

**Policy:** It is the policy of the MHDS Division to comply with the federal Family and Medical Leave Act of 1993 (FMLA), and with the discretionary options described throughout this policy.

NOTE: This policy is not a substitute for relevant law or regulation, nor does it establish additional rights beyond those provided in law and regulation. It is intended to be used in conjunction with the FMLA, Federal regulations, state law, the Rules for State Personnel Administration (NAC 284) and the Overview of the FMLA published by the Department of Personnel. This policy outlines the manner in which discretionary options within the FMLA will be applied in the Division of MHDS and Department of Health and Human Services.

**Purpose:** To ensure that Division employees are accorded the rights provided by the FMLA, and that Division managers and personnel staff administer FMLA in the manner specified by federal, state, and departmental directives.

**Procedures:**

#### I. Overview

The FMLA is a federal law which provides an eligible employee up to a maximum of 12 workweeks of leave in a 12-month period for one or any combination of qualifying reasons for him-/herself or his/her spouse, child or parent. An agency is required to maintain an employee's health coverage during the leave period on the same basis as coverage would have been provided if the employee had been continuously working during the FMLA leave. Once the leave period is concluded, the employee must be reinstated to the same or an equivalent job unless the employee would not otherwise have been employed.

FMLA may consist of paid or unpaid leave. It is the policy of MHDS and the Department of Health and Human Services to require an employee to use appropriate types of accrued leave time (does not include compensatory time) prior to any leave without pay for FMLA unless the leave is in connection with a work-related injury or illness.

An employee must ordinarily provide 30 days' advance notice when the need for leave is foreseeable. Normal notice and request requirements for the use of sick leave and annual leave apply. This must be at least verbal notice sufficient to make the employer aware of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave. However, the employee does not have to mention FMLA, or expressly assert rights under FMLA.

#### II. Eligibility

A. To be eligible for FMLA, an employee must:

1. Have worked for the State of Nevada for at least 12 months (both continuous and prior service count);

2. Have worked or been in paid leave status at least 1,250 hours during the 12 months preceding the leave; and
  3. Be employed at a worksite where the State of Nevada employs at least 50 employees within 75 miles of the work site.
- B. Unclassified employees who are appointed by the Governor to serve on a policy-making level are not covered by the provisions of FMLA.
- C. Notification must be provided to an employee who requests leave if he/she does not meet the eligibility requirements for FMLA leave.
- D. If a husband and wife are both eligible for FMLA leave and are both employed by the State of Nevada, FMLA is limited to a combined total of 12 work weeks during a 12 month period if leave is taken for the birth of the employee's child or to care for the child or for placement of a child with the employees for adoption or foster care. Leave associated with a serious health condition (e.g., the period of time the mother is recovering from childbirth) is not subject to the combined limit.

### III. Part-Time/Intermittent Employees

- A. Eligibility requirements for a part-time or intermittent employee are the same as those for a full-time employee (see II.A).
- B. The amount of leave to which a part-time or intermittent employee is entitled is based on the employee's normal workweek. An employee who works 25 hours per week would be eligible to take up to twelve 25-hour workweeks of leave.
- C. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period is used to calculate an employee's normal workweek.

### IV. Reasons for Leave

- A. Eligible employees may be granted leave for the following reasons:
1. The **birth** of the employee's child and to **care for the child** (until the child is one year old);
  2. The **placement of a child** with the employee for **adoption** or **foster care** (within 12 months from the date of placement);
  3. To care for the employee's **spouse, child or parent** who has a **serious health condition**;
  4. A **serious health condition** that renders the **employee** incapable of performing one or more of the essential functions of his/her job.
- B. Qualifying **serious health conditions** (illness, injury, impairment of physical or mental conditions) fall into one or more of the following categories:

1. Hospital Care - **inpatient care** in a hospital, hospice or residential medical care facility and subsequent incapacity or follow-up treatment;
2. Absence plus treatment - **more than three consecutive calendar days** of incapacity that also involves:
  - Treatment two (2) or more times by a health care provider, by a nurse or physician's assistant under the provider's direct supervision, or by a provider of health care services (e.g., physical therapist) under order/referral by the health care provider; OR
  - Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider;
3. Pregnancy - any period of incapacity due to **pregnancy**, or for **prenatal care**;
4. Chronic condition - conditions require periodic visits for treatment by a health care provider, or nurse or physician's assistant under the provider's direct supervision, continue over an extended period of time (including recurring episodes of a single underlying condition), and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
5. Permanent/long term conditions - incapacity which is **permanent or long-term** due to a condition for which treatment may not be effective. Must be under the continuing supervision of a health care provider but need not be receiving active treatment (e.g., Alzheimer's, a severe stroke or terminal stages of a disease);
6. Multiple treatments (Non-chronic) - any period of absence to receive multiple treatments (including recovery) by a health care provider or by a provider of health care services under order/referral by the health care provider for either restorative surgery after an accident or injury, or for a condition which would likely result in an incapacity of more than three consecutive calendar days in the absence of medical intervention, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), kidney disease (dialysis).

Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, etc. are examples of conditions which do not meet the definition of a serious health condition and do not qualify for FMLA leave.

#### V. Rolling 12-Month Period

- A. An employee is entitled to 12 workweeks of leave during a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Under the rolling 12-month period, each time an employee takes FMLA leave the remaining leave entitlement becomes any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning Feb 1, 2000, four weeks beginning June 1, 2000, and four weeks beginning Dec. 1, 2000, the employee would not be entitled to any additional leave until Feb. 1, 2001. However, beginning on Feb. 1, 2001, the employee

would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

VI. Benefits Coverage During Leave

- A. During the period of FMLA leave, an employee will be retained on the State of Nevada group insurance plan as though the employee had been working during the leave period. The agency is responsible for paying the employer's portion of the premium for employee-only coverage.
- B. Failure of the employee to pay his/her share of the health insurance premium (e.g., premium for dependent coverage) may result in the Public Employees' Benefits Program terminating coverage retroactively to the last day of the month for which the employee paid for coverage. Premiums are due on the 15<sup>th</sup> of each month for coverage for the calendar month. The employee has a 30-day grace period in which to make the premium payment. The agency will not pay these premiums on the employee's behalf.
- C. An employee who wishes to maintain coverage under an optional insurance plan (voluntary supplemental life insurance, cancer care insurance, etc.) is responsible for making the premium payment directly to the plan administrator. The names and addresses of plan administrators are available from the Public Employees' Benefits Program at (775) 684-7000.
- D. If the employee fails to return to work after the expiration of the leave, the employee is typically required to reimburse the State of Nevada for payment of health insurance premiums during unpaid FMLA leave. Reimbursement is not required if the reason the employee fails to return is the presence of a serious health condition of the employee or employee's family member which would otherwise be FMLA-qualifying (medical certification may be required), or if the reason is due to other circumstances beyond the employee's control.
- E. An employee does not accrue sick leave or annual leave while on FMLA leave that consists of unpaid leave or catastrophic leave. Unpaid leave/catastrophic leave in excess of 240 hours a year may affect an employee's pay progression date, probationary period, longevity pay, and date of eligibility for increased rate of annual leave.
- F. When an employee is on unpaid FMLA leave for the entire scheduled shift prior to a holiday, he/she is not entitled to holiday pay for that holiday.
- G. Periods of unpaid FMLA leave are not treated as credited service for the purposes of benefit accrual, vesting and eligibility to participate in the Public Employees, Retirement System.

VII. Employees' Notice of the Need for Leave

- A. An employee planning to take FMLA for the birth or placement of a child or because of planned medical treatment must submit a request for leave at least 30 days in advance. If the need for leave is unforeseeable and will begin within 30 days, the employee must give notice to his or her immediate supervisor as soon as the need for leave becomes known to the employee. Normal notice and leave request requirements apply to requests to use annual or sick leave.
- B. An employee does not have to expressly mention FMLA to meet his/her obligation to provide notice, though he/she does need to state a qualifying reason for the leave.
- C. Upon receiving notice of the need for leave, the employee will be provided with a Request for Leave of Absence Form (NPD-60, Attachment III) to complete. The request form must be completed and forwarded through the employee's supervisor to the personnel representative within two working days, as far as practicable. If the employee's condition is such that he/she is unavailable to complete the form, the supervisor may complete the request form based on a verbal conversation.
- D. Designation of leave usage as FMLA leave is based upon the employee meeting the eligibility requirements for FMLA and upon notice to the employer that the reason for the leave is FMLA-qualifying. **An eligible employee does not have the option to request that qualifying leave not be designated as FMLA leave.**
- E. For each separate period of leave, the employee's eligibility for FMLA leave must be redetermined. A new Request for Leave of Absence form may be required.

VIII. Supervisor's Responsibility upon Receiving Notice

- A. When a supervisor receives notice that leave is potentially FMLA-qualifying (typically through an employee requesting leave verbally, on the required leave request form, or calling in to report an absence), the supervisor is to notify the personnel representative. The supervisor is also responsible for providing the employee with a Request for Leave of Absence form (NPD-60, Attachment III) to complete or for completing the form on the employee's behalf based on a verbal conversation, if the circumstances are such that the employee is not able to complete the form (e.g., medical emergency). The completed Request for Leave of Absence form is to be forwarded to the personnel representative within two working days of receiving notice, as far as practicable.
- B. If the supervisor receives less than five working days' notice of the need for leave, the supervisor must provide the employee with a Notice of Provisional

Designation - Family or Medical Leave (Attachment I) and immediately provide a copy of the provisional designation to the personnel representative.

- C. Designation of leave is based upon the employee meeting the eligibility requirements for FMLA leave and upon notice to the employee that the reason for the leave is FMLA-qualifying. An eligible employee does not have the option to request that the supervisor not designate qualifying leave as FMLA leave.

IX. Personnel Office's Responsibility upon Receiving Notice

- A. Upon receipt of a Request for Leave of Absence or Notice of Provisional Designation, the personnel representative will confirm whether the employee is eligible for FMLA leave and whether the reason for which leave is requested is FMLA-qualifying. Eligibility determinations may require that the agency personnel representative contact an employee's prior agency for FMLA usage information. Designation of leave as FMLA may be provisional pending receipt of a medical certification or other information required to determine if the leave is FMLA-qualifying.
- B. The Request for Leave of Absence is submitted to the appointing authority or his or her designee for signature designating whether or not approval for leave is granted. A copy of the signed form is returned to the employee. Central Payroll is also notified of approved FMLA requests.
- C. Appropriate types of accrued paid leave must be used prior to leave without pay except when the leave is taken in conjunction with a work-related injury or illness and the employee has elected not to supplement temporary total disability payments from workers' compensation with paid leave. State personnel regulations governing the use of sick leave and annual leave apply (e.g., sick leave cannot be used to care for a person who does not have an illness or other authorized medical need; family sick leave may be used for leave approved under the FMLA to care for spouse, parent, or child with serious health condition). Compensatory time is not considered accrued paid leave.
- D. For each period of leave, the employee's eligibility for FMLA leave must be redetermined. A separate Employer Response to Employee Request for Family or Medical Leave form (NPD-62, Attachment V) must be completed for separate periods of leave. Where appropriate, however, periods of intermittent leave may be addressed on a single Employer Response form.
- E. If the employee is not eligible for FMLA leave, the personnel representative is responsible for promptly notifying the employee that he/she is not eligible by designation on the Request for Leave of Absence form (Section III) or by designation on the Employer Response to Employee Request for Family or Medical Leave form (Item #1) that the employee is not eligible for leave under the FMLA.

- F. If the employee is eligible for FMLA leave, their personnel representative is responsible for completing the Employer Response for Family or Medical Leave form (Attachment V) in its entirety and providing it to the employee within two working days, if feasible. The form includes the following:
1. Reason and anticipated dates of leave;
  2. Whether or not the employee is eligible for FMLA leave and whether the leave will be counted towards the entitlement to 12 work weeks of FMLA leave. (Note: all FMLA leave in the state is to be counted toward this entitlement.);
  3. The requirement to furnish medical certification of a serious health condition and any requirement for medical recertification. If the leave is for the employee's serious health condition, the personnel representative should attach a copy of essential functions of the employee's position to the blank medical certification form provided to the employee (see Item V of certification form, Attachment IV);
  4. The ability of the employee to substitute appropriate types of accrued leave time and the agency's requirement that appropriate types of accrued leave time must be used instead of unpaid leave (unless employee is receiving temporary total disability payments from worker's compensation and chooses not to use paid leave);
  5. The requirement for the employee to pay any portion of the group insurance premium he or she would normally pay (e.g., dependent coverage) and the requirement for the employee to pay for any optional insurance coverage. The agency will not pay for either;
  6. The requirement to present a release to return to work from the health care provider. The requirement to provide advance notice to the agency if the employee is able to return to work earlier than the return date initially anticipated;
  7. The requirement to provide periodic reports of the employee's status and intent to return to work (this is not a medical certification); and
  8. Notification that sick leave and annual leave does not accrue while an employee is on unpaid leave or catastrophic leave. The amount of time in unpaid leave/catastrophic leave status in excess of 240 hours in a year affects an employee's pay progression date, the completion date of probationary period, the amount of longevity pay, and the date an employee is eligible for an increased rate of annual leave.
- G. If the approval of leave is provisional, the personnel representative must indicate at the top of the Employer Response to Employee Request for Family or Medical Leave form, "Provisional Designation pending receipt of: (list information which is pending)" (e.g., certification of health care provider). If the information received establishes the employee's eligibility, the designation becomes final. However, if the information received fails to confirm that the reason for the leave is FMLA-qualifying, the personnel representative must withdraw the provisional designation and give written notice to the employee.

- H. The agency personnel representative is responsible for completing a Benefits Change Form to notify the Public Employees' Benefit Program at the time the employee begins FMLA leave and upon the employee's return from leave.
- I. The agency personnel representative is responsible for completing a Notice of Removal From Retirement Report Form to notify the Public Employees' Retirement System of periods of unpaid leave.

X. Certification of Health Care Provider

- A. An agency may require an employee to provide a Certification of Health Care Provider form (NPD-61, Attachment IV) to substantiate the need for FMLA leave for a serious health condition of the employee or employee's spouse, child or parent. If the employee has requested or the agency is requiring the employee to use sick leave or annual leave rather than unpaid FMLA leave, the agency may only require the employee to comply with the certification requirements pertaining to the use of sick leave. NAC 284.566 provides that an agency may require an employee to provide substantiating evidence of the employee's or a family member's medical condition prior to approving the use of sick leave for absences in excess of three consecutive workdays or in cases of suspected abuse.
- B. If a certification form is required due to the serious health condition of the employee, the personnel representative should attach a copy of the essential functions of the employee's position to the certification form prior to providing the form to the employee for submission to his or her health care provider.
- C. If a certification form is required due to the need for the employee to care for a spouse, child, or parent with a serious health condition, the employee must complete Item VII on NPD-61 describing the care he/she will provide and an estimate of the period during which care will be provided. This section is to be completed prior to the employee submitting the certification form to the patient's health care provider for completion.

XI. Recertification of a Medical Condition

- A. An agency may require an employee to provide recertification of a serious health condition of the employee, spouse, child or parent and must allow the employee at least 15 calendar days after the request to provide such recertification. With the exceptions noted in paragraphs B, C, and D, an agency may request recertification at any reasonable interval, but not more often than every 30 days unless the employee requests an extension of leave, circumstances described in the previous certification change significantly, or the agency receives information that casts doubt on the stated reason for the absence.

- B. For **pregnancy, chronic or permanent/long-term conditions**, a recertification may be required no more often than every 30 days and only in connection with an absence unless circumstances described in the previous certification change significantly, or the agency receives information that casts doubt on the stated reason for the absence.
- C. If the **minimum duration of the incapacity** on the certification form completed by the health care provider is **more than 30 days**, the agency may not request recertification until that time period has passed unless the employee requests an extension of leave, circumstances described in the previous certification change significantly, or the agency receives information that casts doubt on the stated reason for the absence.
- D. For FMLA leave taken **intermittently or on a reduced leave schedule**, the agency may not request recertification until the minimum period of time specified on the certification for such leave has passed unless the employee requests an extension of leave, circumstances described in the previous certification change significantly, or the agency receives information that casts doubt on the stated reason for the absence.

## XII. Employee's Responsibility to Return the Certification

- A. The employee is responsible for submitting a Certification of Health Care Provider form (NPD-61, Attachment IV) to the health care provider for completion. The employee must return the completed form to the personnel representative within 15 calendar days of receipt of the agency's request unless it is not practicable despite the employee's diligent efforts. If the certification form is returned but some information is incomplete, the employee will have additional 5 working days to acquire the additional information and resubmit the form.
- B. In the event the employee does not comply with the requirement for certification, the personnel representative will provide the employee with a letter indicating that FMLA approval or sick leave approval, if applicable, was on a provisional basis pending return of the Certification of Health Care Provider form. The letter will also state that failure to return the form will result in revocation of authorization to be absent from work and that failure to comply with a request from a supervisor and/or unauthorized absence from work may result in disciplinary action.
- C. If the employee is at work the letter may be hand-delivered. If the employee is not at work, the letter will be mailed to the employee and a certificate of mailing (Attachment II) will document the date it was mailed. The agency may also choose instead to mail the letter by regular mail and certified mail, return receipt requested. The employee will be given two working days from the date of receipt of the letter to provide a certification form or return to work unless there are extenuating circumstances. Any extenuating circumstances must be

promptly communicated to the agency. The date of the employee's receipt of the letter will be deemed to be the third day after the date of mailing or the date indicated by the post office as the date of delivery, whichever is earlier.

- D. If a certification form is not provided, action may be taken for an unauthorized absence and failure to comply with the request for certification regardless of whether or not the employee returns to work.

### XIII. Second and Third Medical Opinion

- A. If the agency has reason to doubt the validity of the health provider's certification, the opinion of a second health care provider designated by the agency may be required at the agency's expense. If this is required, the following steps apply:
  1. The employee must obtain the second opinion on the Certification of Health Care Provider form. The designated health care provider must not be regularly used by the state unless the employee or the employee's spouse, parent or child with a serious health condition resides or works in an area where such a provider of health care is not otherwise available. The health care provider must not be employed by the state;
  2. The employee will be given 15 calendar days to return the completed form. In the event the employee does not comply with the request, steps listed under section XII of this policy will be followed;
  3. If the first and second opinion differ, a third medical opinion may be required from a health care provider approved jointly by the agency and the employee at the agency's expense. The third opinion is final and binding;
  4. The employee is provisionally entitled to the benefits of FMLA pending receipt of the second or third medical opinion;
  5. If entitlement to FMLA leave is not substantiated by these opinions, the leave must not be designated as FMLA leave. The appropriate designation for the employee's absence will be determined at the time, in consultation with the personnel representative, and communicated to the employee; and
  6. If it is anticipated that an employee or family member will need to incur out-of-pocket travel expenses to obtain a second or third medical opinion, the agency must communicate to the employee the requirements to obtain reimbursement for reasonable expenses. The State Administrative Manual (SAM) policies on travel apply.

### XIV. Confidentiality of Medical Information

- A. An employee's or family member's medical information must be maintained in a separate, locked file with strictly limited access. Forms and correspondence identifying an employee's or family member's serious health condition are not to be maintained in the employee's personnel file.
- B. When an employee's medical condition requires work restrictions or accommodation, supervisors and managers with a need to know may be

informed; however, they may not inform others (e.g., co-workers). It is the employee's choice whether to inform co-workers of his/her medical condition.

XV. Intent to Return to Work

- A. An agency may require an employee on FMLA leave to submit, not more often than every two weeks, a statement of his or her intent to return to work. This is not a medical certification but rather a statement of the employee's intentions.

XVI. Intermittent Leave/Reduced Leave Schedule

- A. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of work hours per workweek or workday. Only the actual amount of leave taken counts towards the 12 workweeks of FMLA leave for which an employee is eligible.
- B. FMLA leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition, recovery from a serious health condition, or incapacity associated with a chronic serious health condition. It may also be taken to provide care to an employee's spouse, parent, or child with a serious health condition.
- C. Examples of intermittent leave include leave for medical appointments or treatments associated with a serious health condition, and leave for prenatal care or severe morning sickness associated with pregnancy.
- D. An employee must attempt to schedule his or her medical appointments or treatments at times which do not unduly disrupt the agency's operations.
- E. For FMLA leave taken after the birth of a child (and not associated with a serious health condition of the mother or child) or placement of a child with an employee for adoption or foster care, leave may be taken intermittently or on a reduced leave schedule only if the agency agrees.
- F. In some instances, an employee requesting intermittent leave or leave on a reduced schedule may be required to temporarily transfer to an alternative assignment which better accommodates the employee's recurring periods of leave for the duration of the FMLA leave. Typically, five working days notice of a transfer is required (NAC 284.390). Some transfers may require compliance with the Americans with Disabilities Act (ADA). The agency personnel representative can provide assistance in this area.

#### XVII. Worker's Compensation

- A. Leave taken by an FMLA-eligible employee in conjunction with a work-related injury or illness which qualifies as a serious health condition must be counted toward the employee's FMLA leave and be so designated by the agency.
- B. An employee has a choice of whether or not he/she wants to use accrued paid leave to supplement temporary total disability payments received as a result of a work-related injury or illness (NRS 281.390). The agency cannot require the employee to use paid leave as a supplement.
- C. An employee may decline a light-duty job offer and continue on FMLA leave up to 12 work weeks if he/she is unable to perform one or more of the essential functions of the pre-injury job. Refusal may affect the employee's workers' compensation benefits. Further information is available from the workers' compensation insurer.
- D. An employee may voluntarily accept a light-duty job while recovering from a serious health condition. He/she retains the right to be restored to the same or equivalent position until the entitlement to 12 workweeks of FMLA leave has passed. For purposes of restoration, the 12-workweek period includes all FMLA leave plus the period of light duty.
- E. Health insurance premiums paid by the employer for an employee on worker's compensation leave may not be recovered from an employee if he/she does not return to work.
- F. An employee who is receiving temporary total disability payments is entitled to have the agency pay the employer's portion of the premium for employee-only coverage for up to 9 months (NRS 287.0445).

#### XVIII. Reporting Leave

- A. Upon notice to the employee that leave will be designated as FMLA leave, timesheets must reflect the appropriate FMLA usage codes: UFMAL, UFMCL, UFMFS, UFMLP, UFMSL. For leave related to worker's compensation, the codes are: UFWAL, UFWCL, UFWLP, UFWSL.
- B. Employees are eligible to use up to 12 workweeks of leave during a **rolling** 12-month period. The workweek is based on the employee's regular work schedule. For example, an employee who works 25 hours per week would be eligible to use up to twelve 25-hour work weeks of leave during the 12-month period. A holiday is considered part of the workweek regardless of whether the employee is in paid status during the holiday.
- C. Employees not eligible to receive overtime compensation in the state of Nevada (**exempt employees**) must report **partial-day absences for FMLA leave**. This will

not affect their status as exempt employees under the federal Fair Labor Standards Act.

- D. When an employee transfers to a different agency, the agency from which he or she transferred must report to the personnel representative of the receiving agency the amount of the FMLA leave used by the employee in the 12 months prior to transfer.

XIX. Restoration to Employment/Conclusion of 12-Week FMLA Leave

- A. A certification from the employee's health care provider that the employee is able to return to work may be required prior to returning an employee to work after FMLA leave if requested as part of a uniformly applied practice. This requirement must be disclosed on the Employer Response to Employee Request for Family or Medical Leave form. A release to return to work may not be required if the FMLA leave is intermittent. An agency does not have the right to request second and third medical opinions for return-to-work certifications.
- B. The employee must be returned to the position he/she held at the time leave commenced or to a position with equivalent pay, benefits, and other terms and conditions of employment unless he/she would no longer be employed if not on leave (e.g., due to layoff; or employee was only hired for a specific term).
- C. If the returning employee no longer qualifies for the same or an equivalent position due, for example, to an inability to renew a license or attend a training course as a result of the leave, he/she must be given a reasonable opportunity to fulfill those conditions upon return to work.
- D. If an employee is unable to perform the essential functions of his/her position because of a physical or mental condition, the agency's obligations may be governed by the Americans with Disabilities Act (ADA). If the individual is a qualified individual with a disability within the meaning of ADA, the agency may be required to make a reasonable accommodation, barring undue hardship, in accordance with ADA. The agency personnel representative can provide further assistance in this area.
- E. If an employee fails to return to work upon the expiration of FMLA leave, he/she may be subject to disciplinary action (e.g., for unauthorized absence), including possible termination unless additional leave time has been requested and approved by the appointing authority. An employee who requests an extension of leave must submit the request, in writing, to his/her immediate supervisor. This written request must be made as soon as the employee realizes he/she will not be able to return at the end of the leave period, but no later than two weeks prior to the date FMLA leave is

due to end. Authorization of additional leave is considered on an individual basis and is subject to approval by the appointing authority.

- F. If the employee fails to return to work after the expiration of the leave, the employee is typically required to reimburse the State of Nevada for payment of health insurance premiums paid during unpaid FMLA leave. Reimbursement is not required if the employee fails to return due to the presence of a serious health condition of the employee or the employee's family member which would otherwise be FMLA-qualifying (medical certification may be required), or due to other circumstances beyond the employee's control.

A handwritten signature in black ink that reads "Carol Brandenberg". The signature is written in a cursive style with a large, stylized initial "C".

Administrator

ATTACHMENTS:

- I. Sample - Notice of Provisional Designation
- II. Sample - Certificate of Mailing
- III. Request for Leave of Absence - NPD-60
- III. Certification of Health Care Provider - NPD-61
- IV. Employer Response to Employee Request for Family or Medical Leave NPD-62

Effective Date: 2/7/03

Approved by the Commission on MHDS: 2/7/03

Revised Date: 06/15/07

**NOTICE OF PROVISIONAL DESIGNATION  
FAMILY OR MEDICAL LEAVE**

DATE:

TO: Employee

FROM: Supervisor

Based on the stated reason for your absence, the following absence is being provisionally designated as Family Medical Leave (FMLA) and must be coded as such on your time sheet:

Dates Absent : \_\_\_\_\_

Stated Reason: \_\_\_\_\_

Please return the attached Request for Leave of Absence form by:

\_\_\_\_\_  
*(allow 2 working days)*

This notice will be forwarded to the agency's personnel representative. The personnel representative will determine whether you meet the eligibility requirements for FMLA and confirm whether you were absent for an FMLA-qualifying condition. This may require the submission of additional information including a Certification of Health Care Provider form.

If it is determined you are not eligible for FMLA leave or the reason for your absence is not FMLA-qualifying, the personnel representative will notify you in writing that this provisional designation has been withdrawn.

cc: Agency Personnel Representative

**CERTIFICATE OF MAILING**

I hereby certify that I am employee of the \_\_\_\_\_ Division, and  
that on this date I deposited for mailing at \_\_\_\_\_, Nevada, a copy  
of the attached letter to:

Employee's Name  
Address

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

## REQUEST FOR LEAVE OF ABSENCE

### EMPLOYEE: COMPLETE SECTION I AND II

#### **I. EMPLOYEE INFORMATION (PLEASE PRINT)**

Employee's Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
(LAST) (FIRST) (MI)

Address: \_\_\_\_\_

Class Title: \_\_\_\_\_ Full-Time: \_\_\_\_\_ Part-Time: \_\_\_\_\_

Agency Name: \_\_\_\_\_ Agency ID: \_\_\_\_\_

#### **II. LEAVE REQUEST**

Estimated Date Leave Will Begin: \_\_\_\_\_ Estimated Date of Return: \_\_\_\_\_

Reason for the Leave: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If leave is requested on an intermittent or reduced leave schedule, please indicate the days of the week and/or hours during the day you will be absent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If leave is associated with the birth of a child or placement of a child for adoption or foster care, please indicate the date of birth or placement: \_\_\_\_\_ or \_\_\_\_\_.  
(Anticipated Date) (Actual Date)

Is your spouse employed by the State of Nevada?  YES  NO

If the leave is to care for a family member with a serious health condition, please specify the name and relationship of the family member to you: \_\_\_\_\_  
(Name) (Relationship)

Signature of Employee or Designee \_\_\_\_\_ Date \_\_\_\_\_

(If employee is not available to sign request, note verbal conversation, date and the signature of the person who completed the employee's portion of the form.)

### EMPLOYER: COMPLETE SECTION III AND IV

#### **III. ACCOUNTING FOR LEAVE**

Is the employee eligible for FMLA leave? (Refer to Guidelines in Section V.)  YES  NO

NOTE: Employer Response to Employee Request for Family and Medical Leave (NPD-62) must be promptly provided to an employee giving notice of the need for leave for an FMLA-qualifying reason.

Will appropriate types of paid leave be substituted for any portion of the unpaid family and medical leave?  YES  NO

After discussion with employee, please specify the type(s) of leave which will be substituted:

Annual Leave  Sick Leave  Family Sick Leave  Catastrophic Leave

**APPROPRIATE CODES MUST BE INDICATED ON THE BI-WEEKLY TIME SHEET.** (Refer to Guidelines in Section V.)

If the request for leave is due to an employee's serious health condition or the serious health condition of a family member, and a medical certification is required, please provide the certification form (NPD-61) to the employee. The completed medical certification form should be returned directly to the employee's current supervisor or the appointing authority.

(over)

**IV. AUTHORIZATION**

Leave of Absence Approved:     YES     NO

\_\_\_\_\_  
Signature of Appointing Authority or Designee

\_\_\_\_\_  
Date

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V. GUIDELINES**

These guidelines are to assist in determining whether a leave request for sick leave, worker’s compensation leave, personal leave, etc. may qualify as FMLA.

**Family and Medical Leave Act – FMLA**

Eligibility criteria:

- (1) Worked for State of Nevada for at least 12 months (need not be consecutive).
- (2) Worked at least 1,250 hours during 12 months preceding the leave.
- (3) Employed at worksite where the State of Nevada employs at least 50 employees within 75 miles.

Does not apply to elected officials, their personal staff or policy-making appointees. Leave limited to a total of 12 workweeks in a “rolling” 12 month period measured backward from the date an employee uses any FMLA leave.

Must be for FMLA – qualifying purpose:

- (1) Birth of child, and to care for newborn child.
- (2) Placement of child for adoption or foster care.
- (3) To care for the employee’s spouse, child, or parent with a serious health condition.
- (4) A serious health condition which makes the employee unable to perform any one or more of the essential functions of his/her position.

Applicable time codes:    UFWLP (Family Medical - Leave Without Pay)  
  UFMAL (Family Medical - Annual Leave)  
  UFMSL (Family Medical - Sick Leave)  
  UFMFS (Family Medical - Family Sick Leave)  
  UFMCL (Family Medical - Catastrophic Leave)

Work Injury codes:    UFWAL (FMLA Workers’ Comp Annual Leave)  
  UFWCL (FMLA Workers’ Comp Catastrophic Leave)  
  UFWLP (FMLA Workers’ Comp Leave Without Pay)  
  UFWSL (FMLA Workers’ Comp Sick Leave)

**VI. DISTRIBUTION**

Original:    Department (Personnel/Payroll)  
Copy:        Employee  
                  Central Payroll (Approved Requests Only)  
                  Central Records (Approved Requests Only)

**CERTIFICATION OF HEALTH CARE PROVIDER  
(Family & Medical Leave Act of 1993)**

The information sought in this form relates only to the condition for which the employee is taking FMLA leave. Terms in **bold** are defined on the last page.

Employee Name	Patient's Name <i>(If other than employee)</i>
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I. A *Serious Health Condition* means an illness, injury, impairment, or physical or mental condition, which under the Family & Medical Leave Act, is described by the following categories. Does the patient's condition qualify under any of the categories described?

NO            YES *If yes, please check the appropriate category below:*

**HOSPITAL CARE**

Inpatient care (*i.e.*, 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.

**ABSENCE PLUS TREATMENT**

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

**Treatment** two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; *or*

Treatment by a health care provider on at least one occasion which results in a **regimen of continuing treatment** under the supervision of the health care provider.

**PREGNANCY**

Any period of **incapacity** due to pregnancy, or for prenatal care.

**CHRONIC CONDITIONS REQUIRING TREATMENTS**

A chronic condition which:

Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

Continues over an extended period of time (including recurring episodes of a single underlying condition); and

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

**PERMANENT/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 or, 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.

**MULTIPLE TREATMENTS (NON-CHRONIC CONDITIONS)**

Any period of absence to receive multiple treatments (including any period of recovery therefrom) 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 restorative surgery after an accident or other injury, or for a condition that would 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), kidney disease (dialysis).

II. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

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III. Describe the approximate date the condition commenced:

What is the probable duration of the condition: \_\_\_\_\_

What is the probable duration of the patient's present incapacity, if different: \_\_\_\_\_

Will it be necessary for the employee to work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in item IV below)?      NO      YES    If yes, what is the probable duration: \_\_\_\_\_

If the condition is a chronic condition or pregnancy, describe whether the patient is presently incapacitated and what the likely duration and frequency of episodes of incapacity will be: \_\_\_\_\_

IV. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments: \_\_\_\_\_

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery, if any: \_\_\_\_\_

If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please describe the nature of the treatments: \_\_\_\_\_

If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment): \_\_\_\_\_

V. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee able to perform work of any kind?      YES      NO

If able to perform some work, is the employee able to perform all of the essential functions of the employee's job? *(Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)*

YES      NO    If no, please list the essential functions the employee is unable to perform: \_\_\_\_\_

If neither of the above applies, is it necessary for the employee to be absent from work for treatment?      YES      NO

VI. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?      YES      NO

If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

YES      NO

If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need: \_\_\_\_\_

Name, Address and Telephone Number of Health Care Provider:	Type of Practice - Field of Specialization:
	Signature of Health Care Provider:
	Date:



**EMPLOYER RESPONSE TO EMPLOYEE  
REQUEST FOR FAMILY OR MEDICAL LEAVE**

**Provisional Designation Pending:**  
 **Medical Certification**  
 **Other:** \_\_\_\_\_  
\_\_\_\_\_

**(FAMILY AND MEDICAL LEAVE ACT OF 1993)**

*This form must be provided to an employee the first time in each six-month period that he/she gives verbal/written notice of the need for leave for an FMLA-qualifying reason. If information changes with respect to a subsequent period of FMLA leave during the six-month period, an updated form must be provided.*

DATE: \_\_\_\_\_  
TO: \_\_\_\_\_  
(Employee's Name)  
FROM: \_\_\_\_\_  
(Name of Appropriate Agency Representative)  
SUBJECT: Request for Family/Medical Leave

On \_\_\_\_\_, you notified us/we became aware of your need to take family/medical leave due to:  
(Date)

- the birth of your child, or the placement of a child with you for adoption or foster care; or
- a serious health condition that makes you unable to perform the essential functions of your job; or
- a serious health condition affecting your  spouse,  child,  parent, for which you are needed to provide care.

You notified us/we became aware that you need this leave beginning on \_\_\_\_\_ and that you expect  
(Date)  
leave to continue until on or about \_\_\_\_\_.  
(Date)

Except as explained below, you have a right under the FMLA to receive up to 12 work weeks of leave in a “rolling” 12 month period measure backwards from the date you use any FMLA leave, for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. However, you have no greater right to reinstatement or other benefits and conditions of employment than if you were continuously working during FMLA leave.

**If you do not retire, or do not return to work following FMLA leave for a reason other than:** (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave (medical certification *may* be required); or (2) other circumstances beyond your control, you will be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave. This may include the following premiums paid while you were on unpaid leave: full premium for employee-only coverage; employee's portion of the premium for coverage through a health maintenance organization; and employee's portion of premium for dependent coverage.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are  eligible  not eligible for leave under the FMLA.
2. The requested leave  will  will not be counted against your annual FMLA leave entitlement.
3. You  will  will not be required to furnish medical certification (NPD-61) of a serious health condition. If required, you must furnish the certification to \_\_\_\_\_ by \_\_\_\_\_  
(Name) (Date)  
(Employer must allow at least 15 calendar days) or commencement of your leave may be delayed until the certification is submitted.

4. You  will  will not be required to furnish recertification relating to a serious health condition.  
(Note: Except in certain circumstances, cannot require more often than every 30 days or before duration of incapacity specified on initial certification has passed.)
- 5(a) If appropriate for the purpose of the leave and authorized in accordance with State regulations, you may elect to substitute accrued paid leave for unpaid FMLA leave or we may require that you substitute appropriate types of accrued paid leave.
- (b) We  will  will not require that you substitute appropriate types of paid leave for unpaid FMLA leave.
- (c) If paid leave will be used, the following conditions will apply: (Specify the order and dates of leave time.)
- 6(a) If you normally pay a portion of the premiums for your group health insurance (**e.g., premium for dependent coverage and/or for coverage through a health maintenance organization**), these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments to \_\_\_\_\_ on the  
(Agency's Payroll Clerk)  
15th day of each month for insurance coverage for that calendar month.
- (b) You have a 30-day grace period in which to make payment. If payment has not been made during the grace period, your group health insurance may be canceled provided you are notified in writing at least 15 days before your health coverage will cease, or, at our option, we may pay your share of the premiums during unpaid FMLA leave, and recover these payments from you upon your return to work.
- We:  will pay your portion of the premiums for your group health insurance while you are on unpaid leave and recover these payments from you when you return to work or, unless otherwise prohibited, when you terminate employment.
- will not pay your portion of the premiums for your group health insurance while you are on unpaid leave. If your payment is not made during the grace period, your coverage will be cancelled retroactive to the last day of the month for which you paid the premium.
- (c) If you have optional insurance coverage which you normally pay through payroll deduction (e.g., supplemental life insurance, cancer care insurance, etc.), you should make the premium payment directly to the Plan Administrator while you are on unpaid FMLA leave. The name and phone number of the Plan Administrator is available by contacting Public Employees' Benefits Program at 684-7000. Any questions regarding continuation of coverage should be directed to the Plan Administrator. **We will not pay the premium for your optional insurance.**
7. You  will  will not be required to present a release to return to work prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until such certification is provided. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you  will  will not be required to notify us at least two working days prior to the date you intend to report to work.
8. You  will  will not be required to furnish us with periodic reports of your status and intent to return to work every \_\_\_\_\_ weeks (not more often than every 2 weeks) while on FMLA leave.
9. While you are in unpaid leave status or on catastrophic leave, sick leave and annual leave will not accrue. The amount of time you are in unpaid leave and catastrophic leave, combined, in excess of 240 hours in a year may affect:
- your pay progression date
  - the completion date of a probationary period
  - the amount of longevity pay
  - the date you are eligible for an increased rate of annual leave.