



THE STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

Post Office Box 1654 (32302)
227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301



Alton L. "Rip" Colvin, Jr.
Executive Director

(850) 488-2415
Toll Free (866) 355-7902
FAX (850) 488-8944
Toll Free FAX (866) 355-7906

www.justiceadmin.org

COMMISSIONERS

Brad King, Chair
State Attorney
Diamond R. Litty
Public Defender
Jerry Hill
State Attorney
Nancy Daniels
Public Defender

MEMORANDUM #012---13HR

TO: Agency Administrators

FROM: Carolyn Horwich, J.D., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Updated FMLA PowerPoint Presentation and PARs for FMLA

DATE: June 6, 2013

In our continuing effort to assist the agencies we administratively serve, we are replacing the PowerPoint presentation on the Family Medical Leave Act (FMLA) and Military Family Leave issued January 2012 in Memorandum 03-12HR with a revised version. The revised version will be posted on our website, along with new forms. The primary changes to the PowerPoint address:

1. Calculating allowable FMLA leave
2. Inclusion of the new forms
3. Submitting PARs

A. Maximum Length of Leave

During an internal review of the presentation, it was discovered that the information provided under "Maximum Length of Leave" on slide 4 was not completely accurate. The first bullet previously stated that an employee can use up to 12 weeks of medical and/or qualifying exigency FMLA Leave in a *fiscal year*. There are actually four ways that an agency can calculate the 12 weeks of protected leave:

1. Calendar year (January – December)
2. A fixed 12-month "leave year"
3. The 12-month period measured forward from the date of the employee's first FMLA leave usage.
 - a. An employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. See 29 C.F.R. § 825.200 - Amount of leave.

4. A “rolling” 12-month period measured backward from the date of any FMLA leave usage.

The most commonly used time frame is the rolling 12-month period. This approach allows that, “each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.” See 29 C.F.R. § 825.200

An example of this would be if an employee took eight weeks of FMLA leave during the past 12 months, he or she could take an additional four weeks of leave. If an employee used four weeks of FMLA leave beginning February 1, 2012, another four weeks beginning June 1, 2012, and another four weeks beginning December 1, 2012, the employee would not be entitled to any additional leave until February 1, 2013. However, beginning on February 1, 2013, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2013. The employee would also begin to recoup additional days beginning on June 1, 2013, and additional days beginning on December 1, 2013. Accordingly, employers using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. Using the scenario above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2013, only the first four weeks of the leave would be FMLA protected.

Regardless of the method chosen, please ensure that you are consistent in the methodology chosen and that you inform your employees of the method selected. If you fail to inform your employees of the selected method, they are authorized to choose the option that is most beneficial to them.

B. Updated FMLA forms

The updated FMLA forms can be found on our website under FMLA; they may be used through February 28, 2015.

C. Personnel Action Forms (PAR's)

In consultation with JAC Payroll and Benefits staff, we are proposing what we believe is a less confusing way of when to send in PAR's for an employee who is on FMLA and what the PAR should say.

- When employees are out on leave (with or without pay) for a full calendar month or longer, use BOMS transaction code **58 (Leave of Absence)**. In the comments area, please provide the leave type (i.e., FMLA, Personal, Military or Worker's Compensation). Note: When an employee is using leave to cover their deductions, this is considered leave with pay.

- If the employee is going to be out less than a full calendar month, please use BOMS transaction code **98 (Miscellaneous Change)**. In the comments area, indicate the number of hours to be paid. Note: Using code 98 will not place the employee on Leave of Absence (LOA).

D. Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (New Form)

The definition of Military Caregiver Leave entitles an eligible employee who is the spouse, parent, son, daughter, or next of kin of a covered servicemember up to 26 workweeks of FMLA leave in a single 12-month period. Effective March 8, 2013, the definition was expanded to include family members of certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty. A new form was added (WH-385V) for these types of circumstances and is found on our website.

If you have any questions or need assistance, please contact me at Carolyn.Horwich@justiceadmin.org or Andy Snuggs at Andy.Snuggs@justiceadmin.org. We both can be reached by phone at 850.488.2415.

Thank you.

