



GDOT Publications Policies & Procedures

Policy: 2230-9- Family and Medical Leave

Section: Leave and Holidays

Office/Department: Division of Human Resources

Reports To: Division of Admin/General Counsel

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The Georgia Department of Transportation (GDOT) will comply with the Family and Medical Leave Act (FMLA) of 1993 and its implementing regulations as revised effective January 16, 2009 and March 27, 2015. The purpose of this policy is to provide employees with a general description of their FMLA rights.

A. General Provisions

It is the policy of the Georgia Department of Transportation to grant up to twelve (12) weeks of Family Medical Leave (FML) during any rolling 12-month period to eligible employees, or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness.

Under the rolling twelve-month period, each time an employee takes FMLA leave for any reason, except military caregiver leave, GDOT will calculate the 12-month period backward from the date the employee requests to use any FML. Each time an employee takes FML; GDOT will compute the amount of leave the employee has taken in the last 12 months and subtract it from the 12 weeks of available leave. The remaining balance is the eligible amount available to the employee.

For military caregiver leave only, GDOT will calculate the leave against a forward rolling 12-month period. The leave year is based on a single 12-month period and begins with the first day the employee takes leave. FML taken for other FML circumstances will be deducted from the total of 26 weeks available.

B. Eligibility

To qualify for FML under this policy, the employee must meet all of the following conditions:

- B.1** The employee must have been employed with the State of Georgia for a minimum of twelve (12) months. The twelve months need not have been consecutive; there can be a break in service, not exceeding seven (7) years (unless the break in service is due to fulfillment of a military service obligation).
- B.2** The employee must have been present at work for a minimum of 1,250 hours during the twelve (12) months immediately before the beginning of FML. Time at work does not include holidays or time spent on paid or unpaid leave, but does include any overtime worked and may include time spent on active military duty.

C. Types of Leave

To qualify for FML leave under this policy, the employee must be taking leave for one of the reasons listed below:

- C.1** The birth of a child and to bond with the newborn child within one year of birth. An employee's entitlement to FMLA leave for birth and bonding expires 12 months after the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child.

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C.2 The placement of a child for adoption or foster care and to care for the newly placed child.

C.3 To care for a spouse, child or parent with a serious health condition.

An employee may take leave because of the serious health condition of a spouse, parent, son or daughter. Under the FMLA, these terms are defined as follows:

Spouse – A husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Parent – A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”

Son or daughter – A biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is either under age 18, or who is age 18 or older and is incapable of self-care because of mental or physical disability at the time that FMLA leave is to commence.

FML to care for a family member is limited to the time determined to be medically necessary by the attending health care provider. Should the family member die, the date of death is the last day that qualifies for FML.

C.4 The serious health condition of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the essential functions of the employee’s position. FML for this purpose is limited to the time determined to be medically necessary by the attending health care provider.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or, long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

If an employee takes paid sick leave for a condition that progresses into a serious health condition, GDOT may designate all or some portion of related leave taken as FML, to the extent that the earlier leave meets the necessary qualifications.

Employees with questions about the types of illnesses covered under this FML policy or under GDOT’s sick leave policy are encouraged to consult with Human Resources.

- C.5** Qualifying exigency leave for a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency operation.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service when it constitutes a qualifying exigency. Qualifying exigencies include: (1) short notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, and (8) additional activities to address other events that arise out of the covered service member's active duty or call to active duty status, provided that GDOT and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person may be of any age.)

- C.6** Military caregiver leave (to care for an injured or ill service member or veteran).

An employee may take up to 26 weeks of FML in a 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member. This leave also entitles employees to provide care for a veteran who is undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. Next-of-kin is defined as the closest blood relative of the injured or recovering service member other than the covered service member's spouse, parent, son or daughter. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person may be of any age.)

D. Limitations on Use of Family and Medical Leave

- D.1** If a husband and wife both work for GDOT and each wishes to take FML for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent-in-law) with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave.
- D.2** If a husband and wife both work for GDOT and each wishes to take FML to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.
- D.3** Any FML for birth or adoption of a child must occur within twelve (12) months of the birth or placement for adoption of the child.
- D.4** FML may not be taken intermittently or on a reduced work schedule after the birth of a child or placement of a child for adoption or foster care.
- D.5** Eligible employees are entitled to a maximum of twelve (12) weeks of FML in a 12-month period, even if the employee has multiple qualifying conditions (unless the employee is eligible for military caregiver leave). All FML-related absences will be charged to the employee's FML entitlement for the applicable 12-month period.
- D.6** Employees on approved FML shall not perform any work on behalf of the Department and shall not engage in outside employment during the period they are on FML from the Department.

E. Employee Status and Benefits During Leave

While on FML, employees who have health insurance benefits through the State Health Benefit Plan are entitled to maintain their health insurance coverage at the employee rate. If premiums change while an employee is on FML, the employee is responsible for paying the new premium.

In order to maintain health insurance and any benefits through the Flexible Benefits Program (e.g., Accidental Death and Dismemberment Insurance, Dental Insurance, etc.), employees on FML with pay will continue to pay premiums through payroll deductions. Employees on FML without pay will be advised of the cost for maintaining health insurance and any benefits through the Flexible Benefits Program, arrangements for making payments, and consequences for not making timely payments.

Employees with at least one (1) year of participation in the Group Term Life Insurance Program under the Employees' Retirement System (ERS) may retain coverage while on FML without pay. A request to continue coverage using the Continuation of Group Term Life form must be made in writing to ERS prior to beginning the FML without pay. Coverage terminates if this written request is not received.

F. Use of Paid and Unpaid Leave and Compensatory Time

An employee who is absent due to reasons that qualify for family and medical leave will be required to use all available paid leave and compensatory time prior to being eligible for unpaid leave. Note, however, the employee must meet the eligibility requirement for a leave type before utilizing the leave. For example, sick leave may be used in conjunction with FML only for reasons that qualify for sick leave (e.g. sick leave is not authorized for "bonding" time due to the birth of a child, adoption, or placement of a child for foster care, although other types of paid or unpaid leave may be authorized).

Exceptions to Paid Leave Requirement – When an absence qualifies for FML and the employee is also receiving Workers' Compensation wage substitution benefits or is receiving benefits from a disability insurance plan, the employee will not be required to use paid leave.

G. Intermittent Leave or a Reduced Work Schedule

The employee may take FML leave over twelve (12) consecutive weeks, may use the leave intermittently (i.e., take time periodically when needed over the course of 12 months), or under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced schedule. In all cases, the leave may not exceed a total of twelve (12) work weeks (or 26 work weeks to care for an injured or ill service member) over a 12-month period.

GDOT may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

FML may not be taken intermittently or on a reduced work schedule after the birth of a child or placement of a child for adoption or foster care.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee must make a reasonable effort to schedule such treatment so as not to unduly disrupt GDOT's operations. If this is not possible, then the employee must prove that the use of the leave at the time requested is medically necessary. GDOT may contact the health care professional and/or require certification of the medical necessity.

H. Certification of Serious Health Condition

GDOT may ask for certification of the serious health condition of an employee or an employee's family member. Medical certification may be provided by using the Serious Health Condition Form (GDOT Form [DOT 4122](#)), or the employee may provide a statement from a health care provider that provides similar information.

Certification of the serious health condition shall include the date when the condition began, its expected duration and a brief statement of treatment. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For a family member who is seriously ill, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced schedule.

GDOT has the right to ask for a second opinion if it has reason to doubt the certification. GDOT will pay for the employee to get a certification from a second health care provider, which GDOT will select. If necessary to resolve a conflict between the original certification and the second opinion, GDOT will require the opinion of a third health care provider. GDOT and the employee will mutually select the third health care provider, and GDOT will pay for the opinion. This third opinion will be considered final.

GDOT may require an employee who is on FML to report periodically on the employee's status and intent to return to work.

I. Documentation of the Covered Family Member's Active Duty or Call to Active Duty in the Armed Forces

Employees requesting this type of service member FMLA leave must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

J. Documentation of FML to Care for an Injured or Ill Service Member

Employees requesting this type of service member FMLA leave must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

K. Procedure for Requesting Leave

When FML is not foreseeable, employees must follow GDOT's normal call-in procedures regarding notification of absences in order for leave to qualify as FML.

When FML is foreseeable, employees are required to provide at least thirty (30) days' notice prior to taking leave, or if this is not possible, as much notice as is practicable. Otherwise, FML may be delayed or denied.

Employees requesting FML due to their own serious health condition or the serious health condition of a family member are to provide a completed CERTIFICATION OF SERIOUS HEALTH CONDITION FORM (GDOT Form [DOT 4122](#)) from the attending health care provider. The certification must be provided as follows:

- K.1** When FML for a serious health condition is foreseeable, the certification should be provided before the absence begins.
- K.2** When it is not possible to provide this certification before the absence begins, employees must provide the certification within fifteen (15) calendar days of the date it is requested.
- K.3** When a single serious health condition requires multiple absences (e.g., asthma, chemotherapy, etc.), a separate medical statement is not required for each absence.

Employees requesting FML due to adoption or foster care are to provide supervisors or authorized officials the completed CERTIFICATION OF ADOPTION OR FOSTER CARE FORM (GDOT Form [DOT 4121](#)). Separate FML request forms and certification forms are not needed for each absence associated with the adoption or foster care placement process, unless the circumstances regarding the placement change to the extent that updated information is needed.

Employees requesting leave for a qualifying exigency due to a covered family member's active duty or call to active duty in the armed forces should provide a completed CERTIFICATION FOR QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE. (GDOT Form DOT)

Employees requesting military caregiver leave based on the serious injury or illness of a covered service member should provide a completed CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICE MEMBER. (GDOT Form [DOT 4142](#))

L. Notification and Approval

Within five (5) business days after the employee has submitted the appropriate certification form, GDOT will complete and provide the employee with a written response to the employee's request for FML. Employees will receive a "Notice of Eligibility and Rights & Responsibilities" that will advise them of their eligibility for FML, approval or denial, insufficient medical document (if applicable), recertification requirements, and/or second opinion requirements. An employee whose denial is based on insufficient medical documentation will be allowed an additional seven (7) calendar days to correct any deficiencies in medical documentation. It is the employee's responsibility to furnish a complete, sufficient medical certification or authorization for their health care provider to release the requested information.

M. Designating Family and Medical Leave

It is the responsibility of supervisors or authorized officials to designate FML as appropriate. If FML is determined appropriate, employees are to be placed on FML even when they do not submit a request. Supervisors or authorized officials may learn that an absence or part of an absence from work qualifies for FML either during or after the period of absence. In these circumstances, FML may be retroactively designated. Whenever the Department (i.e. supervisor, Human Resources, etc.) becomes aware of a situation that qualifies for FML, the employee must be placed on FML. Whenever the Department (i.e. supervisor, Human Resources, etc.) becomes aware of a situation that qualifies for FML, the employee must be placed on FML.

N. Recertification

GDOT has the right to make reasonable requests for periodic recertification as necessary, but may not request recertification for intermittent FML any more often than once every thirty (30) days and only in conjunction with an employee's absence, unless: (1) the employee requests an extension of leave; (2) circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or (3) GDOT receives information that casts doubt upon the continuing validity of the certification.

O. Authentication and Clarification of Documents

In the event GDOT questions the authenticity of a certification form, Human Resources may contact the employee's health care provider to authenticate the form. In the event GDOT needs clarification of any information provided, GDOT may contact the employee's health care provider for clarification purposes, so long as HIPAA Medical Privacy Rules are adhered to. The supervisor MAY NOT, under any circumstances, contact the employee's health care provider directly.

P. Reinstatement

Employees who have complied with the terms and conditions in the FML approval notice are entitled to return to the same position or to an equivalent position with the same pay and grade, benefits and comparable working conditions at the expiration of FML. Employees do not retain this right to reinstatement if, at the expiration of FML, they are unable to perform the essential functions of the position, with or without reasonable accommodation due to a physical or mental condition.

Further, employees on FML have no greater right to return to work than they would have had if they had continuously remained at work. For example, employees who are on FML during a staff reduction do not have a right to return to work if their position is eliminated during the staff reduction.

Employees returning from FML (other than intermittent FML) due to their own serious health condition will be required to submit a return-to-work statement from the attending health care provider prior to returning to work. (See GDOT Form [DOT 4123](#) which may be used for this purpose.) This statement must certify that the employee is capable of performing the essential functions of the position, with or without reasonable accommodation. Employees who do not provide the required statement will not be allowed to return to work.

Q. Records

Medical records accompanying FML requests shall be kept separate from personnel files in a confidential manner. All FML related employment records must be maintained for at least three (3) years and made available upon request by the U. S. Department of Labor.

References:

Family and Medical Leave Act, 29 U.S.C. 2601, et seq.
29 C.F.R. Part 825
H.R. 2647

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