

**Chapter: Leave Benefits**  
**Title: Non-FMLA Medical Leave (NFM Leave)**

**Effective Date: 12/1/11**  
**Page: 1 of 4**  
**New**

ACA Standard(s): N/A

---

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) grants Non-FMLA Medical Leave (NFM leave) in accordance with the provisions of this policy to an employee who requires the use of leave due to the employee's own illness or injury and has not met the service eligibility requirements for Family and Medical Leave Act (FMLA) leave following the employee's date of hire or reinstatement.

(b) **Definitions.**

For definitions of certain terms used in this policy, see the PRS Glossary.

(c) **General Provisions.**

(1) **Local Human Resources Administrator for Central Office Employees.**

For employees assigned to Central Office, references in this policy to the local human resources administrator (HRA) will mean the leave coordinator.

(2) **Service Eligibility Requirements.**

- (A) NFM leave is available only during the first 12 months following an employee's hire, rehire, or reinstatement.
- (B) Once an employee has met the service eligibility requirements for FMLA leave following the employee's last date of hire, rehire, or reinstatement, the employee will not become eligible again for NFM leave during the employee's current period of TJJD employment.

(3) **NFM Qualifying Reason.**

An eligible employee will be granted NFM leave, subject to the documentation requirements set forth in this policy, if the employee is unable to perform the functions of the employee's job for more than three consecutive workdays due to an illness or injury of the employee (work related or non-work related).

(4) **Maximum NFM Leave.**

- (A) An eligible full-time employee's maximum NFM leave is limited to four workweeks (or 160 hours), reduced by any sick leave or parental leave used by the employee since the last date of hire or reinstatement.
- (B) The maximum NFM leave that may be granted to a part-time employee will be determined on a pro-rata or proportional basis, comparing the employee's normal workweek with a 40-hour workweek. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period will be used to calculate the employee's normal workweek.

(5) **Impact of Unpaid NFM Leave on Employee Benefits.**

- (A) An employee's benefits will be impacted by unpaid NFM leave only if:
  - (i) the employee is on unpaid NFM leave for one full calendar month (i.e., on the first day of the month through the end of the last day of the same month); or
  - (ii) the employee's gross pay is not sufficient to cover premiums for optional benefits due to being on unpaid NFM leave for part of the month.

- (B) If an employee is using unpaid NFM leave for one full calendar month, the employee's benefits will be affected in the following ways:
- (i) The employee will not accrue or be paid for sick leave, annual leave, holiday leave, or administrative leave.
  - (ii) The employee will not earn state service credit for purposes of longevity pay or hazardous duty pay rates or annual leave accrual rates.
  - (iii) The employee does have the option to continue to maintain employee insurance coverage, optional health insurance (e.g., spouse, children), and other optional benefits (e.g., life insurance, disability insurance, etc.). However, the state will make no contribution toward the cost of coverage, and the employee's portion of the cost will no longer be deducted from the employee's pay. The Employees' Retirement System of Texas (ERS) will bill the employee for his/her portion of the costs. If the employee does not make timely payments, the coverage(s) may be canceled.
- (C) In the event the employee's gross pay for the month is not sufficient to pay for optional coverage premiums, ERS will send a notice to the employee concerning the cost to continue optional coverage.

(6) **Reinstatement.**

When an employee who takes NFM leave returns to work, he/she will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment. The employee may also be subject to applicable fitness-for-duty certification requirements. However, requesting or being on NFM leave does not prevent disciplinary action or other employment action which would have been taken in absence of NFM leave, including termination or administrative separation.

(d) **Procedures.**

(1) **Notice of Intent to Use Leave.**

(A) **Employee's Responsibilities.**

- (i) When an employee can foresee the need to use leave, the employee is required to provide at least 30 days advance notice before the leave period is to begin. If the employee is not able to provide 30 days advance notice, he/she must provide as much notice as practicable.
  - (I) Such notice is to be in accordance with the department's or facility's call-in procedures for absences. If circumstances prevent the employee from providing notice, the employee's spouse, adult family member, or other responsible party may provide the notice.
  - (II) If 30 days notice is not provided, the employee may be required to explain the reason why a 30-day notice was not practicable.
  - (III) Once a period of absence has been conditionally designated as NFM leave, the employee should conduct all communications regarding the leave through the local HRA. Any required documentation (e.g., medical certification, recertification, or release for return to work) should be provided to the HRA. The employee must advise the local HRA as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.
- (ii) As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee is required to provide notice of an absence as soon as practicable, the employee should

provide the notice on the same day or the next business day after the employee becomes aware of the need for leave.

**(B) Supervisor's Responsibilities.**

- (i) To help ensure the local HRA is aware that an employee is absent due to an NFM (or FMLA) qualifying reason, a supervisor must notify the local HRA within one business day of learning that a supervised employee is or will be absent:
  - (I) for more than three scheduled workdays due to any medical reason, including illness or injury, whether work related or non-work related;
  - (II) in order to obtain inpatient care in a hospital, hospice, or other residential care facility;
  - (III) due to pregnancy or prenatal care;
  - (IV) due to a chronic medical condition;
  - (V) or for any other reason that might qualify for FMLA leave as set forth in PRS.28.10.
- (ii) Supervisors are prohibited from contacting the employee's healthcare provider to obtain additional information. Only an HRA or other human resources specialist may contact the employee's healthcare provider.

**(2) Designation as NFM Leave and Documentation Requirements.**

- (A) Upon receipt of notice from a supervisor, employee, or the representative of an employee (e.g., doctor or family member) that an employee will miss work for more than three consecutive workdays due to the employee's illness or injury, the local HRA will determine whether the employee meets the service eligibility requirements for FMLA.
  - (i) If the employee meets FMLA service eligibility requirements, the local HRA will follow the procedures for FMLA leave.
  - (ii) If the employee does not meet FMLA service eligibility requirements, the local HRA will provide the employee with:
    - (I) a Notice of Eligibility and Rights & Responsibilities – FMLA form, HR-113, indicating the employee's ineligibility for FMLA;
    - (II) a Designation of NFM Leave form, HR-119; and
    - (III) a blank Certification of Health Care Provider for Employee's Serious Health Condition (FMLA or NFM) form, HR-040e.
- (B) Prior to receipt of adequate medical certification, a designation of NFM leave will be preliminary and conditioned on the employee's timely submission of the completed HR-040e form or other equivalent medical certification to the HRA. The employee must provide the completed HR-040e form or other equivalent medical certification to the local HRA within seven calendar days of receipt of the HR-119 form. The medical certification must contain:
  - (i) the name, address, telephone number, and fax number of the health care provider, and the type of practice or specialization of the health care provider;
  - (ii) a statement that the employee is unable to perform the duties of his/her position due to an illness or injury;
  - (iii) the date on which the illness or injury commenced and the probable duration of the condition; and
  - (iv) a statement or description of appropriate medical facts regarding the condition for which NFM leave is to be used (e.g., symptoms, diagnosis, hospitalization, doctor visits,

whether medication has been prescribed, any referrals for evaluation or treatment, or other regimen of continuing treatment)

- (C) The local HRA will determine whether a medical certification other than a completed HR-040e form contains sufficient information.
  - (D) A new medical certification is required upon any significant change in the circumstances described in the initial or previous medical certification (e.g., an extension of the projected return to work date, or a significant change in the severity of the condition, applicable work restrictions, diagnosis, etc.).
  - (E) Completed certification and recertification forms must be submitted to the local human resources office for approval. If a required certification or recertification is not provided by the due date, or if a submitted certification or recertification does not support the need for leave, any time missed will be:
    - (i) deducted from any available leave balances; and
    - (ii) counted as unauthorized absence, subjecting the employee to disciplinary action up to and including termination of employment.
- (3) **Use of Paid Leave Benefits in Connection with NFM Leave.**

Except as provided in PRS.28.02 for an employee drawing workers' compensation lost-time benefits, an employee must use available paid leave balances while taking NFM leave. PRS.28.02 allows the employee to choose the order in which available paid leave balances are used, with certain restrictions. In addition, PRS.28.02 establishes the order of use if the employee does not make any elections. If some form of paid leave is not available for use in conjunction with NFM leave, the NFM leave will be unpaid leave.

(4) **Return to Work.**

(A) **Employee's Responsibilities.**

- (i) While on leave, the employee is required to promptly notify the local HRA in writing if the employee does not intend to return to work as scheduled.
- (ii) If the circumstances of the employee's leave change and the employee is able to return to work earlier than the scheduled return date, the employee will be required to notify the local HRA prior to the date the employee intends to report for work.
- (iii) The employee must present a fitness-for-duty certification to the local HRA prior to being allowed to return to work. The employee may not return to work until the HRA provides the employee's supervisor with written notification (e.g., email or memo) that the employee may return to work.

(B) **Supervisor's Responsibilities.**

The supervisor must not allow an employee who has been on NFM leave to return to work unless the supervisor has received written notification from the local HRA or his/her designee that the employee may return to work.

---

---