

Family and Medical Leave Guidelines

The State of North Dakota and the Office of Secretary of State are subject to the Federal Family and Medical Leave Act (FMLA) and the North Dakota Family Leave Act (N.D.C.C §54-52.4). These acts require employers to provide eligible employees having certain qualifying reasons up to 12 workweeks of unpaid leave during a 12-month period. Because this policy is not an exhaustive description of state and federal law on Family and Medical Leave, employees are encouraged to consult with the designated personnel officer and review state and federal laws in specific requirements, right, and obligations.

1. Following are the essential requirements and benefits:

- a) Eligibility: Employees are eligible if they have worked for the State of North Dakota for at least 12 months (need not be consecutive) and have worked at least 1,250 hours for the State in the previous 12 months before the date leave is to commence.
- b) Leave will be provided for any of the following reasons:
 - For the birth of the employee's newborn and to care for the employee's newborn if leave ends within 12 months after birth of the child;
 - For the placement of or precondition to a newly adopted or foster child and to care for a newly placed adopted or foster child;
 - To care for the employee's spouse, son, daughter, or parent who has a serious health condition (the definition stated in law of a son or a daughter is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability); or
 - For a serious health condition that makes the employee unable to work or perform any one of the essential functions of the employee's job.
- c) Notwithstanding any other opinions of the condition, the Secretary of State will decide whether a condition qualifies as a serious health condition as defined in the Family and Medical Leave Act.
 - An employee may be required to supply a physician's verification of the condition, that the condition is serious and that the employee will be unable to perform one or more essential functions of their job as a result of that condition. The verification may be required on U.S. Department of Labor's form entitled Certification of Health Care Provider (Optional Form WH-380) or a similar form.
 - An employee may be required to submit to an examination by a physician selected, and paid for, by the Secretary of State.
- d) Length of leave allowed:
 - An employee may take up to 12 workweeks of leave for any of the reasons specified in (b).
 - If an employee and his/her spouse work for the State of North Dakota and qualify for family leave, the combined total leave for purposes stated in (b) above, except for an employee's own serious health condition, may not exceed 12 workweeks.
- e) Designation of paid leave: The Office of the Secretary of State will require an employee to use accrued paid leave during an authorized FMLA leave of absence. Employees will

first use any accrued sick leave and then use any accrued annual leave in conjunction with an authorized Family and Medical Leave taken. Employees who have exhausted the applicable types of paid leave will be provided unpaid leave to fulfill the remaining authorized period of Family and Medical Leave.

Note: Under N.D.C.C §54-52.4-03 an employee may use up to 40 hours of accrued sick leave in a 12-month period for the care of a child, spouse, or parent. For any leave to be granted for this reason beyond 40 hours, Family Medical Leave must be requested by the employee or invoked by the Deputy Secretary of State.

- f) Job benefits and protection for non-key employee (see note below): Employees who are using the required paid leave will continue to receive or accrue benefits as normally provided employees on paid leave. Employees who are provided with unpaid leave during any authorized Family and Medical Leave period will continue to have health insurance benefits paid by the Office of the Secretary of State during the leave period. Employees in an unpaid leave status will not accrue annual or sick leave during the period of unpaid leave. Upon return from leave an employee who is not designated, as a "key employee" will be restored to their original or an equivalent position with equivalent pay, benefits, and any other employment rights that existed at commencement of the leave or that may have accrued during the leave period. An employee designated as a "key employee" may not be provided restoration rights upon return from leave.

Note: Individuals designated as "key employees" under FMLA §825.217 will be notified of such designation at or before the time FMLA leave commences. If the restoration of a "key employee" causes "substantial and grievous economic injury" to the employing agency then reinstatement upon returning from leave may not occur.

2. Employees taking FMLA leave in either a paid or unpaid status may not perform work for another employer during the leave period without prior notification and approval of the Division Director. Working for another employer other than under the conditions approved may be considered as negating the requirement to be absent from work for the Office of the Secretary of State and may cause immediate cancellation of FMLA leave status or disciplinary action up to and including termination of employment.

The Office of the Secretary of State will continue to pay the employer's share of health plan coverage during the period of paid and unpaid family and medical leave. An employee may be responsible to reimburse the Office of the Secretary of State for health insurance premiums paid during any unpaid portion of the Family and Medical Leave period when:

- An employee performs work for an employer without the approval of the employee's Division Director, or
 - The employee chooses not to return to work upon completion of the Family and Medical Leave period, unless the employee does not return to work due to continuation, recurrence, or onset of a serious health condition of the employee or employee's immediate family member. (See Federal Regulation 825, section 825.213)
4. Authorized leave under this section may be taken in intermittent or reduced work schedules but in no less than one-hour increments. An employee taking intermittent leave or reduced work schedules may be temporarily reassigned to an alternative position with equivalent pay and benefits which better accommodates the recurring leave than does the employee's regular position.
5. An employee may be required to furnish periodic verbal or written reports to their Division Director reporting the status of their condition, and the employee's intent to return to work.

6. The employee's Division Director, Deputy, and Secretary of State must approve all leave under this section prior to commencement of the leave. The approving authority is responsible to determine eligibility for leave based on eligibility of the employee and reason(s) given for the leave.
7. The entitlement period, which is the 12-month period during which the maximum allowable weeks of leave may be taken, will be determined by the "rolling" 12-month period looking backward method. This means the period will be measured backward by 12 months from the date an employee uses any leave under this section. Any FMLA leave used during this 12-month period will be deducted for the total allowable under this section.
8. An employee must apply for leave under this section in writing by completing the form entitled Employee Request for Family Medical Leave or preparing his or her own request, which must contain the same information. The application must be submitted 30 days in advance of the requested leave starting date unless compelling circumstances substantiate a shorter notification as determined by the Division Director.
9. The employer may invoke Family and Medical Leave for qualifying situations even if an employee has not applied for FMLA.
10. The approving authorities will provide a response in writing to an employee's application for leave by completing the form entitled Response To Family Medical Leave Request or preparing their own response, which must contain the same information. When leave is approved, the approving authorities will provide a statement that leave is designated as Family and Medical Leave, whether the employee is required to use accrued paid leave during the authorized family and medical leave of absence, a clear record of the start date, and the last date of eligibility when family and medical leave designation must end.
11. If a dispute arises as to the eligibility for leave under this section, or as concerns the designation of paid leave as qualifying under this section, or to determine appropriateness of notice requirement of less than 30 days, an employee may submit additional information to their Division Director for further consideration.

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Name

Date