

Family and Medical Leave Act (FMLA)

Supersedes: June 2008

Effective: July 2009

I. PURPOSE

This policy explains rights and responsibilities in regards to obtaining leave under the Family and Medical Leave Act (FMLA) and establishes procedures for receiving and responding to requests for leave that qualifies as FMLA leave.

II. POLICY

It is the Commission's policy to comply with the FMLA and to grant FMLA leave to eligible employees who are entitled to such leave. The FMLA entitles eligible employees to up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more qualifying reasons and up to a total of 26 workweeks of unpaid leave during a "single 12-month period" needed to care for a spouse, son, daughter, parent, or next of kin who is a covered service member and has a serious injury or illness incurred in the line of duty on active duty. Employees are eligible for FMLA if they have worked for the Boston Public Health Commission for a total of 12 months and have worked 1,250 hours over the previous 12 months. It is the Commission's policy to use forms based on the prototypes promulgated by the United States Department of Labor to notify employees of their eligibility for FMLA leave when required, to designate leave as FMLA, and to obtain healthcare provider and other certifications and documentation that employees must submit to obtain FMLA leave.

III. PROCEDURE

A. QUALIFYING REASONS FOR FMLA LEAVE

1. The birth and care of a newborn child of the employee;
2. The placement of a child with the employee for adoption or foster care;
3. The employee has a serious health condition that makes him/her unable to perform the functions of his/her job.
4. The employee is needed to care for a spouse, child, or parent with a serious health condition;
5. The employee needs leave for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member who is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation as a member of a reserve

component of the Regular Armed Forces or as a retired member of the Regular Armed Forces or Reserve (hereinafter “Qualifying Exigency Leave”); and

6. The employee is needed to care for a spouse, son, daughter, parent, or next of kin who is a covered service member and has a serious injury or illness incurred in the line of duty on active duty (hereinafter “Military Caregiver Leave”).

B. EMPLOYEE NOTICE AND RESPONSIBILITIES

1. Employees must provide the Commission with enough information about the reasons that they are requesting or taking leave to enable the Commission to determine whether the leave qualifies as FMLA leave. Absent unusual circumstances, employees who need FMLA leave must notify the Benefits Administrator in the Human Resources Office and complete a Request for FMLA Leave Form identifying the reason(s) for the leave. Requests for FMLA leave should not be directed to supervisors.
2. Employees seeking to use FMLA leave based on the expected birth or placement of a child or for planned medical treatment for themselves, qualifying family members, or a covered service member must provide the Commission with thirty (30) days advance notice of the need for such leave if the need is foreseeable and such notice is practicable. In all other cases, leave must be requested as soon as practicable under the facts and circumstances of the particular case – generally, either the same or next business day after which the employee becomes aware of the need for leave. Unless excused by the Commission, employees must comply with the Commission’s usual and customary notice and procedural requirements for requesting leave.
3. The employee must provide the Commission with a complete and sufficient certification when a certification is required under this Policy and must clarify the certification as necessary. Certifications will be required as a condition of certain qualifying leaves as follows:
 - a. Employees who need leave due to their own serious health condition must submit a completed *Certification of Health Care Provider for Employee’s Serious Health Condition* within the time period established by the Commission, which shall not be less than fifteen (15) calendar days.
 - b. Employees who need leave to care for a spouse, child, or parent with a serious health condition must submit a completed *Certification of Health Care Provider for Family Member’s Serious Health Condition* form within the time period established

by the Commission, which shall not be less than fifteen (15) calendar days.

- c. Employees who need Qualifying Exigency Leave must submit a completed *Certification of Qualifying Exigency for Military Leave* form within the time period established by the Commission, which shall not be less than fifteen (15) calendar days, and such certification shall include available written documentation that supports the need for the leave.
- d. Employees who need Military Caregiver Leave must submit a completed *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave* within the time established by the Commission, which shall not be less than fifteen (15) calendar days.

Certification forms are available in the Human Resources Office and on the Commission's Intranet.

4. The Commission may require an employee who needs leave due to his/her own serious health condition to obtain a second, and in some cases third, opinion at the Commission's expense. It may also contact the employee's healthcare provider for the sole purposes of authenticating or clarifying a medical certification of a serious health condition that was provided by the healthcare provider, except that only a health care provider, a human resource professional, leave administrator, or authorized management official may contact the employee's healthcare provider for these purposes. The employee's direct supervisor shall not contact the employee's healthcare provider under any circumstances.
5. The Commission may require an employee who needs leave due to his/her own serious health condition to submit periodic recertification of his/her serious health condition.

C. EMPLOYER NOTICE AND RESPONSIBILITY

1. A copy of this policy and a general notice concerning employees' rights under the FMLA will be posted on the Commission Intranet, placed in the Commission Employee Handbook, and distributed to new hires.
2. When a Program Director or Department Manager acquires knowledge that an employee needs or is taking leave that may qualify as FMLA leave, he/she must notify the Human Resources Office on the same business day they acquire such knowledge.

3. The Director of Human Resources Office or his/her designee will determine whether an employee is eligible for FMLA leave. Absent extenuating circumstances, the Director of Human Resources/designee shall send the employee an Eligibility Notice within five (5) business days of the request/stated need that notifies the employee whether he/she is eligible to obtain FMLA leave. If an employee is eligible to obtain FMLA leave, the Eligibility Notice will identify any certification, documentation, or other information that the employee must submit to obtain FMLA leave and advise the employee of his/her general responsibilities while on leave.
4. The Director of Human Resources/designee will notify the employee that his/her leave has been designated as FMLA leave when such leave has been approved. He/she shall send the employee such designation within five (5) business days of receiving a completed certification and/or the necessary information to make such designation. If an employee submits a certification that is incomplete or insufficient, the Director of Human Resources/designee will notify the employee, advise the employee what additional information is required, and give the employee at least seven (7) calendar days to complete the certification or provide the necessary information.

D. CALCULATION OF LEAVE

1. Each absence from work by an eligible employee for an FMLA-qualifying reason will be considered as FMLA leave and will count toward fulfillment of the 12 weeks (or 26 weeks in the case of Military Caregiver Leave) within the 12-month period, except that the Commission shall not be required to designate leave as FMLA retroactively if the employee failed to give timely notice of the need for leave and/or otherwise failed to satisfy the conditions precedent to obtaining FMLA leave. The 12-month period is a “rolling” period measured backward from the date of any FMLA usage. The “single twelve month period” for purposes of Military Caregiver Leave will be calculated in accordance with the FMLA regulations.
2. If an employee and his/her spouse are both employed by the Commission, then they may be limited to a combined total of twelve (12) weeks of leave if the leave is taken for the birth of the employee’s child, to care for the child after birth, for placement of a child for adoption or foster care, to care for the child after placement, or to care for a parent who has a serious health condition. The employees may be further be limited to a combined total of twenty six (26) weeks of Military Caregiver Leave.
3. Any worker’s compensation/industrial accident leave that qualifies as FMLA leave will be counted against the employee’s FMLA entitlement.

E. CONDITIONS OF LEAVE

1. While on FMLA leave, an employee must use all accrued sick, personal, vacation and compensatory time, except that employees may request to reserve up to two (2) weeks of accrued vacation leave for when they return from FMLA. The request to reserve two (2) weeks of vacation time must be made in writing to the Director of Human Resources at the beginning of the FMLA leave. Any leave taken after exhausting accrued paid leave will be unpaid. Employees on unpaid leaves of absence, including unpaid FMLA leave, do not accrue seniority, vacation, and sick leave during such periods of unpaid leave except as otherwise provided by a collective bargaining agreement.
2. An employee on FMLA may continue coverage under their health insurance. The employee is responsible for her/his share of premium payments during the leave and s/he must mail the monthly premium before the first of every month to:

Boston Public Health Commission
Human Resources
1010 Mass. Ave., 6th Floor
Boston, MA 02118
Attn: Benefits Administrator
3. Weekly time sheets must reflect that an employee is on FMLA leave. If an employee is using paid leave as required by this policy, then the time sheets must reflect the applicable code (e.g. FMLA-Sick in the event that an employee is using sick leave).
4. Under some circumstances, employees may take FMLA intermittently (taking the leave in separate blocks of time for a single qualifying reason) or on a reduced leave schedule (reducing the employee's usual weekly or daily work schedule). When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
5. Employees must report on their status and intent to return to work periodically as directed by the Commission.

F. RETURNING FROM LEAVE

1. Following a FMLA protected leave, an employee will return to the same or similar job and rate of pay as held before going out on leave or an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee whose position is eliminated while on FMLA is entitled to the same rights and benefits as other employees whose positions are eliminated. However, s/he will have no greater rights to reinstatement or

other benefits and conditions of employment than if s/he had continued to work.

2. Employees returning from leave for their own serious health condition must submit a fitness for duty certification from their healthcare provider indicating that they are medically able to perform their jobs as a condition precedent to returning to work. If reasonable safety concerns or concerns of an employee's ability to perform the essential functions of their job exist, the Commission may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.
3. Employees must return to work with or without accommodations at the end of their authorized leaves unless they obtain authorization for additional leave in accordance with Commission policy or their collective bargaining agreement. Employees who fail to return to work at the end of their leaves without authorization may be subject to discipline up to and including discharge for unauthorized absence.

G. LEAVE AFTER FMLA LEAVE IS EXHAUSTED

1. Additional medical leave beyond an employee's entitlement under the FMLA is at the discretion of the Commission and subject to operating needs, and the employee must abide by any terms and conditions set by the Commission or applicable collective bargaining agreement for such additional leave. If an employee needs leave due to their own serious health condition beyond the 12 weeks provided by the FMLA, he/she must request additional leave from the Human Resources Office in writing. The Director of Human Resources/designee may require the employee to submit medical documentation to support the request for additional leave.
2. The Commission will not grant additional medical leave to employees who have been on a leave of absence for twelve (12) months, except that the Director of Human Resources may, subject to operating needs, grant an employee up to an additional three (3) months of leave as an accommodation if the employee provides evidence acceptable to the Commission indicating that he/she intends to return to work and will be capable of performing the essential functions of his/her job with or without accommodations within that three (3) month period.

(BPHC Policy 145)