

report on the expiration of the leave granted may be terminated.

An employee granted leave without pay will, upon return, be assigned duties of like seniority, status and pay.

Leave without pay may be granted for other purposes (education, family leave, extended illness, etc.). If due to illness, a written statement from a physician stating the reason for the leave may be required.

Employees using leave without pay do not earn annual and sick leave or other benefits available to regular employees.

Granting a leave without pay request will depend on whether the absence of the employee will unduly disrupt the agency's operations or services.

Granting a leave without pay request will depend on whether the terms and conditions concerning the leave have been agreed to in writing by the employee and the Department.

## **9-10 Family and Medical Leave -7B**

The Commissioner will provide leave for eligible employees for specified family and medical reasons. The following does not provide a complete description of state and federal law on family medical leave or state and federal laws and regulations. The Deputy Insurance Commissioner should be consulted concerning extended family or medical leave requests.

1. General definitions:
  - a. "Department" means the North Dakota Department of Insurance.
  - b. "Employee" means an individual who is payrolled through the state payroll-personnel system.
  - c. "State" means the State of North Dakota.
  - d. "FMLA" means the Family Medical Leave Act of 1993.
  - e. "FMLA leave" means Qualified Leave under the Family Medical Leave Act of 1993 or the North Dakota Family Medical Leave Act (N.D. Cent. Code Chapter 54-52.4)
2. Eligibility for family or medical leave of absence (regardless of full-time, part-time, temporary, or hourly status), all employees must have been:
  - a. Employed by the state for at least 12 months;
  - b. Employed for at least 1,250 hours during the 12-month period immediately preceding the leave date.
3. Qualifying reasons for family or medical leave:
  - a. For the birth of the employee's child.
  - b. For the placement with the employee of a son or daughter for adoption or foster care, and to care for the child.
  - c. For the care of the employee's spouse, child, or parent, if the spouse, child or

parent has a serious health condition.

- d. For a serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of the job.
4. A serious health condition is an illness, injury, impairment, physical or mental condition that involves inpatient care, continuing treatment by a health care provider, chronic conditions, or conditions which require multiple treatments. Short-term conditions requiring only brief treatment and recovery and routine treatments are generally not considered serious health conditions.
5. Length of family or medical leave
  - a. An employee may generally take up to 12 weeks of medical leave out of a 12-consecutive month period for an employee's own serious health condition. The 12-consecutive month period must be based on the date an employee's FMLA leave begins.
  - b. An employee may generally take up to four months of family or medical leave for the other authorized reasons.
  - c. An employee's eligibility to take FMLA leave for the birth of a child or the placement of a child for adoption or foster care expires 12 months after the birth or placement of the child.
6. Employee notification of leave as family or medical leave
  - a. If the need for FMLA leave is foreseeable, an employee must provide at least 30 days advance notice before FMLA leave is to begin.
  - b. If 30 days notice is not practicable, such as in a medical emergency, notice must be given as soon as practicable. Verbal notice is sufficient.
  - c. If planning FMLA leave, the employee must consult with the Deputy Insurance Commissioner and make a reasonable effort to schedule the leave so as not to disrupt unduly the Department's operations. If the employee fails to consult with the Department, the Department will initiate discussions with the employee and attempt to work out a schedule which meets the employee's needs.
  - d. If an employee fails to give 30 days advance notice for foreseeable leave, the Department may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice.
7. An employee may take FMLA leave on an intermittent or reduced leave schedule when it is medically necessary for a serious health condition of the employee, the employee's spouse, the employee's parent, or the employee's child. If an employee requests intermittent or reduced FMLA leave, the Department may require the employee to transfer temporarily to an alternative position with equivalent pay and benefits to accommodate recurring periods of absence or a part-time schedule.
8. Designation of family or medical leave
  - a. An employee requesting leave must explain the reasons for the leave so as to allow the Department to determine whether the leave qualifies under the FMLA or the request may be denied. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA or even mention

the FMLA to meet his or her obligation to provide notice, although the employee needs to state a qualifying reason for the FMLA leave.

- b. If the requested leave qualifies as FMLA leave, the Department will notify the employee that it has designated the leave as FMLA leave.
- c. The Department may designate an employee's paid leave, annual leave, sick leave, or donated leave, as FMLA leave. The Department will notify the employee that paid leave is being designated as being substituted for otherwise unpaid FMLA leave.

9. Department notification

- a. If the Department grants a request for FMLA leave, the Deputy Insurance Commissioner will provide an employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations within a reasonable time (generally one or two business days of the request for leave).
- b. The office will notify the employee that the leave will be counted against the employee's annual FMLA leave and:
  - o Of any requirements for the employee to furnish medical certification and the consequences of failing to do so;
  - o Of the rights to substitute paid leave by either the office and the employee;
  - o Of insurance premium payment requirements and arrangements for making payments and consequences of failing to make payments;
  - o Of the requirement to present a fitness-for-duty certificate for return to work;
  - o Of the employee's right to restoration of the same or equivalent job upon return from leave;
  - o Of the employee's liability for payment of insurance premiums paid by the employer if the employee fails to return to work; and
  - o Of the employee's status as a "key employee" and the effect that restoration to the employee's previous position may be denied.

10. Benefits during family medical leave:

- a. Family or medical leave is generally unpaid.
- b. The Department will maintain the employee's coverage under the state's group health plan on the same conditions as coverage would have been provided if the employee had been continuously at work during the entire leave period. In addition, the Department will pay the basic life insurance premiums during the FMLA leave period.
- c. Employees do not receive paid holidays nor accrue annual leave or sick leave while on unpaid family medical leave.

11. Medical certification of leave:

- a. The Department may require an employee to provide a certification from a health care provider to substantiate the serious health condition of the employee or family member.