



## DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

### POLICY 4.20 FAMILY AND MEDICAL LEAVE

#### **APPLICATION:**

Full-time, quasi full-time and part-time classified employees, wage employees, and at-will employees.

#### **PURPOSE:**

In accordance with the Family Medical Leave Act (FMLA), it is the policy of the Commonwealth to provide eligible employees with up to 12 workweeks of unpaid family and medical leave per rolling 12-month period because of their own serious health condition or the serious health condition of an eligible family member; or up to 26 workweeks of unpaid leave to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty, or has been notified of an impending call or order to covered active duty.

Family Medical Leave is unpaid leave, and provides job protection and preservation of certain benefits.

#### **POLICY SUMMARY:**

This policy provides guidance regarding the interaction of the Family Medical Leave Act and the Commonwealth's other Human Resource policies.

More information regarding FMLA can be found at the U.S. Department of Labor's [FMLA](#) website. The [Family and Medical Leave Act Employer Guide](#) is a helpful resource.

#### **AUTHORITY & INTERPRETATION:**

Title 2.2 of the Code of Virginia

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the Code of Virginia. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

#### **RELATED POLICIES:**

Policy 1.30 – Layoff  
Policy 1.57 – Severance Benefits  
Policy 2.10 – Hiring  
Policy 2.20 – Types of Employment  
Policy 4.10 – Annual Leave

- Policy 4.21 – Parental Leave
- Policy 4.30 – Leave Policies – General Provisions
- Policy 4.35 – Leave Sharing
- Policy 4.37 – Leave to Donate Bone Marrow and Organs
- Policy 4.50 – Military Leave
- Policy 4.55 – Sick Leave
- Policy 4.57 – Virginia Sickness and Disability Program
- Policy 4.60 – Workers’ Compensation
- Policy 6.10 – Personnel Records Management

**POLICY HISTORY:**

<b>EFFECTIVE DATE</b>	<b>DESCRIPTION</b>
09-16-93	Original publication of Policy 4.20 FMLA
06-16-97	Revision: Change in the paid leave provision to include employee’s ability to use all forms of leave.
01-13-10	Revision
10-07-14	Revision: Definition of spouse changed in accordance with Executive Order #30 Marriage Equality in the Commonwealth of Virginia.
07-01-18	Revision: Addition of Parental Leave from Policy 4.21 Parental Leave effective 06-26-18.
1/10/23	Revision and Re-Format: changed the 12-month measurement period from the leave year to a rolling 12-month period; clarification of son and daughter; and updated definition of a serious health condition. Policy communicated as of 11/04/22 to meet regulatory requirements for the transition between the 12-month periods.



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ADMINISTRATIVE PROCEDURES

PROCEDURES

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Eligibility	<p>To be eligible for coverage under FMLA, the employee:</p> <ul style="list-style-type: none"><li>• must have been employed by the Commonwealth in a salaried or wage position for a minimum of twelve months in the past seven years <i>AND</i></li><li>• must have worked for at least 1,250 hours in the previous 12-month period. (Note: leave and holiday hours are not counted in the calculation of work hours.)</li><li>• Eligibility determinations are made as of the date that the family and medical leave is to begin.</li><li>• Employees who are not eligible for family and medical leave at the beginning of their approved leave may become eligible and begin family and medical leave once they meet the eligibility requirements.</li></ul> <p>The rolling 12-month period begins on the first date of the FMLA event and ends twelve months following that date.</p> <p>Note: The Commonwealth of Virginia is considered one employer for the application of FMLA.</p>
FMLA Leave Amount	<p>An eligible employee is entitled to receive up to 12 workweeks (480 hours) of unpaid family and medical leave during a 12-month rolling period on either a continuous, intermittent, or reduced leave schedule basis for any one or more of the following reasons:</p> <ul style="list-style-type: none"><li>• the prenatal care for or the birth of a child, and to care for the newborn child (refer to Policy 4.21 Parental Leave for criteria for using Parental leave);</li><li>• placement of a child with the employee for adoption or foster care (refer to Policy 4.21 Parental Leave for criteria for using Parental leave);</li><li>• to care for a spouse, <a href="#">son</a>, <a href="#">daughter</a> or parent with a <a href="#">serious health condition</a>; Refer to the glossary for definition of son or daughter.</li></ul>

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	<ul style="list-style-type: none"> <li>• because of a serious health condition which renders the employee unable to perform the functions of their position; or</li> <li>• because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on covered active duty, or has been notified of an impending call or order to covered active duty.</li> </ul> <p>An eligible employee is entitled to receive up to 26 workweeks (1,040 hours) of unpaid family and medical leave during a single 12-month period to care for a covered servicemember with a serious injury of illness if the eligible employee is the servicemember’s spouse, son, daughter, parent or next of kin.</p> <ul style="list-style-type: none"> <li>• The single 12-month period commences the first day leave is taken to care for the covered servicemember and expires 12 months later.</li> <li>• An eligible employee is entitled to a combined total of 26 workweeks of unpaid leave during a single 12-month period for any FMLA-qualifying reason.</li> </ul> <p><u>Example:</u> An eligible employee may take 16 workweeks of family and medical leave to care for a covered servicemember and 10 workweeks of family and medical leave to care for a parent.</p> <p>Quasi Full-Time and Part-Time Classified</p> <ul style="list-style-type: none"> <li>• FMLA Leave Amount will be prorated based on the hours normally scheduled to work during the prior 12-month period.</li> </ul> <p>Wage Employees</p> <ul style="list-style-type: none"> <li>• FMLA Leave Amount will be prorated based on the hours normally scheduled to work during the prior 12-month period.</li> </ul> <p>EXAMPLE: A part-time employee works 25 hours per week year-round. During any 12-workweek period, they work a total of 300 hours (12 workweeks x 25 hours per week.) Therefore, if FMLA leave is taken, they may take up to 300 hours of family and medical leave in a 12-month rolling period.</p> <p>NOTE: Spouses employed by the same agency are limited in the amount of family and medical leave they may take for the</p>

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	<p>birth and care of a newborn child, or the placement of a child for adoption or foster care to a combined total of 12 workweeks of FMLA Leave. A combination of paid and/or unpaid leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement. This limitation does not apply to Parental Leave.</p>
<p>Use of Paid Leave</p>	<p>FMLA leave is unpaid but employees may use other leave types in order to be paid during their FMLA Leave. Some agencies may require employees to use their paid leave before entering into an unpaid leave status.</p> <ul style="list-style-type: none"> <li>• Personal Illness - Employees may use all available annual, VSDP Family/Personal, compensatory, overtime, recognition, traditional sick, or VSDP sick leave during the FMLA-designated leave period.</li> <li>• Family Reasons – Employees may use all available annual, VSDP Family/Personal, compensatory, recognition, overtime leave hours, and 33% of available sick leave hours under the Traditional Sick Leave program or the Virginia Sickness and Disability Program.</li> <li>• Agencies must provide up to 12 or 26 workweeks of FMLA whether the leave is paid or unpaid.</li> </ul>
<p>Intermittent Leave or Reduced Schedule Leave</p>	<ul style="list-style-type: none"> <li>• When medically necessary because of an eligible employee's own serious health condition or the serious health condition of a child, spouse or parent, an employee may take family or medical leave on an intermittent leave basis or work a reduced schedule, not to exceed 12 or 26 workweeks.</li> <li>• Employees who take intermittent leave or work a reduced schedule may use their available paid leave balances as permitted by each specific leave policy or take the intermittent leave as unpaid.</li> <li>• Employees do not accrue annual and sick leave for pay periods when they are unpaid during family and medical leave.</li> <li>• If approval is granted by agency management in advance, an employee may take intermittent leave or work a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care.</li> <li>• The agency may temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule as long as the new position carries equivalent pay and benefits.</li> </ul>

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<p>Medical Certification for Leave</p>	<p>The agency may require that a family and medical leave request be supported by a completed medical certification by the Treating Health Care Provider.</p> <p>Medical certification is required except in the case of birth, adoption, or foster placement. Other confirmation may be required in the case of birth, adoption or foster placement.</p> <ul style="list-style-type: none"> <li>• Leave for employee’s own serious health condition: use the "<a href="#">Certification of Health Care Provider for Employee’s Serious Health Condition</a>" form (U.S. Department of Labor Form WH-380-E) and submit to their agency’s Human Resources department. VSDP claim approval documentation shall be accepted for FMLA purposes. Leave for family member’s serious health condition: use the "<a href="#">Certification of Health Care Provider for Family Member’s Serious Health Condition</a>" form (U.S. Department of Labor Form WH-380-F) and submit to their agency’s Human Resources department.</li> <li>• Medical certification shall be obtained by the employee and returned to their agency within 15 calendar days of the request or upon return to work from an absence that may qualify as FMLA leave (absent extenuating circumstances).</li> <li>• If an employee fails to provide certification, recertification, or clarification in a timely manner then the agency may deny FMLA leave until the required certification is provided.</li> </ul>
<p>Leave Because of a Qualifying Exigency</p>	<ul style="list-style-type: none"> <li>• An employee may take family and medical leave for qualifying exigencies while their spouse, son, daughter, or parent who is a member of the Armed Forces, National Guard or Reserves and is on covered active duty or called to covered active duty.</li> <li>• The employee should use the "<a href="#">Certification of Qualifying Exigency for Military Family Leave</a>" (U.S. Department of Labor Form WH-384) form and submit it to their agency’s Human Resource department.</li> <li>• The first time an employee requests leave because of a qualifying exigency, they must provide a copy of the covered military member’s covered active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s covered active duty. This information need only be provided once. A copy of new covered active duty orders or other documentation issued by the military shall be provided if the need for qualifying exigency leave arises out of a different covered active</li> </ul>

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	<p>duty or call to covered active duty status of the same or a different covered military member.</p>
<p>Leave to Care for a Covered Service member</p>	<ul style="list-style-type: none"> <li>The employee should use the <a href="#">“Certification for Serious Injury or Illness of a Current Servicemember”</a> form (U.S. Department of Labor Form WH-385) and submit to their agency’s Human Resources department.</li> </ul>
<p>Employee Responsibilities</p>	<ul style="list-style-type: none"> <li>An employee should submit a written request for family and medical leave at least 30 calendar days prior to the anticipated leave begin date or as soon as practicable in unforeseen circumstances. If an employee is not able to provide notice because of an illness or injury, notice may be given by a family member or a representative as soon as practicable.</li> <li>An employee must comply with agency leave request procedures, absent unusual circumstances. Failure to do so may be grounds for delaying or denying an employee’s request for FMLA leave.</li> </ul>
<p>Agency Responsibilities</p>	<ul style="list-style-type: none"> <li>Agencies must grant an eligible employee's request to take up to 12 workweeks of family and medical leave during a rolling 12-month period, or 26 workweeks of leave to care for a covered servicemember, during a single 12-month period, as applicable, for the reasons stated above.</li> <li>Agencies must determine if they will require employees to use paid leave before entering into an unpaid leave status. Agencies must document this decision in their agency policy and communicate this requirement to all employees.</li> <li>Upon receiving a request for family and medical leave the agency must notify the employee of their eligibility for FMLA within five business days. The agency may require certification for leave requested for an employee's serious health condition, for their family member's serious health condition, or for the serious injury or illness of a covered servicemember, before granting family and medical leave. The agency should provide the employee with a completed <a href="#">“Notice of Eligibility and Rights &amp; Responsibilities”</a> form (U.S. Department of Labor Form WH-381).</li> <li>Agencies must make a determination on a family and medical leave request within five business days of receiving sufficient information to make a determination. Once a determination has been made, agencies should provide notification to their employees using the <a href="#">“Designation Notice”</a> form (U.S. Department of Labor Form WH-382).</li> </ul>

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	<ul style="list-style-type: none"> <li>The agency may designate family and medical leave for an employee if notified that the employee has a serious health condition, rather than wait for the employee to request it.</li> </ul>
Returning from Leave	<p>Upon returning from family and medical leave, an employee must be reinstated to their original position, or an "equivalent position." During periods of family and medical leave, agencies can require their employees to report periodically on their status and intent to return to work, and can require certification from the Treating Health Care Provider that employees are able to return to work.</p>
Status of Benefits and Pay during Family Medical Leave	<p style="text-align: center;"><u>Health Insurance Premiums</u></p> <ul style="list-style-type: none"> <li>Agencies will continue to contribute to the health insurance premiums of salaried employees for absences covered by the provisions of FMLA.</li> <li>Health care premiums will continue to be deducted from paychecks when an employee is using paid leave..</li> <li>Employees who are in an unpaid status must submit the employee portion of their health insurance premiums directly to their agency. Premiums are due to agencies by the first day of each month of coverage. If the employee fails to make premium payments, agencies will follow the same procedures to terminate coverage as they would if employees failed to pay premiums while on leave without pay for other reasons.</li> <li>If an employee fails to return to work at the end of leave under FMLA, the agency may recover from them the Commonwealth's share of premiums paid during the period of leave without pay. However, there will be no recovery of premium if the employee fails to return to work as a result of the onset, recurrence, or continuation of serious health conditions that entitled them to leave to care for themselves or for a family member; or other circumstances beyond the employee's control.</li> </ul> <p style="text-align: center;"><u>Performance Increases</u></p> <p>Employee eligibility for performance increases will be determined in accordance with Policy 1.40, Performance Planning and Evaluation or enabling legislation.</p> <p style="text-align: center;"><u>Life Insurance</u></p>



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	<p data-bbox="618 226 1393 296">Agencies will continue to pay life insurance premiums while employees are on family and medical leave.</p> <p data-bbox="922 331 1114 365" style="text-align: center;"><u>Leave Accrual</u></p> <p data-bbox="618 401 1401 506">Employees will not accrue annual or traditional sick leave hours during any period of unpaid leave or after 90 calendar days on leave with pay.</p> <p data-bbox="943 541 1094 575" style="text-align: center;"><u>Retirement</u></p> <p data-bbox="618 611 1386 680">Retirement contributions may be impacted. Please consult with the Virginia Retirement System.</p> <p data-bbox="808 716 1230 749" style="text-align: center;"><u>Annual Leave Anniversary Date</u></p> <p data-bbox="618 785 1406 919">When more than 14 consecutive calendar days of unpaid family and medical leave are taken, the employee's next annual leave anniversary date will be advanced according to the length of time taken on unpaid family leave.</p>
FMLA Records Management	<p data-bbox="618 951 1414 1085">Agencies must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years and must include the information listed below:</p> <ul data-bbox="618 1121 1409 1843" style="list-style-type: none"> <li data-bbox="618 1121 1409 1297">• Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.</li> <li data-bbox="618 1297 1409 1402">• Leave designated as FMLA leave, and the dates employees took leave. If FMLA leave is taken in increments of less than a day, the hours must be noted.</li> <li data-bbox="618 1402 1409 1436">• Copies of employee's notices of leave.</li> <li data-bbox="618 1436 1409 1541">• Any documents (including written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves.</li> <li data-bbox="618 1541 1409 1575">• Records of premium payments.</li> <li data-bbox="618 1575 1409 1751">• Records of any dispute between the agency and an employee regarding designation of leave as FMLA leave, including any written statement from the agency or employee of the reasons for the designation and for the disagreement.</li> <li data-bbox="618 1751 1409 1843">• Agencies should designate leave as FMLA in the Human Resource Information System when FMLA criteria are met.</li> </ul>



Employment Benefits	All benefits provided by the Commonwealth to salaried employees including group life insurance, health insurance, annual and sick leave, educational benefits, and retirement contributions.
Equivalent Position	One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility and authority.
Intermittent Leave Schedule	A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis.
Medical Certification	Certification from the Treating Health Care Provider supporting the employee's request for the family medical leave. See Forms.
Treating Health Care Provider	Doctors of medicine or osteopathy that are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice; any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, physician assistants, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law. This also includes Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, although an employee or family member may be required to submit to a medical examination for a second or third opinion (not treatment) from a non-Christian Science practitioner.
Military Caregiver Leave	Twenty-six weeks of unpaid leave during a single 12-month period to provide care for a covered servicemember.
Parent	Biological parent or individual who stands in place of the parent of the employee and is charged with the duties and responsibilities of the parent.
Qualifying Exigency	A reason for taking FMLA leave, arising out of the fact that the employee's spouse, son, daughter or parent is on, or has been notified of an impending call or order to active duty in the Armed Forces. Qualifying exigencies fall into 8 categories: 1) short-notice deployment, 2) military events and 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 which arise

out of active duty, or call to active duty, provided that the employee and agency agree.

Reduced Schedule

A leave schedule permitting the employee to reduce their usual number of hours worked per workweek or per workday.

Rolling Period

A rolling 12-month period measured backward from the date an employee uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months).

Serious Health Condition

- An overnight stay in a hospital, hospice, or residential medical care facility. Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
- Continuing treatment by a Treating Health Care Provider (any one or more of the following)
  - Incapacity Plus Treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either:
    - Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or,
    - At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the Treating Health Care Provider might prescribe a course of prescription medication or therapy requiring special equipment.
  - Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.
  - Chronic Conditions: Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.
  - Permanent or Long-term Conditions: A period of incapacity which is permanent or long-term due to a

condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.

- Conditions Requiring Multiple Treatments: Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.

Son or daughter

A biological, adopted or foster child, a stepchild, or legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or a physical disability. If an adult son or daughter is determined to be incapable of self-care because of a disability, he or she will be considered a "son or daughter" under the FMLA. In order for a parent to take FMLA leave to care for an adult child, the son or daughter must also:

1. have a serious health condition, and
2. needs care because of the serious health condition.

Spouse

Husband or wife as recognized in accordance with Executive Order 30 (2014) Marriage Equality in the Commonwealth of Virginia.