

be approved for circumstances that take the military member past this benchmark.

Should a mobilization occur, national or state authorized, the first 30 days shall be without a loss of pay, less any other paid military leave of absence granted during the calendar year.

Weekend, daily or hourly periods of drill are excluded from the authorized 20 days leave of absence. If an employee is scheduled to work during those periods, the employee has the option to either take the time off with loss of pay, or be given the opportunity to reschedule the work period so that the training occurs during time off without loss of pay.

Employees returning from military leave following an extended period of active duty service have a protected right of return to their former position or one of like status and pay.

Recommendations:

The Approving Authority should ensure that when an employee is absent from work due to military leave, the proper records are prepared to clearly indicate the employee's status.

Section 9. FAMILY AND MEDICAL LEAVE GUIDELINES

The Family and Medical Leave Act of 1993 (FMLA) and the North Dakota Family Leave Act of 1989 are designed to protect the employee's job and benefits while off. The FMLA allows up to 12 weeks of leave for reasons as specified below.

For purposes of interpreting the referenced laws, the State is considered a single public agency employer.

Family and medical leave is a paid or unpaid leave of absence available to an employee for the birth, adoption, or foster placement of a child; or for the serious health condition of a parent, child, spouse, or employee.

Family and medical leave is available to employees who have been employed by the employer for at least 12 months and worked at least 1,250 hours for the employer during the previous 12 months.

The maximum length of family and medical leave available in a twelve-month period is 12 weeks per employee. The leave is prorated for part-time employees.

If both spouses are employed by the state, the state and the FMLA reserves the right, under certain circumstances, to combine the maximum allowable leave. Please refer to the full text of the law as referenced below.

Family and medical leave may be taken consecutively, intermittently, or on a reduced work schedule.

When an employee is aware of the need for family and/or medical leave, the employee is required to provide their Approving Authority with notice 30 days in advance. When leave is not foreseeable, the employee can give notice as soon as he or she is aware of the need. Notice can be verbal or in writing, in person, or by telephone. **NOTE:** As a guideline, ITD requests that the Approving Authority notify Human Resources of any such absences of 3 days or longer.

Birth, adoption, or foster care leave must be taken within 12 months of the triggering event.

When family and medical leave is completed, the employee must be returned to the same position or a position with equivalent compensation and benefits. If a layoff would have caused the position to have been lost, this reinstatement provision does not apply.

An agency must continue health benefits at the same level and coverage had the employee not taken leave.

Medical certification may be required by the agency. However, it is limited to stating only that: a serious health condition exists, the date of commencement and probable duration, and the medical factors to the best of the provider's knowledge.

The following are ITD forms associated with FMLA:

- Employee Request For Family Medical Leave (SFN 53533)
- Employer Response To Employee Request For Family Medical Leave (SFN 53534)

Response To Request For Annual OR Sick Leave Determined To Be Counted As Family Medical Leave (SFN 53542)

All forms listed above can be found on the ITD intranet site at:
<http://intranet.itd.state.nd.us/forms/>

References:

NDCC 54-52.4 (North Dakota Family Leave Act of 1989)
Public Law 103-3 (Family and Medical Leave Act of 1993 (national))

Section 10. LEAVE WITHOUT PAY

In accordance with the HRMS division policy, ITD, at the discretion of an Approving Authority, is affording all employees the opportunity to take leave without pay on a case-by-case basis provided that:

The absence of the employee will not disrupt the operations or service of ITD.