

Policy Executive Summary

Second Reading

June 6, 2022

The following revised policy will be presented for a Second Reading.

Policy GBN Family Medical Leave Act

Policy GBN is a required policy. The revised policy has been updated to include new categories of family members (grandchildren and domestic partner's grandchildren) included under Maine's Family Medical Leave Law, effective in October 2021. The revised policy also includes federal military caregiver leave which has been added since the policy was last updated. The military family leave provisions of the FMLA Act provides leave for foreign deployment or to care for a serious injury or illness of a servicemember if the servicemember is the spouse or next of kin.

The revised policy simplifies Procedure GBN – R1 and Procedure GBN – R2 by adding current regulations into Policy GBN.

Recommendation

Policy GBN: To approve the policy as written and eliminate GBN-1 and GBN-2 as recommended.

FAMILY AND MEDICAL LEAVE

Employees are entitled to family and medical leave under the federal Family and Medical Leave Act of 1993 (“FMLA”) or the Maine Family Medical Leave law when they meet all of the eligibility requirements of these laws. This policy sets forth several rules that must be applied uniformly to all employees who may be eligible for family and medical leave. As used in this policy, “family and medical leave” means leave available under both the federal and state laws.

1. The Federal Employee Eligibility Periods

Employees who have been employed for at least 12 months and have worked at least 1,250 hours in the previous 12 months are eligible for FMLA leave under the federal law.

There are two types of eligibility periods under the federal law as described below.

A. 12-Month Period for Birth, Adoption or Foster Care; Serious Health Condition Purposes; Qualifying Exigency

There is a 12-month eligibility period for 12 weeks of FMLA leave taken for the following qualifying purposes:

1. Birth and care of the newborn child of the employee;
2. Placement with the employee of a son or daughter for adoption or foster care;
3. Care for an immediate family member (spouse, child, or parent) with a serious health condition;
4. Medical leave when the employee is unable to work because of a serious health condition; or
5. Qualifying exigency leave for an employee whose spouse, child or parent is a regular member of the Armed Forces on covered active duty deployed to a foreign country or a reserve member of the Armed Forces (including National Guard) on covered active duty deployed to a foreign country under a call or order to active duty in a contingency operation.

The 12-month period used to determine employee eligibility for FMLA for the purposes described above shall be a rolling 12-month period measured backward from the date of any FMLA leave usage.

B. Federal 12-Month Period for Military Caregiver Leave

There is a separate 12-month period for employees eligible for military caregiver leave of up to 26 weeks. Such leave may be taken to care for a spouse, child, parent or next of kin of an eligible service member or veteran with a serious injury or illness. This leave is calculated from the first day that leave is taken for this purpose and does not track the employer’s designated 12-month

FMLA tracking period as described above. Any military caregiver leave that is not taken within the specific 12-month period is forfeited. This leave period may overlap with the usual 12-month leave period designated by the employer and in certain circumstances, this may impact the employee's eligibility to take other types of FMLA leave.

2. Maine Requirements

A. Employee Eligibility

Employees who have been employed for at least 12 consecutive months are eligible for leave under the Maine Family Medical Leave law.

B. Leave Amount and Eligibility

The amount of family and medical leave available to employees under the Maine law is 10 work weeks in any two-year period.

C. Qualifying Purposes

Leave may be used for the following qualifying purposes:

1. Serious health condition of the employee;
2. Serious health condition of the employee's spouse, domestic partner, child (or child of domestic partner), grandchild (or grandchild of domestic partner), parent or sibling;
3. Birth of the employee's child or child of his/her domestic partner;
4. Placement of a child 16 years of age or younger with the employee or the employee's domestic partner for adoption;
5. Donation of an organ for human transplant by the employee;
6. Death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child as a member of the state military forces or United States Armed Forces (including National Guard and Reserves) while on active duty.

3. Notice by Employee

Employees requesting leave shall provide at least 30 days' notice to the Employer whenever the need for such leave is foreseeable. The employee shall provide appropriate medical certification (or other certification appropriate to the particular request) supporting the leave request.

When the Employer has reason to believe that an employee is or will be absent for an FMLA-qualifying purpose, the Employer should request the appropriate information from the employee to determine the employee's eligibility for family and medical leave.

4. Coordination with Other Leave

When leave is taken that qualifies both as FMLA and as permitted leave under any employment contract, collective bargaining agreement or policy, the employee shall use FMLA and the other type of leave concurrently, provided that the employee meets all of the eligibility requirements for each type of leave. Types of leave that shall run concurrently with FMLA include, but are not necessarily limited to: accrued sick leave, vacation and compensatory time, unpaid leave, disability leave, absence for work-related injuries, and any other applicable types of leave.

5. Fitness for Duty Certificate

Before returning to work, employees taking FMLA for their own serious health condition shall submit a certificate from a health care provider indicating that they are able to return to work and perform the essential functions of the position.

Legal Reference: 26 U.S.C. § 2601 et seq.; 29 CFR Part 825
26 MRSA § 843 et seq.

Adopted: July 6, 1998

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