

Responsibilities of Office Directors and Leave Clerks

It is the responsibility and duty of all agency personnel to accurately report time worked and absences. Office Directors and Leave Clerks have the additional responsibility to ensure that employees assigned to their respective offices accurately complete leave forms and time sheets. It is important that you familiarize yourself with the statutes, both State and Federal, which impact leave. Copies of the relevant statutes are included in this document.

Leave Clerks have the responsibility of accurately entering this information in SPAHRS, and Office Directors have the responsibility to ensure that this information is reviewed for accuracy. Each month, Leave Clerks must submit a certification that the leave is entered and that this information has been reviewed by a supervisor. This form is due to Payroll by the 10th of each month certifying leave has been entered for the prior month.

If you have an employee that you anticipate may be going into leave without pay status, please make sure you keep their timesheet as up-to-date as possible in SPAHRS and notify Payroll or Human Resources so a determination can be made regarding their Payroll status. Failure to do this may result in a delay in that employee receiving their paycheck.

The agency is required to maintain timesheets on all non-exempt employees for a period of three (3) years. Employee leave records should be maintained by the leave clerk for a minimum of two (2) years, along with relevant documentation such as physician excuses and/or other required documentation such as military orders, jury duty certifications, etc.

All leave records should be maintained in a locked secure area and Leave Clerks should be mindful that any medical information which is received is **HIGHLY CONFIDENTIAL** and should not be discussed with anyone with the exception of the Office Director. Comments should be limited to acknowledgement that you have proper certification.

Work Schedules

Each position has an assigned work schedule. The default schedule for most positions is 8 hours a day, Monday thru Friday. Specific positions have alternative schedules such as a positive reporting schedule utilized by Capitol Police or a compressed work schedules. The schedules are assigned to the Position, not the employee. When an employee moves to a new position, please check the schedule by looking at the time sheet and notify Human Resources if it is not correct. If the schedule needs to be adjusted, it is easier to correct it prior to the time sheet being paid. Non-exempt employees may not be on a two-week compressed schedule, but may have a variation of the standard schedule subject to permission of the Office Director. For additional information please, contact Human Resources.

Use of Compensatory Time Prior to Use of Personal Leave

When posting leave, all non-exempt employees are required to use FLSA Compensatory Leave (CPTFL) **prior** to the use of any type of leave with the exception of Medical Leave. Should the employee not have FLSA Compensatory Leave, the employee should use Agency Compensatory Time (CPTIM) and/or Floating Holiday (HOLFT prior to the use of Personal Leave.

Holidays

If the holiday falls on a regular day off, the leave clerk must change the time sheet by designating an alternate day as the HOLID (Holiday). The alternate holiday selected must be set up on the table maintained by MMRS. To record the selection of the alternate holiday, delete the REGSH on the alternate date selected and enter 8 hours as the HOLID.

If an employee works on a Holiday, record the number of hours the employee worked using HOLFL (Hours Worked on Holiday – Floating Holiday). For example, if the employee worked the entire day, the total hours calculated at the bottom of the column for the day will be 16 hours – 8 hours for the holiday and 8 hours for

the time worked on the holiday. When the employee takes the holiday time, record the number of hours taken as HOLFT (Take Floating Holiday).

Employees working on compressed work schedules must have an adjustment made for any holiday falling on a day that would normally be more or less than 8 hours. If the employee's regular schedule for that day is more than 8 hours, HOLID will be populated with the default schedule. Agency policy requires this number be changed to 8 hours and personal or compensatory time must be taken to equal the regular scheduled hours. If the employee's regular schedule for the day is less than 8 hours, only the number of regularly scheduled hours will be reflected on the time sheet. Agency policy requires that the remainder of the hours should be designated as a HOLID on an alternate holiday. If the regular hours were worked on the alternate holiday, use the code HOLFL to capture the holiday hours worked so the employee is properly credited with this time.

Employees that are part-time or work less than full-time earn holidays on a pro-rata basis by multiplying 8 hours by the percentage of time worked. For example if the employee works 80% of the time, only 80% of the holidays are earned or 6.4 hours for each holiday. An adjustment will be necessary for these employees dependent upon whether the holiday falls on a regular day off or otherwise. If the holiday falls on a regular workday, the number of HOLID hours should be adjusted to the appropriately calculated number of hours. Any difference between REGSH hours and the earned holiday hours should be posted as CPTFL, CPTIM, PERLV, or ULWOP.

Extra Work and Compensatory Time

Employees and supervisors should communicate prior to any work outside normal working hours being performed. This time should be submitted using "Application for Accrual of Compensatory Time Form" which is signed by both the employee and supervisor. Compensatory time worked should be limited as much as possible. Any extra work should be posted using code EXTWK (Extra Hours Worked).

Medical Leave

State law requires that employees use 8 hours of personal leave or compensatory leave prior to use of medical leave. After a 32 hour absence, an employee should produce a doctor's certificate. If the employee does not produce a doctor's certificate, all leave after 31 hours must be personal leave or compensatory time.

Employees may use up to 3 days of medical leave without prior use of personal leave for death of an family member as specified in the State Leave Law.

Family Medical Leave

An employee must have worked for the State for a total of twelve months and the employee must have worked at least 1,250 hours in the twelve month period immediately preceding the commencement of the leave to be eligible for FMLA leave. An employee meeting these requirements is referred to an "eligible employee" for purposes of this policy. Please note that employment as a contract worker should be included when determining eligibility.

The following are conditions which are covered:

For incapacity due to pregnancy, prenatal medical care, or childbirth;

To care for a newborn son or daughter, a recently adopted child, or a recently placed foster child through formal placement by a State agency;

To care for a legal spouse, parent (not including in-laws) or son or daughter (under the age of eighteen or over the age of eighteen and incapable of self-care because of a physical or mental disability), who has a serious health condition; or

Because of a serious health condition that makes the employee unable to perform the functions of his or her job.

Please note that the State Leave Law allows an employee to use medical leave to care for dependents other than those listed under FMLA.

If you have an employee that you feel may be eligible, your duty is to COMMUNICATE with that employee, provide them the appropriate forms (or send them the link to the DFA website, Office of Human Resources, Forms tab). Should an employee be eligible for FMLA, a designation form must be created and emailed or mailed to the employee. Provide a copy of the designation form to Human Resources so an FMLA Leave Balance can be created for the employee. Employees on FMLA used personal and/or medical leave just as they would for any other absence due to illness. When entering this time in SPAHRS use PLFAM (Personal), MLFAM (Medical), CPTFL (FLSA Comp), CPFAM (Agency Comp), and/or UFMLA (Unpaid). If you require any assistance, please contact Human Resources.

Workers Compensation Leave

Employees who are absent due to workers' compensation cannot be paid in excess of 100% of their salary from the State and Workers' Compensation. Employees have the option of turning in the check they receive from Workers' Compensation and receiving their full paycheck, or they may keep the check from Worker's Compensation and use personal or medical leave to make up the difference. When entering this time in SPAHRS, use the codes PLWKR (Personal Leave – Workers Comp), MLWKR (Medical Leave – Workers' Comp) or ULWKR (Unpaid Leave – Workers' Comp). If the employee elects to keep the check from Workers' Compensation, they should be posted to receive 2.64 hours of leave and 5.36 hours of leave without pay. If you require any assistance, please contact Human Resources or Payroll.

Administrative Leave

Administrative (ADMIN) leave may be granted by the Governor or the Executive Director. This leave is generally only used during extreme weather events, or disciplinary actions when an employee is suspended with pay. In the event where the majority of employees are told to stay home, there is no need to post this time as ADMIN. Essential employees who work during an event are not entitled to any type of compensatory leave for working their regularly scheduled hours.

Military Leave

Employees who are members of the military reserves or former members of the military are entitled to fifteen days of paid leave per calendar year when ordered to duty to participate in training or military exercises and are entitled to unpaid leaves of absence from their respective duties in excess of fifteen days when ordered. Employees should present orders for their training and/or leave of absence. Please contact Human Resources or Payroll to create this leave balance for you. Any military leave taken may be posted with code MILIT (Military Leave).

Jury Leave

Employees are entitled to be granted leave when they are subpoenaed to court to serve on a jury, as a litigant, or a witness. Employees are not required to turn over to the State any payments for service on a jury. Employees should turn in documentation in the form of a note from the Clerk of the Court, or subpoena to court. When posting this leave use the code JURY.

Extra Work

When posting overtime, use the code EXTWK (Extra Work) and post the actual amount of time worked. With non-exempt employees, SPAHRS will perform the 1 ½ calculation, and the balance will be reflected as FLSA Comp Time. To take this time when an employee takes leave, use the code CPTFL. **FLSA Compensatory Time must be used prior to any other leave with the exception of medical leave.**

Likewise with exempt employees, when posting overtime worked, use the code EXTWK (Extra Work) and post the actual amount of time worked. The balance will be reflected in Agency Comp Time. To take this time when an employee takes leave, use the code CPTIM (Agency Comp Time Used).

Store the record with EXTWK to make comp time available to use in the same month. After the EXTWK is stored, SPAHRS recognizes the comp time as an available balance.

STATUTES AND LAWS

LEAVE

Each month State employees earn two types of leave, personal leave and major medical (sick) leave. Employees, including part-time employees, will be granted leaves of absence for Non-State Service and military leave as provided by statute. The appointing authority cannot increase the amount of personal leave or Major Medical Leave to an employee's credit, and it is unlawful for an appointing authority to grant personal and Major Medical Leave in an amount greater than was earned and accumulated by the employee. Part-time employees are granted leave only during periods when they are scheduled to work.

Transfer of Leave Between State Agencies

Both major medical and personal leave earned by employees are transferable between any and all State agencies, junior colleges and senior colleges. However, compensatory leave is not transferable. Each appointing authority will be furnished a statement of accrued leave when an employee transfers between agencies.

Upon transfer, leave accrual rates at the receiving agency will reflect total continuous service. An employee transferring with a break in service must begin accruing at the rate established for new employees. Lump sum payment for accrued personal leave and/or the lapse of one eight hour workday between the termination date with the original agency and the effective date with the new agency denote a break in service.

Personal Leave

All full-time employees and appointed officers of the State of Mississippi earn personal leave as follows:

CONTINUOUS SERVICE	ACCRUAL RATE (Monthly)	ACCRUAL RATE (Annually)
1 month to 3 years	12 hours	18 days
37 months to 8 years	14 hours	21 days
97 months to 15 years	16 hours	24 days
Over 15 years	18 hours	27 days

Employees begin to earn and accumulate personal leave on the first working day of each month the employee works or receives paid leave. Personal leave is available for the employee's use on the first day of the month after the leave is earned. Part-time and temporary employees accrue personal leave on a pro rata basis. There is no limit to the accumulation of personal leave. Upon termination of employment, each employee may be paid for not more than thirty days of accumulated personal leave. Unused personal leave in excess of thirty days and all unused Major Medical Leave will be counted as creditable service for the purposes of the retirement system.

Employees are encouraged to use earned personal leave for vacations and personal business. However, all requests for personal leave, except when taken due to an illness, are approved at the agency's discretion. Personal or compensatory leave must be used for illnesses of the employee requiring absences of one day or less. In addition, accrued personal or compensatory leave must be used for the first day of an employee's illness requiring his or her absence of more than one day. A workday is defined as eight working hours. Accrued personal, major medical, or compensatory leave may also be used for an illness in the employee's immediate family, including only a spouse, parent, stepparent, sibling, child, stepchild, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law.

A state law enforcement officer who is injured by wound or accident in the line of duty is not required to use earned personal leave during the period of recovery from such injury. For the purpose of computing credit for personal leave, each appointed officer or employee is considered to work no more than five days each week. For purposes of calculating the leave accrual rate for employees, leaves of absence granted by the appointing authority for one year or less are permitted without forfeiting previously accumulated continuous service. The provisions of this section do not apply to military leaves of absence.

The beneficiary of an employee who dies with unused personal leave will receive payment for all personal leave accumulated but not used by the employee. The beneficiary designated with PERS will receive these benefits unless another beneficiary has been designated.

Major Medical Leave

All full-time employees and appointed officers of the State of Mississippi accrue Major Medical Leave as follows:

CONTINUOUS SERVICE	ACCRUAL RATE (Monthly)	ACCRUAL RATE (Annually)
1 month to 3 years	8 hours	12 days
37 months to 8 years	7 hours	10.5 days
97 months to 15 years	6 hours	9 days
Over 15 years	5 hours	7.5 days

Employees begin to earn and accumulate Major Medical Leave on the first working day of each month the employee works or receives paid leave. The leave is available for the employee's use the first day of the month after the leave is earned. Part-time and temporary employees accrue Major Medical Leave on a pro rata basis. There is no maximum limit to Major Medical Leave accumulation. All unused Major Medical Leave will be counted as creditable Service for the purposes of the retirement system.

Major Medical Leave may be used for the illness or injury of an employee or member of the employee's immediate family, including only a spouse, parent, stepparent, sibling, child, stepchild, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law. The employee should remember that Major Medical Leave can be used in this manner only after the employee has used one day of accrued personal or

compensatory leave. In the event that an employee has no accrued personal or compensatory leave, the first day of leave must be taken as Leave Without Pay. This is a requirement for each absence due to illness.

Major Medical Leave may be used, without prior use of personal or compensatory leave, to cover regularly scheduled visits to a doctor's office or a hospital for the continuing treatment of a chronic disease, as certified in advance by a physician. "Physician" means a doctor of medicine, osteopathy, dental medicine, podiatry or chiropractic. Employees must remember that the initial eight hours (one day) of leave relating to the condition must be personal leave, compensatory leave or Leave Without Pay.

For each absence due to illness that requires the employee be absent from work for thirty-two consecutive working hours (combined personal, major medical, and compensatory leave), Major Medical Leave can be authorized only when certified in writing by the attending physician.

An employee may use up to three days of earned Major Medical Leave for each occurrence of death in the immediate family requiring the employee's absence from work. No use of personal or compensatory leave will be required prior to the use of Major Medical Leave for this purpose. The immediate family is defined as only a spouse, parent, stepparent, sibling, child, stepchild, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law. Child means a biological, adopted or foster child, or a child for whom the individual stands or stood in loco parentis.

An employee may use up to six weeks of earned major medical leave for the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.

With appropriate documentation, an employee is entitled to use all accrued Major Medical Leave for recuperation from illness. In cases of illness or disability exhausting available Major Medical Leave, the employee may be allowed to charge the excess days against accumulated personal leave or compensatory time earned by the employee. If all accumulated major medical, personal leave and compensatory time have been used, employees are subject to a pro rata deduction from their salaries for the length of time or number of days in excess of accumulated leave. Family Medical Leave is also available for qualifying State employees and is described in detail in the Family and Medical Leave Act Leave Section herein.

A state law enforcement officer who is injured by wound or accident in the line of duty is not required to use earned major medical leave during the period of recovery from such injury.

Should an employee die having accumulated Major Medical Leave, such leave will be counted as creditable service. Employers have no authority to pay an employee's beneficiary for unused Major Medical Leave in the event of an employee's death.

Compensatory Leave

Compensatory leave is administered in accordance with State law and in compliance with the Fair Labor Standards Act and the regulations promulgated by the U. S. Department of Labor (hereinafter referred to as "DOL").

FLSA Compensatory Leave

State employees in positions which have been classified "non-exempt," as defined in the federal regulations promulgated by DOL pursuant to the Fair Labor Standards Act (hereinafter referred to as "FLSA"), may receive compensatory time at a rate of not less than one and one-half hours for each hour worked over forty hours in a workweek as defined in DOL regulations, instead of cash overtime pay. State employees in positions that have been classified as "exempt" under DOL regulations may receive compensatory time earned under FLSA only when they perform duties of a "non-exempt" position on an emergency and temporary basis. There are limits on the extent to which the non-exempt employee may continue to accrue compensatory time. The limit of earned compensatory time under the FLSA for most non-exempt employees is 240 hours. Law enforcement, fire fighters, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of compensatory time under the FLSA. State employees should consult their agency Human Resources Office to confirm the status of their position under the FLSA, when their DOL workweek begins and ends, and to determine the limit of compensatory time, which may be earned for their position under the FLSA.

The appointing authority may require a State employee to use compensatory time earned pursuant to the FLSA prior to the use of accrued personal or state compensatory time. Further, the appointing authority may require a non-exempt employee to take FLSA compensatory time off when the employee's compensatory time earned under the FLSA has reached the limit allowed under the regulations, as stated above.

State Compensatory Leave:

State law provides that when, in the opinion of the appointing authority, it is essential that a State employee work after normal working hours, the employee may receive credit for compensatory leave. Further, except as otherwise provided by statute, when in the opinion of the appointing authority, it is essential that a State employee work during an official State holiday, the employee will receive credit for compensatory leave. Compensatory time earned under State law is credited at a rate of an hour for an hour for all employees.

Upon termination of employment, an employee may not be paid for accumulated state compensatory leave. Should an employee retire having accumulated state compensatory leave, such leave may not be counted as creditable service for retirement purposes. Employers also have no authority to pay an employee's beneficiary for unused state compensatory leave in the event of an employee's death.

Administrative Leave

State employees may be granted administrative leave with pay. For the purposes of this section, "administrative leave" means discretionary leave with pay, other than personal leave or Major Medical Leave.

The appointing authority may grant administrative leave to any employee serving as a witness or juror or party litigant, as verified by the clerk of the court, in addition to any fees paid for such services, and such services or necessary appearance in any court shall not be counted as personal leave.

The Governor or the appointing authority may grant administrative leave with pay to State employees on a local or statewide basis in the event of extreme weather conditions or in the event of a manmade, technological or natural disaster or emergency. Any employee on a previously approved leave shall be eligible for such administrative leave granted by the Governor or appointing authority, and shall not be charged for his or her previously approved leave.

The appointing authority may grant administrative leave with pay to any employee who is a certified disaster service volunteer of the American Red Cross (hereinafter referred to as "ARC") and who participates in specialized disaster relief services for the ARC in this State and in states contiguous to this State when the ARC requests the employee's participation. Administrative leave granted under this paragraph cannot exceed twenty days in any twelve-month period. An employee on leave under this paragraph is not considered to be an employee of the State for the purposes of workers' compensation or for purposes of claims against the State. As used in this paragraph, the term "disaster" includes disasters designated at level II and above in the ARC national regulations and procedures.

Accumulated Leave Upon Retirement

Unused personal and Major Medical Leave for which an employee is not compensated upon termination or retirement will be transferred by the employee's agency to the Public Employees' Retirement System (hereinafter referred to as "PERS") and be counted by PERS as creditable service for the purpose of the retirement system. In computing unused leave for creditable service, in no case shall credit be allowed for any period of unused leave of less than fifteen days. In order to receive creditable service for unused leave, PERS must receive certification of such leave balances from the employee's agency.

Leave Record Keeping

All State agencies whose payroll is processed through SPAHRS offer the same leave record reporting method. Time and leave record reporting should be entered into SPAHRS in a timely manner to ensure that records accurately reflect the State's liabilities and obligations. The balances of both personal and Major Medical Leave are reported on each pay stub. Employees should verify leave balances on a monthly basis for accuracy.

Donated Leave for Catastrophic Injury or Illness

“Catastrophic injury or illness” means a life-threatening injury or illness of an employee or a member of an employee’s immediate family, including only a spouse, parent, step-parent, sibling, child or stepchild, which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, which result in intermittent absences from work and which are long-term in nature and require long recuperation periods, may be considered catastrophic.

Any employee may donate a portion of his or her earned personal leave or Major Medical Leave to another employee who is either suffering from a catastrophic injury or illness or who has a member of his or her immediate family that is suffering from a catastrophic injury or illness, as follows:

The employee donating the leave (the “donor employee”) must designate the employee who is to receive the leave (the “recipient employee”) and the amount of earned personal leave and Major Medical Leave that is to be donated and must notify the donor employee’s supervisor of his or her designation. The donor employee’s supervisor will then notify the recipient employee’s supervisor of the amount of leave that has been donated by the donor employee to the recipient employee.

The maximum amount of earned personal leave that an employee may donate to any other employee may not exceed the number of days that would leave the donor employee with fewer than seven days of personal leave, and the maximum amount of earned Major Medical Leave that an employee may donate to any other employee may not exceed fifty percent of the earned Major Medical Leave of the donor employee. All donated leave shall be in increments of at least twenty-four hours.

An employee must have exhausted all of his or her earned personal leave and Major Medical Leave before he or she will be eligible to receive any leave donated by another employee.

Before an employee may receive donated leave, he or she must provide his or her supervisor with a physician’s statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

If an employee is aggrieved by the decision of his or her appointing authority that the employee is not eligible to receive donated leave because the injury or illness of the employee or member of the employee’s immediate family is not, in the appointing authority’s determination, a catastrophic injury or illness, the employee may appeal the decision to the Employee Appeals Board.

The maximum period of time that an employee may use donated leave without resuming work at his or her place of employment is ninety days, beginning on the first day that the

recipient employee uses donated leave. Donated leave that is not used because a recipient employee has used the maximum amount of donated leave authorized under this paragraph must be returned to the donor employees in the manner provided in this subsection.

If the total amount of leave that is donated to any employee is not used by the recipient employee, the donated leave must be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees. In no case will any donor employee receive more leave in return than the employee donated.

The failure of any appointing authority or supervisor of any employee to properly deduct an employee's donation of leave to another employee from the donor employee's earned personal leave or Major Medical Leave shall constitute just cause for the dismissal of the appointing authority or supervisor.

No person, through the use of coercion, threats or intimidation shall require or attempt to require any employee to donate his or her leave to another employee. Any person who alleges a violation of this paragraph must report the violation to the executive director of the agency by whom he or she is employed or, if the alleged violator is the executive director of the agency, then the employee must report the violation to MSPB. Any person found to have violated this paragraph will be subject to removal from office or termination of employment.

No employee can donate leave after tendering notice of separation for any reason or after termination of his or her employment.

Recipient employees of agencies with more than five hundred (500) employees as of March 25, 2003 may receive donated leave only from donor employees within the same agency. A recipient employee in an agency with five hundred (500) or fewer employees as of March 25, 2003 may receive donated leave from any donor employee.

In order for an employee to be eligible to receive donated leave, the employee must have been employed for a total of at least twelve months by the employer on the date on which the leave is donated and have been employed for at least 1,250 hours of service with such employer during the previous twelve month period from the date on which the leave is donated.

Donated leave may not be used in lieu of disability retirement.

Those employees who received donated leave and continued to be eligible to use it as of July 1, 2000 will be allowed to use that leave which was donated to them before July 1, 2000.

Family and Medical Leave Act Leave

In keeping with the requirements of the Family and Medical Leave Act of 1993 (hereinafter referred to as "FMLA") and the State of Mississippi's policies, an employee must have worked for the State for a total of twelve months and the employee must have worked for the State for 1,250 hours in the twelve month period immediately preceding the commencement of the

leave to be eligible for FMLA leave. An employee meeting these requirements is referred to an “eligible employee” for purposes of this policy.

Availability of Family Medical Leave

An eligible employee may take up to the equivalent of twelve workweeks of unpaid family and/or medical leave (FMLA leave) during any twelve month period for one or more of the following purposes:

- For incapacity due to pregnancy, prenatal medical care, or childbirth;
- To care for a newborn son or daughter, a recently adopted child, or a recently placed foster child through formal placement by a State agency;
- To care for a legal spouse, parent (not including in-laws) or son or daughter (under the age of eighteen or over the age of eighteen and incapable of self care because of a physical or mental disability), who has a serious health condition; or

Because of a serious health condition that makes the employee unable to perform the functions of his or her job.

Leave to care for a new child must be taken within the first twelve months of birth or placement by adoption or foster care, and leave may be taken by the father and/or the mother of the child.

Federal regulations allow an employer to choose from several different methods in determining the twelve-month period in which the twelve weeks of leave entitlement occurs.

Military Leave Entitlements

Eligible employees are entitled to two different kinds of leave as a result of either being in the military or having family members in the military:

- Eligible employees are entitled to up to twelve weeks of FMLA leave because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a member of any Armed Forces and/or a reserve component of the Armed Forces on covered active duty, or has been notified of an impending call to covered active duty status. Qualifying exigencies may include any one or more of the following: 1) attending to issues arising from a short notice (seven days or less) of deployment, with FMLA leave entitlement lasting up to seven days from the notice; 2) attending certain military events; 3) attending certain childcare and school activities related to the military duty; 4) addressing certain financial and legal arrangements; 5) attending certain counseling sessions; 6) taking up to fifteen days to spend with a military member who is on short-term, temporary rest and recuperation leave; 7) attending post-deployment reintegration briefings; 8) parental care leave, when a military member’s parent is incapable of self-care when the care is necessitated by the member’s covered active duty; or 9) other activities agreed to by the agency and the employee. Eligible employees must provide notice of the need for such leave as soon as reasonable and practicable. This kind of leave may be taken intermittently or on a reduced

schedule. Upon request, eligible employees must provide documentation to support any request for leave.

Eligible employees may take up to twenty-six weeks of leave during a single twelve-month period to care for a “military member” who is the employee’s spouse, son, daughter, parent or next of kin (nearest blood relative or designated as such). A military member is a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran, who was discharged or released under conditions other than dishonorable, who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, as set forth in the FMLA regulations. Eligible employees may take this kind of leave intermittently, or on a reduced schedule, where medically necessary. This twenty-six week leave entitlement will include all other permissible FMLA leave.

Serious Health Condition

A “serious health condition” is defined as an illness, injury, or physical or mental condition that involves:

In-patient care in a hospital, hospice, or residential care facility, including a period of incapacity or treatment related to the inpatient care (i.e., an overnight stay);

A period of incapacity of more than three consecutive calendar days, with two or more visits to a health care provider, one occurring within seven days of the onset of incapacity, and the second within thirty days of the onset (unless extenuating circumstances exist);

A period of incapacity of more than three consecutive calendar days, with one or more visits to a health care provider, the first occurring within seven days of the onset of the incapacity, and which results in a regimen of continuing treatment under the supervision of the health care provider (example: four day absence, one doctor’s visit, and prescription medication);

Any period of incapacity due to pregnancy, for prenatal care, or childbirth;

Treatment for or incapacity because of a chronic serious health condition (examples: diabetes or epilepsy), which requires periodic visits (at least two per year) for treatment by a health care provider;

Incapacity which is permanent or long term for which treatment may be ineffective, and the individual is under the continuing supervision of a healthcare provider (example: Alzheimer’s Disease); or

Any absence to receive multiple treatments by a health care provider either for restorative surgery after an 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 treatment (example: chemotherapy treatments for cancer).

The serious health condition must prevent the employee from performing the functions of his or her job or prevent the qualified family member from participating in school or other daily functions.

A “serious injury or illness” in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the military member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the service member’s covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of the service member’s office, grade, rank, or rating; and in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period of covered active duty, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the covered service member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the service member’s covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that manifested itself before or after the service member became a veteran, and is:

- A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member medically unfit to perform the duties of the service member’s office, grade, rank, or rating; or
- A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
- A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Intermittent or Reduced Schedule Leave

An eligible employee generally does not need to use FMLA leave entitlement in one block. Eligible employees who, because of a serious health condition of their own or a qualifying relative, need to take FMLA leave on an intermittent basis or to stretch their leave out by working a reduced schedule, must provide certification of the medical necessity for such leave. Eligible employees must make reasonable efforts to schedule planned medical treatment so as not to unduly disrupt the agency’s operations. When eligible employees request intermittent or reduced schedule leave because of a birth or placement of a child with them for adoption or foster care, the agency director and/or management will consider such things as how the request for intermittent leave or reduced hours will affect the work output of the employee’s position, and the request will be granted only at the agency’s discretion. Under certain circumstances, the agency may require an employee on intermittent leave or

reduced schedule leave to transfer temporarily to an alternative job for which he or she is qualified and that better accommodates the leave.

Married Couples

The twelve week maximum per eligible employee per year applies to married couples, rather than individual employees, if both members of the couple work for any State agency and the leave is for the purpose of caring for a new child by birth, adoption or foster care placement or to care for the employee's parent. Leave requested because of an eligible employee's own serious health condition is not subject to this limitation, nor is leave to care for the eligible employee's sick spouse or child. Husbands and wives who are both employed by any State agency are limited to a combined twenty-six workweeks of leave during the twelve-month period to care for a covered service member.

Notice Requirements

Employees: Employees must provide sufficient information to the agency's human resources department to determine if the leave qualifies for FMLA protection, and they must also provide the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.

When leave is foreseeable, employees are required to give thirty days advance notice of their expected need for FMLA leave. If they fail to provide such notice, the agency may deny the leave until a thirty-day notice period has expired. When thirty days' notice is not possible, employees are required to give as much notice as is practicable, and they generally must comply with the agency's call-in procedures. Medical certification for most FMLA leave is required and must be submitted within no more than fifteen days of an employee's initial request for leave. Medical certifications must be submitted on the appropriate form which may be obtained in the agency's human resources department. It is the employee's obligation to return this form as required. If the certification indicates that the employee does not qualify for FMLA leave, or if the employee fails to return the form in a timely manner, the employee will be subject to the agency's normal attendance and discipline policies. Employees on leave must call the agency periodically (but at least every thirty days) to report on their status and intent to return to work.

The Agency: The agency will inform employees if they are eligible under FMLA, if their requested leave will be designated as FMLA-protected, and the amount of leave counted against the employee's leave entitlement. The notice will also specify any additional information required, as well as the eligible employee's rights and responsibilities. If the agency determines that the leave is not FMLA protected, the agency will notify the employee and supply the reason for the ineligibility.

Use of Accrued Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave, if they otherwise satisfy all of the procedural requirements for the use of that accrued leave.

Leave for a worker's compensation injury that involves a serious health condition, as defined by this policy, will run concurrently with FMLA leave up through the permissible twelve weeks of FMLA leave.

Benefits During Leave

Health insurance benefits will be continued during FMLA leave, and the State of Mississippi will continue to cover the applicable premium amount for the employee. An employee may continue dependent coverage during leave, but he or she will be responsible for paying for the coverage on a timely basis. If the employee ceases paying the premium, the State may cancel the dependent coverage. However, the State may also continue the dependent coverage at its own expense and recoup payments from the employee upon the employee's return to active employment. Personal and medical leave benefits will not accrue during unpaid FMLA leave.

An employee who fails to return to work at the end of the FMLA leave and who cannot excuse the failure as due to reasons beyond his or her control, or because of the continuance, recurrence or onset of a serious health condition, is potentially liable for reimbursing the State for its payment of any or all of the health insurance premiums or other non-health premiums it paid during the employee's FMLA leave, except for premiums paid by the State while the employee was concurrently on paid leave. The amounts paid can be deducted from any moneys owed by the State to the employee, including unpaid wages or accrued leave, to the extent permitted by law. Employees are considered to have "returned to work" if they come back to work for at least thirty days after the conclusion of the FMLA leave.

Return from Leave

Employees returning from FMLA leave will be restored to their prior positions and pay wherever practicable. Such employees will receive all benefits accrued prior to the beginning of leave, and they will be provided continuation of, or reinstatement to, health insurance benefits. If the employee's prior position is not available, the employee will be restored to an equivalent position with equivalent pay and terms and conditions of employment.

Employees must report on their intention to return to work as requested by the agency. So that their work may be properly scheduled, employees must provide reasonable notice (within two business days) of any foreseeable changed circumstances requiring either longer or shorter FMLA leave periods than originally requested.

Unlawful Acts

The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the FMLA; or discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under, or relating to, the FMLA.

Please notify the agency's executive director immediately if any of these actions occur. Employees may also file a complaint with the United States Department of Labor or bring a private lawsuit against the agency.

Leave of Absence

An employee can, upon written application to and in the discretion of the appointing authority, be granted a leave of absence without pay not to exceed twelve months, without forfeiting previously accumulated continuous service.

A State Service employee, with the consent of the head of the department, agency or institution and the concurrence of the MSPB Executive Director, may be placed on a leave of absence for purposes of accepting an assignment in the Non-State Service for a period not to exceed one year.

Leaves of absence should not be confused with Leave Without Pay. A leave of absence is for the purpose of accepting another position in Non-State Service. Leave Without Pay is leave granted to the employee, at the discretion of the appointing authority, in the absence of paid leave.

Leave Without Pay

Leave Without Pay (hereinafter referred to as "LWOP") is employee leave taken in the absence of paid leave. LWOP must be authorized by the appointing authority. When a State government employee is on LWOP, it is the employee's responsibility to pay the employee and employer portion, if any, of all insurance premiums the employee wishes to continue. In order to continue insurance coverage while out on LWOP, the employee should contact his or her human resources director.

Use of Leave During Pregnancy

Women affected by pregnancy, childbirth or related medical conditions will be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. All types of leave will be granted to pregnant women on the same terms as leave is granted to other employees. When certified in advance by a medical doctor, pregnant women can use Major Medical Leave for regularly scheduled prenatal care by a medical doctor without the requirement that personal leave be used for the first eight hours of each absence for subsequent visits. Just as with Major Medical Leave, the first day (or the first eight hours) of leave taken for pregnancy must be personal or compensatory leave or leave without pay if the employee has no accrued personal or compensatory leave.

Military Leave

Employees who are members of the military reserves or former members of the military are entitled to fifteen days of paid leave of absence when ordered to duty to participate in training or military exercises. Such employees are further entitled to unpaid leaves of absence from their respective duties in excess of the previously outlined fifteen days without loss of time, annual leave or efficiency rating until relieved from duty when ordered to duty as above.

The Uniformed Services Employment and Re-employment Act of 1994, a federal law, requires employers to allow up to five years of unpaid leave to a soldier who leaves employment to perform military duty, performs that duty satisfactorily, and requests his or her job back within the statutory time limits. The soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.