



# DEPARTMENT OF ADMINISTRATION

## Enterprise Policy

### HR-LEAVE POLICIES-2017

#### DIVISION OF HUMAN RESOURCES

#### Family, Medical, and Parental Leave Policy

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**Kyle Adamonis**

(401) 222-5664

kyle.adamonis@hr.ri.gov

#### 1. Purpose

- a. The purpose of this policy is to advise employees of the Executive Branch of the State of Rhode Island ("State") of their rights and responsibilities under the Federal Family and Medical Leave Act ("FMLA"), and the Rhode Island Parental and Family Medical Leave Act ("RIPFMLA").
- b. Leave taken under the FMLA is referred to as "FMLA Leave" and leave taken under the RIPFMLA is referred to as "RIPFMLA Leave." While similar in nature, the two types of leave are different in many ways, including eligibility and duration.
- c. Please note that the "headings" provided are for convenience only. Language found under one heading may affect language found under a different heading; and, therefore this policy must be read and understood in its entirety.

#### 2. General Benefits

- a. Both FMLA and RIPFMLA provide four basic benefits to eligible employees:
  - (i.) The right to an unpaid leave of absence in certain circumstances;
  - (ii.) The right, subject to certain exceptions, to be reinstated to their position, or an equivalent position, at the end of their leave;
  - (iii.) The right to continue to receive fringe benefits while on leave under the same terms and conditions as active employees and to retain benefits accrued prior to the leave; and,
  - (iv.) The right not to be discriminated or retaliated against because an eligible employee took, or are likely to take, FMLA/RIPFMLA Leave and/or the right to be free from unlawful interference in taking such leave.

#### 3. Eligibility Requirements

- a. Eligibility requirements for FMLA Leave or RIPFMLA Leave are not the same. The criteria for both are set forth below.<sup>1</sup>
  - (i.) To be eligible for FMLA Leave, the employee must:
    1. Have worked for the State for a total of 12 months within the past 7 years;

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<sup>1</sup> Military leave that is protected under USERRA counts towards service requirements.

2. Have worked 1,250 hours during the 12 months immediately preceding the first day of requested leave ( paid leave does not count toward this requirement); and,
  3. Work at a worksite that has at least 50 State employees within 75 miles as of the date the employee gives notice of the need for leave.
- (ii.) To be eligible for RIPFMLA Leave, the employee must:
1. Be a full time employee (i.e. work an average of 30 hours per week)
  2. Have worked for the State for 12 consecutive months; and,
  3. Have taken less than 13 weeks of leave pursuant to RIPFMLA in the prior 24 months.

#### 4. Qualifying Absences

a. Qualifying absences for FMLA Leave or RIPFMLA Leave are distinguished below.

- (i.) FMLA Leave is available to eligible employees for the following reasons:
1. For any incapacity due to pregnancy, prenatal medical care or childbirth;
  2. The birth of a child to the employee or his/her spouse and the care for the newborn child. (Note: This type of leave must be completed within 12 months of the child's birth);
  3. The placement with the employee or his/her spouse of a child for adoption or foster care and the care for or bond with the newly placed child. (Note: This type of leave must be completed within 12 months of placement);
  4. To care for the employee ' s spouse, parent (or a person who stood in loco-parentis of the employee when the employee was a child), child (under the age of 18 unless incapable of self-care) with a serious health condition;
  5. For a serious health condition that makes the employee unable to perform his or her job;
  6. For a qualifying exigency arising out of the fact that an eligible employee's spouse, child or parent is a covered military member on "covered active duty;" and/or,
  7. To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of said service member. (Note: Under this provision, eligible employees may take up to 26 weeks in a 12 month period; and, additional leave may be available under the Rhode Island Military Leave Act.)
- (ii.) RIPFMLA Leave is available to eligible employees for the following reasons:
1. For a serious health condition that makes the employee unable to perform his or her job;
  2. To care for the employee's spouse, qualifying domestic partner, parent, child, or parent-in-law with a serious health condition;

3. The birth, adoption or foster placement of a child; and/or,
4. To attend a child's qualifying school activities (Note: This leave is limited to 10 hours in a 12month period).

## 5. Definition of a "Serious Health Condition:"

- a. Serious Health Condition means an illness, injury, impairment, or physical or mental condition that involves:
  - (i.) Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, or residential medical care facility;
  - (ii.) A period of incapacity requiring absence of more than 3 consecutive, full calendar days from work, school, or other regular daily activities that also involves continuing treatment by or under the supervision of a health care provider;
  - (iii.) Any period of incapacity due to pregnancy or for prenatal care;
  - (iv.) Any period of incapacity or treatment due to a chronic serious health condition;
  - (v.) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; and/or,
  - (vi.) Any absences to receive required multiple medical treatments including any period of recovery therefrom, for a condition that likely would result in incapacity of more than three consecutive days if left untreated.

## 6. Duration and Nature Of Leave

- a. Eligible employees are entitled to up to 12 weeks of unpaid, job protected leave for qualifying absences in a 12 month period. The 12-month period for FMLA Leave is measured forward from the date the employee's first FMLA Leave begins.
- b. FMLA Leave may be taken in three ways:
  - (i.) Continuous period of time, with a specific duration;
  - (ii.) Intermittent; and/or,
  - (iii.) Reduced work schedule
- c. Limitations and Options:
  - (i.) Subject to the approval of the health care provider, employees must make reasonable efforts to schedule leave for planned medical treatments so as not to unduly disrupt the employer's operations;
  - (ii.) If an employee needs intermittent leave or a reduced schedule leave, the State may require the employee to transfer temporarily, during the period of intermittent or reduced work schedule, to an available alternative position provided that the alternative position has equivalent pay and benefits.
  - (iii.) Spouses employed by the State are limited to a combined total of 12 weeks if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's child or the care for the child after the birth or for

placement of a child with the employee for adoption or foster care or the care for the child after placement. This limitation does not apply to leave:

1. For one's own serious health condition, such as with the recovery period following the birth of a child;
  2. To care for a spouse, son or daughter with a serious health condition; or
  3. For any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."
- (iv.) Instructional employees are subject to special rules with respect to the taking of intermittent, reduced schedule leave and leave near the end of a semester which are not addressed in this Policy. (Note: Instructional employees should contact their respective Human Resources Office to discuss their leave options.)
- (v.) Employees who are absent from work due to their own serious health conditions must submit a "fitness for duty" certificate prior to returning to work if advised that it will be necessary at the time their FMLA Leave is approved.
- d. For RIPFMLA Leave:
- (i.) Eligible employees are entitled to 13 weeks of leave in a consecutive 24 month period.
  - (ii.) RIPFMLA does not allow for the use of intermittent or reduced schedule leave; therefore, leave must be taken in a continuous period of time.
- e. Relationship to other leave:
- (i.) Leaves pursuant to both the FMLA and/or RIPFMLA are unpaid. Employees are required to discharge all applicable accrued leave, however, at the employee's discretion they may retain up to 1 week sick leave, 1 week vacation leave, RO and RI days and 4 personal days, concurrent with their FMLA and/or RIPFMLA Leave. Employees must first discharge applicable sick leave, and then vacation leave (unless otherwise approved by HR). The discharge of paid leave is subject to the terms of the State's leave policies, and, therefore must comply with the procedural and eligibility requirements of the particular leave policy.
  - (ii.) Employees taking FMLA/RIPFMLA Leave to care for a family member with a serious health condition or bond with a newborn child or newly placed foster or adopted child must discharge family sick leave concurrently with their FMLA/RIPFMLA Leave. State Personnel Regulations, however, limit the use of family sick leave to 10 days per calendar year.
  - (iii.) If both are applicable, FMLA and RIPFMLA Leave run concurrently. FMLA/RIPFMLA Leave also runs concurrently with any other applicable leave which may be available under the leave policies, as stated above, the State Personnel Rules, any Collective Bargaining Agreement affecting the employee and applicable law.

## 7. Notice Requirements:

- a. Employee Notice Requirements

- (i.) Employees must provide 30 days advance notice of the need to take FMLA/RIPFMLA Leave when the need is foreseeable. If an employee fails to provide 30 days' notice of foreseeable leave with no reasonable excuse, leave may be denied.
- (ii.) In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable. Absent unusual circumstances, notification of the need for unforeseeable leave must be made in accordance with the State's normal notification procedures for requesting leave and provide sufficient notice to make the State aware of the potential need for FMLA/RIPFMLA Leave.
- (iii.) Employees seeking to discharge approved intermittent FMLA Leave must follow their department's regular sick leave reporting procedure and specifically reference that they are taking FMLA Leave during this notification.
- (iv.) Failure to provide proper notice may result in denial of leave and subject employee to disciplinary action for unexcused absences.

**b. Notifications and Forms**

- (i.) This policy, necessary forms and other information regarding the FMLA and the RIPFMLA are available on the Human Resources website: [www.hr.ri.gov](http://www.hr.ri.gov). Employees may also contact the Division of Human Resources, Department of Administration ("HR"), directly to obtain the necessary forms. Instructional employees should contact their institutional Human Resources Office as stated previously as special rules apply.
- (ii.) Employees who request FMLA/RIPFMLA Leave will be notified in writing of his or her eligibility for FMLA/RIPFMLA Leave and his or her rights and responsibilities under the applicable law.
- (iii.) Employees who are eligible for FMLA/RIPFMLA Leave and who are absent for reasons that may qualify for FMLA and/or RIPFMLA Leave will be notified in writing that they may be eligible for leave under the FMLA and/or RIPFMLA Leave and advised of his or her rights and responsibilities under the applicable law.
- (iv.) Employees who are eligible for FMLA/RIPFMLA Leave will be given the appropriate form to substantiate the need for leave. The required documentation must be returned to HR within 15 calendar days after the request is made or the request may be denied.
- (v.) Upon receipt of the completed form, employees will be informed whether the request for leave has been approved or denied, whether additional information or clarification is needed, the duration of his or her leave and whether he or she will be required to present a fitness for duty certification prior to returning to work. They will also be informed as to the amount of paid leave which must be discharged prior to the commencement of unpaid FMLA/RIPFMLA Leave
- (vi.) All absences by employees which qualify for FMLA Leave and/or RIPFMLA Leave shall be designated as such by the State even if the employee does not request such leave.

## **8. Second and Third Medical Opinions:**

- a.** If the State has reason to doubt the validity of a medical certification or has reasonable grounds to question the employee's fitness-for duty upon expiration of leave, the State may obtain a second opinion at the State's expense.
- b.** If the opinions of the employee's health care provider and the second opinion provider differ, the State may require the employee to obtain certification from a third health care provider at the State's expense. The selection of the third health care provider will be made by mutual agreement between the parties. This third medical opinion shall be final and binding on the State and the employee.

## **9. Recertifications:**

- a.** Employees, whose need for leave is due to his/her own serious health condition or the serious health condition of a covered family member lasts beyond a leave year, will be required to submit a new medical certification each subsequent leave year.
- b.** Employees who request leave beyond that which was originally approved will be required to submit an additional medical certification in support of the extended leave.
- c.** Employees with ongoing qualifying conditions will be required to submit a new medical certification every 6 months
- d.** Employees will be required to submit recertification of their continued need for leave when there is a change in the circumstances described in the original certification, when the employee's use of intermittent leave suggests abuse of his or her FMLA Leave, or when information is received that casts doubt on the stated reason for the absence or the validity of the certification.

## **10. Other benefits:**

- a.** Health Care Coverage and Fringe Benefits
  - (i.)** An employee granted FMLA/RIPFMLA Leave is entitled to maintain their health-care coverage, including dental and eye care coverage, and the same fringe benefits (e.g. life insurance and longterm disability) under the same terms and conditions as if the employee had been actively employed during the leave period. A failure to timely remit monies in accordance with employee benefits protocols to the State for such benefits will result in the termination of the benefits by the State or insurance coverage provider as further discussed herein. If you have any questions regarding employee benefits, please contact that office at (401) 222-3160.
  - (ii.)** Employees on FMLA/RIPFMLA Leave are subject to plan changes, premium and coverage changes that apply to State employees, generally, that take place while the employee is on leave.
  - (iii.)** Employees remain responsible for paying the health insurance co-share payments and other applicable premiums while on FMLA/RIPFMLA Leave, even if that leave is unpaid. If the employee is on paid leave concurrent with his or her FMLA/RIPFMLA Leave, the deduction will be made from his or her payroll check. If the leave is unpaid, the employee will be billed for their co-share

payments and other applicable premiums on a bi-weekly basis. Failure to make co-share and other applicable premium payments will ultimately result in the loss of health care coverage and/or other coverages.

**b. Job Protection/Reinstatement**

- (i.) At the conclusion of his or her FMLA/RIPFMLA Leave, an employee generally is entitled to be restored to the same or an equivalent position as the employee held prior to the FMLA/RIPFMLA Leave. The State may require an employee returning from FMLA/RIPFMLA Leave to submit a "fitness for duty" certificate from a health care provider before the employee reports for work. The "fitness for duty" certificate is a statement of the employee's ability to work and to perform the essential job functions, with or without a reasonable accommodation if required by the Americans with Disabilities Act, of the employee's position and only addresses the "serious health condition" that caused the employee's FMLA/RIPFMLA absence.

**c. Unlawful Actions and Enforcement of FMLA/RIPFMLA Rights**

- (i.) The State will not unlawfully interfere with, restrain, or deny the exercise of FMLA/RIPFMLA rights, or discharge or discriminate against anyone for exercising their rights under the FMLA or the RIPFMLA or engage in any practice made unlawful under either the FMLA or RIPFMLA.

**11. Confidentiality:**

- a. Records and documents relating to certifications, recertifications, medical opinions and/or medical histories will be maintained as confidential medical records and kept separate from the usual personnel files maintained by HR. Access to these records is restricted.

**12. Disclaimer**

- a. This policy is a general summary of an employee's rights and obligations under the FMLA and the RIPFMLA. Every situation is different and employees may have additional leave entitlements beyond those described in this policy. For questions about specific leave entitlements and to obtain the necessary forms for applying for leave, please contact the Division of Human Resources, Department of Administration, or, in the case of instructional employees, the Human Resources Office at their respective institution.
- b. Unless otherwise prohibited by law, the State expressly reserves the right to modify this policy without notice.

**13. Signatures**



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Director of Administration

Dated: 6/15/17