

**Idaho Department of
Juvenile Corrections
Administrative
Policy/Procedure**

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SUBJECT: FAMILY AND MEDICAL LEAVE ACT (FMLA) LEAVE

CATEGORY: HUMAN RESOURCES

Policy

The Idaho Department of Juveniles Corrections (IDJC) realizes that from time to time employees may experience problems balancing their work and personal lives. Personal health problems can interfere with work responsibilities.

The Family and Medical Leave Act (FMLA) was created to recognize and help alleviate the inevitable conflicts that our employees can face between their health, the health of their families and their work responsibilities. It is a federal law which entitles eligible employees to unpaid job protected leave under qualifying circumstances. The law contains provisions on employer coverage, employee eligibility under the Act, entitlement to leave, health benefits during leave, notice and certification of the need for family medical leave and protection for employees who request or take family medical leave. The FMLA is intended, "To balance the demands of the workplace with the needs of families."

It is therefore the policy of the IDJC to provide for and enforce the Family Medical Leave Act.

Operating Procedures

I. Reasons for Family Medical Leave

A. Twelve Weeks of Unpaid Job-Protected Leave:

A covered employer must grant an eligible employee up to a total of 12 work weeks (480 hours) of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:

1. For the birth of an employee's child and to bond with the newborn child; or
2. For the placement with the employee of a child for adoption or foster care and to bond with that child; or
3. To take medical leave when the employee is unable to work because of a serious health condition, including relating to pregnancy, childbirth, and related medical conditions; or
4. To care for an **immediate** family member (spouse, child, or parent but not a sibling or a parent "in-law") with a serious health condition; or
5. For qualifying exigencies (needs or demands) arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to

covered active duty status as a member of the National Guard, Reserves, or regular Armed Forces.

B. Twenty-Six Weeks Unpaid Job-protected Leave:

The FMLA also allows eligible employees to take up to 26 work weeks of unpaid job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness, as per section III. f., below.

II. Employee Eligibility

An employee must meet the following criteria in order to be eligible for family medical leave:

- A. The employee must have been employed with the state of Idaho for at least twelve months. The twelve months do not have to be continuous employment. If an employee has a break in service of more than seven years, time worked prior to rehire/reinstatement following that break in service does not count towards the 12-month eligibility requirement—unless the break in service was due to the employee's National Guard or Reserve military service obligations.
- B. The twelve months do not have to be all with one agency. Employees who were on the payroll for any part of a week (even just one day) will be credited with a full week toward their total. This includes part-time and temporary workers; and
- C. The employee must have worked at least 1,250 hours during the twelve-month period immediately preceding the leave. This 1,250 hours must be actual hours worked, unless absent on military leave*, and does not include paid vacation or sick time nor periods of unpaid leave during which other benefits (i.e., a group health plan or worker's compensation) continued to be provided by the IDJC.

***Note:** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), hours that an employee would have worked but for their military service are credited toward the employee's required 1,250 hours worked for FMLA eligibility.

III. Quantity of and Allowable Purposes for Family Medical Leave

FMLA provides unpaid leave to employees for the following six circumstances:

A. Birth of a child

- 1. Family medical leave may be taken to care for or assist in the care of a newborn and is available to all employees (male and female) as long as they are the parents or legal guardians of the child.
- 2. An expectant mother may take family medical leave if her pregnancy makes her unable to work before the birth of the baby. Under the FMLA, pregnancy and pre-natal care involve continuing treatment by a health care provider and therefore qualify as a serious health condition.
- 3. Full-time employees are allowed up to twelve weeks (480 hours) of unpaid, job-protected leave.

B. Adoption of a child or placement of a child in foster care

1. Family medical leave may be taken for events incident to the placement of a son or daughter with the employee for adoption or foster care. This includes, but is not limited to, pre-placement counseling sessions, court appearances, attorney consultations, and care for the adopted or foster child.
2. Full-time employees are allowed up to twelve weeks (480 hours) of unpaid, job-protected leave.

Limitation: An employee's right to take leave for birth and care of a newborn or for placement of a child for adoption or foster care, must conclude within 12 months of the birth or placement.

C. To care for a qualifying family member with a serious health condition

1. Family members who qualify are limited to the employee's spouse, the employee's children under 18 years of age, the employee's children incapable of self-care due to a mental or physical disability regardless of age, and the employee's parents with a serious health condition.
2. If an employee requests family medical leave to care for qualifying family member(s), the IDJC may require U.S. Department of Labor (USDOL) Form WH-380-F, FMLA Certification of Health Care Provider for Family Member's Serious Health Condition, stating the need for support or care for the family member's illness as well as its expected duration.
3. Full-time employees are allowed up to twelve weeks (480 hours) of unpaid, job-protected leave.

D. Due to the employee's own serious health condition

1. Full-time employees are allowed up to twelve weeks (480 hours) of unpaid, job-protected leave.

E. To attend to a Qualifying Exigency (QE) arising out of the fact that the employee's spouse, parent, son, or daughter is a service member who is on active duty (or notified of an impending call or order to active duty) in support of a contingency operation.

1. QE leave is available only to family members of National Guard and Reserve service members; it does not extend to family members of military members in the regular armed forces.
2. Activities considered to be a QE may include:
 - a. Short-notice deployment;
 - b. Military events and related activities (in advance of and during deployment);
 - c. Childcare and school activities;
 - d. Financial and legal arrangements;
 - e. Counseling;
 - f. Rest and recuperation;

- g. Post deployment activities; and
 - h. Additional activities agreed upon between the IDJC and the employee.
3. Full-time employees are allowed up to twelve weeks (480 hours) of unpaid, job-protected leave.
 4. IDJC may require eligibility verification regarding the QE, including the USDL Form WH-384, Certification of Qualifying Exigency for Military Family Leave; the service member's orders; and confirmation from third parties (such as a teacher).
- F. To care for a qualifying family member who incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces
1. Family members who qualify are limited to service members who are the employee's spouse, parent, child, or next of kin.
 - a. For purposes of family medical leave, next of kin refers to the nearest blood relative of the individual, other than the service member's spouse, parent, or child, in the following order of priority:
 - i. individuals designated in writing by the service member as next of kin for purposes of this provision of the FMLA;
 - ii. blood relatives who have been granted legal custody of the service member by statute or court authority;
 - iii. siblings of the service member;
 - iv. grandparents of the service member;
 - v. aunts and uncles of the service member;
 - vi. first cousins of the service member.
 2. Covered service members include members of the Armed Forces (including members of the National Guard or Reserves) or veterans (who were members during the five years preceding their injury or illness) who are undergoing medical treatment, recuperation, or therapy; who are otherwise in outpatient status; or who are otherwise on the temporary disability retired list for a serious illness or injury.
 3. Full-time and part-time employees are allowed up to 26 weeks (1,040 hours) of unpaid, job-protected leave during a single 12-month period, at any time during the five years preceding the date of treatment, recuperation, or therapy.
 4. If an employee's leave qualifies as both military family medical leave and non-military family medical leave, military family medical leave is designated first.
 5. Total family medical leave allowed during the 12-month period is 26 weeks (1,040 hours). (For example, an employee may not, in the same 12-month period, take 26 weeks of military family medical leave per this circumstance and also take 6 weeks of family medical leave due to circumstances 1-5 described above.)

IV. Definition of Serious Health Condition

A. Serious Health Condition means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. 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 related to or resulting from such inpatient care.
2. For purposes of family medical leave, incapacity is defined to mean inability to perform one or more of the functions of one's job, attend school, or perform other regular daily activities due to the serious health condition, treatment for that condition, or recovery from that condition.

B. Incapacity Plus Treatment—A period of incapacity of more than three consecutive calendar days that also involves in-person treatment by a health care provider:

1. On at least two occasions that occur within 30 days of the first day of incapacity (unless extenuating circumstances exist), with the initial visit occurring within seven days of the first day of incapacity; or
2. Within seven days of the first day of the incapacity and resulting in a regimen of continuing treatment under the supervision of the health care provider.

Continuing treatment is further defined as either (1) treatment two or more times by a healthcare provider or (2) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment. A regimen of continuing treatment includes, for example, a source of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, salves, bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

C. Pregnancy (includes prenatal care and any period of incapacity due to pregnancy or for recovery from child birth).

D. Chronic Conditions Requiring Treatments

A chronic condition is a condition that:

1. Requires periodic visits (minimum two visits per year) for treatment by a health care provider or by a nurse or physician's assistant under a health care provider's direct supervision;
2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
3. May cause episodic rather than a continued period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

E. Permanent/Long-term Conditions Requiring Supervision

This is defined as a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under

the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's disease, a severe stroke, or the terminal stages of a disease, etc.

F. Multiple Treatments (Non-Chronic Conditions).

This section encompasses absences to receive multiple treatments by a health care provider or by a provider of health care services under orders of or on referral by a health care provider for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

V. Use of Paid Leave

An employee is required to use accrued vacation, sick, or compensatory leave concurrently with family medical leave. The employee is required to comply with all procedural requirements, such as notice requirements, of the agency's paid leave policies.

A bona fide illness must exist in order to use sick leave concurrently with FMLA (IDAPA 15.04.01.240.03).

VI. Types of Family Medical Leave

There are two types of family medical leave:

1. Continuous and intermittent
2. Reduced work schedule.

A. Continuous Family Medical Leave

An employee who is off work entirely for a single qualifying reason is on continuous family medical leave.

B. Intermittent Family Medical Leave.

Intermittent family medical leave (or a reduced work schedule) is leave taken in separate blocks of time, interspersed with periods of work, due to a single qualifying (medical) reason. For example, an employee may request intermittent family medical leave or a reduced work schedule for transporting a family member to a medical care facility, filling in for primary caregivers, making arrangements for changes in care, periodic medical treatments, or episodic chronic illnesses/treatment (i.e., chemotherapy treatment).

1. Employees requesting intermittent leave or reduced work hours should schedule their leave so as to disrupt IDJC's operations as little as possible. When possible, employees will submit a schedule disclosing their planned leave. Anticipated leave which was not actually taken will not be counted against the employee's family medical leave hours.
2. Employees on intermittent leave may be temporarily transferred to another similar position, if the transfer helps to accommodate the employee's intermittent leave, until the need for intermittent leave no longer exists.

3. Intermittent leave related to birth, adoption, or foster care is only available with the IDJC Director's approval. In approving or denying the employee's request for intermittent family medical leave, the Director should consider the business needs of the IDJC. The IDJC has the right to require the employee to temporarily transfer to another equivalent position while on intermittent leave to least disrupt business.
4. In cases where intermittent or reduced work schedule family medical leave is for birth, adoption, or foster care, use of intermittent family medical leave cannot exceed a period of six months regardless of the number of family medical leave hours used.

VII. Calculating Eligibility

The state of Idaho uses a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes family medical leave, the amount of leave taken is computed and subtracted from the available weeks of leave. The balance remaining is the amount the employee is entitled to take at that time.

VIII. FMLA and Worker's Compensation

While an employee is on leave related to a worker's compensation injury (Ref. I-Time code "JAT"), the IDJC may designate the employee's leave as family medical leave. See State Controller's Office (SCO) timesheet codes for more coding options.

If an employee on worker's compensation leave is approved for modified or light duty work but remains qualified for family medical leave, the employee may choose not to work and to use family medical leave. However, refusal of the modified or light duty work may lead to loss of worker's compensation benefits.

Note: There is no guarantee that modified or light duty work will be available at the time it is requested. Each request is evaluated on a case-by-case basis.

IX. Family Medical Leave Procedures

A. Notification and Request

In some instances, the need for family medical leave is foreseeable. Employees should notify HR as soon as possible.

1. Advance Notification Required

When the employee knows in advance of the need to take family medical leave, the employee must give 30 days' notice prior to taking such leave. Notice will include the anticipated start date of the family medical leave and the expected duration of the leave. Employees are to use the FMLA Leave Request Form (DJC-073) for this purpose.

2. Impromptu Leave

In situations where advance notification is not possible, the employee will notify the IDJC as soon as feasible. As soon as feasible ordinarily means the employee provides verbal notification to the IDJC within one business day of the employee knowing of the need for family medical leave.

3. If the employee is unable to complete the DJC-073 form to request unforeseen family medical leave, HR will complete the form on the employee's behalf and notify the appropriate supervisor of the request. A copy of the DJC-073 form will be provided to the employee.
4. If an employee is unable to provide notice, an employee's family member or friend, acting on the employee's behalf, may notify the IDJC of the employee's need to take family medical leave. Such notice may be communicated via phone call, fax, mail, or E-mail. In such situations, the supervisor notifies the IDJC HR who will complete the DJC-073 form on the employee's behalf.

B. Medical Certification.

When an employee requests family medical leave for their own medical condition or to care for family members, the IDJC may require the employee to furnish a medical certification using the U.S. Department of Labor forms, WH-380-E or WH-380-F, provided by HR. This is a doctor's statement certifying the medical information necessary to determine the employee's eligibility for family medical leave at the time such leave is requested.

1. To expedite the processing of the leave request, employees are encouraged to furnish the physician's medical certification with their completed DJC-073 form. Ultimately, the employee must return the completed medical certification within 15 days from the date the leave request was made, unless a request for extension is received and approved. If an employee fails to provide medical documentation, family medical leave may be denied.
2. In situations where family medical leave is unforeseen, the IDJC requests certification within two business days after the leave commences. The employee then must provide the medical certification within 15 days of receipt of the IDJC request.
3. In cases where medical certification is required, the certification must be complete and sufficient. If the medical certification provided by the employee is incomplete (one or more of the applicable entries have not been completed) or insufficient (the information provided is vague, ambiguous, or inconclusive), the employee is notified in writing of the additional information needed to make the certification complete and sufficient. The employee has seven days (unless not practical despite the employee's diligent efforts) to cure the deficiencies. Failure by the employee to do so may result in denial of family medical leave.
4. To determine the extent of an employee's serious health condition, if the first medical certification appears to lack validity, the IDJC may request a second opinion. If the second opinion is different than the first opinion, the IDJC may request a third medical opinion. That third opinion will be binding. If second and third opinions are requested by the IDJC, they will be paid for by the IDJC.
5. Employees whose leave continues for an extended period of time and/or their need for leave changes significantly may be required to provide an updated medical certification.

C. Eligibility Determination and Response

The IDJC is required to provide the employee with an FMLA Eligibility, Rights & Responsibilities Notice and an FMLA Designation Notice once family medical leave is requested.

1. Within five days of the employee requesting leave or the IDJC learning an employee's leave **may** be FMLA eligible, the IDJC will notify the employee in writing, using USDL form WH-381, Notice of FMLA Eligibility, and Rights & Responsibilities Notice (obtained from HR), whether they are eligible for family medical leave (and if not, why they are ineligible), pursuant to Section II, Employee Eligibility, of this policy. This notice will include:
 - a. Whether medical certification is required and the consequences for failure to provide such medical certification;
 - b. Whether certification to verify a QE is required and the consequences for failure to provide such certification; and
 - c. Whether a return-to-work certification from a health care provider is required for the employee to return to work and the consequences for failure to provide such a certification.
2. Within five days of receiving enough information to determine that an employee's leave is FMLA eligible, the IDJC will complete the USDL form WH-382, FMLA Designation Notice, to provide official written confirmation of the designation of the employee's leave as family medical leave and the parameters (e.g., expectation, obligations, and consequences for failure to meet the same). An employee can affirmatively decline to use FMLA after receiving written, official confirmation of the employee's eligibility for FMLA leave.
 - a. In the event an employee who qualifies for family medical leave does not request family medical leave for time off work for a qualifying health condition, the IDJC will designate the employee's absence as family medical leave.
 - b. An employee can affirmatively decline to use FMLA after receiving written, official confirmation of the employee's eligibility for FMLA leave.
3. If a return-to-work medical release from a health care provider is required that specifically addresses the issue of whether the employee can meet the essential functions of their job, the IDJC supervisor or HR will provide a list of the essential job functions no later than the date of the FMLA Designation Notice. In such a case, the Designation Notice will specifically inform the employee that the release must address the employee's ability to perform those essential job functions.

D. Procedures for Coding Family Medical Leave

Employees/supervisors will not code family medical leave on timesheets until the employee's eligibility for such leave has been verified with HR. Such verification can be either orally or in writing. Available time codes include:

1. For leave pursuant to circumstances in Section III, 1-5, Quantity of and Allowable Purposes for Family Medical Leave:
 - a. FMS: Family Medical Leave–Sick (This coding uses the employee's accrued sick leave while on FMLA leave.)

- b. FMC: Family Medical Leave–Comp Time (This coding uses the employee’s accrued compensatory time while on FMLA leave.)
 - c. FMV: Family Medical Leave–Vacation (This coding uses the employee’s accrued vacation leave while on FMLA leave.)
 - d. FML: Family Medical Leave–Unpaid
2. For leave pursuant to circumstances in Section III, 6:
- a. FSS: Service Member Family Leave–Sick (This coding uses the employee’s accrued sick leave while on FMLA leave.)
 - b. FSC: Service Member Family Leave–Comp Time (This coding uses the employee’s accrued compensatory time while on FMLA leave.)
 - c. FSV: Service Member Family Leave–Vacation (This coding uses the employee’s accrued vacation leave while on FMLA leave.)
 - d. FSL: Service Member Family Leave–Unpaid
3. Employees on family medical leave, concurrently using available leave time, will accrue sick and vacation hours at the same rate as if they were not on FMLA. However, employees utilizing compensatory time (coded “FMC” or “FSC” on timesheets) or unpaid family medical leave (coded “FML” on timesheets) do not accrue leave credits.

Supervisors are responsible for ensuring accuracy of employee timesheets, including the use of family medical leave codes.

E. Completion of Leave

An employee who is returning from family medical leave may be required to provide a return-to-work medical certification from their medical practitioner to return to work, if due to the nature of the health condition and the job:

- 1. Light duty work or other accommodation is requested; or
- 2. The IDJC, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others.

Note: If a medical release will be required upon return to work, the employee must be notified of that requirement in advance in writing on the FMLA Designation Notice. Medical releases must address the employee’s ability to meet essential job functions and the requirement for a return-to-work medical certification. The supervisor, with support from HR, will provide the employee with a list of the essential job functions in conjunction with the FMLA Designation Notice.

X. Benefits and Employee Rights

- A. While on family medical leave, the employee’s health and dental benefits will remain unchanged. Thus, the employee will still be responsible for their share of the monthly health and dental premiums. If the employee is using sick, vacation and/or compensatory

leave balances to receive a full paycheck while on family medical leave, the employee's portion of health and dental insurance premiums will be deducted from paychecks as usual. However, if the employee is not receiving a sufficient paycheck due to no leave credits, they must arrange to pay the employee's portion of health and dental insurance premiums. If the employee does not return to work after family medical leave for reasons beyond their medical condition, the IDJC can require the employee to reimburse the State's share of the premiums paid during the employee's family medical absence.

- B. An employee's use of family medical leave cannot result in the loss of any employment benefit that the employee earned or to which they were entitled **before** using family medical leave.
- C. Use of family medical leave cannot be counted against the employee for any disciplinary action regarding attendance.
- D. Upon return from family medical leave, employees are entitled to be restored to the position they held prior to the family medical leave, or to be restored in a substantially equivalent position with substantially equivalent benefits, pay, work schedule, or other terms and conditions of employment.
- E. This policy is not intended to be all-inclusive. The exceptions and unique situations regarding FMLA benefits are too numerous and complex to address in this policy alone. HR must be involved in all FMLA circumstances.

XI. Contact with IDJC while on Family Medical Leave

- A. The IDJC has the right to require employees on FMLA leave to provide periodic reports on their status and intent to return to work. While on FMLA, employees will maintain regular contact with their supervisor regarding their status, intent to return to work, and anticipated return date.
- B. IDJC may contact the employee to verify FMLA is being used as intended and to ask for updates on the medical status and intended return date. The frequency of contact will vary based on the type of leave approved (ongoing or intermittent), the duration of the leave, and the proximity to the anticipated date of return.
- C. Occasional requests for work related information, e.g. the status of a project, the location of a file, the password to a file, or other questions pertaining to business needs are permissible.

XII. Scheduling Employees Return to Work

When it is anticipated that the employee on FMLA will be returning to work within two weeks, the supervisor will contact the employee to confirm their anticipated return date. If the employee is not on a fixed work schedule, e.g., working Monday through Friday 8 a.m. to 5 p.m., the supervisor will place the employee on the schedule and inform them of their scheduled return to work date and time.

XIII. Additional Employment While on Approved FMLA

An employee on approved Family Medical Leave Act (FMLA) leave from the IDJC cannot engage in work for any other employer. A violation of FMLA-approved leave is grounds for disciplinary action, up to and including dismissal, and can result in the cancellation of the FMLA leave.

- References:* [Glossary of Terms and Acronyms](#)
IDAPA 15.04.01.242
IDAPA 15.04.01.240.03
Federal Dept. of Labor Wage and Hour Division website:
<http://www.dol.gov/whd/fmla/index.htm>
Uniformed Services Employment and Reemployment Rights Act (USERRA)
Advisor
- Desk Manuals:* None
- Related Policies:* [Sick Leave](#) (353)
[Temporary Modified Duty/Return to Work Program](#) (373)
Additional Employment and Dual State Employment (332)
- Related Forms:* [FMLA Leave Request Form \(DJC-073\)](#)
U.S. Department of Labor forms:
- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
 - WH-380-F Certificate of Health Care Provider for Family Member's Serious Health Condition
 - WH-381 Notice of Eligibility and Rights & Responsibilities
 - WH-382 Designation Notice
 - WH-384 Certification of Qualifying Exigency for Military Family Leave
 - WH-385 Certification for Serious Injury or Illness of Current Service member—for Military Family Leave
 - WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave