

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: LEAVE POLICIES
EMPLOYEE PROCEDURES MANUAL	SECTION: 8.0 PAGE 1 OF 26 EFFECTIVE DATE: MAY 1, 2000 REVISION #6: July 1, 2021

LEAVE POLICIES

All full-time employees of the Department of Education shall be provided, in accordance with the policies established by the State Legislature and the Mississippi State Personnel Board, and stated here, the following types of leave: personal, major medical, military, administrative, family and medical (FMLA), compensatory, and leave without pay.

In addition to covering the above types of leave, this section also covers furloughs.

LEAVE REQUESTS

Requests for any type of leave, except medical emergencies, must be made in advance utilizing the "Leave Request form (online at [www.mde.k12.ms.us/human\\_resources/forms.html](http://www.mde.k12.ms.us/human_resources/forms.html)). The employee is required to receive prior approval of the leave request from his/her supervisor or their designee before being absent from the office. An employee may request accrued leave at any time; however, the granting of personal leave requested is at the discretion of the employee's supervisor. Supervisory personnel have both the authority and responsibility to review and/or question any leave request. The supervisor's discretion to approve or not to approve leave is final.

Employees shall report leave involving illness to the immediate supervisor, or his/her designee, no later than the hour they are required to report to work on the day of the illness, unless an emergency situation prevents such notification. Requests for leave in unforeseen circumstances which do not receive prior approval must be completed within one (1) hour of returning to work.

PERSONAL LEAVE (MS Code Annotated §§ 25-3-93 through 25-3-97)

Personal Leave is to be used for vacations, days off, the first day of employee or family illness, medical, dental, or optical appointments.

Personal leave is earned and accrued on a monthly basis. Employees begin accruing personal leave upon employment. There is no maximum limit to the number of hours an employee may accumulate. Employees earn personal leave based on their years of continuous service with the state.

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PERSONAL LEAVE (continued)

The accrual rates for full-time employees are:

CONTINUOUS SERVICE	ACCRUAL RATE (Monthly)	ACCRUAL RATE (Annually)
1 month to 3 years	12 hours	18 days
37 months to 8 years	14 hours	21 days
97 months to 15 years	16 hours	24 days
Over 15 years	18 hours	27 days

Employees working less than a full workweek and part-time employees shall be allowed to earn personal leave on a pro-rata basis. The accumulated leave will be computed utilizing the Mississippi State Personnel Board’s conversion tables.

**PERSONAL LEAVE WILL NOT BE GRANTED PRIOR TO THE TIME IT IS EARNED.**

MAJOR MEDICAL LEAVE (MS Code Annotated §§ 25-3-95 through 25-3-97)

Major medical leave may be used for the illness or injury of an employee or member of the employee’s immediate family only after the employee has used one (1) day of accrued personal or compensatory leave (or combination) for each absence due to illness, or leave without pay if the employee has no accrued personal or compensatory leave.

However, major medical leave may be used, without prior use of personal leave, to cover regularly scheduled visits to a doctor’s office or a hospital for the continuing treatment of a chronic disease, as certified in advance by a physician. (Examples of continuing treatment include, but are not limited to: dialysis, chemotherapy, and prenatal checkups.) Certification by a physician of the chronic disease/condition is required each June (Section 8.3).

For each absence due to illness of thirty-two (32) or more consecutive working hours (combined personal leave and major medical leave), major medical leave shall be authorized only when certified by the attending physician.

“Physician” means a doctor of medicine, osteopathy, dental medicine, podiatry or chiropractic.

An employee may use up to three (3) days of earned major medical leave for each occurrence of death in the immediate family requiring the employee’s absence from work. No qualifying time

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MAJOR MEDICAL LEAVE (continued)

or use of personal leave will be required prior to use of major medical leave for this purpose. The immediate family is defined as: spouse, parent, step-parent, sibling, child, step-child, grandchild, grandparent, son or daughter-in law, mother or father-in-law or brother or sister-in-law. Child means a biological, adopted or foster child, or a child for whom the individual stands or stood “in loco parentis”.

Major medical leave for full-time employees is earned and accumulated at the following rates:

CONTINUOUS SERVICE	ACCRUAL RATE (Monthly)	ACCRUAL RATE (Annually)
1 month to 3 years	8 hours	12 days
37 months to 8 years	7 hours	10.5 days
97 months to 15 years	6 hours	9 days
Over 15 years	5 hours	7.5 days

Employees working less than a full workweek and part-time employees shall earn major medical leave on a pro-rata basis. The accumulation of leave will be computed utilizing the Mississippi State Personnel Board’s conversion tables.

Leave is not earned and credited until the end of the pay period. NO leave shall be taken until such time as it is earned. There is no maximum limit to the number of hours of major medical leave an employee may accumulate. Personal leave may be used to supplement major medical leave, but major medical leave cannot be used to supplement personal leave.

EXHAUSTION OF MAJOR MEDICAL LEAVE

An employee is entitled to use all accrued major medical leave for recuperation from illness. In cases of illness or disability exhausting available major medical leave, the employee may be allowed to charge the excess days against accumulated personal leave or compensatory leave earned by the employee. If all accumulated major medical leave and personal leave or compensatory leave have been used, employees are subject to a pro-rata deduction from their salaries for the length of time or number of days in excess of accumulated leave.

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DONATED LEAVE FOR CATASTROPHIC ILLNESS OR INJURY (MS Code Annotated §§ 25-3-91, 25-3-3 and 25-3-95, as amended)

Effective March 25, 2003, Senate Bill 2317 was signed into law, allowing any state employee to donate accrued personal or major medical leave to another state employee who is suffering from a catastrophic injury or illness, or to another employee who has a member of his/her immediate family who is suffering from a catastrophic injury or illness.

“Catastrophic injury or illness” means a **life-threatening** injury or illness of an employee or member of an employee’s immediate family which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the state for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery that result in intermittent absences from work and which are long-term in nature and require long recuperation periods may be considered catastrophic.

“Immediate family” is defined as spouse, parent, stepparent, sibling, child or stepchild.

Any employee may donate a portion of his/her earned personal leave or major medical leave to another employee who is suffering from a catastrophic injury or illness, or to another employee who has a member of his/her immediate family who is suffering from a catastrophic injury or illness, as follows:

- A. The employee donating the leave (“the donor employee”) shall designate the employee who is to receive the leave (the “recipient employee”) and the amount of earned personal leave and major medical leave that is to be donated, and shall notify the donor employee’s appointing authority or supervisor of his/her designation. The donor employee’s appointing authority or supervisor then shall notify the recipient employee’s appointing authority or supervisor of the amount of leave that has been donated by the donor employee to the recipient employee.
- B. The maximum amount of earned personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave, and the maximum amount of earned major medical leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the earned major medical leave of the donor employee. All donated leave shall be in increments of at least twenty-four (24) hours.

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DONATED LEAVE FOR CATASTROPHIC ILLNESS OR INJURY (continued)

- C. An employee must have exhausted all of his/her earned personal leave and major medical leave before he/she will be eligible to receive any leave donated by another employee.
- D. Before an employee may receive donated leave, he/she must provide his/her appointing authority or supervisor with a physician's statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.
- E. If an employee is aggrieved by the decision of his/her appointing authority that the employee is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness, the employee may appeal the decision to the Employee Appeals Board (EAB).
- F. The maximum period of time that an employee may use donated leave without returning to work at his/her place of employment is ninety (90) days, which commences on the first day that the recipient employee uses donated leave. Donated leave that is not used because a recipient employee has used the maximum amount of donated leave authorized under this paragraph shall be returned to the donor employees in the manner provided under paragraph (G) of this subsection.
- G. If the total amount of leave that is donated to any employee is not used by the recipient employee, the donated leave shall be returned to the donor employee on a pro-rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees. In no case will any donor employee receive more leave in return than the employee donated.
- H. The failure of any appointing authority or supervisor of any employee to properly deduct an employee's donation of leave to another employee from the donor employee's earned personal leave or major medical leave shall constitute just cause for dismissal of the appointing authority or supervisor.
- I. No person through the use of coercion, threats or intimidation shall require or attempt to require any employee to donate his/her leave to another employee. Any person who alleges a violation of this paragraph shall report the violation to the executive head of

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DONATED LEAVE FOR CATASTROPHIC ILLNESS OR INJURY (continued)

the agency by whom he/she is employed or, if the alleged violator is the executive head of the agency, then the employee shall report the violation to the Mississippi State Personnel Board. Any person found to have violated this paragraph shall be subject to removal from office or termination of employment.

- J. No employee can donate leave after tendering notice of separation for any reason or after termination.
- K. Recipient employees of agencies with more than five hundred (500) employees as of March 25, 2003, may receive donated leave only from donor employees within the same agency. A recipient employee in an agency with five hundred (500) or fewer employees as of March 25, 2003, may receive donated leave from any donor employee.
- L. In order for an employee to be eligible to receive donated leave, the employee must:
  - 1. Have been employed for a total of at least twelve (12) months by the employer on the date on which the donated leave is donated; and
  - 2. Have been employed for at least 1250 hours of service with such employer during the previous twelve-month period from the date on which the leave is donated.
- M. Donated leave shall not be used in lieu of disability retirement.
- N. Those employees who received donated leave and continue to be eligible to use it as of July 1, 2000 will be allowed to use that leave which was donated to them before July 1, 2000.

MISSISSIPPI LIVING ORGAN DONOR LEAVE (MS Code Annotated § 25-3-103)

All permanent full-time or part-time employees who have been employed by any agency of State government for a period of six months or more and who donate an organ, bone marrow, blood or blood platelets are eligible for organ donor leave. Those individuals employed by local government entities or school districts are not eligible for leave under this policy.

Employees may use organ donor leave only upon receipt of prior approval from the donor employee's agency but are not required to use accumulated Major Medical Leave or personal

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MISSISSIPPI LIVING ORGAN DONOR LEAVE (continued)

leave before using organ donor leave. Certification by the employee’s attending physician for an employee participating as a bone marrow or organ donor will be required prior to using organ donor leave.

Employees requesting placement on organ donor leave for the purpose of donating blood or blood platelets must provide verification from the blood service organization of the donation of blood and/or blood platelets to their supervisor upon returning to work to be approved for organ donor leave.

An employee may use:

- Up to thirty days (240 hours) of organ donor leave in any twelve month period to serve as a bone marrow donor;
- Up to thirty days (240 hours) of organ donor leave in any twelve month period to serve as an organ donor;
- Up to one hour to donate blood every fifty-six days; and
- Up to two hours to donate blood platelets no more than twenty-four times in a twelve-month period in accordance with appropriate medical standards established by the ARC or other nationally recognized standards.

MILITARY LEAVE (MS Code Annotated §§ 33-1-19 and 33-1-21)

Employees requesting leave when ordered to military duty in excess of the fifteen (15) days allowed by law are entitled to leave of absences from their respective duties without loss of time, annual leave or efficiency rating until relieved from duty. If approved by the appointing authority, it can be charged against personal leave.

Military leave may be granted to an employee for the purpose of reporting for a physical examination at a distant point, provided that such an examination results from an official order by military authorities. Each employee shall submit a copy of the military orders along with the request for military leave.

The Uniformed Services Employment and Re-employment Act (USERRA) of 1994, a federal law, requires employers to allow up to five (5) years of leave (whether paid or unpaid) to a soldier

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MILITARY LEAVE (continued)

who leaves to perform military duty, performs that duty satisfactorily, and requests his/her job back within the statutory time limits. The soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.

USE OF LEAVE DURING PREGNANCY

Federal Law requires that women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. (42 U.S. Code § 2000e (k))

- All types of leave shall be granted to pregnant women on the same terms as leave is granted to other employees.
- The appointing authority shall not terminate the employment of any employee in the state service because of pregnancy or require that such employee take a mandatory leave.
- When certified in advance by a medical doctor, pregnant women can use major medical leave for regularly scheduled prenatal care by a medical doctor without the requirement that personal leave be used for the first eight (8) hours of each absence for subsequent visits. Just as with major medical leave, the first day (or the first eight (8) hours) of leave taken for pregnancy must be personal leave or compensatory leave or unpaid leave (if the employee has no accrued personal or compensatory leave).

COMPENSATORY LEAVE (MS Code Annotated § 25-3-92 (1))

For the purposes of this policy, the workweek shall begin at 12:01 a.m. on Monday and end at 12:00 p.m. the following Sunday. It shall be the responsibility of supervisory staff to ensure adherence to this policy. Each office will be responsible for recording compensatory leave and reporting it to the payroll office for its employees.

Except for certain positions of the Schools for the Blind and Deaf, it is the Department’s policy not to award monetary compensation for extra hours worked. All approved extra hours worked shall be remunerated through compensatory leave. Because of differing regulations dictated by FLSA wage and hour laws, this policy shall address two (2) classifications of employees as relating to the administration of compensatory leave, exempt employees and non-exempt



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COMPENSATORY LEAVE (continued)

employees. To effectively administer this policy, it is mandatory that each supervisor know the classification of each employee. If either the supervisor or the employee is unsure about an employee’s classification, please contact the Office of Human Resources.

**Any request to accrue compensatory leave must receive prior approval before it will be allowed.** To receive prior approval, the employee must have a completed leave form (online at [www.mde.k12.ms.us/human\\_resources/forms.html](http://www.mde.k12.ms.us/human_resources/forms.html)) with the signature of his/her supervisor. Each office may, at their discretion require two levels of approval for earning compensatory leave.

EARNING COMPENSATORY LEAVE (NON-EXEMPT EMPLOYEES)

It is the position of the Department that non-exempt employees should not work overtime. However, should circumstances require overtime, the Fair Labor Standards Act (FLSA) requires that non-exempt employees must receive time and one-half for any approved time worked in excess of 40 hours per week. If a supervisor has prior knowledge that an employee will be required to work any time outside the normal workweek, causing the employee to work more than 40 hours during any week, the supervisor may request that the employee take time off during the week in lieu of earning compensatory leave.

The maximum number of compensatory leave hours to be accrued by a non-exempt employee is not to exceed 80 hours. Any compensatory leave request that would cause a non-exempt employee to accrue more than 80 hours must be submitted, with justification, to the Deputy State Superintendent or Accountability Director for prior approval. Accrued compensatory leave in excess of 80 hours will only be approved in cases of extreme emergency. The supervisor should encourage any non-exempt employee with a compensatory leave balance greater than 80 hours to take leave immediately, or at the earliest possible time.

EARNING COMPENSATORY LEAVE (EXEMPT EMPLOYEES)

The total number of hours that can be worked by exempt employee is not limited by Fair Labor Standards Act (FLSA). Therefore, exempt employees may, at any time, work more than 40 hours during any workweek without prior approval. **However, should an exempt employee be required by their immediate supervisor to work in excess of 40 hours during the workweek and expect to earn compensatory leave for extra hours worked, the employee must complete a form, with the appropriate signatures, prior to working in excess of 40 hours.**

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EARNING COMPENSATORY LEAVE (EXEMPT EMPLOYEES) (continued)

If the exempt employee has received prior approval to earn compensatory leave for extra hours worked, compensatory leave shall be awarded at a rate of straight time (one hour earned for each hour worked). The maximum number of hours to be accrued by an exempt employee is not to exceed 160 hours. Any compensatory leave request that would cause an exempt employee to accrue more than 160 hours must be submitted, with justification, to the Deputy State Superintendent or Accountability Director for prior approval. Accrued compensatory leave in excess of 160 hours will only be approved in cases of extreme emergency. The supervisor should encourage any exempt employee with a compensatory leave balance greater than 160 hours to take leave immediately, or at the earliest possible time.

EARNING COMPENSATORY TIME FOR A STATE HOLIDAY

Compensatory leave shall be awarded at straight time (one hour earned for each hour worked) for any time worked on an official state holiday for exempt and non-exempt employees, if the employee has received prior approval to work by completing a form. A holiday is considered part of the 40 hours that make up the normal workweek, and therefore, time and one-half is not applicable. **(This part of the policy does not apply to employees of the Schools for the Blind and Deaf, School of the Arts and School Attendance Officers who work on the basis of a school calendar.)**

EARNING COMPENSATORY TIME FOR ATTENDANCE AT FUNCTIONS

Both exempt and non-exempt employees will receive compensatory leave for attendance at functions (i.e.: training, workshops, conferences, etc.) if the employee's attendance at the function is mandatory and will cause the employee to work more than 40 hours during the workweek.

**If an employee's immediate supervisor does not allow travel time,** compensatory leave will also be allowable for travel to and from any function or worksite outside of normal working hours that is the result of mandatory attendance at a function. Travel arrangements, including estimated departure and arrival times, must be approved in advance by the immediate supervisor to ensure adherence to this policy. The employee must notify the immediate supervisor of any changes in travel and/or work schedule as soon as possible. This policy is the same for both in-state and out-of-state situations.

No compensatory leave will be earned for functions (training, workshops, conference, etc.) attended at the discretion of the employee, and the use of personal leave may be required by

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EARNING COMPENSATORY TIME FOR ATTENDANCE AT FUNCTIONS (continued)

the Office director for attendance at such functions during normal work hours. However, if attendance at a discretionary function occurs on a state holiday, compensatory leave may be earned in accordance with this policy.

RULES FOR TAKING COMPENSATORY LEAVE

Employees are encouraged to take compensatory leave within 90 days of the date earned. Requests to take compensatory leave will be approved at the discretion of the immediate supervisor. Supervisors and employees are encouraged to work together on requests for use of compensatory leave in order to avoid any undue disruption of office activities.

DISPOSITION OF COMPENSATORY LEAVE BALANCES UPON TERMINATION

Non-exempt employees, upon termination, will be compensated for any accrued compensatory leave balance; however, since this is not desirable to the Department, each supervisor shall closely monitor an employee’s workload to ensure that only essential overtime is worked. It is, therefore, imperative that the supervisor shall ensure that all accrued compensatory leave is taken as quickly as possible.

**Exempt employees, upon termination, forfeit any unused compensatory leave.**

ADMINISTRATIVE LEAVE (MS Code Annotate § 25-3-92 (2))

Administrative leave with pay may be approved for any employee serving as a witness, juror, or party litigant, as verified by the Clerk of the Court. Any fees earned for such services shall not be counted against such leave. Administrative leave may also be approved by the Governor or the State Superintendent in the event of extreme weather conditions or in the event of a man-made technological or natural disaster or emergency. Questions on whether to work during inclement weather should be directed in a timely manner to an employee’s supervisor.

The appointing authority may grant administrative leave with pay to any employee who is a certified disaster service volunteer of the American Red Cross and who participates in specialized disaster relief services for the American Red Cross in this state and in states contiguous to this state when the American Red Cross requests the employee’s participation. Administrative leave granted under this paragraph shall not exceed twenty (20) days in any twelve-month period. An employee on leave shall not be deemed to be an employee of the state for purposes of workers compensation or for purposes of claims against the state allowed

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ADMINISTRATIVE LEAVE (continued)

under MS Code Chapter, Title 11. As used in this paragraph, the term “disaster” includes disasters designated at level II and above in the American Red Cross national regulations and procedures.

LEAVE WITHOUT PAY

Leave without pay should be requested only in emergency situations and never for routine time off. All leave without pay must receive prior approval from the employee’s immediate supervisor. Leave without pay in excess of five (5) consecutive days, except in unusual circumstances, may only be approved by the State Superintendent or the Education Accountability Director.

Cases where it may be in the best interest of all parties to grant leave without pay in excess of five (5) days include, but are not limited to, employees required to be absent from work due to military obligations in excess of the fifteen annually allowable days of military leave, and employees on medical leave who have exhausted all other accrued leave but remain unable to work due to a medical condition as certified by a physician, including pregnancy.

Payment of holidays or administrative leave approved for inclement weather occurring during the leave without pay shall not be allowed. Leave without pay shall not, under any circumstances, be considered as time for purposes of leave accrued for retirement, or other compensable considerations of employment. An employee may retain insurance benefits while on leave without pay provided he/she bears all the costs associated with the insurance coverage.

LEAVE OF ABSENCE (MS Code Annotated § 25-3-93 (2))

An employee may be granted an extended absence from work for a period not to exceed one (1) year. This type of leave may be granted only for special circumstances such as prolonged illness or, in order to take advantage of specialized training or educational opportunities. This type of leave is similar to leave without pay; however, since it is for an extended time period, additional criteria have been established for its use.

Employees wishing to apply for a leave of absence must:

- First secure a recommendation from their immediate supervisor and appropriate Superintendent’s Management Team member;

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LEAVE OF ABSENCE (continued)

- Prepare a formal letter of application to the State Superintendent specifying the reasons for requesting the leave of absence, the beginning and ending dates of such absence, medical documentation, if applicable, and plans following completion of the leave of absence;
- Submit the secured recommendation and letter of application through the appropriate supervisory levels for submission to the Human Resources Director;
- The Human Resources Director will submit the request to the State Superintendent for consideration.

Any leave of absence must receive prior approval from the State Superintendent.

When the granted leave of absence is completed, the employee will be restored to his/her same position, unless that position is no longer available. The employee granted a leave of absence shall not forfeit all previously accumulated continuous service; however, the leave of absence will not be considered as creditable service in the earning of personal and medical leave. In order for the employee to have continued insurance coverage, all insurance premiums must be paid in full by the employee while on leave of absence. Procedures for making such payments may be secured from the Payroll Office.

If the employee fails to report promptly back to duty at the expiration of the granted leave of absence, except for satisfactory reasons submitted in advance and approved by the State Superintendent, it will be cause for dismissal or loss of status.

A state service employee, with the consent of the State Superintendent and the concurrence of the Mississippi State Personnel Director, may be placed on a leave of absence for purposes of accepting an assignment in the non-state service for a period not to exceed one (1) year.

FURLOUGH

Furlough, involuntary leave without pay, may be implemented when the State Superintendent certifies and has written concurrence from the State Fiscal Officer that such action is necessary to temporarily reduce expenditures to avoid a deficit of funds.

Such leave for the purpose of reducing expenditures shall be based on the State Superintendent's determination that:

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FURLOUGH (continued)

1. Funds on hand or to be received during the current fiscal period will be inadequate to effectively discharge the agency's responsibilities without recourse to reductions-in-force or,
2. It is necessary to accrue funds by reducing current payroll expenses so that a reduction-in-force or more extensive furloughs may be minimized or avoided.

Provisions for Implementation of Involuntary Leave Without Pay (Furlough)

Before instituting such leave, the State Superintendent shall develop an equitable and systematic plan for implementation of an agency-wide furlough, stating the reasons that require this action. Such plan and subsequent furlough action must be submitted to the Mississippi State Personnel Board for review and approval prior to implementing such leave.

Such a plan shall apply uniformly to all employees in the agency, regardless of status. All employees, including those on paid leave, shall be placed on an equivalent number of hours of leave without pay. A proportionate number of hours shall be applied to part-time employees. However, the State Superintendent may, with the approval of the Mississippi State Personnel Director, make such leave subject to early cancellation or periodic callback on a case-by case basis, to protect public health, safety or property or to ensure operations of critical agency functions. The plan and the employee's notice of leave shall describe the reason for, and conditions of the provision.

Employees who are to be placed on such leave shall be given prior written notice, advising the employee of the particulars regarding the action, including the dates and times leave is to begin and end.

While on furlough leave, an employee shall continue to accrue personal and major medical leave as though the involuntary leave without pay had not occurred, but personal and major medical leave can not be taken in lieu of furlough leave.

Failure on the part of an employee to return to work from such leave to his/her previous work status as directed in writing shall be cause for dismissal.

Involuntary leave without pay conducted under this policy shall not be grievable.

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LEAVE REPORTING

The minimum amount of leave that can be taken is one-tenth of one hour. Arriving late for work, departing early and taking a lunch break in excess of the scheduled period must all be reported as leave. Leave taken in periods of less than an hour at different times or dates cannot be accumulated and the reported as a full hour. Each absence is considered independent of other absences. Leave taken is reported from the first day of the month to the last day of the month. Personal and major medical leave balances will be made available to each employee on a monthly basis with his/her paycheck. This leave report will show leave earned and taken during the **previous month**. The leave report does not report leave taken in the current month. The employee and his/her supervisor shall be responsible for maintaining a current balance of all unused leave in order to ensure the employee is not in a position to be on leave without pay.

LEAVE ACCRUAL AND TRANSFER

Leave is accrued and accruals are calculated after the employee has worked a full month, beginning with the date of initial employment. During the first month of employment, no leave may be taken unless it is leave without pay or administrative leave granted as described herein. If a former employee is re-employed after a break in service, he/she shall be considered a new employee with leave accrual calculated accordingly. Individuals employed by the Department directly from another state agency with no break in service shall be allowed to transfer all accrued personal and major medical leave and to continue earning leave at the same rate.

DISPOSITION OF LEAVE AT TERMINATION OR RETIREMENT

**It is the policy of the Department that the termination date of an employee shall not be extended to allow the terminating employee to utilize accumulated leave.** Payment of not more than thirty days (240) hours of accumulated personal leave shall be made to the employee during the pay period following termination whether by resignation, lay-off, termination for cause, retirement, or other reasons.

The beneficiary of an active employee who dies with unused personal leave shall receive payment for all personal leave accumulated but not used by the employee (MS Code Annotated § 25-3-97).

Payment for unused compensatory time shall be made only as required by the Fair Labor Standards Act (FLSA). In no instance will an employee receive compensation for any accumulated major medical leave.

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DISPOSITION OF LEAVE AT TERMINATION OR RETIREMENT (continued)

Unused personal leave, reduced by the amount for which payment was made as described above, and all unused medical leave shall be counted as creditable service for the purpose of the Public Employees' Retirement System, provided a minimum of fifteen (15) days or 120 hours of leave has been accumulated.

FAMILY AND MEDICAL LEAVE ACT OF 1993

All information provided below and more detailed information and instructions regarding the implementation and application of the Family and Medical Leave Act of 1993 can be found at [www.dol.gov/WHD/fmla](http://www.dol.gov/WHD/fmla).

GENERAL PROVISIONS

In keeping with the requirements of the Family Medical Leave Act of 1993 (hereinafter referred to as FMLA) and the State of Mississippi's policies, an employee must have worked for the State for a total of twelve months and the employee must have worked for the State for 1250 hours in the twelve month period immediately preceding the commencement of the leave to be eligible for FMLA leave. An employee meeting these requirements is referred to as an eligible employee for purposes of this policy.

AVAILABILITY OF FAMILY MEDICAL LEAVE

An eligible employee may take up to the equivalent of twelve workweeks of unpaid family and/or medical leave (FMLA leave) during any twelve month period for one or more of the following purposes:

- For incapacity due to pregnancy, prenatal medical care, or childbirth;
- To care for a newborn son or daughter, a recently adopted child, or a recently placed foster child through formal placement by a State agency;
- To care for a legal spouse, parent (not including in-laws) or son or daughter (under the age of eighteen or over the age of eighteen and incapable of self care because of a physical or mental disability), who has a serious health condition; or
- Because of a serious health condition that makes the employee unable to perform the functions of his or her job.



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AVAILABILITY OF FAMILY MEDICAL LEAVE (continued)

Leave to care for a new child must be taken within the first twelve months of birth or placement by adoption or foster care, and leave may be taken by the father and/or the mother of the child.

Federal regulations allow an employer to choose from several different methods in determining the twelve month period in which the twelve weeks of leave entitlement occurs.

AGENCY POSTING REQUIREMENTS

Each appointing authority shall post and keep posted, in conspicuous places where notices to employees and applicants are customarily posted, a notice summarizing the entitlement to family leave and providing information concerning the procedures for filing complaints of violations of the Act.

MILITARY LEAVE ENTITLEMENTS

Eligible employees are entitled to two different kinds of leave as a result of either being in the military or having family members in the military:

Eligible employees are entitled to up to twelve weeks of FMLA leave because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a member of any Armed Forces and/or a reserve component of the Armed Forces on covered active duty, or has been notified of an impending call to covered active duty status. Qualifying exigencies may include any one or more of the following: 1) attending to issues arising from a short notice (seven days or less) of deployment, with FMLA leave entitlement lasting up to seven days from the notice; 2) attending certain military events; 3) attending certain childcare and school activities related to the military duty; 4) addressing certain financial and legal arrangements; 5) attending certain counseling sessions; 6) taking up to five days to spend with a covered service member who is on short-term, temporary rest and recuperation leave; 7) attending post-deployment reintegration briefings; or 8) other activities agreed to by the agency and the employee. Eligible employees must provide notice of the need for such leave as soon as reasonable and practicable. This kind of leave may be taken intermittently or on a reduced schedule.

Eligible employees may take up to twenty-six weeks of leave during a single twelve month period to care for a covered service member who is the employee’s spouse, son, daughter, parent or next of kin (nearest blood relative or designated as such). A covered service member

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MILITARY LEAVE ENTITLEMENTS (continued)

is a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Eligible employees may take this kind of leave intermittently, or on a reduced schedule, where medically necessary. This twenty-six week leave entitlement will include all other permissible FMLA leave.

SERIOUS HEALTH CONDITION

A serious health condition is defined as an illness, injury, or physical or mental condition that involves:

- *In-patient care* in a hospital, hospice, or residential care facility, including a period of incapacity or treatment related to the inpatient care;
- *A period of incapacity* of more than three consecutive calendar days, with *two or more visits to a health care provider*, one occurring within seven days of the onset of incapacity, and the second within thirty days of the onset (unless extenuating circumstances exist);
- *A period of incapacity* of more than three consecutive calendar days, with one or more visits to a health care provider, the first occurring within seven days of the onset of the incapacity, and *which results in a regimen of continuing treatment* under the supervision of the health care provider (example: four day absence, one doctor’s visit, and prescription medication);
- Any period of incapacity due to *pregnancy, for prenatal care, or childbirth*;
- Treatment for or incapacity because of a *chronic serious health condition* (examples: diabetes or epilepsy), which requires periodic visits (at least two per year) for treatment by a health care provider;
- *Incapacity which is permanent or long term* for which treatment may be ineffective, and the individual is under the continuing supervision of a healthcare provider (example: Alzheimer’s Disease); or

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SERIOUS HEALTH CONDITION (continued)

- Any absence to receive *multiple treatments by a health care provider* either for restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment (example: chemotherapy treatments for cancer).

The serious health condition must prevent the employee from performing the functions of his or her job or prevent the qualified family member from participating in school or other daily functions. A serious injury or illness in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the covered service member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the member’s covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period of covered active duty, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the covered service member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the member’s covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

INTERMITTENT OR REDUCED SCHEDULE LEAVE

An eligible employee generally does not need to use FMLA leave entitlement in one block. Eligible employees who, because of a serious health condition of their own or a qualifying relative, need to take FMLA leave on an intermittent basis or to stretch their leave out by working a reduced schedule, must provide certification of the medical necessity for such leave. Eligible employees must make reasonable efforts to schedule planned medical treatment so as not to unduly disrupt the agency’s operations. When eligible employees request intermittent or reduced schedule leave because of a birth or placement of a child with them for adoption or foster care, the agency director and/or management will consider such things as how the request for intermittent leave or reduced hours will affect the work output of the employee’s positions, and the request will be granted only at the agency’s discretion. Under certain circumstances, the agency may require an employee on intermittent leave or reduced schedule leave to transfer temporarily to an alternative job for which he or she is qualified and that better accommodates the leave.

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MARRIED COUPLES

The twelve week maximum per eligible employee per year applies to married couples, rather than individual employees, if both members of the couple work for the same agency and the leave is for the purpose of caring for a new child by birth, adoption or foster care placement or to care for the employee’s parent. Leave requested because of an eligible employee’s own serious health condition is not subject to this limitation, nor is leave to care for the eligible employee’s sick spouse or child. Husbands and wives who are both employed by the agency are limited to a combined twenty-six workweeks of leave during the twelve month period to care for a covered service member.

NOTICE REQUIREMENTS

Employees: Employees must provide sufficient information to the agency’s human resources department to determine if the leave qualifies for FMLA protection, and they must also provide the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.

When leave is foreseeable, employees are required to give thirty days advance notice of their expected need for FMLA leave. If they fail to provide such notice, the agency may deny the leave until a thirty day notice period has expired. When thirty days notice is not possible, employees are required to give as much notice as is practicable, and they generally must comply with the agency’s call-in procedures. Medical certification for most FMLA leave is required and must be submitted within no more than fifteen days of an employee’s initial request for leave. It is the employee’s obligation to return this form as required. If the certification indicates that the employee does not qualify for FMLA leave, or if the employee fails to return the form in a timely manner, the employee will be subject to the agency’s normal attendance and discipline policies. Medical certifications must be submitted on the appropriate form which may be obtained in the agency’s human resources department. Employees on leave must call the agency periodically (but at least every thirty days) to report on their status and intent to return to work.

The Agency: The agency will inform employees if they are eligible under FMLA, if their requested leave will be designated as FMLA-protected, and the amount of leave counted against the employee’s leave entitlement. The notice will also specify any additional

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The Agency (continued)

information required, as well as the eligible employees' rights and responsibilities. If the agency determines that the leave is not FMLA protected, the agency will notify the employee and supply the reason for the ineligibility.

USE OF ACCRUED LEAVE

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave, if they otherwise satisfy all of the procedural requirements for the use of that accrued leave. Leave for a worker's compensation injury that involves a serious health condition, as defined by this policy, will run concurrently with FMLA leave up through the permissible twelve weeks of FMLA leave.

BENEFITS DURING LEAVE

Health insurance benefits will be continued during FMLA leave, and the State of Mississippi will continue to cover the applicable premium amount for the employee. An employee may continue dependent coverage during leave, but he or she will be responsible for paying for the coverage on a timely basis. If the employee ceases paying the premium, the State may cancel the dependent coverage. However, the State may also continue the dependent coverage at its own expense and recoup payments from the employee upon the employee's return to active employment. Vacation, sick and personal leave benefits will not accrue during FMLA leave.

An employee who fails to return to work at the end of the FMLA leave and who cannot excuse the failure as due to reasons beyond his or her control, or because of the continuance, recurrence or onset of a serious health condition, is potentially liable for reimbursing the State for its payment of any or all of the health insurance premiums or other non-health premiums it paid during the employee's FMLA leave, except for premiums paid by the State while the employee was concurrently on paid leave. The amounts paid can be deducted from any moneys owed by the State to the employee, including unpaid wages or accrued leave, to the extent permitted by law. Employees are considered to have returned to work if they come back to work for at least thirty days after the conclusion of the FMLA leave.

If an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays during unpaid FMLA leave, the agency is required to follow established policies or practices for continuing such benefits for other instances of leave

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BENEFITS DURING LEAVE (continued)

without pay. If the agency has no established policy, the employee and the agency are encouraged to agree upon arrangements before FMLA leave begins. With respect to pension and other retirement plans, any period of FMLA leave will be treated as continued service (i.e., no break in service) for purposes of vesting and eligibility to participate.

RETURN FROM LEAVE

Employees returning from FMLA leave will be restored to their prior jobs and pay wherever practicable. Such employees will receive all benefits accrued prior to the beginning of leave, and they will be provided continuation of, or reinstatement to, health insurance benefits. If the employee’s prior job is not available, the employee will be restored to an equivalent position with equivalent pay and terms and conditions of employment.

Employees must report on their intention to return to work as requested by the agency. So that their work may be properly scheduled, employees must provide reasonable notice (within two business days) of any foreseeable changed circumstances requiring either longer or shorter FMLA leave periods than originally requested.

DESIGNATION OF LEAVE AS FMLA LEAVE AND NOTIFICATION TO EMPLOYEE

The agency is responsible for designating leave that is FMLA qualifying and for giving notice of the designation to the employee.

- A. If the agency knows the reason for leave is an FMLA reason at the time leave begins, the leave must be designated by the agency in writing at that time. If the agency knows the leave is for a FMLA reason at the time leave begins and *fails* to designate, the leave may not be counted against the employee's FMLA entitlement, and the employee continues to be subject to FMLA protection. Once the agency designates, the leave may be counted against the FMLA entitlement only from that time forward, and not retroactively.
- B. When the agency learns that leave is for an FMLA purpose after leave has begun, but before the employee returns to work, the entire or some part of the leave period may be retroactively counted as FMLA leave.
- C. Leave may be designated as FMLA after the employee has returned to work in only two circumstances:

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DESIGNATION OF LEAVE AS FMLA LEAVE AND NOTIFICATION TO EMPLOYEE (continued)

1. The leave is short-term and the agency is awaiting medical certification, or
  2. The agency does not know the reason for the leave, but learns upon the employee's return to work. The designation must be made within two business days of the employee's return to work. If the agency has not made a designation, but the employee wants the absence to be treated as FMLA leave, the employee must notify the agency within two business days of his or her return to work. If such notification is not made, the employee may not subsequently assert FMLA protection.
- D. If an employee takes paid or unpaid leave and the agency does not designate the leave as FMLA leave, it may not be counted against the employee's FMLA entitlement.
- E. The agency must provide written notice detailing the specific expectations and obligations of the employee and explaining any consequence of failure to meet these obligations. Such specific notice must be provided to the employee within a reasonable time after notice of the need for leave is given, and must include, as appropriate:
1. That the leave will be counted against the employee's annual FMLA leave entitlement;
  2. Any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;
  3. The employee's right to substitute paid leave and whether the agency will require the substitution of paid leave and the conditions related to any substitution;
  4. Any requirement for the employee to make any premium payments to maintain health benefits, the arrangements for making such payments, and the consequences of failure to make such payments on a timely basis;
  5. Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;
  6. The employee's status as a key employee, the potential consequence that restoration may be denied following FMLA leave, and the conditions required for such denial;
  7. The employee's right to restoration to the same or an equivalent job upon return from leave; and

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DESIGNATION OF LEAVE AS FMLA LEAVE AND NOTIFICATION TO EMPLOYEE (continued)

8. The employee's potential liability for payment of health insurance premiums paid by the agency during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

MEDICAL CERTIFICATION

The agency may require that an employee's leave to care for his/her seriously-ill immediate family member, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member.

When the leave is foreseeable and at least thirty days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested verification to the agency within the timeframe requested (which must allow at least fifteen calendar days after the agency's request) unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts.

The Department of Labor has developed an optional form (Form WH-380, as revised found at [www.dol.gov](http://www.dol.gov)) for employees or their family members to use in obtaining medical certification from health care providers that meet FMLA's certification requirements. This form or another form containing the same basic information may be used by the agency; however, no additional information may be required. The form contains required entries for:

- A. A certification as to which part of the definition of serious health condition, if any, applies to the patient's condition and the medical facts, which support the certification, including a brief statement as to how the medical facts meet the criteria or definition.
- B. The approximate date the serious health condition commenced and its probable duration.
- C. Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis.
- D. If the condition is pregnancy or a chronic condition, whether the employee is presently incapacitated and the likely duration and frequency of episodes of incapacity.



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MEDICAL CERTIFICATION (continued)

- E. If additional treatments will be required for the condition, an estimate of the probable number of such treatments.
- F. If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and the period required for recovery.
- G. If medical leave is required for the employee's absence from work because of the employee's own condition, whether the employee:
  - 1. Is unable to perform work of any kind;
  - 2. Is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions that the employee is unable to perform based on either information provided on a statement from the agency of the essential functions of the position, or if not provided, discussion with the employee about the employee's job functions; or
  - 3. Must be absent from work for treatment.
- H. If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery.

If an employee submits a complete certification signed by the health care provider, the agency may not request additional information from the employee's health care provider.

If the agency has reason to doubt the validity of the certification, it may require, at agency expense that the employee obtain the opinion of a second health care provider designated or approved by the agency. Any such health care provider designated or approved shall not be employed on a regular basis by the State.

If the second opinion differs from the original certification, the agency may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information previously

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MEDICAL CERTIFICATION (continued)

certified. The opinion of the third health care provider concerning the information previously certified shall be considered final and shall be binding on the agency and the employee.

The agency may require, at the employee's expense, that the employee obtain subsequent recertification on a reasonable basis. No second or third opinion on recertification may be required.

UNLAWFUL ACTS

The FMLA makes it unlawful for any employer to:

Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or

Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under, or relating to, the FMLA.

Please notify the agency’s executive director immediately if any of these actions occur. Employees may also file a complaint with the United States Department of Labor or bring a private lawsuit against the agency.

ENFORCEMENT

The U. S. Department of Labor (DOL) is responsible for the enforcement of the FMLA and may investigate and resolve complaints and violations under the Act in the same manner as under the Fair Labor Standards Act (FLSA). For assistance in complying with the FMLA, State agency employers may contact the area office of the Wage and Hour Division of the DOL at [www.dol.gov/WHD/](http://www.dol.gov/WHD/) or call (601) 965-4347 or 1-866-4-USWAGE.