

FAMILY MEDICAL LEAVE ACT (FMLA) POLICY

Policy Number:	HR-200
Effective Date:	Approved by the Eastern Washington State Historical Society (EWSHS) Board of Trustees on January 6, 2021.
Application:	Applies to all employees of the EWSHS.
History:	This policy updates and renumbers previous BP #108 dated January 6, 2016. BP #108 replaced HR #117.

Article I PURPOSE

1.1 The Family Medical Leave Act (FMLA) is a federal law passed in 1993 to grant family and temporary medical leave to eligible employees under certain circumstances. This **policy should be read together with the FMLA Military Leave** policy as the 12 workweek entitlements do not apply separately. It offers valuable protection for eligible employees to maintain employment and benefits while dealing with family or medical situations that takes them from the work place for an extended period of time either in a single block or intermittently.

Article II DEFINITIONS

2.1 ***In loco parentis*** – Persons who are *in loco parentis* include those who provide day-to-day responsibilities to care for a child or those who provide financial support for a child or, in the case of an employee, who provided such responsibility or support for the employee when the employee was a child. For the purposes of this definition, the term “child” means a person who is either under the age of 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence. For more information, see section 2.4 – Son or Daughter – below.

2.2 **Parent** – A biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”

2.3 **Serious Health Condition** – An illness, injury, impairment, or physical or mental condition that involves one of the following:

2.3.1 **Inpatient Care** – Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2.3.2 **Continuing Treatment** – by a health care provider includes any one or more of the following:

2.3.2.1A period of incapacity of more than three consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition, but also involves:

2.3.2.1.1 Treatment two or more times within the 30 days of the first day of incapacity by a health care provider, a nurse or physician's assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider. Treatment includes examination to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations; or

2.3.2.1.2 Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

This requirement means an in person visit to a health care provider. The first or only visit must occur within 7 days of the first day of incapacity.

Incapacity, for the purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment or recovery

2.3.2.2 Pregnancy – Any period of incapacity due to pregnancy or for prenatal care.

2.3.2.3 Chronic Conditions Requiring Treatments – A chronic condition which meets all of the following:

2.3.2.3.1 Requires periodic visits at least twice per year for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.

2.3.2.3.2 Continues over an extended period of time including recurring episodes of a single underlying condition.

2.3.2.3.3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).

2.3.2.4 Permanent or Long-Term Conditions Requiring Supervision – A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

2.3.2.5 Multiple Treatments Non-Chronic Conditions – Any period of absence to receive multiple treatments including any period of recovery by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for:

2.3.2.5.1 Restorative surgery after an accident or other injury.

2.3.2.5.2 For a condition that will likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

A thorough definition of “serious health condition” can be found in 29 CFR 825.113, .114, and .115. The EWSHS will rely on that definition.

2.4 **Son or daughter** – A biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing *in loco parentis*, who is either under the age of 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.

2.5 **Spouse** – A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into 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:

2.5.1 Was entered into in a State that recognizes such marriages; or

2.5.2 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.

Article III ELIGIBILITY

3.1 **Eligibility Requirements:** To be eligible, an employee must have worked for the state for at least 12 months (not necessarily consecutively) and worked at least 1,250 non-overtime hours in the 12 months immediately preceding the first day of leave. Paid leave will not be counted as hours worked toward the 1,250 hour requirement. The employee must have worked at a work site which employs at least 50 employees within a 75-mile radius.

3.2 **Provisions:** The FMLA entitles eligible employees to take up to 12 work weeks of job-protected paid or unpaid leave in any 12-month period for specific family and medical reasons. Leave for the following reasons will meet the criteria to be designated as FMLA:

3.2.1 For the birth, and care of, or to bond with, a newborn child of an eligible employee;

3.2.2 For the placement for adoption or foster care of a child with the eligible employee and to care for that child

3.2.3 To care for an immediate family member (spouse, child, or parent) with a serious health condition.

3.2.4 To take medical leave when employees are unable to work because of their own serious health condition.

3.2.5 Leave for Military Exigency and Service Member Caregiver Leave as added by the amendments to the FMLA. For more information, see HR-201 Family Medical Leave Act (FMLA) Military Family Leave.

Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement of the foster or adopted child.

NOTE: FMLA leave is not an additional leave category. It is simply the designation indicating leave for one of the purposes stated below to ensure leave entitlement and continuation of benefits during instances of leave without pay. During absences designated as FMLA leave, an employee may choose to use accrued paid leave to cover all or part of their FMLA absence. Accrued paid leave includes sick leave, vacation leave, temporary salary reduction leave and personal holiday accrued as indicated on leave records. If applicable, shared leave or leave without pay may also be used. Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed pursuant to state laws or EWSHS policies regarding sick leave use.

The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Absences covered by worker's compensation will also run concurrently with FMLA, assuming they are qualifying conditions.

Article IV ADMINISTRATION

4.1 Counting Absences Toward The Use Of FMLA: Employee absences that qualify as FMLA absences will be counted toward the FMLA 12-work week allowance beginning with the first day of the employee's use of leave or leave without pay for reasons that meet the FMLA criteria. The first day of the approved designated absence will also count as the first day of the 12-month rolling period.

The 12 month period is measured forward from the date the requesting employee begins leave under the FMLA. The employee's next 12 month period would begin the first time leave under the FMLA is taken after completion of the previous 12 month period.

Under some circumstances employees may take leave designated as FMLA intermittently which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

FMLA leave amounts may be counted in hourly increments and the actual hours available will depend on the FTE of the employee, e.g., a full time FTE will have 480 hours or 12 work weeks available in the 12 month period; a $\frac{3}{4}$ FTE will have 360 hours available.

4.2 Intermittent FMLA: Leave designated as FMLA may be taken intermittently if medically necessary. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule may be required. If the need for intermittent leave is foreseeable based on planned medical treatment, the employee is responsible for scheduling treatment in a manner that does not unduly disrupt the employer's operations subject to the approval of the health care provider.

It may be necessary to transfer an employee temporarily to an alternative job with equivalent pay and benefits that better accommodates intermittent leave for planned medical treatment.

The **EWSHS** may choose to grant leave on an intermittent basis for bonding with a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case by case basis. If such leave is granted, the employee and the

EWSHS must mutually agree to the schedule to be worked before the employee may take the intermittent leave.

4.3 FMLA Allowance For Spouses Who Are Both Employed With The EWSHS: Spouses employed by the **EWSHS** are jointly entitled to a combined total of 12 weeks of FMLA leave during any 12-month period if the leave is taken for the birth of a child or placement for adoption or foster care. The leave must conclude within 12 months of the birth or placement.

This limitation does not apply to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child or other qualifying relative with a serious health condition, or for his or her own serious illness. In these situations, each eligible employed spouse is entitled to 12 weeks of family leave during any 12-month period.

4.4 Notification: When the employee's absence is designated by the Department of Enterprise Services (DES) Human Resource (HR) Consultant as FMLA qualifying, the employee will be notified of the decision in writing by the DES HR Consultant. This notification will also outline the employee's responsibilities to report their status during their absence and to provide guidance on steps to take in returning to work.

Whenever possible, the employee shall provide at least 30 days written notice to the agency and the DES HR Consultant of the need to take FMLA leave. When this is not possible, the employee should communicate in writing the need to take leave as soon as it is known. This should include anticipated beginning and ending dates of the requested leave and the reason for the leave. If the leave is needed to care for a family member, the employee will provide the name, relationship, and the nature of the employee's role in the care.

4.5 Required Medical Certification: The DES HR Consultant may ask the employee to provide a medical certificate from the health care provider of the employee's or family member's health care provider before the absence or within a specified time. Second or third opinions or updated medical certification may be requested on a periodic basis as allowed by law. Certification for military exigency will also be requested as applicable.

4.6 Impact On Benefits: The **EWSHS** will provide health insurance and other benefits to employees on leave as required by law. If leave without pay is taken for eligible and approved FMLA leave, the employee will not be required to take eight hours of leave per month to retain medical or dental benefits.

The employee's (payroll deducted) self-paid health insurance premiums, optional life, and/or long term disability insurance may be continued on a self-pay basis during FMLA leave. Arrangements should be made as to how these self-payments will be made. These arrangements should be discussed prior to the start of the leave; however, the payments are not required to be made in advance. If the employee on unpaid leave does not pay their share of the premiums, the **EWSHS** may elect to continue the employee's benefits and collect the amounts due from the employee upon their return to work.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, the **EWSHS** may require the employee to reimburse the **EWSHS** for the amount of health care benefit premiums paid for the employee during the unpaid FMLA leave period.

4.7 Returning To Work: The employee should provide notice to the DES HR Consultant indicating when the employee plans to return to work. An employee returning from leave due to a personal illness will be required to provide a physician's certification of the employee's ability

to perform the functions of the job, and verifying that the employee may return to work.

The employee returning from absence will be reinstated to the same job or to an equivalent job with equivalent status and pay in the same geographic area. If the same position or one of equivalent status and pay is not available due to layoff or other operational reasons, the employee will be treated in the same manner as though the employee were not absent at the time of the layoff.

4.8 Other Impacts: An employee's anniversary and seniority dates will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

If an employee uses leave without pay for an entire work shift while serving a probationary period or trial service period, the probationary period or trial service period will be extended by one work day for each work shift of leave without pay.

An employee's periodic increment date will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

4.9 Primary roles and responsibilities for FMLA within the EWSHS:

Role	Responsibilities
Employee	<ul style="list-style-type: none"> • If possible, notify your supervisor of the need to take FMLA, 30 days prior to the anticipated absence. • Provide medical certification as requested/required. • Provide status reports to the DES HR Consultant when out on FMLA. • Notify the DES HR Consultant of your intention to return to work. • Provide medical release to return to work to your supervisor if out on FMLA for the employee's own serious health condition. • If applicable, continue employee-paid insurance premiums during FMLA absence. • Submit leave requests associated with the absence as outlined in the Leave Policy.
Supervisor/ Manager	<ul style="list-style-type: none"> • Communicate with the DES HR Consultant when an employee requests FMLA or when an employee requests leave that you feel may be FMLA qualifying. • Ensure that the employee's position is protected during an FMLA absence.
DES HR Consultant	<ul style="list-style-type: none"> • Determine if employee meets FMLA eligibility requirements. • Designate the leave as FMLA. Notify the employee regarding eligibility. Send FMLA pre-approval or denial letter. • Request medical certification from the employee. • Determine if the absence meets FMLA qualification requirements. Send FMLA approval or denial letter. • Notify the employee when the 12 week allowance is near conclusion. • Update the supervisor on employee status. • Notify the supervisor of the employee's intention to return to work and the date. • Communicate with the agency payroll office.

4.10 Interaction With Laws and Regulations: This policy will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy or are, or become, inconsistent with this policy, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.

References that apply to this policy

357-31-135 (sick leave procedure)	357-31-200 (reasons vacation req. approval)
357-31-285 (family care emergency)	357-31-290 (what qualifies for family care)
357-31-300 (entitlement for family care leave)	357-31-305 (approval process for family care)
357-31-325 (leave with pay entitlements)	357-31-335 (employer limit to LWOP status)
357-31-390 (criteria to be eligible for shared leave)	
357-31-400 (shared leave limits)	357-31-405 (med certification for shared leave)
357-31-495 (parental leave/FMLA)	357-31-535 (criteria for FMLA allowance)
29 U.S.C. § 2601 et. Seq. (United States code, title 29, chapter 28 of the Family & Medical Leave Act of 1993)	29 C.F.R. Part 825 (Code of Federal Regulations, Part 825 of the Family & Medical Leave Act of 1993)
RCW 49.78 (family leave)	