



Employment Policies for the State of North Dakota

FAMILY MEDICAL LEAVE ACT (FMLA) POLICY

Effective Date: 2/15/2019

The State of North Dakota, as the employer, has established a Family Medical Leave Act (FMLA) policy that provides guidance to the handling of these employee situations in a sensitive and confidential manner. This policy is not an exhaustive description of state and federal laws relating to family and medical leave (i.e., FMLA leave is different from family sick leave as allowed under NDAC 4-07-13-07). Employees should consult with their employing agency's HR or HRMS when these situations arise to ensure compliance with all applicable laws.

ELIGIBILITY

Employees are eligible for FMLA leave if they have been employed with the State of North Dakota for at least 12 months and have worked at least 1,250 hours during the previous 12-month period.

PROGRAM DETAILS

FMLA provides eligible employees with up to 12 weeks of unpaid, job-protected leave for the following reasons:

- a. The birth or care of the employee's child within the first 12 months after the birth.
- b. The placement or care of a newly adopted or foster child within the first 12 months after placement.
- c. Care for the employee's spouse, son, daughter, or parent, who has a serious health condition. Son or daughter is defined as a biological, adopted, or foster child; a step-child; and a legal ward under the age of 18 or, if older than 18, incapable of self-care because of a mental or physical disability at the time the leave is requested. Employees who provide day-to-day care or financial support to a child can be considered "in loco parentis" even if they have no biological or legal relationship with a child and be entitled to 12 weeks of FMLA leave. The employing agency may require the employee provide reasonable documentation or a statement of family relationship.
- d. A serious health condition that makes the employee unable to work or perform any one of the essential functions of the employee's job. Examples would include an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the job or prevents the qualified family member from participating in school or other daily activities.
- e. A qualifying event arising from an employee's spouse, child, or parent that is a covered military member on active duty or has been notified of impending call or order to active duty in the armed forces. Examples would include short-notice deployment, military events and related activities, counseling, post-deployment activities, and additional activities that may arise out of active duty or call to active duty status.

An employee who is the spouse, parent, child, or next of kin of a current member of the armed forces who was injured in the line of duty on active duty in the armed forces may be eligible for a combined total of 26 weeks of FMLA leave for any qualifying reason during the 12-month period. Family members may also take 26 weeks of FMLA leave for a veteran who is undergoing medical treatment, recuperation, or therapy and who was a service-member at any time during the five years preceding the date in which the injury or illness was incurred in the line of duty and manifested itself before or after the member became a veteran.



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An employee and spouse who work for the same employer are entitled to a combined total of 12 weeks of FMLA leave if taken for the birth, adoption or foster care of a healthy child, or to care for the employee's parent with a serious health condition. An employee and spouse who work for the same employer are each entitled to 12 weeks of FMLA leave if the child with a serious health condition was born or placed for adoption or foster care. The employee and spouse may be limited to a combined total of 26 weeks of FMLA leave when care for a covered service-member with a serious injury or illness is taken in addition to FMLA leave for birth of the employee's son or daughter or to care for the healthy child after birth, for placement of a healthy son or daughter with the employee for adoption or foster care, to care for the child after placement, or to care for the employee's parent with a serious health condition during a single 12-month period.

When medically necessary, employees may take FMLA leave intermittently or on a reduced work schedule for their own serious health condition, the serious health condition of a family member, or to care for a covered service-member with a serious injury or illness.

The FMLA leave entitlement period will be determined by a rolling 12-month period measured backward from the date an employee first uses any leave under this section. Any unpaid FMLA leave used during this 12-month period will be deducted from the total amount of FMLA leave provided. If an employee is eligible for FMLA leave, it will run concurrently to the employee's accrued paid leave used and donated leave received if applicable.

While on FMLA leave, the employing agency will continue to pay employer paid benefit premiums for the employee.

REQUIRED DOCUMENTATION

An employee requesting FMLA leave must complete the required paperwork, obtain medical certification, and submit the completed documents to the employing agency as soon as the need for FMLA leave is known. Forms should be obtained from the employing agency's HR. Failure to provide the requested information or medical certification with the leave request may result in denial of the leave until it is provided.

If an employee wishes to return to work prior to the expiration of a FMLA leave of absence, written notification must be given to the employing agency prior to the employee's planned return. An employee may also be required to submit to additional examinations by a health care provider selected and paid for by the employing agency. Any recertification requested by the employing agency shall be at the employee's expense. The employing agency will not request recertification until the minimum duration has passed unless:

- a. The employee requests a leave extension,
- b. Circumstances described by the previous certification have changed significantly, or
- c. The employing agency receives information that casts doubt upon the continuing validity of the certification.

An employee who needs to request an extension of FMLA leave due to the continuation, recurrence or onset of his/her own serious health condition or of the serious health condition of the employee's spouse, child, or parent, must submit a written request for an extension to the employing agency.

RETURN TO WORK

Upon return from FMLA leave, an employee who is not designated as a "key employee" will be restored to his or her original position or an equivalent position with equivalent pay, benefits, and any other employment rights that existed



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at commencement of the leave or that may have accrued during the FMLA leave period. An employee designated as a “key employee” may not be provided restoration rights upon return from FMLA leave. Whether a position is an “equivalent position” is the decision of the employing agency. Individuals designated as “key employees” under FMLA will be notified of such designation at or before the time FMLA leave commences. If the restoration of a key employee causes “substantial and grievous economic injury” to the employing agency, reinstatement upon returning from leave may not occur.

An employee who takes leave for their own serious health condition may be required to provide a fitness for duty certification signed by the health care provider prior to his/her return to work. If an employee fails to submit the required fitness for duty certification, the employee’s restoration to his or her position may be delayed or denied.

An employee who fails to return at the end of the FMLA leave will be considered to have voluntarily resigned unless additional leave as a reasonable accommodation under the Americans with Disabilities Act is necessary. If an employee fails to return from an FMLA leave, the employing agency may recoup the cost of employer paid benefit plan premiums for any period of the FMLA leave which was taken as unpaid leave, unless the reason the employee does not return is due to:

- a. The continuation, recurrence, or onset of a serious health condition of the employee or the employee’s family member which would otherwise entitle the employee to leave under FMLA; or
- b. Other circumstances beyond the employee’s control such as caring for a newborn with a serious health condition, the spouse is transferred to a location more than 75 miles from the employee’s worksite, etc.

If the employing agency enacts a reduction-in-force during the employee’s absence and the employee would have lost his/her position, the employee retains any rights under the employing agency’s Reduction in Force policy but may not be eligible for reinstatement under FMLA.

PAID LEAVE USE AND HOLIDAY CONSIDERATIONS

All unpaid FMLA leave used will be deducted from the total amount of FMLA leave provided, and runs concurrently with any paid and donated leave the employee uses during this time. An employee must use any accrued paid and donated leave received before unpaid FMLA leave will be authorized. Employees who have exhausted the applicable types of paid leave will be provided unpaid leave to fulfill the authorized period of FMLA leave. Employees in an unpaid leave status will not accrue annual or sick leave during the period of unpaid leave.

If a holiday falls within a week in which the employee needs a full week of FMLA leave, the holiday will count against the FMLA leave entitlement. If the employee needs less than a full week of FMLA leave and a paid holiday occurs during the leave period, the holiday cannot be counted against the 12-week entitlement unless the employee would be otherwise scheduled and expected to work if not on leave.

Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: 29 CFR §825,
NDCC 54-52.4-03
NDAC 4-07-13-07