

STATE OF MAINE
PRIMARY FAMILY AND MEDICAL LEAVE POLICY

I. Policy Statement

The State of Maine complies with federal and state Family and Medical Leave (“FML”) laws and provides leave consistent with collective bargaining agreements, Civil Service Law and Rules, and other relevant legal authority. The purpose of this Policy is to provide employees with a general description of their rights. In the event of any conflict between this Primary Family and Medical Leave (the “Policy”) and the applicable law, employees will be given all rights required by law.

This Policy applies to all Executive Branch Employees and provides up to 12 weeks (or up to 26 weeks for Military Caregiver Leave) of job protected leave during a 12-month period. Any questions about this Policy may be directed to the EEO Coordinator for the appropriate agency or the State EEO Coordinator in the Office of Employee Relations.

II. Definitions

A. “Child” means the employee’s biological child, the employee’s adopted child, the employee’s ward or a child for whom the employee is functioning as parent. A “child” must be under the age of 18, unless the child is incapable of self-care due to a disability.

B. “Continuing treatment” means:

1. Incapacity of more than 3 consecutive days; and
 - a. Treatment by a health care provider within the first 7 days and at least two more times within 30 days; or
 - b. Treatment by a health care provider once, plus a regimen of treatment (including prescription medication);
2. Pregnancy or prenatal care;
3. Episodic Conditions (requiring 2 or more visits with a health care provider within 12 months);
4. Permanent or long-term conditions; or
5. Conditions requiring multiple treatments.

- C. “Domestic Partner” means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other’s welfare.
- D. “Employer” means the State Government Department or Agency that employs the employee.
- E. “*in loco parentis*” means having the day-to-day responsibilities to care for and financially support a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood *in loco parentis* to the child for purposes of this Policy.
- F. “Health care provider” means a doctor of medicine or osteopathic medicine and other health care professionals such as podiatrists, dentists, clinical psychologists, physician assistants, nurse midwives, nurses certified for advanced practice, optometrists, chiropractors, and other providers who are authorized to practice medicine or surgery. State and Federal laws also recognize Christian Scientist practitioners on whom the employee relies for treatment through prayer or spiritual means.
- G. “Parent” means a biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term does not include parents “in law.”
- H. “Serious Health Condition” means an illness, injury, impairment or physical or mental condition that involves either:
 - 1. Inpatient Care (overnight stay in a hospital or similar facility); or
 - 2. Continuing Treatment.
- I. “Sibling” means a sibling of an employee who is jointly responsible with the employee for each other’s common welfare as evidenced by joint living arrangements and joint financial arrangements.
- J. “Spouse” means a party to a marriage that is legally recognized by the State of Maine.

III. **Employee Eligibility**

A. **Eligibility Generally**

To be eligible for leave under this policy, the employee must:

1. Be a classified or unclassified employee of the Executive Branch of Maine State Government; and
2. Have at least 12 months (this does not need to be consecutive) of State employment with the Executive Branch during the last seven years. The 12-month period means 52-weeks. If an employee was on payroll for any part of the week that full week counts towards the 52-week threshold.

An employee who has not met the eligibility requirements as listed above at the beginning of their requested leave may become eligible during the requested leave and may have their leave partially approved under this policy.

B. Calculation of Eligibility

1. *Permanent and Limited Period Positions (full-time and part-time)*

The 12-month employment requirement must include all periods of authorized leave, paid or unpaid. The hours worked during the 12-month period are not a consideration. A part-time employee who works for 12 months satisfies the same eligibility requirements as a full-time employee who works for 12 months.

2. *Seasonal Positions (full-time and part-time)*

The 12-month employment requirement will include only those months worked during the season. For example, a seasonal employee who works four months per season would be eligible at the beginning of the fourth season because they would have met the 12-month requirement. Time on authorized leave during the season must be counted as time worked for this purpose.

3. *Acting and Project Appointments*

Time in acting and project appointments is counted toward the 12-month requirement.

4. *Intermittent Positions*

For intermittent positions, the 12-month eligibility requirement will be met upon the completion of 2080 hours in intermittent status.

IV. Family and Medical Leave

A. Entitlement

An eligible employee may take up to 12 weeks of unpaid FML each calendar year:

1. For pregnancy or birth of a child or a domestic partner's child and to care for the newborn child within one year of birth;
2. For placement with the employee or the employee's domestic partner of a child for adoption or foster care and to bond with the newly placed child within one year of placement;
3. To care for the employee's spouse, domestic partner, child, sibling,¹ parent, or domestic partner's child with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;
5. Because of the donation of an organ by the employee for a human organ transplant.

B. Certification

The employing department shall require that an employee submit a certification from a health care provider to support the need for FML for the employee's own serious health condition or to care for a covered family member with a serious health condition. The certification form must be completed and returned within fifteen (15) calendar days. The HR representative must notify the employee within five (5) business days of receiving a complete and sufficient certification whether the leave will be designated as FML. Certification is not required for leave to bond (Section IV(D)) with a newborn child or a child placed for adoption or foster care.

If an employee provides a certification that is incomplete or insufficient, the HR representative must tell the employee in writing what additional information is needed and allow seven (7) calendar days to resubmit the certification. If the information is still insufficient for HR to make a determination, the HR representative must consult with its agency EEO representative or the State EEO Coordinator for further action.

¹ Please see the definition of Sibling under Section II.

The HR representative may also require the employee to submit a recertification for a long-term health condition every six months. Recertification may be required in less than 6 months if:

1. The employee requests an extension of leave;
2. Circumstances described by the previous certification have changed significantly; or
3. If the agency receives information casting doubt on the continuing validity of the certification.

C. Continuous and Intermittent Leave

An employee may take continuous or intermittent leave. The employer may not require the intermittent time off be taken in a minimum amount of time per day or per week. However, bonding leave taken after the birth, adoption, or fostering of a child, may be required to be continuous. (Please see Section IV(D)) of this Policy for more information.)

If an employee takes intermittent leave, then they are entitled to intermittent leave equal to the number of hours in their regularly scheduled workweeks multiplied by 12.

Examples:

1. A full-time employee whose regular weekly schedule is 40 hours per week is entitled to 480 (40 X 12) hours of intermittent FML.
2. A part-time employee whose regular weekly schedule is 20 hour per week is entitled to 240 (20 X 12) hours of intermittent FML.
3. An intermittent employee's weekly hours must be averaged by dividing the number of hours worked during the 12 months immediately preceding the leave period by 52 and rounding up to whole numbers. The average will be multiplied by 12 to determine the number of hours the employee may take for intermittent FML.

D. Pregnancy, Adoption, and Fostering Leave

Pregnancy related leave applies to both the pregnant person and the pregnant person's spouse, domestic partner, or non-pregnant parent. The employee may use leave for prenatal care and other medical appointments relating to pregnancy, and for the birth and resulting incapacity.

Employees may also use FML when a child is first placed with them for adoption or foster care. Employees may also use FML before the actual placement or adoption of a child to:

1. Attend counseling sessions;
2. Appear in court;
3. Consult with the attorney or doctor(s) representing the birth parent;
4. Submit to a physical examination; and/or
5. Travel to another country to complete an adoption.

Employees may also take up to the remaining balance of their FML as leave to bond with a child after birth, adoption, or fostering. Bonding leave, once commenced, must be taken continuously, unless otherwise agreed to by the employer.

Employees are entitled to use a certain amount of sick leave immediately following the birth of the child, which can be taken on an intermittent or continuous basis. The person who gave birth may use up to 6 weeks of sick leave for vaginal birth or up to 8 weeks of sick leave for caesarean ("C-Section") birth. The non-birthing parent may use up to 2 weeks of sick leave. However, if the person who gave birth or the child have a serious health condition then an employee may take additional sick leave, consistent with the Sick Leave Policy.

Employees may also be entitled to take additional leave following the birth or adoption of a child as unpaid leave in accordance with their applicable Collective Bargaining Agreement, although an employee may use accumulated compensation, vacation, and/or personal leave during this time. Employees are encouraged to contact their HR representative to determine if they are covered by this one (1) year leave benefit.

All leave periods under this section expire on the first anniversary of the child's birth, adoption, or foster placement.

E. Use of Paid Leave

If leave qualifies under both FML and the State's sick leave benefit, an employee must use their sick time for the duration of the leave before going on unpaid leave; however, if an employee elects to use other leave, such as vacation, compensatory time, or personal leave, or is collecting income protection or short-term disability, the employee is not required to use sick leave for the timeframe when the employee is receiving paid leave or income protection.

An employee may choose to use any accrued vacation, compensatory time, or personal leave to cover the leave which is not paid by sick leave. If an employee has exhausted their sick leave and declines to use, or does not have, accrued vacation, compensatory time, or personal leave, the balance of the 12-week entitlement will be provided as unpaid leave. All qualifying leave, whether paid or unpaid, will count towards the 12-week entitlement.

F. Asserting Protected Leave

Employees are not required to assert their rights under FML. An employee may choose to use any accrued vacation, compensatory time or personal leave available to them in accordance with standard practice for the employer. Supervisors and managers must not ask questions concerning the possible use of such leave as FML.

If an employee does not assert leave as FML and the request is denied, the employee may then assert the leave under FML. If the request qualifies for FML then the request for leave shall be approved consistent with this Policy.

The identification of qualifying leave must be made using information provided by the employee, either voluntarily or in connection with the practice for leave approval. For example:

1. The employee asks to use vacation to care for a seriously ill parent;
2. The employee asks to use sick leave and HR asks the employee for information to determine that the use of sick leave is covered by the State's sick leave policy; or
3. The employee asks for FML due to pregnancy or adoption.

If the Employer becomes aware that the leave qualifies for FML then the Employer shall designate the leave as FML retroactively if the employer receives sufficient information indicating the leave should be considered as FML, and the employee so informed. This retroactive designation shall not be used if it would cause harm or injury to the employee.

If the leave is covered by the State's sick leave policy, the employer may require the employee provide a medical statement, consistent with the employer's standard operating procedures.

If an employee is requesting FML for the serious medical condition of a domestic partner who has not previously submitted documentation of the domestic partnership for health insurance purposes, the employer may require the document for the purposes of determining eligibility for FML.

G. Advance Notice of Leave

Whenever possible, employees must give 30 days of advance notice for those leaves that are foreseeable. When it is not possible to provide 30 days' advanced notice, the employee must give as much notice as possible.

Examples:

1. An employee is scheduled for surgery in 60 days. The employee must give notice at least 30 days before the surgery because it is a foreseeable leave.
2. An employee is seen by a medical professional on Monday and is scheduled for an urgent surgery the following Monday. The employee should give notice as soon as possible because it is a foreseeable leave, but the employee could not have given notice 30 days in advance.
3. An employee is struck by a motor vehicle and taken to the hospital where the employee is admitted as an in-patient for 3 days. The employee must notify their supervisor as soon as possible because this leave is unforeseeable.

H. Spouses or Domestic Partners Employed by the State of Maine

All employees are entitled to 12 weeks of FML. If both an employee and their spouse or domestic partner work for the State, then both may take up to the 12 weeks of leave.

If, however, both spouses or domestic partners have the same Employer and use leave for the birth, adoption, or fostering of a child, then the employer may limit their leave for these purposes to a combined total of 12 weeks per calendar year (e.g. to 12 weeks between them). Should an employer wish to limit the use of FML, the employer should first consult with their HR contact.

If the employer limits the use of FML to a combined total of 12 weeks, and if either or both of the employees later need to use more leave for a serious health condition then this limitation must be withdrawn. However, the total time taken by each employee for the combination of the birth/placement reasons and the other qualifying reasons for leave under this policy cannot exceed 12 weeks per calendar year unless the other reason is Military Caregiver Leave.

I. Second Opinions

The employer may require the employee to provide a medical statement from the health care provider and may request a second opinion at the State's expense. If the opinions differ, a third opinion may be obtained from a health care provider jointly selected by the employer and the employee. The third opinion shall be paid for at the State's expense.

V. Grandparent Leave

Eligible employees are entitled to 10 workweeks of leave in any 2 years for care of a grandchild or domestic partner's grandchild with a serious health condition.

If the eligible employee can demonstrate they have an *in loco parentis* relationship with the grandchild or domestic partner's grandchild, then the employee is eligible for up to 12 weeks of FML per calendar year, consistent with this Policy. Please see the Family and Medical Leave Policy for Employees Taking Leave for a Grandchild with a Serious Health Condition for more information.

VI. Military Caregiver Leave

A. Entitlement

Eligible employees are entitled to 26 weeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, domestic partner, child, sibling,² parent, next-of-kin or domestic partner's child of the servicemember.³ For this type of leave, family members who are in the Regular Armed Forces are included.

B. 12-Month Period

The 12-month period for Military Caregiver Leave begins on the first day the eligible employee takes leave to care for a covered servicemember and ends 12 months after that date. Unlike other types of leave under this Policy, Military Caregiver Leave uses a rolling calendar year⁴ instead of a January through December calendar year.

Example:

1. An employee uses 12 weeks of FML for their own serious health condition during the single 12-month period and uses an additional 14 weeks of Military Caregiver Leave during the same period. On January 1, the employee will be eligible for an additional 12 weeks of FML, regardless of when the FML was used in the preceding year. However, the 14 weeks of Military Caregiver Leave will be restored on a rolling basis throughout the year, based on the anniversary of each use of this type of leave.

² Please see the definition of Sibling in Section II.

³ In the case of the death of the employee's spouse, domestic partner, parent, sibling, or child if the spouse, domestic partner, parent, sibling, or child is a member of the State military force or the United States armed forces, the employee is entitled to up to 10 weeks of unpaid leave in any 2 years.

⁴ A rolling year means the twelve (12) month period measured backward from the date an employee uses any Military Caregiver Leave. This is unlike the leave calculation under other sections of this Policy where the leave entitlement is refreshed on January 1st each year.

C. Certification

An employer may require the leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

An authorized health care provider is a:

1. United States Department of Defense ("DOD") health care provider;
2. United States Department of Veterans Affairs ("VA") health care provider;
3. DOD TRICARE network authorized private health care provider;
4. DOD non-network TRICARE authorized private health care provider; or
5. Non-military-affiliated health care provider.

An employer may request a second or third opinion of a current servicemember's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

D. Continuous and Intermittent Leave

An employee may take continuous leave or intermittent leave. The employer may not require that intermittent time off be taken in a minimum amount of time per day or per week.

If an employee takes intermittent leave, then they are entitled to intermittent leave up to 26 of their regularly scheduled workweeks.

Examples:

1. A full-time employee whose regular weekly schedule is 40 hours per week is entitled to 1040 (40 X 26) hours of intermittent Military Caregiver Leave.
2. A part-time employee whose regular weekly schedule is 20 hour per week is entitled to 520 (20 X 26) hours of intermittent Military Caregiver Leave.
3. An intermittent employee's weekly hours must be averaged by dividing the number of hours worked during the 12 months immediately preceding the leave period by 52 and rounding up to whole numbers. The average will be multiplied by 26 to determine the number of hours an employee may take intermittent Military Caregiver Leave

E. Use of Paid Leave

If leave qualifies under both FML and the State's sick leave benefit, an employee must use their sick leave benefit for the duration of the leave before going on unpaid leave; however, if an employee elects to use other leave, such as vacation, compensatory time, or personal leave, or is collecting income protection, such as short-term disability, the employee is not required to use sick leave for the timeframe that the employee is receiving paid leave or income protection.

An employee may choose to use any accrued vacation, compensatory time, or personal leave to cover the leave which is not paid by sick leave. If an employee has exhausted their sick leave and declines to use, or does not have, accrued vacation, compensatory time, or personal leave, then the balance of the 26-week entitlement will be provided as unpaid leave. All qualifying leave, whether paid or unpaid, will count towards the 26-week entitlement.

F. Asserting Protected Leave

Employees are not required to assert their rights under Military Caregiver Leave. An employee may choose to use any accrued vacation, compensatory time or personal leave available to them in accordance with standard practice for the employer. Supervisors and managers must not ask questions concerning the possible use of such leave as Military Caregiver Leave.

If an employee does not assert leave as Military Caregiver Leave and the request is denied, the employee may then assert the leave under Military Caregiver Leave. If the request qualifies for Military Caregiver Leave, then the request for leave shall be approved consistent with this Policy.

If the employer becomes aware that the leave qualifies for Military Caregiver Leave then the employer shall designate the leave as Military Caregiver Leave and request submission of the appropriate certification documents, regardless of if the employee used sick, vacation, compensatory time, or personal leave.

G. Advance Notice of Leave

Whenever possible, employees must give 30 days of advance notice for those leaves which are foreseeable. When it is not possible to provide 30 days advanced notice, the employee must give as much notice as possible.

H. Spouses or Domestic Partners Employed by the State of Maine

If the employee's spouse or domestic partner also works for the State, both employees must be provided their own leave entitlement under this Policy.

VII. Family Military Leave

A. Entitlement

Eligible employees are entitled to 15 business days unpaid leave per calendar year, if the employee is the spouse, domestic partner or parent of a servicemember who is deployed for military service for a period lasting longer than 180 days when the duty assignment is in a combat theater or in an area where armed conflict is taking place.

B. Certification

The only certification required for this type of leave is certification from the proper military authority to verify an employee's eligibility for the family military leave requested.

C. Continuous and Intermittent Leave

Leave under this section may be taken during the 15 days prior to deployment, 15 days immediately following the period of deployment, and/or during deployment, if the military member is granted leave. The employee may allocate the number of leave days among these periods. For example, an employee may take 5 days of leave during the 15 days prior to the servicemember's deployment, 7 days during the servicemembers leave, and 3 days during the 15 days immediately following the period of deployment.

D. Notice

The employee must give at least 14 days' notice of this type of leave if it will consist of 5 or more consecutive workdays; if less than 5 consecutive workdays, the employee must give as much advance notice as is practicable.

The employee shall consult with the employer to attempt to schedule the leave so as not to unduly disrupt the operations of the employer.

E. Use of Paid Leave

The employee may choose to use accrued vacation, compensatory time or personal leave for some or all of their leave entitlement. Use of paid leave time while also using leave under this Policy must be counted toward the per year leave entitlement. If the employee exhausts their accrued vacation, compensatory time or personal leave or declines or does not have paid vacation, personal or compensatory time, then the balance of the leave entitlement shall be given as unpaid leave.

VIII. Qualifying Exigency Military Leave

A. Entitlement

Eligible employees are entitled up to 12 weeks of unpaid leave during a calendar year because of any qualifying exigency arising out of the fact the employee's spouse, domestic partner, child, parent, or spouse's or domestic partner's child is a covered military member on active duty (or has been notified of an impending call or order to active duty in support of a contingency operation). Qualifying exigencies include:

1. Short-notice deployment;
2. Military events and related activities;
3. Childcare and school activities;
4. Care of the military member's parent
5. Financial and legal arrangements;
6. Counseling;
7. Post-deployment activities; and
8. Any other event which the employee and the employer agree is a qualifying exigency. Additional detail regarding what constitutes a qualifying exigency can be found at 29 C.F.R. § 825.126.

B. Certification

Employers may require an employee's request for qualifying exigency leave be supported by an appropriate certification. An employer may require the certification include a copy of the military member's active-duty orders. However, the employee is only required to provide this information to the employer once for a military member on a specific deployment.

C. Notice of Leave

Whenever possible, employees must give 30 days of advance notice for those leaves that are foreseeable. When it is not possible to provide 30 days advanced notice, the employee must give as much notice as possible.

D. Continuous and Intermittent Leave

An employee may take continuous or intermittent leave. The employer may not require intermittent time off be taken in a minimum amount of time per day or per week.

If an employee takes intermittent leave, then they are entitled to intermittent leave up to 12 of their regularly scheduled workweeks.

Examples:

1. A full-time employee whose regular weekly schedule is 40 hours per week is entitled to 480 (40 X 12) hours of intermittent Qualifying Exigency Military Leave.
2. A part-time employee whose regular weekly schedule is 20 hour per week is entitled to 240 (20 X 12) hours of intermittent Qualifying Exigency Military Leave.
3. An intermittent employee's weekly hours must be averaged by dividing the number of hours worked during the 12 months immediately preceding the leave period by 52 and round up to whole numbers. The average will be multiplied by 12 to determine the number of hours an employee may take intermittent Qualifying Exigency Military Leave.

E. Use of Paid Leave

If leave qualifies under both FML and the State's sick leave benefit, an employee must use their sick leave benefit for the duration of the leave before going on unpaid leave; however, if an employee elects to use other leave, such as vacation, compensatory time, or personal leave, or is collecting income protection, such as short-term disability, then an employee is not required to use sick leave for the timeframe in which the employee is receiving paid leave or income protection.

An employee may choose to use any accrued vacation, compensatory time, or personal leave to cover the leave that is not paid by sick leave. If an employee has exhausted their sick leave and declines to use, or does not have, accrued vacation, compensatory time, or personal leave, then the balance of the 12-week entitlement will be provided as unpaid leave. All qualifying leave, whether paid or unpaid, will count towards the 12-week entitlement.

F. Family Members Employed by the State of Maine

If more than one family member (spouse, domestic partner, child, parent, spouse's or domestic partner's child) of a covered military member who has a

qualifying exigency is employed by the State of Maine each employed family member is entitled to their own 12-weeks of leave for the same qualifying exigency.

G. Asserting Protected Leave

Employees are not required to assert their rights under Qualifying Exigency Leave. An employee may choose to use any accrued vacation, compensatory time or personal leave available to them in accordance with standard practice for the employer. Supervisors and managers must not ask questions concerning the possible use of such leave as Qualifying Exigency Leave.

If an employee does not assert leave as Qualifying Exigency Leave and the request is denied, the employee may then assert the leave under Qualifying Exigency Leave. If the request qualifies for Qualifying Exigency Leave, then the request for leave shall be approved consistent with this Policy.

If the employer becomes aware that the leave qualifies for Qualifying Exigency Leave then the employer shall designate the leave as Qualifying Exigency Leave and request submission of the appropriate certification documents, regardless of if the employee used sick, vacation, compensatory time, or personal leave.

IX. Coordination of Leave

An employee may have multiple reasons for leave that qualify under this Policy. An employee is entitled to only 12 weeks of unpaid leave per calendar year, regardless of the number of qualifying reasons they may have for FML.

An employee who qualifies for both Family and Medical Leave and Military Caregiver Leave is entitled to 26 weeks of leave during the single 12-month period, provided the employee is entitled to no more than 12 weeks of leave for purposes other than Military Caregiver Leave.

An employee who qualifies for both Family and Medical Leave and Qualifying Exigency Leave is entitled to 12 weeks of unpaid leave during the year. Additionally, any leave used for Family Military Leave counts towards this 12-week entitlement.

Employees may also qualify for additional leave after exhausting their leave entitlement as a reasonable accommodation under the Americans with Disabilities Act.

X. Health / Dental Insurance

A. Generally

The employer must maintain the health/dental insurance coverage for employees on leave on the same conditions this insurance would have been provided if the employee were employed and not on leave.

B. Paid Leave

When paid leave is used under this Policy, the State's share of health/dental insurance and the employee's share will be accomplished through the payroll process as usual. Health/dental insurance costs paid by the employer during any paid leave under this Policy must not be recovered for any reason.

C. Unpaid Leave

When unpaid leave is used under this Policy, the State will continue to pay its share of the employee's and the employee's dependents' health/dental insurance coverage, and if applicable, the employee will be billed for the employee's share of their own coverage as well as for dependent coverage costs. Employees must make arrangements with the Office of Employee Health and Wellness to either pay the premiums for their own coverage and for any dependent coverage or to temporarily remove themselves and/or dependents from their policy. Failure to pay premiums for any dependents may result in the cancellation of dependent coverage.

D. Birth, Adoption, Fostering

Employees who take more than 12 weeks of unpaid leave in accordance with the childbearing and adoption benefit of their collective bargaining agreement will be eligible for State-paid health/dental insurance for only that portion of the childbearing and adoption leave covered by this Policy (e.g., for only their 12-week per calendar year entitlement).

E. Seasonal and Project Employees

An eligible seasonal employee is provided leave under this Policy during the established season. If leave is taken during the season and if this leave continues beyond the employee's season end date, the employee must assume the full cost of health insurance coverage after the end date is reached since, as a matter of usual employment, the State does not pay a seasonal employee's health/dental insurance during the off-season.

Similarly, eligible project or non-State acting capacity employees are provided leave under this Policy between the begin and end dates of their appointment. If

leave is taken during this temporary employment period and if this leave extends beyond the established end date, the employee must pay the full cost of health/dental insurance coverage after the end date is reached.

F. Termination of Insurance and Recoupment of Insurance Payments

If an employee fails to return to work after their unpaid FML, the State may recover its share of health plan premiums paid during the period of unpaid FML unless the reason the employee does not return is due to:

1. Retirement;
2. Circumstances beyond the employee's control; or
3. The continuation, recurrence or onset of a serious health condition of the employee or the employee's family member that would otherwise entitle the employee to leave under this policy. Medical documentation must be provided within 30 days.

In those cases where the employee exhausts leave and does not return to work, and the employee does not have an acceptable reason for not returning or does not provided medical documentation in a timely manner, the employer must give the employee notice that failure to return to work within 30 calendar days will result in termination of health/ dental insurance and recovery of health/ dental insurance payments made by the State for the unpaid portion of the employee's leave. If after this notice is made, the employee does not return, the employer may terminate the employee's insurance and take whatever means are available to recover the health and dental costs that were paid by the State for the part of the leave that was unpaid leave.

If the employee exhausts leave and does not return to employment because of a circumstance outside of the employee's control (*e.g.*, the employee must move from the area because the employee's spouse is transferred out of state; employee is needed to care for the relative not covered by the leave policy), the employer must give the employee notice that failure to return to work within 30 calendar days will result in termination of the employee's insurance without the recovery of the health/dental insurance payments paid by the State during the unpaid portion of the employee's leave.

If the employee uses additional unpaid leave after the exhaustion of leave under this Policy, then the employer must require the employee to provide a medical statement from the health care provider within 30 days of the end of their approved leave. If the required medical statement has not been provided by the employee, the employer may recover its cost for health and dental insurance for any part of the leave that was unpaid leave.

G. Restoration of Coverage

Employees who either cancel insurance coverage or have health/dental insurance discontinued for failure to make timely payment of their share of the premium cost while on unpaid leave must be restored to full coverage without need for proof of insurability or any other qualification requirement when they return from leave.

XI. Life Insurance

A. Continuing Coverage

Employees on unpaid leave must be allowed to continue their life, accidental death and dismemberment, supplemental and dependent insurance at their own expense. Employees who choose to continue their life insurance coverage must contact the Maine Public Employees Retirement System to make the arrangements for their premium payments within 31 days of their last paycheck.

B. Restoring Coverage

Employees who do not continue their life insurance coverage during an unpaid leave or whose coverage is discontinued due to their failure to make premium payments must be restored to the coverage in effect immediately prior to this leave and must not be required to meet any qualification requirement.

XII. Employee Protections

A. Interference

The employer cannot interfere with, restrain or deny an employee's protected leave or discriminate against an employee who files a complaint or grievance under this Policy. Interference with protected leave includes requiring work while the employee is on leave. However, an employer may, after consultation with human resources, make discrete inquiries to an employee who is on protected leave. These inquiries must be concise, not require a significant amount of time on the part of the employee and cannot require the employee to travel to the workplace.

Employee grievances which are not resolved by the employer or the Bureau of Human Resources may be submitted to the U.S. Department of Labor if they involve leave covered under the Federal Family and Medical Leave Act and the employee may also bring a civil action against the State for violations of the State Family and Medical Leave Law.

B. Reemployment

Upon return to work, the employee must be returned to their position with the pay, status, and benefits in effect for them prior to the start of their unpaid leave. However, employees may be reemployed in positions other than those held prior to the start of unpaid leave, provided these positions provide equivalent pay, benefits and status.

C. Sick Leave

The employee must not accrue vacation and sick leave while on unpaid leave taken under this policy, and unpaid leave taken under this policy must not count as service needed to advance the vacation accrual rate.

D. Longevity

Time on unpaid leave taken under this policy must be credited to longevity service as required for all authorized leaves.

E. Seniority

Time on unpaid leave taken under this policy must be credited for seniority purposes.

F. Performance Review

The Performance Review Date (anniversary for step increases) must not be changed as the result of unpaid leave taken under this policy. Decisions to grant or deny merit step increases must be made on a case-by-case basis, in accordance with the amount of lost work time. Reference to the use of leave or other sick leave must not be made in the performance evaluation.

G. Probation

Time on unpaid leave for a serious health condition reason covered by the State's sick leave benefit must not automatically advance the employee's probation end date. However, the employee's probation end date may be extended by the employer if the employee has not worked long enough for the employer to complete a valid probationary evaluation.

Time on unpaid FML for the birth (excluding pregnancy disability) or care of a child or for adoption/foster care placement must advance the employee's probation end date.

H. Layoffs

Employees on unpaid leave who are affected by a layoff action must be notified of their rights in accordance with the layoff notice requirements for active employees.

I. Project and Acting Capacity Employees

Project and non-State acting capacity employees must not be provided reemployment rights beyond the established end date of their appointment.

J. Fitness for Duty

Employees who are returning from leave for their own serious health condition may be required by the employer to establish their fitness to return if this requirement has been made known to the employee at the time the leave was approved. If the employer chooses to attach a list of essential functions for the treatment provider to address, the agency EEO Coordinator and/or State EEO Coordinator must be consulted.

If an employee is unable to return to the employee's position at the end of leave because the employee is physically or mentally incapable of performing the essential functions of the position, the agency EEO representative or State EEO Coordinator must be consulted for further action.

XIII. Failure to Return to Work

A. If the employee exhausts FML and is unable to return to work because of a new or continuing serious health condition covered by the FML policy and the State's sick leave benefit, the employing department:

1. Must allow the use of accrued sick leave, if available; or
2. May approve an unpaid health leave pursuant to the applicable collective bargaining agreement or civil service rules; or
3. If not granting leave under (2), must provide the employee with paperwork to apply for continued leave as an accommodation under the State Policy on Reasonable Accommodation.

To support the use of sick leave, the employing department must require the employee to provide a medical statement from the health care provider within 30 days of the end of FML.

If the employing department decides to end the use of unpaid leave, the employing department must give the employee notice that failure to return within a reasonable period of time (but no sooner than 30 days from the date FML is exhausted) may result in termination.

B. Accommodations

The decision to terminate an employee who fails to return from a serious health condition leave covered by the FML Policy after FML is exhausted or after FML supplemented by paid and/or unpaid leave must not be made without consultation with the State EEO Coordinator and/or the Office of the Attorney General for an evaluation of whether reasonable accommodation, including reassignment, is appropriate and has been considered.

XIV. Fraud

An employee who fraudulently obtains leave from the state is not protected by the job restoration or maintenance of health benefits provisions. In addition, the employer may take all available appropriate disciplinary action against such an employee.

XV. Record Retention

The employer must maintain records of employee leaves under this policy for a minimum of three years. The employer will have the only record of those leaves that are taken as vacation, compensatory time, personal leave and sick leave. Unpaid leaves will be included in the employee records maintained by the Bureau of Human Resources.

XIII. Effective Date

This policy shall be effective July 1, 2024