

GEORGIA DEPARTMENT OF JUVENILE JUSTICE	Transmittal # 12-10	Policy # 3.70
Applicability: {x} All DJJ Staff {x} Administration {x} Community Services {x} Secure Facilities (RYDCs and YDCs)	Related Standards & References: Family and Medical Leave Act of 1993 29 U.S.C. @2601, as amended by Section 585 of the National Defense Authorization Act for FY 2008, Public Law [110-181] Rules of the State Personnel Board 478-1-.23 DJJ 3.65, 3.69, 3.83, 5.9	
Chapter 3: PERSONNEL	Effective Date: 4/15/12 Scheduled Review Date: 4/15/14 APPROVED:	
Subject: SERVICE MEMBER CAREGIVER LEAVE		
Attachments: A – Request for Family and Medical Leave B – Certification of Serious Injury or Illness of Service Member C – Family and Medical Leave Notice of Eligibility, Rights and Responsibilities D – Family and Medical Leave Designation Notice E – Employee Rights and Responsibilities Under the Family and Medical Leave Act F – Notice of Family and Medical Leave	<hr/> L. Gale Buckner, Commissioner	

I. POLICY:

In accordance with the Family and Medical Leave Act, the Department of Juvenile Justice shall provide a maximum of 26 weeks of job-protected leave during a 12-month period to eligible employees to care for a service member who is recovering from a serious injury or illness incurred in the line of military duty. The Director of Human Resources shall designate requested leave as service member caregiver leave, subject to the provisions of this policy, whether or not the employee specifically requests the leave.

In order to qualify for service member caregiver leave, an employee must meet both of the following conditions:

- The employee must have been employed with the State of Georgia for a minimum of 12 months; and
- The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the date service member caregiver leave is to begin.

II. DEFINITIONS:

12-Month Period: For the purposes of this policy, a 12-month period measured forward from the first day of an employee's leave to care for a service member.

26 Work Weeks: A total of 1040 work hours for full-time employees eligible for service member caregiver leave. Appropriate pro-rata adjustments will be made for eligible part-time employees. In the event a state holiday occurs within a week taken as service member caregiver leave, the full week continues to count against the 26-week maximum allotment.

Eligible Employee: Employees who have been employed with the State of Georgia for a minimum of 12 months and who have worked at least 1,250 hours during the 12 month period immediately preceding the date leave is to begin. (The 12-month employment period

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	2 of 10

represents an employee's total state employment in any branch of government. The period can incorporate one or more breaks of service provided a break in service does not exceed 7 years. The 1,250 hours does not include any absence due to paid leave or holidays, but does include any period of absence due to ordered military leave.)

Family and Medical Leave: The leave taken by an eligible employee in accordance with the provisions of the Family and Medical Leave Act. Family and medical leave may not be for a period greater than 12 weeks in any 12-month period.

Foreseeable: Any situation in which an employee knew, or reasonably should have known, of a need for leave prior to the beginning of an absence.

Health Care Provider: For purposes of leave taken to care for a service member, any one of the following health care providers may complete such a certification:

- United States Department of Defense (DOD) health care provider;
- United States Department of Veterans Affairs (VA) health care provider;
- DOD TRICARE network authorized private health care provider; or
- DOD non-network TRICARE authorized private health care provider.

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).

Intermittent Leave: The use of service member caregiver leave in separate blocks of time due to a single qualifying reason.

Needed to Care For: The physical and/or psychological care of a service member in the following situations:

- The service member is unable to care for his/her basic medical, hygienic or nutritional needs or safety, or is unable to travel to the doctor, etc.;
- The service member is receiving inpatient or home care and the employee is needed to provide beneficial psychological comfort and reassurance;
- An employee is needed to fill in for others who are caring for the service member, or to make arrangements for changes in care such as a transfer to a nursing home;
- The service member's need for care is intermittent; or
- An employee is needed only intermittently (e.g., other care is normally available, or the responsibility of caring for the service member is shared with another caregiver, etc.).

Next of Kin: The nearest blood relative of an employee other than the service member's spouse, parent, son, or daughter, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member by court order or law,
- Brothers and sisters,
- Grandparents,
- Aunts and uncles, and
- First cousins.

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	3 of 10

The order of priority will apply unless the service member has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of service member caregiver leave.

Outpatient Status: The status of a service member assigned to:

- A military medical treatment facility as an outpatient; or
- A unit established for providing command and control of members of the Armed Forces receiving medical care as outpatients.

Paid Leave: All types of leave with pay that are available to an employee. Paid leave must be used in accordance with other Department policies.

Parent: A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the service member. This term does not include parents “in law.”

Reduced Leave Schedule: Service member caregiver leave that reduces the usual number of hours per work week or hours per work day of an eligible employee. Upon agreement between the reviewing manager and the employee, leave may be taken on a reduced schedule of work hours.

Reviewing Manager: The Assistant Commissioner, Deputy Commissioner, facility/office Director, or his/her designee responsible for recommending approval or disapproval of service member caregiver leave requests. The Commissioner or his/her designee will serve as the reviewing manager for employees comprising the Commissioner’s Office staff, including all Assistant Commissioners, Deputy Commissioners and Central Office Directors.

Serious Injury or Illness: An injury or illness incurred in the line of duty on active duty (or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty) in the Armed Forces by a member of the Armed Forces, National Guard, or Reserves that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. The definition also applies to a veteran who undergoes treatment for such a serious injury or illness during a period of 5 years after release from active duty.

Service Member: A current member of the Armed Forces, National Guard, or Reserves who is undergoing medical treatment, recuperation, therapy, outpatient treatment, or who is on the temporary disability retired list, due to a serious injury or illness incurred in the line of duty; or a veteran who is undergoing medical treatment, recuperation, or therapy due to a serious injury or illness incurred in the line of duty (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty while on active duty). The treatment will be qualifying for service member caregiver leave if received within a period of 5 years after the veteran was released from active duty.

Son or Daughter of a Service Member: A service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the service member stood in loco parentis, and who is of any age.

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	4 of 10

Spouse: The husband or wife of an employee as defined or recognized under State law for purposes of marriage in the State of Georgia.

III. ELIGIBILITY FOR SERVICE MEMBER CAREGIVER LEAVE:

- A. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a service member will be entitled to a total of 26 work weeks of leave during a 12-month period to care for a service member who is recovering from a serious injury or illness incurred in the line of duty. The service member must:
- Be medically unfit to perform their required duties and responsibilities; and
 - Be undergoing medical treatment, recuperation, therapy or outpatient treatment.
1. The 12-month period will begin on the first day an employee takes leave to care for a service member and ends 12 months after that date.
 2. The combined leave total under the provisions of this policy and the provisions of DJJ 3.65, Family and Medical Leave and DJJ 3.69, Service Member Exigency Leave will be a maximum of 26 weeks during a single 12-month period.
- B. The entitlement to this leave will be based on each separate incident of injury or illness of a service member, excluding complications from an earlier injury or illness for which the employee previously took service member caregiver leave.
- C. If both parents of a service member are employees of the Department, the combined leave total of both parents under the provisions of this policy and the provisions of DJJ 3.65, Family and Medical Leave and DJJ 3.69, Military Member Event Leave will be a maximum of 26 weeks during a single 12-month period.
- D. Employees must use available paid leave during any period of service member caregiver leave. An absence that exceeds available paid leave will be designated as service member caregiver leave without pay.
- E. The right to service member caregiver leave will begin on the date the employee's presence is necessary to care for the service member.
- F. Leave to care for a service member with a serious injury or illness may not be taken on an intermittent basis or on a reduced leave schedule unless the employee's presence is medically necessary, as certified by the service member's health care provider.
1. The employee and his/her immediate supervisor and/or reviewing manager should attempt to develop a schedule that meets the needs of all parties without unduly disrupting work unit operations.
 2. The reviewing manager may require the employee to transfer temporarily to an available alternative position, with equivalent pay and benefits that better accommodates recurring periods of absence.

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	5 of 10

3. Managers will not transfer an employee to an alternative position in order to discourage an employee from taking leave or otherwise cause a hardship for an employee.

IV. REQUESTING SERVICE MEMBER CAREGIVER LEAVE:

A. When the need for service member caregiver leave is foreseeable:

1. The employee must provide their local Human Resources representative with at least 30 calendar days written notice and provide the following:
 - Request For Family and Medical Leave (Attachment A);
 - Certification of Serious Injury or Illness of Service Member (Attachment B); and
 - Service member's military orders.
2. Following the employee's request, the employee will be provided a Family and Medical Leave Notice of Eligibility, Rights and Responsibilities within 5 business days of their request. (See Section VI.)
3. Failure to Provide Documentation:
 - a. The employee will be placed on service member caregiver family leave without pay. The use of any form of paid leave will not be authorized during this period.
 - b. If the necessary supporting documentation is provided, the employee will be placed in paid leave status, to the extent that paid leave is available and appropriate, as of the date the documentation is received.
 - c. If the necessary supporting documentation is not provided within 15 business days of the beginning of the absence, the employee may be terminated as a presumptive resignation.

B. When the need for service member caregiver leave is unforeseeable:

1. An employee must notify his/her supervisor as soon as the need for leave has been determined. When service member caregiver leave is needed for an emergency, notice may be given by telephone, facsimile, other electronic means, or through a spokesperson for the employee. The supervisor must immediately notify the local Human Resources representative.
2. The employee must submit the documentation specified in paragraph IV.A.1. above within 15 business days of receipt of a completed Notice of Eligibility, Rights and Responsibilities.
3. Failure to Provide Documentation:

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	6 of 10

- a. The employee will be placed on service member caregiver family leave without pay. The use of any form of paid leave will not be authorized during this period.
 - b. If the necessary supporting documentation is provided, the employee will be placed in paid leave status, to the extent that paid leave is available and appropriate, as of the date the documentation is received.
 - c. If the necessary supporting documentation is not provided within 15 business days of receipt of a completed Notice of Eligibility, Rights and Responsibilities, the employee may be terminated as a presumptive resignation.
4. 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.

V. DESIGNATION OF LEAVE AS SERVICE MEMBER CAREGIVER LEAVE:

A. Employee Provides Prior Notice of Absence:

1. When the employee has not requested service member caregiver leave for the absence, the immediate supervisor will notify the local Human Resources representative that the reason(s) for the employee's absence may qualify as service member caregiver leave.
2. The local Human Resources representative will send the following to the employee within 5 business days:
 - Family and Medical Leave Notice of Eligibility, Rights and Responsibilities (Attachment C);
 - Request for Family and Medical Leave (Attachment A); and
 - Certification of Serious Injury or Illness of Service Member (Attachment B).
3. Failure to Provide Documentation:
 - a. The employee will be placed on service member caregiver family leave without pay. The use of any form of paid leave will not be authorized during this period.
 - b. If the necessary supporting documentation is provided, the employee will be placed in paid leave status, to the extent that paid leave is available and appropriate, as of the date the documentation is received.

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	7 of 10

- c. If the necessary supporting documentation is not provided within 15 business days of receipt of a completed Notice of Eligibility, Rights and Responsibilities, the employee may be terminated as a presumptive resignation.

B. Employee Does Not Provide Prior Notice of Absence:

1. 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 service member caregiver leave, the supervisor will notify the local Human Resources representative.
2. The local Human Resources representative will send the following to the employee within 5 business days:
 - Family and Medical Leave Notice of Eligibility, Rights and Responsibilities (Attachment C);
 - Request for Family and Medical Leave (Attachment A); and
 - Certification of Serious Injury or Illness of Service Member (Attachment B).
3. Failure to Provide Documentation:
 - a. The employee will be placed on service member caregiver family leave without pay. The use of any form of paid leave will not be authorized during this period.
 - b. If the necessary supporting documentation is provided, the employee will be placed in paid leave status, to the extent that paid leave is available and appropriate, as of the date the documentation is received.
 - c. If the necessary supporting documentation is not provided within 15 business days of receipt of a completed Notice of Eligibility, Rights and Responsibilities, the employee may be terminated as a presumptive resignation.

C. An absence may be designated as service member caregiver leave after an employee has returned to duty only if one of the following circumstances is applicable:

- The employee was absent for a qualifying reason and the immediate supervisor or local Human Resources representative did not learn the reason for the absence until on or after the employee's return. The retroactive designation must be made within 2 business days of the employee's return to duty.
- The employee takes leave for a qualifying reason but the Department was not aware of the reason and the employee desires that the leave be counted as service member caregiver leave. The employee must notify his/her immediate supervisor within 2 business days after returning to work of the reason for the

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	8 of 10

leave. Absent this notification, the employee may not subsequently assert service member caregiver leave protections for the absence.

- The immediate supervisor or local Human Resources representative is aware of the reasons for the leave, but has not been able to confirm that the leave qualifies as service member caregiver leave, or in instances in which a medical certification has been requested, but not received. The Department will make a preliminary designation of service member caregiver leave and notify the employee of this decision. If subsequent information confirms that the absence is qualifying, the preliminary decision stands. If later medical certification does not confirm that the reason is qualifying, the approval designation will be withdrawn and the employee will be notified in writing of this determination.

- D. If the Department has sufficient information and fails to designate the absence as service member caregiver 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 service member caregiver leave entitlement.

VI. APPROVAL / DENIAL OF REQUEST:

- A. When the local Human Resources representative learns that a leave of absence qualifies as service member caregiver leave, the local Human Resources representative must, within 5 business days:
- Notify the employee's supervisor of the request and inform the supervisor of the requested begin and end dates of the leave;
 - Review the information provided;
 - E-mail information identifying the employee and the dates and reason(s) for the leave to the Director of Human Resources;
 - Send the following to the employee: Family and Medical Leave Notice of Eligibility, Rights and Responsibilities (Attachment C); Request for Family and Medical Leave (Attachment A); and Certification of Serious Injury or Illness of Service Member (Attachment B);
 - Send the Family and Medical Leave Designation Notice(Attachment D); and
 - Send a copy of both Notices to the Office of Human Resources.
- B. The Office of Human Resources will review the information provided and either approve or deny the service member caregiver leave request unless a determination cannot be made without additional information from the employee and/or the health care provider. The final determination will be forwarded to the local Human Resources representative.
- C. The decision of the Office of Human Resources is final.
- D. The local Human Resources representative will notify the employee that his/her request for service member caregiver leave has been approved or denied. If the request is approved, the written notification will specify the terms and conditions of the service

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	9 of 10

member caregiver leave as well as the employee's right to return to duty. If the request is denied, the written notification will specify the reasons for the denial.

- E. The local Human Resources representative will notify the employee's supervisor of the final determination.
- F. If an employee submits a complete and sufficient certification to support a request for service member caregiver leave, the Department may not request or require a second medical opinion nor may the Department request or require recertification of the need for the leave. The Department may require a new certification of the need for leave if the period or the circumstances of the original request change.

VII. USE OF PAID OR UNPAID LEAVE:

- A. Employees must use all available paid leave for periods of service member caregiver leave. Such paid leave must comply with the State Personnel Board Rules and Department policy.
- B. Any period of service member caregiver leave that exceeds available paid leave will be designated as service member caregiver family leave without pay.
- C. An employee who has short-term disability insurance coverage under the Flexible Benefits Program may elect to use the coverage instead of available paid leave.
- D. During a period of service member caregiver leave, paid leave will be used in the following order:
 - FLSA Compensatory Time;
 - Deferred Holiday Time; then
 - Annual/Sick/Personal Leave and State Compensatory Time.

Annual/Sick/Personal Leave and State Compensatory Time may be used in any order that is consistent with other Department leave policies.

- E. Any combination of unpaid family and medical leave, unpaid service member caregiver leave, authorized leave without pay, or contingent leave without pay for the same qualifying condition will not initially exceed 12 continuous months. (See DJJ 3.67, Leave Without Pay)

VIII. RETURN TO WORK:

- A. At the end of service member caregiver 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 the start of service member caregiver leave.

Chapter	Subject	Policy #	Page
PERSONNEL	SERVICE MEMBER CAREGIVER LEAVE	3.70	10 of 10

C. Failure to Return to Work After Service Member Caregiver Leave:

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

IX. GENERAL PROCEDURES:

- 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 employees for opposing any practice made unlawful by the FMLA or for involvement in any proceeding relating to the FMLA.
- B. Eligibility for service member caregiver leave will not prevent an employee from receiving disciplinary action based on conduct or performance deficiencies.
- C. Confidentiality:
1. Health information of service members will be considered 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. Managers and supervisors will not be provided any information by Human Resources staff regarding any service member's medical condition(s) requiring an employee's need for service member caregiver leave.
 3. Managers and supervisors will be provided the following employee information:
 - An application or designation for service member caregiver leave has been made;
 - The anticipated begin and end dates or anticipated duration of the leave; and
 - Approval or denial of an application has been provided to an employee.
 4. Health information of service members will be maintained in the employee's health record. (See DJJ 5.9, Personnel Records)
- D. The Employee Rights and Responsibilities Under the Family and Medical Leave Act poster (Attachment E) and Notice of Family and Medical Leave (Attachment F) must be permanently and prominently posted on the official bulletin board of each office/facility.
- E. The Director of Human Resources will advise managers and employees on questions pertaining to this policy.

X. LOCAL OPERATING PROCEDURES REQUIRED: NO