

**Chapter: Leave Benefits**  
**Title: Family and Medical Leave Act**

**Effective Date:** 12/1/11  
**Page:** 1 of 10  
**New**

ACA Standard(s): N/A

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(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) grants family and medical leave to eligible employees in accordance with the federal Family and Medical Leave Act (FMLA) and applicable state law.

(b) **Definitions.**

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

(c) **Employee Notification of Rights and Responsibilities.**

In addition to this policy, TJJD employees are notified of their rights and responsibilities under the FMLA through the notice prescribed by the United States Department of Labor (Employee Rights and Responsibilities under the FMLA). This notice is:

- (1) provided to each newly hired and rehired employee during the New Employee Orientation Session; and
- (2) posted in employee common-use areas by the local human resources administrator (HRA).

(d) **Service Eligibility Requirements.**

To be eligible for FMLA leave, an employee must meet the following two service requirements:

- (1) An employee must have at least 12 months of total state service. If the employee had a break in state service that was longer than seven years, the service accrued prior to the break will not count toward the 12-month service requirement. The only potential exception is a break due to the employee's fulfillment of his or her National Guard or Reserve military service obligation.
- (2) An employee must have physically worked at least 1,250 hours during the 12-month period immediately prior to the beginning of FMLA leave.
  - (A) Under the Uniformed Services Employment and Reemployment Rights Act, an employee returning from fulfilling his/her National Guard or Reserve military obligation shall be credited with the hours of state service that the employee would have performed if the employee had not been performing such military service. Accordingly, the hours that the employee would have worked for the state during the period of such military leave must be added to any hours the employee actually worked for the state during the previous 12-month period to determine if the employee meets the required 1,250 hours.
  - (B) Time on any leave other than military leave described above does not count toward the required 1,250 hours.

(e) **FMLA Qualifying Reasons.**

(1) **Birth, Adoption, or Foster Care.**

An eligible employee is entitled to FMLA leave for the birth of his/her child, or for the placement of a child with the employee for adoption or foster care.

- (A) FMLA leave for the birth of a child is available to both the mother and the father of the child.
  - (i) For the mother, leave for the birth of a child may include periods of leave based on:

- (I) the mother's physical/medical limitations (for which medical certification is required and which may be taken on an intermittent basis); and
      - (II) time to bond with and care for the newborn child (for which medical certification is not required and which may not be taken intermittently).
    - (ii) For the father, FMLA leave for the birth of a child may include periods of leave based on:
      - (I) a medical need to care for his spouse during a period of incapacitation of the spouse due to pregnancy or childbirth (for which medical certification is required, and which may be taken on an intermittent basis); and
      - (II) time to bond with and care for the newborn child (for which medical certification is not required, and which may not be taken intermittently).
    - (iii) An employee's entitlement to FMLA leave for the birth of the employee's child expires at the end of the 12-month period after the birth date of the child.
  - (B) An eligible employee is entitled to FMLA leave for the placement with the employee of a son or daughter for adoption or foster care as follows:
    - (i) The employee may take FMLA leave when absence is required for the adoption or placement to proceed (e.g., counseling sessions, court appearances, attorney consultations, travel to another country to complete an adoption), and the leave may be taken on an intermittent basis.
    - (ii) The employee may take FMLA leave for time to bond with and care for the newly placed child. FMLA leave for this purpose may not be taken intermittently.
    - (iii) An employee's entitlement to FMLA leave for adoption or foster care expires at the end of the 12-month period after the date of placement.
- (2) **Serious Health Condition.**
- (A) An eligible employee is entitled to FMLA leave:
    - (i) because of a serious health condition that makes the employee unable to perform the functions of the employee's job; or
    - (ii) to care for the employee's spouse, son, daughter, or parent with a serious health condition.
  - (B) FMLA leave to care for an employee's son or daughter is limited to a son or daughter who, at the time the leave is to begin, is:
    - (i) under age 18; or
    - (ii) age 18 or older and incapable of self-care because of a mental or physical disability.
  - (C) A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in work, school, or daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of:
    - (i) incapacitation of more than three consecutive calendar days combined with:

- (I) treatment by or at the direction of a health care provider two or more times within thirty days of incapacitation, with the first in-person treatment visit within seven days of the first day of incapacitation; or
  - (II) at least one in-person visit to a health care provider within seven days of the first day of incapacitation followed by a regimen of continuing treatment (e.g., prescription medications or therapy).
- (ii) incapacitation due to pregnancy or for prenatal care;
  - (iii) incapacitation due to a chronic serious health condition which continues over an extended period of time and requires periodic visits to a health care provider for treatment at least twice a year;
  - (iv) incapacitation due to a permanent or long-term condition for which the employee or family member is under the continuing supervision of a health care provider; or
  - (v) conditions requiring multiple treatments by or on orders or referral from a health care provider due to restorative surgery or for a condition that if left untreated would likely result in incapacity of more than three days (e.g., chemotherapy, radiation treatments, physical therapy or dialysis).

(3) **Military Family Leave – Qualifying Exigency Leave.**

- (A) An eligible employee is entitled to FMLA leave because of any “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is a member of the military reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve) or a retired member of the Regular Armed Forces or Reserves and on active duty or called to active duty status in support of a contingency operation. The son or daughter may be of any age.
- (B) A qualifying exigency is a non-medical activity that is directly related to the covered military member’s active duty or call to active duty status, and may include the following:
  - (i) short-notice deployment (leave permitted up to seven days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the day of deployment);
  - (ii) military events and related activities;
  - (iii) childcare and school activities arising from the active duty or call to active duty (e.g., temporary, but not on-going, childcare arrangements; enrollment in a new school; parent-teacher conferences relating to the call to active duty);
  - (iv) financial and legal arrangements arising from the active duty or call to active duty;
  - (v) attendance at a counseling session by a non-medical counselor (e.g., clergy member) arising from the active duty or call to active duty (includes counseling for the covered military member, employee, son or daughter);
  - (vi) rest and recuperation (leave permitted of up to five days for each instance when the military member is on short-term, temporary rest and recuperation leave during the period of deployment);
  - (vii) post-deployment military activities (e.g., attend arrival ceremonies); or
  - (viii) additional activities approved on a case-by-case basis by the director of human resources or designee.

- (C) An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.
- (D) A call to active duty for this purpose must be a federal call to active duty. State calls to active duty are not covered unless under order of the president of the United States in support of a contingency operation.

(4) **Military Family Leave - Military Caregiver Leave (also known as Covered Servicemember Leave).**

- (A) An eligible employee is entitled to FMLA leave to care for a current member of the Armed Forces (including the National Guard or Reserves), or a member who is on the temporary disability retired list if:
  - (i) the servicemember has a serious injury or illness for which he or she is undergoing medical treatment, recuperation, or therapy; and
  - (ii) if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember as defined by the FMLA;
- (B) An employee may not take leave under this provision to care for a former member of the Armed Forces or a member on the permanent disability retired list.
- (C) A "serious injury or illness" means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.
- (D) If the covered servicemember's medical condition does not fall under the requirements for military caregiver leave, the employee may still be eligible for FMLA leave due to a serious health condition of a family member.

(f) **Maximum Amount of FMLA Leave.**

- (1) Except for military caregiver leave, an eligible employee's total FMLA leave entitlement is limited to 12 workweeks within a "rolling" 12-month period. The "rolling" 12-month period will be measured backward from the date the employee uses any FMLA leave for reasons other than military caregiver leave.
- (2) Special provisions apply when a husband and wife are both TJJJD employees. The amount of leave taken by one spouse for any of the following FMLA leave qualifying reasons will count against the other spouse's FMLA leave entitlement:
  - (A) birth of a child and care for the child (excluding FMLA leave due to a serious health condition of the mother or child);
  - (B) placement of a child with the employee for adoption or foster care, (excluding FMLA leave due to a serious health condition of the child);
  - (C) care for a parent due to a serious health condition (e.g., if a wife uses 8 weeks to care for her parent, the husband will only be entitled to use 4 weeks to care for his parent in the same rolling 12-month period; neither spouse may use FMLA leave to care for a parent-in-law); and
  - (D) military caregiver leave.
- (3) An eligible part-time employee will be entitled to FMLA leave on a proportionate basis.

- (4) An eligible employee's military caregiver leave entitlement is limited to 26 workweeks during a single 12-month period. The single 12-month period will be measured forward from the date the employee first uses military caregiver leave.
  - (A) If an employee requires military caregiver leave to care for more than one covered service member or requires a combination of military caregiver leave and other FMLA leave, the employee's FMLA leave entitlement is limited to a maximum combined total of 26 weeks during any single 12-month period. The limitation of 12 weeks during a rolling 12-month period for other FMLA leave will still apply, even if the employee uses less than 14 weeks of military caregiver leave.
  - (B) Once a single 12-month period expires, the employee is eligible for another 26 weeks of military caregiver leave during a subsequent single 12-month period to care for a different covered service member or to care for the same covered service member if he/she incurs a subsequent serious injury or illness (excluding aggravation or complication of an earlier serious injury or illness for which the employee took military caregiver leave).

**(g) Intermittent or Reduced Schedule Leave.**

- (1) An eligible employee may take FMLA leave on an intermittent or reduced schedule basis when it is:
  - (A) certified as medically necessary due to a serious health condition of the employee or the employee's spouse, son, daughter, or parent (e.g., for periodic medical treatments);
  - (B) certified as medically necessary for military caregiver leave; or
  - (C) necessary because of a qualifying exigency.
- (2) If an employee needs intermittent or reduced schedule leave for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt TJJJ operations.

**(h) Impact of Unpaid FMLA Leave on Employee Benefits.**

- (1) An employee's benefits will be impacted by unpaid FMLA leave only if the employee is on unpaid FMLA leave for a full calendar month (i.e., on the first day of the month through the end of the last day of the same month).
- (2) If an employee is using unpaid FMLA leave for one or more full calendar months, the employee's benefits will be affected in the following ways:
  - (A) The employee will not accrue or be paid for sick leave, annual leave, holiday leave, or administrative leave.
  - (B) The employee will not earn state service credit for purposes of longevity pay or hazardous duty pay rates or annual leave accrual rates.
  - (C) If the employee has optional health insurance (spouse, children) or other optional benefits (life insurance, disability insurance, etc.), 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 optional coverage(s) may be canceled.
  - (D) Even though the agency pays the employee's own health insurance premium during unpaid FMLA leave, the employee may be required to reimburse the agency if the employee fails to return from FMLA leave for a reason other than:
    - (i) the continuation, recurrence, or onset of a serious health condition which would entitle the employee to additional FMLA leave; or
    - (ii) other circumstances beyond the employee's control.

**(i) Reinstatement Entitlement.**

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

**(j) 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 notice as soon 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 personal 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 FMLA 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) When providing notice of intent to use leave, the employee is not required to mention the term "FMLA".
  - (I) The employee must respond to questions from the local HRA in order to provide sufficient information that will allow the HRA to determine whether the need for leave is due to an FMLA qualifying reason. Failure to respond to such questions may result in denial of FMLA protection if the agency is unable to determine that the leave is for an FMLA qualifying reason.
  - (II) The employee must advise the HRA if he/she was previously granted FMLA leave for the same condition for which leave is currently being requested.
- (iii) 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.
- (iv) If an employee has a spouse who is also a TJJJ employee and is requesting FMLA leave for one of the qualifying reasons identified in paragraph (f)(2), the employee should notify the local HRA that his/her spouse is a TJJJ employee.

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

- (i) To help ensure the local HRA is aware that an employee is absent due to an 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 incurred on or off the job;
  - (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) in order to care for a family member with a serious health condition;
  - (VI) for the birth of a child, or for placement of a child with the employee for adoption or foster care;
  - (VII) due to a qualifying exigency; or,
  - (VIII) for military caregiver leave.
- (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) Documentation Requirements.****(A) Birth, Adoption, or Foster Care.**

The local HRA will provide an employee with a Notice of Eligibility and Rights and Responsibilities form, HR-113, generally within five business days of receipt of the facts from which a preliminary designation of FMLA can be made. The HR-113 form will indicate whether the employee is eligible for FMLA leave and whether complete and sufficient certifications have been provided or must be provided by a date identified on the form.

- (i) When FMLA leave is based on birth, adoption, or foster care, the employee must provide proof of the event for the birth of the employee's child, or the placement of a child with the employee for adoption or foster care. For the birth of a child, a birth bracelet, hospital certificate, health care provider's statement, or birth certificate may be used as proof of the event.
- (ii) The employee must provide proof of the event no later than 15 calendar days after receipt of the HR-113 form, unless the employee is granted additional time due to special circumstances.

**(B) Serious Health Condition.**

(See (D) for documentation requirements for military caregiver leave.)

When FMLA leave is based on a serious health condition of the employee or the employee's family member, the employee is required to provide a certification of medical need for leave from a health care provider. The employee must provide the certification no later than 15 calendar days after receipt of the HR-113, unless the employee is granted additional time due to special circumstances.

- (i) The 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 either the employee is unable to perform the duties of his/her position due to a serious health condition or that the employee is needed to care for a family member with a serious health condition;
  - (III) the date on which the serious health condition commenced and the probable duration of the condition; and
  - (IV) a statement or description of appropriate medical facts regarding the patient's condition for which FMLA 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).
- (ii) An employee may have the health care provider complete the Health Care Provider's Certification for Employee's Serious Health Condition form, HR-040e, or the Health Care Provider's Certification for Family Member's Serious Health Condition form, HR-040f, whichever is applicable, to meet the certification requirement.
  - (iii) A new medical certification (a recertification) is required:
    - (I) upon any significant change in the circumstances described in the initial or previous medical certification (e.g., upon any extension of the projected return to work date, any significant change in the severity of the condition, applicable work restrictions, diagnosis, etc.);
    - (II) upon expiration of the minimum period of incapacitation indicated on the most recent certification (unless the employee is released for return to work at or before the minimum period of incapacitation indicated on the medical certification);
    - (III) within 30 days of the date of a previous medical certification that did not indicate a minimum period of incapacitation (unless the employee is released to return to work at or before the end of 30 days); and
    - (IV) every six months (for long-term or chronic serious health conditions that result in a continuing or periodic need for FMLA leave, even if the minimum period of incapacitation in the previous medical certification is longer than six months).

**(C) Military Family Leave – Qualifying Exigency Leave.**

When FMLA leave is due to a qualifying exigency, the employee must provide a completed Certification of Qualifying Exigency for Military Family Leave form, HR-111, to the local HRA. The first time the employee requests such leave, the employee must also provide the local HRA written documentation confirming the covered military member's active duty or call to active duty status in support of a contingency operation.

- (i) The employee must provide these documents no later than 15 calendar days after receipt of the HR-113, unless the employee is granted additional time due to special circumstances.
- (ii) The employee will only be required to provide the written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation the first time the employee requests leave for this purpose.
- (iii) The employee will be required to provide a completed HR-111 whenever the leave is due to a reason unrelated to a previous qualifying exigency (e.g., the first request was for short-notice deployment and the second request is one year later for rest and recuperation).

**(D) Military Family Leave - Military Caregiver Leave.**

When FMLA leave is to care for a covered servicemember with a serious injury or illness incurred in the line of duty, the employee must provide a completed Certification for Military Caregiver Leave form, HR-112, to the local HRA. The employee must provide the HR-112 no later than 15 calendar days after receipt of the HR-113, unless the employee is granted additional time due to special circumstances. Recertification is not required for military caregiver leave.

**(E) Failure to Provide Certification or Recertification.**

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.

**(F) Incomplete or Insufficient Certifications.**

All required certifications must be complete and sufficient. A certification is considered to be insufficient if it is vague, ambiguous, or non-responsive.

- (i) If any required certification (including but not limited to any required medical certification, recertification, or fitness-for-duty certification upon release for return to work) is incomplete or insufficient, the local HRA will provide the employee written notice (either in the Family and Medical Leave Designation Notice, HR-113a, or via other written notice) of what additional information is needed to make the certification complete and sufficient.
  - (I) Upon receipt of the written notice indicating that the certification provided was incomplete or insufficient, it is the employee's responsibility to either:
    - (-a) provide a new certification that is complete and sufficient; or
    - (-b) furnish the health care provider any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer.
  - (II) Upon receipt of written notice that a certification is incomplete or insufficient, the employee will have seven calendar days to submit or have the health care provider submit the requested additional information (unless not practical to do so under the circumstances despite the employee's diligent, good faith efforts, in which case the employee must submit the requested additional information or authorize the health care provider to provide the information as soon as is practicable).
- (ii) The provision regarding a seven-calendar-day period to resubmit complete or sufficient certification does not apply when the employee has failed to submit a required certification. It only applies when the certification submitted is incomplete or insufficient.

**(3) Use of Paid Leave Benefits in Connection with FMLA Leave.**

Except as provided in PRS.28.02 for an employee receiving lost-time benefits through disability insurance or workers' compensation insurance, an employee must use available paid leave balances while taking FMLA 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 FMLA leave, the FMLA 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) If FMLA leave is due to an employee's own serious health condition, the employee must present a fitness-for-duty certification to the local HRA prior to being allowed to return to work. Such an 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.**

- (i) The supervisor must not allow an employee who has been on FMLA leave due to the employee's own serious health condition to return to work unless the supervisor has received written notification (e.g., email) from the local HRA or designee that the employee may return to work.
  - (ii) Upon an employee's return to work from FMLA leave for a reason other than the employee's own serious health condition, the supervisor must provide the local HRA or timekeeper verbal or written notice of the employee's return to work on the same calendar day or shift that the employee returns to work.
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