

<b>GEORGIA DEPARTMENT OF JUVENILE JUSTICE</b>	Transmittal # 18-7	Policy # 3.65
<b>Applicability:</b> <input checked="" type="checkbox"/> All DJJ Staff <input type="checkbox"/> Administration <input type="checkbox"/> Community Services <input type="checkbox"/> Secure Facilities	<b>Related Standards &amp; References:</b> Family and Medical Leave Act of 1993 29 U.S.C. §2601, <i>et seq.</i> ; 29 CFR Part 825. State Personnel Board Rule 16, 19 and 23 (Family and Medical Leave) DJJ 3.5, 3.60, 3.83, 5.9	
<b>Chapter 3: PERSONNEL</b>	<b>Effective Date:</b> 3/28/18 <b>Scheduled Review Date:</b> 3/28/19 <b>Replaces:</b> 9/13/16 Office of Human Resources	
<b>Subject: FAMILY AND MEDICAL LEAVE</b>	<b>APPROVED:</b>  	
<b>Attachments:</b> A - Request for Family and Medical Leave B - Family and Medical Leave Notice of Eligibility, Rights and Responsibilities C - Healthcare Provider Certification D - Certification of Childbirth, Adoption or Foster Care E - Certification of Serious Injury or Illness of Service Member F - Certification for Military Member Exigency Leave G - Family and Medical Leave Designation Notice H - Georgia Activity Analysis Form I - Employee Rights and Responsibilities Under the Family and Medical Leave Act J - Notice of Family and Medical Leave	<hr/> Avery D. Niles, Commissioner	

**I. POLICY:**

In accordance with the Family and Medical Leave Act (FMLA), the Department of Juvenile Justice shall provide a maximum of 12 weeks of job-protected family and medical leave during a 12-month period to eligible employees to care for his/herself, to care for certain family members, or address events that occur when certain family members are deployed with the military. The Department of Juvenile Justice shall provide a maximum of 26 weeks of job protected family and medical leave during a 12-month period to eligible employees to care for certain service members who suffered a serious injury or illness while on active duty.

**II. DEFINITIONS:**

**Covered Active Duty** – deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty.

**Family and Medical Leave (FMLA leave):** The leave taken by an eligible employee in accordance with the provisions of the Family and Medical Leave Act of 1993.

**Health Care Provider** – a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation shown on X-Ray), nurse practitioner, nurse midwife, clinical social

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worker, physician assistant, and other provider to whom the State Health Benefit Plan will pay benefits.

**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. This term does not include parents “in law.”

**Reviewing Manager:** The Assistant Commissioner, Deputy Commissioner, facility/office/program Director or their designee in a functional area or major work unit responsible for recommending approval or denial of family and medical leave requests. The Commissioner or designee shall serve as the reviewing manager for employees comprising of the Commissioner’s Office staff, all Assistant Commissioners, Deputy Commissioners, and Central Office Directors.

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

**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 (including a common-law marriage in Georgia, 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.)

### III. TYPES OF FAMILY AND MEDICAL LEAVE:

A. Generally, FMLA leave is available in the following situations:

1. When an eligible employee has a serious health condition that makes the employee unable to perform the essential functions of his/her position;
2. When an eligible employee’s spouse, parent, minor child, or disabled child has a serious health condition;
3. Due to pregnancy, birth, or adoption of a child, or placement of a child in foster care within one year of birth;
4. In exigent circumstances that arise when certain members of an eligible employee’s family are deployed by the military to a foreign country; and
5. To provide care for a family member who has a serious injury or illness that was incurred or aggravated while on active duty if the person is the eligible employee’s spouse, child (of any age), parent, or next-of-kin.

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B. Serious Health Condition:

1. A serious health condition means either inpatient care in a health care facility (with overnight admission) or continuing treatment by a healthcare provider.
2. Treatment for a serious health condition is “continuing treatment” when:
  - a. It involves incapacity for more than 3 consecutive days and also involves either:
    - i. Treatment two or more times within 30 days of the first day of incapacity ordered by a Health Care Provider; or
    - ii. Treatment by a Health Care Provider on at least one occasion, which results in a regimen of continuing treatment under the doctor’s supervision.
  - b. The incapacity is due to pregnancy or for prenatal care. See also Section III (C).
  - c. It involves a chronic serious health condition. A serious health condition is “chronic” when:
    - i. It requires at least 2 visits a year for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
    - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - d. The incapacity is permanent or long-term due to a condition for which treatment may not be effective. Examples include Alzheimer’s, a severe stroke, or terminal stages of a disease;
  - e. It involves multiple treatments ordered by a doctor for restorative surgery after an accident or other injury; and
  - f. It involves multiple treatments ordered by a doctor (such as chemotherapy or kidney dialysis) for an underlying condition that would result in incapacity if not treated.

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- C. Pregnancy, Birth of a Child, Adoption, or Foster Care: An eligible employee may use FMLA leave for the birth of a child or for:
1. The placement of a child for adoption or foster care;
  2. For bonding time with a newborn child or with a child placed for adoption or foster care;
  3. In the case of a child placed for adoption or foster care, for certain other reasons related to the placement process; and
  4. An expectant mother may use this leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of her child.
- D. Military Exigency Leave:
1. An eligible employee may use FMLA leave because of 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.
  2. Qualifying exigencies are generally related to the military member's deployment or absence, such as:
    - a. Issues arising out of short-notice deployment;
    - b. Attending military events and related activities;
    - c. Assisting with childcare and school activities of the military member's child;
    - d. Helping with financial and legal arrangements;
    - e. Attending counseling arising out of the deployment involving the employee, the military member, or a child of the military member;
    - f. Spending time with the military member when the member is on short-term rest and recuperation leave for a maximum of 15 calendar days
    - g. Attending post-deployment activities; and
    - h. Assisting with care of a military member's parent when that parent is incapable of self-care.

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3. A covered employee may also take FMLA leave to address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

E. Service Member Caregiver Leave:

1. An eligible employee may use FMLA leave to care for a covered service member with a serious illness or injury.
  - a. In order to qualify, the employee must be the covered service member's spouse, son, daughter, parent, or next-of-kin.
  - b. The covered service member's next-of-kin is the nearest blood relative, other than the covered service member's spouse, son, daughter, or parent.

**IV. ELIGIBILITY FOR AND AMOUNT OF FMLA LEAVE:**

- A. Generally, an employee is eligible for FMLA Leave when the employee has both:
  1. Been employed with the State of Georgia for a total of at least 12 months (they do not need to be consecutive months) within last 7-year period; and
  2. Worked at least 1,250 hours during the 12-month period immediately preceding the date FMLA leave is to begin.
- B. Amount of eligible FMLA leave:
  1. When FMLA leave is use for any qualified reason other than to care for a covered service member, an eligible employee is entitled to no more than a total of 12 workweeks of FMLA leave during the 12-month period ending on the day the FMLA leave is taken.
  2. When FMLA leave is used to care for a covered service member, an eligible employee is entitled no more than a total of 26 workweeks of FMLA leave during the 12-month period forward from the day the FMLA leave is taken. However, any other FMLA leave the employee takes counts toward this 26-workweek limit.
    - a. If an employee's spouse also works for DJJ, the couple receives a total of 12 or 26 workweeks between the two, depending upon the reason the FMLA leave is taken.

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## V. REQUESTING LEAVE:

- A. An employee must make an appropriate request to take FMLA leave by submitting the Request for Family and Medical Leave (Attachment A) to their local Human Resources representative prior to taking leave.
- B. Foreseeable Need for Leave: If possible, the employee must submit the request at least 30 days before the leave is to begin. If the employee learns that he/she will need to take FMLA leave less than 30 days in advance, the employee must provide notice as soon as possible (generally either the day you learn of need or the next work day). If possible, the employee should attempt to schedule appointments when it would not disrupt work.
- C. Unforeseeable Need for Leave:
  1. An employee must notify his/her supervisor as soon as possible when the need for leave has been determined. When leave is needed for an emergency, the employee may give notice by telephone, facsimile, other electronic means, or through a spokesperson for the employee. The supervisor must immediately notify the local Human Resources representative.
  2. If an employee's immediate supervisor learns after a period of leave has begun, but before the employee has returned to duty, that the leave may qualify as FMLA leave, the supervisor will notify the local Human Resources representative.

## VI. REQUEST FOR CERTIFICATION:

- A. When the local Human Resources representative receives a FMLA leave request or learns that a leave of absence may qualify as FMLA leave, that representative must, within 5 business days:
  1. Send the employee, via certified mail, the Notice of Eligibility, Rights, and Responsibilities (Attachment B) and, if not yet received, the Request for Family and Medical Leave (Attachment A).
  2. Send the employee the appropriate certification form (Attachments C – F).
  3. Notify the employee's supervisor of the request and inform the supervisor of the approved start and end dates of leave. (See Section XI, Paragraphs 2 & 3.)
  4. E-mail information identifying the employee and the dates and reason(s) for the leave to Absence Manager.

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- B. An employee has 15 calendar days from receipt of the certification form to provide the requested certification.

The employee should provide: the date the absence will commence, the duration of the absence and the medical facts sufficient to allow OHR to determine FMLA eligibility.

1. If the employee does not provide the necessary supporting documentation within 15 days of the receipt of a completed Notice of Eligibility, Rights, and Responsibilities, then the employee will be placed on Unauthorized Leave Without Pay (ULWOP) and subject to termination as a presumptive resignation.
2. In situations where justifiable and verifiable circumstances prevent an employee from providing supporting documentation within the time frames indicated above, the employee, through the local Human Resources representative, may make a request to the Director of Human Resources for an extension.
3. Request for a second or third opinion of a certification of a serious health condition must be submitted to the Director of Human Resources or his/her designee for review and approval. Second opinions are at the Department's expense.
4. Request for second or third opinion of certification of a serious health condition of an employee who works in the Division of Secure Facilities must be reviewed and submitted to the Office of Human Resources by the facility's Regional Administrator. Requests for a second or third opinion of a serious health condition of an employee who works in the Division of Community Services must be reviewed and submitted to the Office of Human Resources by the employee's District Director. Requests for a second or third opinion of a certification of a serious health condition of an employee who works in the Central Office must be reviewed and submitted by the employee's Office Director.
5. No second or third opinion of a certification of serious health condition will be authorized without consulting and receiving approval from the Director of Human Resources or his/her designee.
6. When the employee requests FMLA leave for the purpose of leave taken to care for a covered service member, any one of the following health care providers may complete a certification:
  - a. United States Department of Defense (DOD) health care provider;

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- b. United States Department of Veteran Affairs (VA) health care provider;
  - c. DOD non-network TRICARE authorized private health care provider.
7. If the authorized health care provider is unable to make all necessary military related determinations, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator).

**VII. DESIGNATION OF LEAVE (APPROVAL/DENIAL):**

- A. The Office of Human Resources will review the information provided and provide a written decision on whether the request for FMLA leave is approved or denied (Attachment G, Family and Medical Leave Designation Notice). If the request is denied, the decision will specify the reasons for the denial.
- B. If a decision cannot be made without additional information from the employee and/or the health care provider, Office of Human Resources will send the employee a written request for the additional information. The employee has 7 calendar days from receipt of the request to provide the additional information. Failure to submit may delay or deny entitlement.
- C. The final designation will be mailed to the employee and forwarded to the local Human Resources representative. The local Human Resources representative will notify the employee that his/her request for family and medical leave has been approved or denied.
- D. An absence may be retroactively designated as FMLA leave after an employee has returned to duty only if the failure to timely designate leave does not cause harm or injury to the employee. If the Department has sufficient information and fails to designate the absence as FMLA leave (and provide proper notification to the employee), the Department may not designate the leave retroactively. In such circumstances, the employee is subject to the full protections of the Act, and none of the absence preceding notice to the employee of the designation may be counted against the employee's FMLA leave entitlement.
- E. The decision of the Office of Human Resources is final.

**VIII. EXTENDED LEAVE:**

- A. An employee may request an extension of FMLA leave by utilizing the same process for the original request. The request for an extension must be received in

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the local Human Resources office prior to the expiration of the original leave approval. Additional certification may be required.

- B. Extended Leave may lead to an accommodation under Policy 3.21, American with Disabilities Act.
- C. Recertification of Medical Conditions:
  - 1. The reviewing manager or Director of Human Resources may require a recertification (from the employee's health care provider) of the medical condition(s) that initially supported a request for FMLA leave, including an opinion as to fitness to return to duty.
  - 2. A recertification may be requested at reasonable intervals, but not more often than every 30 calendar days, unless:
    - a. The employee requests an extension of leave;
    - b. Circumstances described by the previous certification have significantly changed (e.g., the duration of the illness, the nature of the illness, complications, etc.); or
    - c. The Department receives information that places doubt upon the continuing validity of certification.
  - 3. As with the initial certification, the employee has 15 calendar days to provide a requested certification. All requirements and consequences outlined in this policy will apply to requests for recertification. The employee is responsible for all costs associated with the recertification.

**IX. USE OF PAID OR UNPAID LEAVE:**

- A. Employees must use all available paid leave for periods of FMLA leave. Such paid leave must comply with the State Personnel Board Rules and Department policy.
- B. Any period of FMLA leave that exceeds available paid leave will be designated as FMLA leave without pay.
- C. An employee who has short-term disability insurance coverage under the Flexible Benefits Program or is on Workers Compensation may elect to use the coverage instead of available paid leave.
- D. During a period of FMLA leave, paid leave will be used in the following order:
  - 1. FLSA Compensatory Time;

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2. Deferred Holiday Time; then
  3. Annual/Sick/Personal Leave and State Compensatory Time.
- E. Annual/Sick/Personal Leave and State Compensatory Time may be used in the order that is consistent with other Department leave policies.
- F. Use of paid leave for Birth, Adoption, or Foster Care:
1. For prenatal care, pregnancy, or birth related incapacity, employees may use available FLSA, Holiday time, State compensatory, Personal, Annual, or Sick leave. Sick leave must be used in accordance with DJJ 3.60, Annual, Sick, and Personal Leave, for dates of medical incapacity, caregiver leave, and/or bonding.
  2. For an adopted or foster care child, the employee must use available holiday time, Fair Labor Standards Act (FLSA) or state compensatory time, annual leave, or personal leave to make arrangements for the placement or adoption.
  3. Available holiday time, FLSA or state compensatory time, annual leave, or personal leave must be used by an employee to care for his/her child (whether biological, foster, or adopted) during the first year after the child's birth or placement.

**X. RETURN TO WORK:**

- A. At the end of FMLA leave, the employee will be returned to his/her former position or to a position of equal grade and pay, without loss of any rights or status.
- B. The employee will have no greater rights than those in effect prior to their leave designation.
- C. The local Human Resources Representative will require any employee who is absent from duty because of personal illness to provide a Georgia Activity Analysis Form (Attachment H) that indicates that the employee is able to return to work (with or without limitations) and the extent to which the employee is able to perform the essential functions of his/her position. An employee who does not provide the necessary documentation will not be allowed to return to work and will be placed on unauthorized leave without pay. If the documentation is not provided within 3 business days for unclassified employees or 5 business days for classified employees, the employee may be terminated as a presumptive resignation.

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D. Failure to Return to Work after FMLA Leave:

Any employee who fails to return to duty at the expiration of an approved leave and who has not received an approved extension of the leave will be separated in accordance with DJJ 3.83, Separation from Employment.

**XI. GENERAL GUIDELINES:**

- A. Department of Juvenile Justice employees will not interfere with, restrain, or deny the exercise of or the attempt to exercise the provisions of this policy. It is unlawful to discharge or discriminate against an employee for opposing any practice made unlawful by the Family and Medical Leave Act or for involvement in any proceeding relating to the Act.
- B. An employee's eligibility for, application for, or use of FMLA leave does not protect any employee from disciplinary or other action, as long as that action is independent of and not related to FMLA rights.
- C. Employees will maintain health insurance.
- D. Confidentiality:
  - 1. Health information of employees and their family members is confidential. Only Human Resources and Legal Services staff who need this information to perform their job duties will be given access to the information.
  - 2. The Human Resources staff will not provide any health information to managers and supervisors.
  - 3. Managers, supervisors, and Human Resources staff will not disclose to other staff the reason for the absence or any other information regarding the absence other than the following specific information:
    - a. An application or designation of FMLA leave has been made;
    - b. The anticipated begin and end dates or anticipated duration of the leave; and
    - c. Approval or denial of an application has been provided to an employee.
  - 4. Health information will be maintained in the employee's health record, (see DJJ 5.9, Personnel Records).

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- E. The Employee Rights and Responsibilities Under the Family and Medical Leave Act poster (Attachment I) and Notice of Family and Medical Leave (Attachment J) must be permanently and prominently posted on the official bulletin board of each office/facility.
- F. The Director of Human Resources will advise managers and employees on questions pertaining to the provisions set forth in this policy.

**XII. LOCAL OPERATING PROCEDURES REQUIRED: NO**