



**OKLAHOMA**  
**Office of Management  
& Enterprise Services**

**State of Oklahoma**  
**Office of Management and Enterprise Services**  
**Policies and Procedures**

**Family and Medical Leave Act**

<b>Effective Date of Policy: 5/22/2022</b>	<b>Next Scheduled Review: 03/01/2020</b>
<b>Effective Date of Original Policy: 10/01/2012</b>	<b>Policy Number: OMES -025</b>
<b>Last Reviewed: 02/25/2019</b>	<b>Replaces Policy Number: HCM - 13</b>
<b>Date Policy Last Revised: 3/16/2022</b>	
<b>Approved: Jamie Bush, as Designee of OMES Director Steven Harpe</b>	<b>Approval Date: 3/16/2022</b>

**Reference**

Federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.)(FMLA)/ Family and Medical Leave Act regulations as revised effective October 28, 2009 / Merit rule 260:25-15-45

**Policy**

FMLA is the federal law that requires employers to grant leave for family and medical circumstances, as listed below, and to reinstate the employee in the same or an equivalent position upon conclusion of the leave. OMES FMLA policy is in compliance with the provisions of the FMLA. Some provisions of FMLA give employers options on how to administer FMLA leave. The options that OMES has elected are included in this policy. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

**FMLA Circumstances**

1. Birth of a son or daughter and to care for the newborn child.
2. Placement with the employee of a son or daughter for adoption or foster care.
3. Care of a spouse, son, daughter or parent with a serious health condition.
4. A serious health condition of the employee that makes him/her unable to perform the essential functions of his or her job.
5. A qualifying exigency for families of members of the Regular Armed Forces, National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation in a foreign country.
6. Care of a spouse, son, daughter, parent or next-of-kin covered service member with a serious illness or injury incurred in the line of duty on active duty.

Note: For circumstances 1-5 above the employee may use up to 12 weeks of FMLA leave in a 12-month period. For circumstance 6 above, the employee may use up to 26 weeks in a single 12-month period.

## **FMLA 12-month period**

OMES uses a rolling 12-month period measured backward. Under the rolling 12-month period, each time an employee takes FMLA leave, the remaining entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. FMLA leave may be taken intermittently or on a reduced work schedule.

FMLA leave at OMES runs concurrently with paid leave (sick, annual), comp time, workers' compensation and disability insurance whenever possible.

For employees that have exhausted paid leave, shared leave may be approved in an aggregate amount not to exceed 12 weeks or 480 hours of FMLA.

When leave is needed for planned medical treatment, employees must make a reasonable effort to schedule treatment so as not to unduly disrupt OMES' operations. Additionally, employees must comply with OMES' usual and customary requirements for requesting leave and provide enough information for supervisors to reasonably determine whether FMLA may apply to the employee's leave request. When the need for leave is unforeseeable, employees must provide notice to their supervisor as soon as possible and practicable under the circumstances.

## **Medical Certification**

FMLA leave at OMES requires certification for the employee's serious health condition, the family member's serious health condition, a qualifying exigency for military family leave and for the serious injury or illness of the covered service member for military family leave.

Employees requesting FMLA leave must provide appropriate verbal or written notice to the Human Resources department, depending on whether the leave is foreseeable or not.

Within five (5) business days after the employee has submitted appropriate certification, the Human Resources department will complete and provide the employee with a written response to the employee regarding the designation of FMLA leave.

An employee is eligible for FMLA leave when he/she

1. Has been employed by the State for at least 12 months, and
2. Has worked at least 1,250 hours during the 12 months preceding start of FMLA leave, and
3. Is employed at a worksite where 50 or more state employees work within 75 miles of that worksite.

The required 12 months of employment need not be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years.

Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement stating OMES' intention to rehire the employee after the service break.

### **Actions prohibited and therefore unlawful for any employer**

1. Interfere with, restrain or deny the exercise of any right provided by FMLA.
2. Discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.
3. Make pre-hire inquiries regarding the need for FMLA leave.
4. Include periods of FMLA leave to exclude employees from good attendance awards or non-performance bonuses.
5. Ask for doctors' notes each time intermittent FMLA leave is used if certification is already approved.
6. Retaliate against employees who file FMLA complaints.

FMLA uses the same definition of employer as the Fair Labor Standards Act and includes any person acting directly or indirectly in the interest of an employer in relation to an employee. Consequently, managers and officers may be individually liable for any violations of the requirements of FMLA.

Violation to this policy may be grounds for disciplinary action up to and including termination.

### **FMLA Resources**

- [Compliance Assistance: Family and Medical Leave Act \(FMLA\)](#)  
Links to various sources of information about FMLA.
- [Fact Sheet on FMLA](#)  
Covers the major requirements of FMLA and updates to the FMLA regulations.
- [FMLA Compliance Guide](#)  
Summarizes FMLA provisions and regulations and provides answers to the most frequently asked questions.
- [elaws FMLA Advisor](#)  
The FMLA Advisor provides information about employee eligibility under the law; including valid reasons for leave; employee/employer notification responsibilities; and employee rights and benefits.
- [The FMLA Poster](#)  
All covered employers are required to display and keep displayed a poster prepared by the Department of Labor summarizing the major provisions of the FMLA.

## Forms

- [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition \(PDF\)](#)
- [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition \(PDF\)](#)
- [WH-381 Notice of Eligibility and Rights & Responsibilities \(PDF\)](#)
- [WH-382 Designation Notice \(PDF\)](#)
- [WH-384 Certification of Qualifying Exigency For Military Family Leave \(PDF\)](#)
- [WH-385 Certification for Serious Injury or Illness of a Current Servicemember -- for Military Family Leave \(PDF\)](#)
- [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave \(PDF\)](#)