

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 1 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

I. Introduction and Summary:

The Family and Medical Leave Act (FMLA) provides job-protected leave without pay to eligible employees for the birth and care of their newborn child, placement of a child with the employee for adoption or foster care, including care for the newly placed child during the first 12 months after placement and any preliminary proceedings required prior to placement; to care for an immediate family member with a serious health condition, or for their own qualifying serious health condition that renders him or her unable to perform one or more of the essential functions of the job. The FMLA also provides for job-protected leave without pay to eligible employees due to a family member's call to active duty in the Armed Services or to care for an injured service member. Eligible employees will be granted up to 12 weeks of FMLA leave during a 12 month rolling year (or 26 workweeks to care for a covered service member with a serious injury or illness.)

II. Authority:

- A. Federal Family and Medical Leave Act (FMLA): 29 USC § 2601, 2612, 2613, and 2614;
- B. U.S. Department of Labor: 29 CFR Part 825;
- C. O.C.G.A.: §45-7-9 and 45-20-16;
- D. State Personnel Board Rules: Rule 16 Absence from Work, Rule 23 FML;
- E. Georgia Department of Corrections (GDC) Standard Operating Procedures (SOPs): 104.37 Working Hours, Overtime & Compensatory Time (FLSA), 104.39.02 Annual & Terminal Leave, 104.39.04 Leave without Pay, 104.39.05 Military Leave, 104.39.06 Sick Leave, 104.39.11 Personal Leave, and 104.39.13 Leave Donation Program.

III. Definitions:

- A. **Covered Military Member** - A current member of the Regular Armed Forces, National Guard or Reserve components who is on covered active duty or called to covered active duty. (This definition applies only to Qualifying Exigency Leave.)

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 2 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

- B. Covered Service Member** - A current member of the Regular Armed Services, Reserves or National Guard who has incurred a serious illness or injury in the line of duty on active duty, is undergoing medical treatment, recuperation, or therapy; is otherwise in military outpatient status, or otherwise on the temporary disability retired list. This definition includes veterans who were members of the Regular Armed Service, Reserves, or National Guard within the five (5) year period preceding the treatment. (This definition applies only to Military Caregiver Leave.)
- C. Eligible Employee** - Any GDC employee, who has been employed for a minimum of 12 months by the State of Georgia; and who has worked for at least 1,250 hours in the 12 months preceding the commencement of Family Medical Leave. (The 12 months do not need to be consecutive; there can be a break in service. Time worked for State government through a temporary service agency may count toward the 12 months-minimum requirement if all other conditions are met).
- D. Family Medical Leave** - Leave taken by an eligible employee in accordance with the provisions of this policy. Such leave shall not be designated/approved for a period greater than 12 workweeks in any rolling 12-month period for family and medical leave or not greater than 26 weeks in a single 12-month period for military caregiver leave.
- E. Health Care Provider** -
1. Physicians authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
 2. Physician's Assistants, Nurse practitioners, Nurse midwives, clinical social workers, and licensed counselors authorized to practice under state law and performing within the scope of their practices as defined under appropriate state law; and
 3. Christian Science practitioners listed with The First Church of Christ Scientist in Boston, Massachusetts.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 3 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

Note: In these instances, the Director, Human Resources or designee may require a second and/or third medical opinion by a non-Christian Science practitioner.

4. Any Health care provider as defined above who practices in a country other than the United States and who is licensed to practice in accordance with the laws and regulations of that country.
 5. Any health care provider from whom the benefit plan will accept a claim.
- F. **Intermittent Leave** - Leave taken in separate blocks of time due to a single qualifying reason.
- G. **Next of Kin** - A term used to describe a person's closest living blood relative or relatives when there is not a parent, spouse, son or daughter. In the following order: siblings, grandparents, aunt/uncle, or first cousin.
- H. **Parent** - The biological parent, adoptive, stepparent, foster parent or an individual who stands or stood *in loco parentis*. A biological or legal relationship is not necessary. This term does not include parents-in-law.
- I. **Reduced Leave Schedule** - A change in the employee's schedule for a period of time, usually reducing the number of hours per work week or work day.
- J. **Rolling Twelve-Month Period** - A rolling period of 365 consecutive calendar days beginning the first day of a Family Medical Leave of absence.
- K. **Serious Health Condition** - An illness, injury, impairment, or physical or mental condition that involves either:
1. An overnight stay in a hospital, hospice, or residential medical facility and any period of incapacity or treatment related to the reason for inpatient care; or,
 2. Continuing treatment by a health care provider that involves at least one of the following:

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 4 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

- a. Incapacity of more than three (3) consecutive days, plus treatment that includes at least two (2) medical examinations or one (1) examination followed by treatment under the healthcare provider's supervision;
 - b. Prenatal care or incapacity because of pregnancy;
 - c. Periodic treatment or incapacity for a chronic serious health condition that:
 - i. Requires periodic visits (at least twice per year) to a health care provider for treatment,
 - ii. Continues over an extended period of time, and
 - iii. May cause episodic rather than continuing periods of incapacity;
 - d. Permanent or long-term condition for which treatment may not be effective; or,
 - e. Absence to receive multiple treatments for:
 - i. Retroactive surgery following an accident or other injury, or
 - ii. For a condition that, if left untreated, would likely result in incapacity of more than three (3) consecutive days (i.e., chemotherapy, dialysis, etc.).
- L. **Son or Daughter** - A biological child, adopted child, stepchild, foster child, legal ward or child of a person who stood *in loco parentis* of an eligible employee who is under 18 years of age or 18 years of age or older and permanently incapable of self-care due to mental or physical disability. (*In loco parentis* means having day to day responsibilities to care for and financially support a child.)

Note: For Military Family Medical Leave purposes, the son or daughter may be of any age.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 5 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

M. **Spouse** - A husband or wife in a lawful marriage.

N. **Workdays** - For purposes of appeals and responses, workdays shall be determined by the schedule of the individual to whom a specified time limit applies.

O. **Work Week** - The number of hours an employee typically works during a seven- day period. Most full-time employees have a 40-hour workweek. Appropriate pro rata adjustment is made for part-time employees. Employees required to work overtime, may have a workweek of more than 40 hours.

IV. Statement of Policy and Applicable Procedures:

A. Request:

The employee's notice of the need to take leave can be verbal, and does not have to specifically mention the Family Medical Leave. In practice, the employee should provide notice at least 30-days prior, when the leave is foreseeable, and as soon as practical when it is not. If, when requesting leave, the employee makes statements indicating that the leave may be Family Medical Leave qualifying, the Appointing Authority/designee is required to ask for further information and details.

B. Serious Health Condition:

1. If Family Medical Leave is foreseeable, based on planned (pre-scheduled) medical treatment, the employee must make a reasonable effort, in cooperation with the appropriate health care provider, to schedule the treatment so as not to unduly disrupt the operations of the work unit.
2. When requesting or designating absences as Family Medical Leave for a serious health condition of the employee or family member, medical certification of the health condition is required utilizing Attachment 4, Certification of Employees Serious Health Condition, and Attachment 5, Certification of a Family Member's Serious Health Condition.
3. The Appointing Authority/designee may require that the employee obtain subsequent re-certifications on a reasonable basis when the certification does not indicate an end date. Certification may not be requested more

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 6 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

often than every 30 days, except under certain extenuating circumstances. The cost of providing re-certification (medical updates) is the responsibility of the employee.

4. Family Medical Leave for a serious health condition is limited to the time determined to be medically necessary by the attending health care provider.
5. Family Medical Leave to care for a family member with a serious health condition ends if the family member passes away. The date of death is the last day that qualifies for Family Medical Leave.

Note: The Appointing Authority may approve leave after the date of death of an employee's family member in accordance with SOPs 104.39.06 Sick Leave, 104.39.02 Annual Leave, and 104.39.11 Personal Leave. A leave of absence without pay may also be considered in accordance with SOP 104.39.04 Leave Without Pay.

C. Child Birth or Adoption:

1. A mother is entitled to leave for incapacity due to pregnancy for prenatal care or her own serious health condition following the birth of a child. Circumstances may require that Family Medical Leave begin before the actual date of birth of a child. A father may be eligible for Family Medical Leave due to a serious health condition involving his unborn or newborn child or the mother of his unborn or newborn child as provided in Section B, above.
2. Leave is available for bonding to fathers and mothers, and no medical certification is required. However, bonding leave must be completed within 12 months of the date of birth or placement of a child with the employee for adoption or foster care.
3. If husband and wife are both employed by the State of Georgia, the aggregate number of work weeks of leave for bonding or adoption to which both are entitled is limited to a total of 12 work weeks. If the husband or wife takes less than 12 weeks for this purpose, each may take the remainder of the 12 weeks for other Family Medical Leave qualifying events.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 7 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

D. Military Caregiver Leave:

1. Employees who are the spouse, son, daughter, parent or next of kin of a covered service member may use Family Medical Leave to care for a covered service member on the temporary disability list who has incurred serious illness or injury in the line of duty.
2. Eligible employees may use up to 26 weeks of Family Medical Leave to care for a covered service member. Employees are limited to a combined total of 26 weeks for any Family Medical Leave qualifying event during a single 12-month period. Only 12 weeks may be used for reasons other than to care for a covered service member.
3. For the purpose of leave to care for a covered service member, the single 12-month period is a rolling 12 months, beginning on the first day leave is taken to care for a covered service member, regardless of the method used to determine the 12-month period for other Family Medical Leave qualifying events.
4. When taking leave to care for a covered service member, certification may be required utilizing Attachment 6, Certification of a Covered Service Member's Serious Illness or Injury.
 - a. Second/third opinions and re-certifications may not be requested for military caregiver leave.
 - b. Invitational Travel Orders will be accepted in lieu of certification.

E. Qualifying Exigency Leave:

1. Employees who are the spouse, son, daughter or parent of a covered military member on active duty or call to active duty status may take Family Medical Leave for the following qualifying exigencies:
 - a. Short Notice Deployment;

Note: Leave taken for this purpose may be used for a period of seven calendar days, beginning on the date of notification.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 8 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

- b. Military Events and Related Activities;
- c. Childcare and School Activities;
- d. Financial and Legal Arrangements;
- e. Counseling;
- f. Rest and Recuperation;

Note: Eligible employees may take five (5) days to spend time with a covered military member on short-term rest and recuperation.

- g. Post deployment activities;
 - h. Additional activities as agreed upon by the Appointing Authority and the eligible employee.
2. Family Medical Leave taken for any of the above reasons may only be approved if the qualifying exigency arises due to the covered military member being on Federal active duty or call to active duty status in support of a contingency operation. A copy of the orders and Attachment 7, Certification of a Qualifying Exigency, may be required.

F. Response:

1. Approval and/or designation of Family Medical Leave must be in writing and conform to the requirements of this policy.
2. Upon receipt of a request (or knowledge of a potentially qualifying event) the Appointing Authority/designee must, within 5 business days, provide the employee with Attachment 3, Notice of Eligibility and Rights and Responsibilities and request that the appropriate certification form be completed and returned Attachment 4, Certification for Employees Serious Health; Attachment 5, Certification of a Family Member's Serious Health Condition; or Attachment 6, Certification of a Covered Service Member's

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 9 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

Serious Illness or Injury; and Attachment 7, Certification of a Qualifying Exigency.

- a. The employee must be provided with a minimum of 15 calendar days to return the certification form.
- b. If the certification form is returned incomplete or if it does not contain sufficient information to determine whether the event is Family Medical Leave qualifying, then an additional seven (7) calendar days must be provided to the employee to correct the form.

Note: Failure to return a certification form in a timely manner does not necessarily result in the forfeiture of an employee's entitlement to Family Medical Leave or the associated right to return to an equivalent position.

3. Upon receipt of a completed certification form, the HR Representative must, within five (5) business days, provide the employee with Attachment 8, Designation Notice, indicating approval or denial of the employee's Family Medical Leave request.
 - a. If the leave is for an employee's own serious health condition, then Attachment 10, Georgia Activity Analysis, must accompany Attachment 8, Designation Notice, along with the employee's job description.
 - b. A designation should only occur once sufficient information has been obtained to confirm the presence of a qualifying event.
 - c. Attachment 8, Designation Notice, should include the terms and conditions of the leave, the employee's right to return, and information regarding the continuation of benefits while on leave without pay, if applicable.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 10 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

- d. If a request is denied, Attachment 9, Appointing Authority's Response, must be included with Attachment 8, Designation Notice, indicating the specific reason for the denial and the employee's appeal rights.

Note: If a request for Family Medical Leave is denied, the Appointing Authority/designee must forward a copy of the request, certification, and designation forms to the Director of Human Resources.

4. In accordance with federal regulations and State Personnel Board Rules, an Appointing Authority may not disapprove a request for the use of accrued paid leave for a Family Medical Leave absence. Accumulated holiday leave and compensatory time balances should be exhausted prior to use of accrued sick, personal or annual leave balances. The type of leave used will be determined by the corresponding GDC policy.
5. Once leave has been designated as a Family Medical Leave, a Personnel Action request must be forwarded to the assigned Corrections Human Resources Management Personnel Technician for documentation in the PeopleSoft System.

Note: Employees who elect to receive Workers' Compensation benefits for a work-related illness or injury will be placed on Family Medical Leave without Pay. Employees designated as "Special Injury" cases will be placed on Family Medical Leave with Pay.

G. Request for Review:

1. An employee who has been denied Family Medical Leave due to ineligibility, may request a review of this decision.
2. The review must be filed with the Director, Human Resources, Department of Corrections, Gibson Hall – 2nd Floor, PO Box 1529, Forsyth, Georgia 31029, using one of the following options:
 - a. Hand deliver;
 - b. FAX to (478) 992-5178; or

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 11 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

c. Certified mail.

3. The written request, including the request for leave and all supporting documentation, must be filed by the employee within five (5) business days following receipt of the initial response.
4. The Director of Human Resources will review the information provided in the written request.
5. Second and third medical opinions may be required, only if the initial request for Family Medical Leave is denied and appealed pursuant to this procedural review section. If the second opinion differs from the original certification, the Director of Human Resources may require that the employee obtain the opinion of a third health care provider designated or approved jointly by the Director of Human Resources and the employee. The expenses for the second and third opinions will be paid by the Department.

Note: The opinion of a third health care provider is final and will bind the Appointing Authority and the employee.

6. The Director of Human Resources will, within two (2) workdays after physical receipt of the documentation in question, issue a final decision with reasons, by either approving or denying family medical leave. The decision of the Director, Human Resources is final and cannot be appealed; except that an employee may file a complaint about alleged violations of Family Medical Leave with the federal government (Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor).

H. Intermittent/Reduced Schedule Leave:

1. Family Medical Leave for a serious health condition of an employee may be taken on an intermittent basis or on a reduced leave schedule when deemed medically necessary by a health care provider.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 12 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

2. Family Medical Leave also may be taken intermittently or on a reduced leave schedule to provide care or psychological comfort to a qualifying family member with a serious health condition or a covered service member with a serious illness to injury.
3. A medical statement is not required for each absence when Family Medical Leave is taken intermittently. Documentation may be required initially, and recertification may be required no more often than every 30-calendar days.
4. Family Medical Leave taken to care for a newborn child or for placement of a child for adoption or foster care may be taken intermittently or on a reduced leave schedule only with Appointing Authority/designee approval, unless the absence involves a qualifying serious health condition.
5. Employees who request Family Medical Leave on an intermittent or reduced leave schedule basis may be required to temporarily transfer to an available alternative position that better accommodates recurring periods of absence.
 - a. The alternative position must have equivalent pay and benefits, but is not required to have equivalent duties.
 - b. Employees must not be transferred to alternative positions in order to discourage the use of Family Medical Leave or to positions that represent a hardship (e.g., employees may not be transferred to a less desirable shift).
 - c. When the need for intermittent leave or a reduced leave schedule ends and employee is able to return to their normal work schedules, he or she must be returned to his or her former position or an equivalent position.
6. Only the amount of leave actually taken on an intermittent or reduced leave schedule basis may be counted toward the 12 work weeks of Family Medical Leave.

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 13 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

I. Return to Duty:

1. As a condition to return to duty, the employee will be required to provide certification from their health care provider that the employee is able to resume work and the limitations, if any on Attachment 10, Georgia Activity Analysis.
2. Upon expiration of a period of Family Medical Leave, the employee must be returned to the former position, OR, to a position of equal grade and pay for which the employee is qualified, without loss of any rights, provided the employee has complied with the terms of the leave.
3. Upon return to duty status, an employee who has been absent due to Family Medical Leave will be treated the same as an employee who returns from regular leave without pay, or any approved form of leave with pay.
4. Absences from work may only be retroactively designated as Family Medical Leave after an employee has returned to duty under the following circumstances:
 - a. When the Appointing Authority/designee learns of the reason for the absence after an employee has returned to work.
 - b. The employee is notified within two calendar days of returning that the leave will count as Family Medical Leave.
 - c. The employee and employer can mutually agree that the leave was Family Medical Leave and that the late designation does not cause harm or injury to the employee.

V. Attachments:

- Attachment 1: Employees Rights and Responsibilities Under the Family and Medical Leave Act;
- Attachment 2: Family and Medical Leave Request Form;
- Attachment 3: Notice of Eligibility and Rights and Responsibilities;
- Attachment 4: Certification of Employees Serious Health Condition;
- Attachment 5: Certification of a Family Member's Serious Health Condition;

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Family and Medical Leave (FMLA)		
Policy Number: 104.39.12	Effective Date: 1/16/2018	Page Number: 14 of 14
Authority: Commissioner	Originating Division: , Administration and Finance Division (Human Resources)	Access Listing: Level I: All Access

Attachment 6: Certification of a Covered Service Member's Serious Illness or Injury;

Attachment 7: Certification of a Qualifying Exigency;

Attachment 8: Designation Notice;

Attachment 9: Appointing Authority's Response; and

Attachment 10: Georgia Activity Analysis.

VI. Record Retention of Forms Relevant to this Policy:

Attachment 1, Employee Rights and Responsibilities Under the Family and Medical Leave Act must be permanently posted in a prominent location on the "Official Bulletin" Board in each facility, unit, and major office area. Upon completion, Attachments 2 through 10 shall be retained permanently in the employee's official and local medical file.