaid family medical and parental leaves granted as a matter of right under the SPS Family Supportive Work Program (FSWP) to Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS) employees under section 110.221, F.S. and Rule 60L-34.0051(4), F.S. And, although not part of the FSWP, these provisions have always applied to leaves of absence without pay for the employee’s own medical condition, in accordance with the former Department of Administration guidelines issued in 1992 during implementation of section 110.123(4)(a), F.S.).

In sum, employees shall receive the employer contribution for state group health insurance for the duration of authorized FMLA leave in accordance with federal law and for up to six months of any medical or parental authorized leave without pay that is granted under Rule 60L-34.0051(4), F.S.

Additionally, it should be noted that the afore-mentioned 1992 FSWP implementation guidelines also provided for continuation of the employer contribution for state group basic term life insurance, and that the certificate of coverage for the SMS/SES state group disability insurance plan also provides for continuation of the employer premium for employees on personal or family medical leaves of absences without pay. Consequently, for uniformity and administrative ease, the State Personnel System will also continue the employer contribution for the state group basic term life insurance plan and the SMS/SES state group disability insurance plan for employees on any authorized form of FMLA leave.

III. OVERVIEW OF FMLA

In accordance with FMLA law, eligible employees are entitled to 12 workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty";
or
- 26 workweeks of leave during a single 12-month period to care for a covered service-member or covered veteran with a serious injury or illness, if the eligible employee is the spouse, son, daughter, parent, or next of kin of such individual.

IV. SPS PRACTICES

SPS agencies are to apply the FMLA law in a standardized manner that is operationally efficient and in the best interest of the state. This section is a job aid for processing FMLA leaves of absence including use of the People First system. However, it is not an exhaustive list of the procedures that agencies may need to implement in order to fully comply with the law.

In the event of a conflict between the information in this guide and information provided by the aforementioned entities, the final authority will be the FMLA law ([FMLA LAW](#)) as interpreted by the United States Department of Labor, Wage and Hour Division. An abundance of additional information and guidance on the FMLA law can be found on the federal [FMLA WEBSITE](#).

General Information for Administering FMLA Leave

In administering FMLA, agencies should take note of the following:

- In a situation where an employee qualifies to care for a covered servicemember or veteran in concert with another FMLA covered absence, refer to the federal FMLA regulations found at 29 C.F.R. Part 825.127 (e)(3) for guidance on the total number of workweeks that such employee may take in a single 12-month period.
- While FMLA permits an employer to reduce the leave that is granted to two spouses working for the same employer into a combined total of 12 weeks during any 12-month period for parental leave and certain family medical leave, this is neither a necessary nor feasible practice for SPS agencies. Specifically, such a policy would be inconsistent with established FSWP law and family sick leave rules which provide each employee (including spouses who are both employed with the SPS) a separate benefit. To provide consistency in application with FSWP, the FMLA benefits will not be combined.

- FMLA provisions regarding the individuals for whom the employee may use FMLA family medical leave differs in some cases from the provisions of FSWP family medical leave or the family sick leave rules. See the SPS Program Guidelines titled [Definitions of Family Members for use of leave under the Family Supportive Work Program, Family and Medical Leave Act, and Accrued Family Sick Leave](#) for information comparing and contrasting the definitions of family member under each of these programs.
- In cases where the employee requests FMLA on an intermittent or reduced schedule basis, agencies shall refer to the federal FMLA regulations found at 29 C.F.R. Part 825.202-205 for guidance regarding the number of leave hours that constitute 12 workweeks for the employee is question.
- The determination of whether the agency has “key employees” (as defined by FMLA) who may be potentially denied reinstatement by the agency is largely dependent on whether the agency can meet all the requirements in 29 C.F.R. Parts 825.217 through 825.219 which includes proving that “**restoration** of the employee to employment will cause substantial and grievous economic injury to the operations of the employer.” (Emphasis added.)
- In cases where the employee’s request for family medical leave or parental leave meets the eligibility criteria of both the FMLA and FSWP, agencies should administer both programs concurrently. In such cases, the 12-month period used by the agency to manage FMLA use should also be used to manage the FSWP leave for ease of administration.

Eligibility Requirements

In accordance with FMLA law, an SPS employee must have 12 months of cumulative service, excluding any service time which may have occurred prior to a break in service of seven or more years (unless such break was for military service protected by the Uniformed Services Employment and Reemployment Rights Act). Additionally, the employee must have physically worked (not including any types of paid or unpaid leave) a total of 1,250 hours in the 12 months immediately preceding the start of the requested leave.

These service requirements apply, regardless of how the employer classifies the employee. Consequently, agencies should be mindful that certain employees paid from Other Personal Services (OPS) funds may qualify for FMLA leave if they have the required length of service and work hours.

Creditable Service For Establishing Eligibility

In determining whether the employee has the required length of service or work hours in the preceding 12 months, agencies should include employment only with SPS employers and within any of the following pay plans:

- Career Service (Pay Plan 01)
- Career Service Comparable in the Executive Office of the Governor (Pay Plan 07¹),

¹ Pursuant to section 110.205(2)(l)2.,F.S., with respect to administration of leave benefits.

- Selected Exempt Service (Pay Plan 08);
- Senior Management Service (Pay Plan 09); and
- OPS employment (all employee subgroups except Institutional Client) within the SPS.

Likewise, when determining if an SPS employee has exhausted FMLA benefits with the employer (i.e., the SPS) for a particular 12-month period, agencies must take into account any FMLA leave used in a CS, CS comparable, SES, SMS or OPS position at an SPS agency during such period.

Researching Creditable Service

In determining the eligibility of an employee for FMLA leave, agency human resource offices should first refer to the “Agency Hire Date” on the “Key Service Dates” screen of the People First system to determine if the employee has at least 12 months of service with the agency. (Agencies should not use the “Creditable Service Months” field, the continuous service fields, or leave accrual fields to determine service since they may include employment outside of the SPS and service which may have occurred prior to a break in service of more than seven years.) If the employee has at least 12 months of service, the agency should then determine if the employee has worked at least 1,250 hours in the 12 months immediately preceding the start of the requested leave by calculating the employee’s hours of “Regular Work” (Hours Type 1000).

Note: Depending on the employee, it may be necessary to review work hours recorded under other hours types.

In cases where an employee’s “Agency Hire Date” in the People First system is less than 12 months prior to the start of the requested leave, agencies must then look to the employee’s “State Hire Date” **and** the “Action History” screen in the People First system to determine if any prior service was in a CS, CS Comparable, SES, SMS position or OPS employment with other SPS agencies which should be included in the calculation of total months of service or hours worked for purposes of FMLA leave eligibility. If an employee does not meet the 1,250 hours of work requirement with the current agency, but has 12 continuous months of service that includes other SPS agencies, the employee’s current agency should contact the former employing agencies to determine if the employee has worked 1,250 hours in the 12 months immediately preceding the start of leave.

Policies Related to Leave Without Pay (LWOP) Status

- The protected leave that is granted under FMLA is an unpaid form of leave. (However, as discussed below, salaried employees may use accrued leave credits in lieu of LWOP, as appropriate.)
- FMLA leave for OPS employees is always without pay.
- All eligible employees (salaried and OPS) on FMLA LWOP shall remain eligible for health insurance premium contributions by the state as provided in the FMLA law. Additionally, salaried employees on FMLA LWOP shall remain eligible for state group basic term life and SMS/SES disability premium contributions by the state pursuant to SPS policy, as previously addressed in this document.

- Upon exhaustion of their 12 weeks of FMLA leave, salaried employees eligible for additional LWOP for parental or medical purposes under FSWP are eligible to continue receiving all the employer contributions under the provisions of section 110.123(4)(a), F.S. (The 6-month maximum period provided by this statute is based on full calendar months of LWOP and any full calendar month that the employee was receiving the employer contributions while concurrently on unpaid FMLA leave and unpaid FSWP medical or parental leave will count toward this 6-month maximum period.)

Policies for Substituted Accrued Leave (Salaried Employees)

At the discretion of the salaried employee, SPS agencies shall allow (rather than force) the **substitution** of accrued leave credits during FMLA leave. The compelling need for this policy is that it aligns FMLA substitution provisions with the substitution provisions of the FSWP law (sections 110.221(2)(b),(c) and (d), F.S.), under which agencies cannot deny the use of LWOP, annual leave credits, or sick leave credits (as applicable), to employees on family medical or parental leave. This uniform policy facilitates the ability of agencies to administer FMLA concurrently with FSWP (where applicable), but also applies when FMLA is used alone.

However, although substitution in this circumstance is elective, the **use** of accrued leave must still comply with all the applicable provisions of Chapter 60L-34, F.A.C., governing how leave types may be used. As such, the following leave provisions apply to salaried employees who use accrued leave while on FMLA:

- Sick leave credits (“family sick leave”) shall be authorized for FMLA family medical leave if the family member for whom the employee is taking FMLA also meets the definition of family member under Rule 60L-34.0042(3)(c), Florida Administrative Code, which includes the agency’s established definition of “caretaker”. (Both the use of FMLA family medical leave and family sick leave are predicated on the employee’s presence being necessary.)
- In accordance with Rule 60L-34.0044(3), F.A.C., Special Compensatory (SC) leave credits may not be compelled before any available sick leave credits including family sick leave credits that the employee would be authorized to take for the FMLA medical leave in question.
- As previously mentioned, applying the substitution provisions of FSWP to FMLA is an administratively practicable way to administer FMLA alone or concurrently with FSWP. However, in situations where an employee is on FMLA and/or FSWP parental or family medical leave and has elected to use annual leave, if the employee has SC credits for which the People First system is programmed to force use, agencies will need to restore these SC credits and deduct the requested annual leave via balance adjustments in the People First system. (This adjustment is necessitated by the provisions of section 110.221(2)(c), F.S.).

Policy Related to Use of Intermittent FMLA Leave

In order to minimize the complexities of FMLA leave running concurrently with FSWP family medical leave or parental leave, a uniform approach to intermittent use of leave credits or the use of a reduced leave schedule is needed for administrative ease and efficiency. Consequently, inasmuch as the FSWP permits intermittent use or use of a reduced leave schedule for family medical leave and for bonding with a child after the birth or placement of the

child, the same policy applies to parental leave granted under FMLA, although not required by federal law. In sum, intermittent use and use of reduced schedule is allowed under FMLA under the same terms and conditions as FSWP.

V. ADMINISTRATION OF FMLA LEAVE IN THE PEOPLE FIRST SYSTEM

The use of People First for administering leaves of absence is critical beyond its assistive role in monitoring (via the timesheet for salaried employees) how much FMLA leave has been granted within the applicable timeframes. For example, agencies need to use system data captured by military Personnel Action Requests (PARs) to ensure compliance with provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) requiring that SPS employees reinstated after USERRA-protected military leave be given FMLA eligibility credit for any months and hours of service he or she would have been employed but for the USERRA-covered service.

General Notes on Using Personnel Action Requests for FMLA Leaves

Salaried Employees: Although the use of a PAR is recommended for sustained periods of FMLA leave, it is not always necessary to administer FMLA leave via a PAR for salaried employees who take FMLA leave intermittently and/or remain in pay status during the entire leave.

OPS Employees: For all OPS employees who are granted FMLA leave, ***a PAR will always be necessary*** because the provisions of the federal Affordable Care Act (ACA) necessitate that the state Division of State Group Insurance use People First to track all FMLA-related absences. Per ACA provisions, any period of unpaid FMLA leave is counted as hours of service for the purposes of determining the eligibility of OPS employees for health insurance coverage. The FMLA PAR is the only mechanism for tracking FMLA leave for OPS employees. For this reason, it is imperative that agencies use the PAR process (described further below) to place eligible OPS employees on FMLA leave.

However, only one PAR is required at the beginning and the end of the FMLA eligibility period, even for OPS employees who use FMLA leave intermittently. Additionally, agencies should continue to track the total number of FMLA hours used by OPS employees per 12-month period using their current internal procedures.

General Notes on Medical LWOPs Related to Workers' Compensation (W/C) Combined with FMLA

Any time an employee sustains a workplace injury covered under Workers' Compensation and is placed out of work by the healthcare provider, the agency needs to determine if the employee is also covered by FMLA. If so, PARs should be managed, as follows:

Salaried Employees: It is more prudent to place salaried employees on a W/C PAR to ensure full leave accrual and prorated holiday pay, in accordance with SPS rules. If such absence qualifies for coverage under FMLA, the timesheet will provide a method by which agencies should memorialize that it was FMLA-related.

OPS Employees: The agency should always process an FMLA PAR to ensure the period of absence is properly recorded as FMLA covered and, equally important, is measured for insurance eligibility purposes. (W/C PARs should not be used because not all W/C absences

qualify for FMLA; consequently no period under a W/C PAR is measured in the People First system.)

System Procedures for Salaried Employees

If salaried employees will be using accrued leave credits during their FMLA leave, it is recommended that the FMLA/FSWP indicator box on the timesheet be activated to record accrued leave taken in conjunction with FMLA. If the agency does not wish to delegate this action to the employee and supervisor, the HR office should activate the indicator box. It is recommended that the “intermittent” option be selected when creating the FMLA/FSWP leave request, since this will accommodate any instance where the employee returns to work or is granted another form of leave in the period during which FMLA-related absences are still authorized.

For sustained periods of LWOP, the agency should complete a PAR, as follows:

PAR Action Type: “LOA Without Pay” (11)

PAR Action Reason: “Family Medical Leave” (49)

Timesheet: Timesheets will still need to be completed for each pay period. If there are no work hours or paid leave hours to report, the missing hours should be charged to Hours Type 0058 (LWOP – Authorized) and flagged FMLA/FSWP via the indicator box. Work hours and paid leave need to be approved in the People First system by payroll cutoff to ensure timely payment of deductions.

Personnel File: The agency will dictate the method for collecting and placing FMLA documentation in an appropriate medical/confidential file.

Impact on Health, Basic Term Life and SMS/SES Disability Benefits: Agencies need to ensure that employees on FMLA/FSWP leave continue to receive the employer contributions toward state group health insurance, basic term life insurance and SMS/SES disability (as applicable) premiums for the duration of their FMLA/FSWP protected leave.

Therefore, if the employee is placed completely out on LWOP, the agency should manually process the state contributions for state group health insurance, basic term life insurance, and SMS/SES disability (as applicable). The employee will need to make arrangements with the People First service center to mail a personal check to the lockbox made out to the Division of State Group Insurance for the employee state group health insurance contribution amount by the tenth of the month prior to the coverage month to ensure that the employee portion is timely paid.

Impact on Other Benefits: Leave accrual and holiday pay will only occur if the employee is in pay status, in accordance with SPS rules. Employees must also make alternative arrangements for any other necessary payroll deductions while on LWOP.

The agency will need to monitor the use of FMLA leave and any other concurrent leave entitlement using their respective methodology and determine when the employee has exhausted their authorized leave and should return to work. If a PAR was used to place the employee on FMLA and/or FMLA/FSWP, complete the following:

PAR Action: “Return from LOA Without Pay” (36)

PAR Action Reason: "Return from LOA Without Pay". (no report code)

System Procedures for OPS Employees

In **all** cases where an OPS employee is eligible for FMLA leave, the agency must complete a PAR, as follows:

PAR Action Type: "LOA Without Pay" (11)

PAR Action Reason: "Family Medical Leave" (49)

Timesheet: Not applicable. OPS employees are on positive pay and should only submit timesheets for hours worked. Therefore, timesheets should only be submitted if the employee is on FMLA intermittently and otherwise working. The timesheet will only reflect hours worked. The FMLA/FSWP indicator box on the timesheet is not functional for OPS employees.

Personnel File: The agency will dictate the method for collecting and placing FMLA documentation in an appropriate medical/confidential file.

Impact on Health Benefits: FMLA eligible OPS employees are entitled to a maximum of 12 weeks **or** 26 weeks per 12-month period, in accordance with the type of leave request that has been approved. If the employee was eligible and participated in state group health insurance at the time of the leave, the agency should manually process the state contribution for state group health insurance for the duration of the FMLA protected leave. Additionally, employees will need to make arrangements with the People First service center to mail a personal check to the lockbox made out to the Division of State Group Insurance for the employee contribution amount by the tenth of the month prior to the coverage month to ensure that the employee portion is timely paid.

Impact on Other Benefits: Employees must also make alternative arrangements for any other necessary payroll deductions while on LWOP such as state group basic term life insurance (OPS employees have the option to enroll in life insurance, but pay the full premium at all times).

The agency will need to monitor the use of FMLA leave using their respective methodology and determine when the employee has exhausted their authorized leave and should return to work. At the end of the authorized leave period, complete the following:

PAR Action: "Return from LOA Without Pay" (36)

PAR Action Reason: "Return from LOA Without Pay". (no report code)

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