



**DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF STATE HUMAN RESOURCE MANAGEMENT
POLICY GUIDELINE**

STATE PERSONNEL SYSTEM

SUBJECT:

Definitions of Family Members for Use of Leave Under the Family Supportive Work Program, Family and Medical Leave Act, and Accrued Family Sick Leave

POLICY GUIDELINE: HRM #2023-008

EFFECTIVE DATE: August 22, 2023

SUPERSEDES: Program Guideline – Definitions of Family Members for Use of Leave Under the Family Supportive Work Program, Family and Medical Leave Act, and Accrued Family Sick Leave

STATUTES/RULES/REGULATIONS/LAWS:

29 CFR Part 825.102, The Family and Medical Leave Act of 1993

Section 110.1522, Florida Statutes (F.S.), Model rule establishing family support personnel policies

Section 110.221, F.S., Parental or family medical leave

Section 110.219, F.S., Attendance and leave; general policies

Rule 60L-34.0051, Florida Administrative Code (F.A.C.), Family Supportive Work Program

Rule 60L-34.0042, F.A.C., Sick Leave

FORMS: N/A

ADDITIONAL REFERENCE MATERIALS:

[FMLA, FSWP, and State Family Sick Leave Matrix](#)

SCOPE AND PURPOSE:

This document describes the types of family members whose care qualifies an employee for protected leave under the State Family Supportive Work Program (FSWP) and the federal Family and Medical Leave Act (FMLA) non-military leave provisions, and for use of accrued Family Sick Leave (FSL). The [FMLA, FSWP, and State Family Sick Leave Matrix](#) located on the State Personnel System HR Practitioners website is a quick reference that summarizes the family relationships for FMLA, FSWP, and FSL.

OVERVIEW OF LEAVE PROVISIONS RELATED TO FAMILY MEMBERS:

A. State Family Supportive Work Program

1. Medical Leave

The “parental or family medical leave” provisions of section 110.221, F.S., were established to provide Career Service employees paid (as available) and unpaid protected leave time for the birth or adoption of a child or to care for a family member who has a serious health condition. These provisions were extended to Selected Exempt Service and Senior Management Service employees via subsection 60L-34.0051, F.A.C., in accordance with the Family Support

Personnel Policies Act (section 110.1521, F.S.). These leave provisions, which are part of the State Personnel System's FSWP, predate and are separate from the federal FMLA. Furthermore, FSWP medical leave is only for use by the employee to care for a covered family member as specifically defined in the FSWP. It is not for the employee's personal illness.

For purposes of "family medical leave," subsection 60L-34.0051(4)(b), F.A.C, provides that, "Leave shall be granted for up to six months for a family member's serious health condition, as defined in the FMLA and implementing regulations."

Note: The phrase "as defined in the FMLA" refers to the family member's serious health condition, not the family member. The definition of "serious health condition" for family medical leave is the same for both the FSWP and the FMLA. Because this is a somewhat broad definition, agencies should refer to 29 C.F.R. Section 825.113 and the Wage and Hour Division [Fact Sheet #28](#) for clarification of qualifying "serious health conditions".

The FSWP family medical leave law establishes the entitlement of six months of protected leave as contained in the rule.

As applied to FSWP family medical leave, "family" is limited to the following:

- The employee's current legal spouse as defined in the FMLA).
- The employee's parents, which includes natural parents, current step-parents, and adoptive parents.
- The employees' children, which include natural children, current step-children and adopted children, regardless of age.

All other family relationships are excluded; for example, grandparents, brothers and sisters, grandchildren, great grandchildren, and in-laws.

2. Non-medical Leave

For purposes of non-medical leave under the other provisions of the FSWP under subsection 60L-34.0051(5) and (7), F.A.C. (non-medical family responsibilities and participation in a child's school or daycare activities), "family" is not defined the same as for FSWP family medical leave as it is intended to facilitate the ability of employees to balance work and non-medical family responsibilities, specifically speak to "aging parents," "dependent children," or family members "in places that require extensive travel time" .

Therefore, for non-medical family responsibility leave requested under subsection 60L-34.0051(5)(d), F.A.C. (Visiting family members in places that require extensive travel), the term "family members" includes all recognized family relationships. Leave may be granted provided that it will not be detrimental or unduly disruptive to the agency's operations.

Note: Non-medical FSWP leave must be used within 30 calendar days of the date the leave begins and cannot be extended beyond 30 calendar days. While there is no limit on the number of non-medical FSWP leave requests an employee can make in a calendar year, the agency should evaluate each request separately to determine the impact it would have on the employee's work unit.

With respect to the leave provided in subsection 60L-34.0051(7), F.A.C., to participate in the employee's child's activities at local schools and child care centers, this addresses a recurring

form of administrative leave with pay for up to one hour per month, the focus of which is on employees engaging with their children who are enrolled in school or in a child care facility. For this leave, agencies shall apply the more inclusive definition of a son or daughter found in section 825.102 (Definitions) of the FMLA, which means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. As such, if an employee is serving in loco parentis [as defined in B. below] or is the foster parent of a child, it is reasonable to expect that they would also have responsibility to attend school conferences and day care activities involving such child and that the agency may grant such requests when feasible.

Note: This administrative leave is in addition to any leave granted under the volunteer program, as the leave under the volunteer program is not based on a family relationship.

B. Federal Family and Medical Leave Act of 1993

Family members who qualify an employee for leave under the federal FMLA differ from those who qualify an employee for leave under the state's FSWP family medical leave provisions. In addition to individuals covered for medical leave under the FSWP (as listed above), FMLA, covered family members who qualify the employee for leave include:

- Persons who stand or once stood in loco parentis for the employee (excludes parents-in-law); and
- Foster children, legal wards, or the child of a person standing in loco parentis.

(In loco parentis means a person with day-to-day responsibilities to care for and financially support a child who is either under age 18, or age 18 or older and incapable of self-care because of a physical or mental disability. A biological or legal relationship is not required.)

Note: For a child with a serious health condition to qualify an employee for FMLA leave, the child must be under the age of 18, or age 18 and older and incapable of self-care because of a physical or mental disability.

C. Accrued Family Sick Leave

Similar to FSWP family medical leave, family sick leave (FSL) is a state benefit granted under the authority of section 110.219(5)(f), F.S., that provides the use of accrued sick leave for certain family members subject to state laws and rules. Employees are authorized to use FSL, as defined by subsection 60L-34.0042(3)(c), F.A.C., with respect to "the employee's spouse, the children or parents of the employee or the spouse, or a person for whom the employee or the spouse has a caretaker responsibility, when the employee's presence is necessary". The rule also provides that each agency shall establish an agency-wide definition of caretaker. For purposes of using FSL, children and parent are defined as follows:

- The applicable definition for "children" is the sons and daughters of the employee or of the current spouse, whether biological, adopted, foster, or step.
- The applicable definition of "parent" is the biological, current step, adoptive, or foster parent of the employee or of the current spouse.

An agency's definition of a caretaker is not limited by the FMLA or the FSWP. As an example, if the employee currently stands in loco parentis for a particular individual (whether minor or adult), or if the employee now cares for an individual who once stood in loco parentis for the employee, the agency definition of caretaker could provide for the use of accrued FSL.

Please note, there is no requirement that a parent be considered a dependent of the employee or a child be a minor before an employee can use FSL. Additionally, there is no requirement that the family member for whom FSL will be used live with the employee. The rule is very specific as to how certain family members must be related to the employee (or the employee's spouse) but is broad in that it does not limit the age, residency, or dependent status of such family members. Accordingly, agencies do not have the authority to create internal policies that are more restrictive by specifying age limits for the children or residency requirements for any family member specified in the FSL rule.

FSL provisions (in contrast to some of the leave provisions associated with the FSWP), have no correlation with the FMLA. However, for purposes of determining if FSL may be substituted for leave without pay during an FMLA covered absence, the spouse or family member needs to meet the FSL definition.

With respect to FSL in general, the operative phrase in subsection 60L-34.0042(3)(c), F.A.C., is "when the employee's presence is necessary". Consequently, the rule already provides a method by which the agency can reasonably control use of accrued FSL. Therefore, agencies do have the authority to make reasonable determinations of when the employee's presence is necessary in accordance with the provisions of section 110.221 (2)(d), F.S.

APPLICABLE STATUTORY AND RULE CITATIONS:

29 CFR Part 825.102 Definitions

Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into a marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (1) Was entered into in a State that recognizes such marriages; or
- (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Section 110.1522, F.S., -- Model rule establishing family support personnel policies

Model rule establishing family support personnel policies. — The Department of Management Services shall develop a model rule establishing family support personnel policies for all executive branch agencies, excluding the State University System. "Family support personnel policies," for purposes of ss. 110.1521-110.1523, means personnel policies affecting

employees' ability to both work and devote care and attention to their families and includes policies on flexible hour work schedules, compressed time, job sharing, part-time employment, maternity or paternity leave for employees with a newborn or newly adopted child, and paid and unpaid family or administrative leave for family responsibilities.

Section 110.221, F.S., -- Parental or family medical leave

(1) As used in this section, the term "family" means a child, parent, or spouse, and the term "family medical leave" means leave requested by an employee for a serious family illness including an accident, disease, or condition that poses imminent danger of death, requires hospitalization involving an organ transplant, limb amputation, or other procedure of similar severity, or any mental or physical condition that requires constant in-home care. The term "parental leave" means leave for the father or mother of a child who is born to or adopted by that parent.

(2) The state shall not:

(b) Refuse to grant to a career service employee parental or family medical leave without pay for a period not to exceed 6 months. Such leave shall commence on a date that is determined by the employee in consultation with the attending physician following notification to the employer in writing, and that is approved by the employer.

(d) Deny a career service employee the use of and payment for accrued sick leave or family sick leave for any reason deemed necessary by a physician or as established by policy.

Section 110.219, F.S., -- Attendance and leave; general policies

(5) Rules shall be adopted by the department in cooperation and consultation with the agencies to implement the provisions of this section; however, such rules must be approved by the Administration Commission prior to their adoption. Such rules must provide for, but need not be limited to:

(f) Sick leave provisions.

(g) Parental leave provisions.

(h) Family medical leave provisions.

Rule 60L-34.0051, F.A.C, Family Supportive Work Program

(4) Agencies shall approve parental or family medical leave to assist employees in meeting family needs, subject to the following.

(a) Within one year following birth or adoption of a child, leave shall be granted for up to six months for the parent.

(b) Leave shall be granted for up to six months for a family member's serious health condition, as defined in the FMLA and implementing regulations.

(c) The agency shall acknowledge to the employee in writing the period of leave to be granted and the date the employee will return to duty.

(5) Agencies shall approve up to thirty days family leave for non-medical family responsibilities, provided that the leave has minimal impact on the employee's work unit. Family responsibilities in this area may include, but are not limited to, the following:

(a) Caring for aging parents.

(b) Involvement in settling parents' estate upon their death.

(c) Relocating dependent children into schools.

(d) Visiting family members in places that require extensive travel time.

(6) An employee granted leave under subsection (4) or (5) may request to use accrued leave credits. If the employee does not so request, the agency shall place the employee on leave without pay.

(7) Agencies may approve up to one hour of administrative leave per month for employees to participate in their child's activities at local schools and child care centers.

Rule 60L-34.0042, F.A.C., Sick Leave

(3)(c) Illness, injury, or well-care check-ups of the employee's spouse, the children or parents of the employee or the spouse, or a person for whom the employee or the spouse has a caretaker responsibility, when the employee's presence is necessary. Each agency shall establish an agencywide definition of "caretaker."

PREPARER'S INITIALS: LTF/SMB
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