

**HR/LR Procedure #1409P
Family and Medical Leave Act**

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Revised N/A
Authority Enterprise Human Resources

GENERAL PROCEDURES AND INSTRUCTIONS

This is a general outline of the process for administering FMLA leave. This procedure should be reviewed with our statewide policy, HR/LR Policy #1409, "Family and Medical Leave Act." This procedure is not intended to be comprehensive, and additional action may be necessary to properly process an FMLA claim. Additional requirements may also apply under the Americans with Disabilities Act (ADA), workers' compensation laws, and the Minnesota Human Rights Act (MHRA). Contact Enterprise Human Resources or your Labor Relations Representative with any questions.

The steps below refer to relevant sections of HR/LR Policy #1409, "Family and Medical Leave Act" and General Memo #2014-6, "FMLA Guidance." Please review these materials for additional information.

1) Employee provides notice of need for leave. See HR/LR Policy #1409, Section IV(C).

Employee: Provide notice to make the employer aware of the need for FMLA-qualifying leave, and the anticipated timing and length of leave. It is not necessary to specifically mention the FMLA, but the employee must sufficiently explain the reasons for the needed leave to allow the employer to reasonably determine whether the FMLA may apply to the leave request. 29 C.F.R. §§ 825.301, 825.302, 825.303.

Manager/Supervisor: If an employee requests time off and you believe that FMLA leave may be necessary, notify human resources (HR) that the employee may need FMLA leave.

Timeline: An employee must provide an employer notice at least 30 days prior to leave for expected leave, or as soon as is practicable.

2) Assess whether the employee is eligible for FMLA leave. See HR/LR Policy #1409, Section II.

- HR:*
- Confirm whether the employee has worked for the State for at least 12 months as of the date the leave will start,¹ and whether the employee has worked at least 1,250 hours during the 12 months immediately preceding the leave, as required to be eligible for FMLA leave;²
 - Identify whether the employee's reason for leave qualifies under the FMLA; and,
 - Send a completed Notice of Eligibility Rights and Responsibilities Form to the employee. 29 C.F.R. §§ 825.110; 825.300.

¹ Whether an employee satisfies the 1,250 hours of service requirement is determined by counting actual hours worked only. Hours the employee is on leave (paid or unpaid) do not count toward hours of service. The 12 months need not be consecutive, provided the employee's prior service occurred within the last seven years. An employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service.

² Employees who have worked for the State for at least 12 months preceding a request for leave and an average of at least ½ the full time equivalent position in the employee's job classification may be entitled to pregnancy and parenting leave under state law (M.S. 181.941) and entitled to use sick leave to care for relatives under state law (M.S. 181.9413). Please see HR/LR Policy #1337, "Sick Leave," or contact Enterprise Human Resources for further guidance.

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Timeline: Send the Notice of Eligibility and Rights and Responsibilities Form within 5 business days of the request.

- If the employee is not eligible for FMLA leave or if the reason for leave does not qualify under the FMLA, state the reason for non-eligibility.
- If the employee is eligible for FMLA leave, use the form to request any additional missing information, request certification if applicable (see below), or indicate that no additional information is needed.

Relevant form(s):

- Federal Form WH-381, Notice of Eligibility and Rights and Responsibilities: <http://www.dol.gov/whd/forms/WH-381.pdf>.

3) If necessary, request certification. See *HR/LR Policy #1409, Section III(B)*.

HR: Request certification from an employee seeking FMLA leave due to the employee's own serious health condition; to care for the employee's covered family member with a serious health condition; due to a qualifying exigency; or to care for a covered servicemember with a serious illness or injury. Provide the employee with a Tennessean Warning with the certification request. Provisionally grant FMLA leave pending completion of the certification process.

Timeline: Request a certification when sending the employee the Notice of Eligibility Rights and Responsibilities Form. Give the employee at least 15 calendar days (or more if not practicable under the particular circumstances despite the employee's diligent good faith efforts) to provide the required certification. 29 C.F.R. § 825.305.

Relevant form(s):

- Federal Form WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition: <http://www.dol.gov/whd/forms/WH-380-E.pdf>.
- Federal Form WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition: <http://www.dol.gov/whd/forms/WH-380-F.pdf>.
- Federal Form WH-384, Certification of Qualifying Exigency for Military Family Leave: <http://www.dol.gov/whd/forms/WH-384.pdf>.
- Federal Form WH-385, Certification for Serious Injury or Illness of Current Servicemember—for Military Family Leave: <http://www.dol.gov/whd/forms/WH-385.pdf>.
- Federal Form WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave: <http://www.dol.gov/whd/forms/wh385V.pdf>.

4) Determine whether the employee has provided complete and sufficient certification³ (if applicable). See *HR/LR Policy #1409, Section III(B)*.

Employee: Provide a complete and sufficient certification within the applicable deadline.

HR: Review the certification to ensure that it is complete and sufficient. If the certification is deemed complete and sufficient, skip to Step (8) discussing Designation Notices.

If the certification is incomplete or insufficient, provide the employee a statement in writing explaining what additional information is necessary to make the certification complete and sufficient, and the deadline (at least 7 calendar days) for submitting the additional information. If the certification is not returned, the employer may deny the taking of FMLA leave until the required certification is provided. 29 C.F.R. § 825.305; 825.313.

Timeline: The employer must provide the employee with at least 7 calendar days (or more if not practicable

³ A certification is incomplete if the employer receives a certification but one or more applicable entries have not been completed. A certification is insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. 29 C.F.R. § 825.305.

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under the particular circumstances despite the employee's diligent good faith efforts) to cure any deficiency.

5) Review the re-submitted certification form to determine if it is now complete and sufficient (if applicable). See *HR/LR Policy #1409, Section III(B)*.

Employee: Provide a complete and sufficient certification within the applicable deadline.

HR: Review the re-submitted certification form to determine if it is complete and sufficient. If the deficiencies specified by the employer are not cured, the employer may deny the taking of FMLA leave until the required certification is provided. 29 C.F.R. § 825.305; 825.313. If the certification process is now complete, skip to Step (8) regarding Designation Notices.

6) If necessary, contact the employee's health care provider for clarification and authentication⁴ of certification for leave taken because of employee's own serious health condition or the serious health condition of a family member. See *HR/LR Policy #1409, Section III(B)*.

HR: If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider.

However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification after the employer has given the employee an opportunity to cure any deficiencies, as described above. In this circumstance, request written authorization by the employee, and then contact the employee's health care provider for clarification and authentication of the certification. You may not ask the health care provider for additional information beyond that required by the certification form. 29 C.F.R. § 825.307(a). Under no circumstances may the employee's direct supervisor contact the employee's health care provider.

For leave taken for a qualifying exigency, see 29 C.F.R. § 825.309. For leave taken to care for a covered servicemember, see 29 C.F.R. § 825.310.

If the certification process is now complete, skip to Step (8) regarding Designation Notices.

7) If necessary, request a second (or third) opinion for leave taken because of employee's own serious health condition or the serious health condition of a family member. See *General Memo 2014-6, Section III, Questions 2 and 3*.

Employee: If requested by HR, obtain a second opinion, at the employer's expense, from a health care provider designated by the employer. If requested by HR, obtain a third opinion, at the employer's expense, from a health care provider jointly chosen with the employer.

HR: If there is reason to doubt the validity of a medical certification for leave taken due to the employee's own serious health condition or the serious health condition of a family member, the employer may request a second (or third) opinion at the employer's expense. 29 C.F.R. §§ 825.307(b), (c). Pending the receipt of the second (or third) medical opinion, provisionally designate the leave as FMLA leave. 29 C.F.R. § 825.307(b).

8) Provide the employee with a Designation Notice. See *HR/LR Policy #1409, Section III(C)*.

HR: After gathering enough information to determine whether the leave is FMLA-qualifying, provide the employee with a Designation Notice. If a fitness-for-duty certification will be required in order for the employee to return to work, provide notice of the fitness-for-duty certification requirement with the Designation Notice. If

⁴ "Clarification" means contacting the health care provider to understand the handwriting or to understand the meaning of a response. "Authentication" means providing the health care provider with a copy of the certification and requesting verification that the information contained on the form was completed and/or authorized by the health care provider who signed the document. No additional medical information may be requested. 29 C.F.R. § 825.307.

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the fitness-for-duty certification must address the employee's ability to perform the essential functions of the job, provide the employee with a list of the essential functions of the job with the Designation Notice. 29 C.F.R. §§ 825.300(d); 825.312.

Timeline: After determining that the employee is eligible for FMLA leave and that the reason for leave is FMLA qualifying, and after completing the certification process if applicable, provide the employee with a Designation Notice within 5 business days, absent extenuating circumstances.

Relevant form(s):

- Federal Form WH-382, Designation Notice: <http://www.dol.gov/whd/forms/WH-382.pdf>.

9) Track the employee's leave of absence.

Employee: If using FMLA leave concurrent with sick leave, vacation leave, or other accrued paid leave, use proper payroll earn codes to record FMLA usage. If using FMLA leave on an intermittent or reduced-schedule basis, use proper payroll earn codes to record FMLA usage.

Manager/Supervisor: Monitor employee's use of FMLA leave to ensure compliance with designated FMLA leave.

HR: Notify payroll of the number of hours of FMLA leave the employee is entitled to for the fiscal year. Monitor employees' FMLA usage and be aware of scheduled dates to return to work. Notify managers/supervisors of return dates, and alert employees, managers, and supervisors if employees are close to using up their FMLA leave.

10) If necessary, request recertification from employee for leave taken because of an employee's own serious health condition or the serious health condition of a family member. See *General Memo 2014-6, Section II, Question 6*.

HR: Medical recertification may be requested to monitor an employee's leave and ensure continued compliance with the FMLA. The employee is required to provide a complete and sufficient recertification. Employers are not permitted to require second or third opinions on recertification. 29 C.F.R. § 825.308.

Manager/Supervisor: Monitor an employee's use of FMLA leave, and alert HR if recertification is necessary to ensure the employee's continued compliance with FMLA.

Timeline: In general, you may request recertification no more than every 30 days for leave taken because of an employee's own serious health condition or the serious health condition of a family member. If the medical certification indicates that the minimum duration of the condition is more than 30 days, wait the minimum duration of the condition before requesting recertification. In all cases, the employer may request recertification of a medical condition every 6 months. You may request recertification in less than 30 days if: the employee requests an extension of leave; circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications); or the employer receives information that casts doubt on the employee's stated reason for the absence or the continuing validity of the certification.

Give the employee at least 15 calendar days (or more if not practicable under the particular circumstances despite the employee's diligent good faith efforts) to provide the requested recertification.

11) Consider requests from the employee to use less/more FMLA leave.

Employee: Provide reasonable notice (*i.e.* within two business days) if you expect to need to take more leave than originally anticipated, or if less leave is necessary than originally requested.

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Manager/Supervisor: If an employee requests additional FMLA leave or gives notice of the need for less FMLA leave, forward the information to human resources.

HR: If the employee requests an extension of leave, you may request a recertification from an employee taking leave because of the employee's own serious health condition or the serious health condition of a family member.

If the amount of leave originally anticipated is no longer necessary or sufficient, the employer can require that the employee provide reasonable notice (*i.e.*, within two business days) of the changed circumstances where the employee has knowledge in advance of the change in circumstances. 29 C.F.R. § 825.311(c). Employees may not be required to take more FMLA leave than is necessary. 29 C.F.R. § 825.311(c).

12) If previously requested with the Designation Notice, obtain a fitness-for-duty certification from an employee on FMLA leave for a serious health condition that made the employee unable to perform the employee's job. See General Memo 2014-6, Section III, Question 7.

Employee: Return a complete and sufficient fitness-for-duty certification to human resources prior to returning to work.

HR: Upon return of the fitness-for-duty certification, review the form to ensure that it is complete and sufficient. If necessary, contact the employee's health care provider for clarification or authentication of the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions may be required. 29 C.F.R. § 825.312.

Timeline: Employees who are required in the Designation Notice to provide a fitness-for-duty certification must provide a complete and sufficient certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition. An employer may delay restoration to employment until the employee submits the required fitness-for-duty certification. An employee who does not provide the requested fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. 29 C.F.R. §§ 825.312(e); 825.313(d).

Generally, an employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employer is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took leave. In those circumstances, if an employer chooses to require a fitness-for-duty certification for absences taken on an intermittent or reduced leave schedule, the employer shall notify the employee in the Designation Notice that the employee will be required to submit a fitness-for-duty certification once every 30 days. An employer may set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employer advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. 29 C.F.R. § 825.312(f).

13) Prepare for the employee to return to work. See HR/LR Policy #1409, Section IV(D).

Employee: Notify your manager/supervisor of your intent to return to work.

Manager/Supervisor: Ensure employee's return to work; contact human resources if the employee does not return to work on the scheduled day. An employee is entitled to return to the same or an equivalent position at the end of FMLA leave, including equivalent pay, benefits, and terms and conditions of employment. After the employee has returned to work, ensure continued compliance with the ADA, workers' compensation, or MHRA, as applicable.

HR: An employee is entitled to return to the same or an equivalent position at the end of FMLA leave,

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including equivalent pay, benefits, and terms and conditions of employment. After the employee has returned to work, ensure continued compliance with the ADA, workers' compensation, or MHRA, as applicable.

FORMS AND SUPPLEMENTS

Contacts	MMB Enterprise Human Resources/Labor Relations Representative
References	HR/LR Policy #1409, Family and Medical Leave Act HR/LR General Memo #2014-6, FMLA Guidance