

NEVADA DEPARTMENT OF AGRICULTURE
FMLA LEAVE
POLICY #AG-1-HR-3

PURPOSE

This policy provides information to employees of the Department of Agriculture concerning Family and Medical Leave Act (FMLA) entitlements and obligations under the provisions of the FMLA.

POLICY

All leave which is FMLA qualifying will be designated as such for FMLA eligible employees.

SCOPE

This policy and the procedures contained within apply to all employees working under the authority of or within the Department of Agriculture.

REFERENCES

The Family and Medical Leave Act of 1993 amended by the National Defense of Authorization Act for Fiscal Year 2008 and the National Defense Authorization Act for Fiscal Year 2010; United States Department of Labor Final Rule (29 CFR Part 825); Nevada Administrative Code (NAC) 284.581, 284.5811 and 284.5813.

For more information regarding eligibility, entitlements and other non-discretionary provisions and requirements see the Family and Medical Leave Act Overview: <http://dop.nv.gov/FMLAOverview.pdf>.

FORMS

As currently provided by the Division of Human Resource Management (DHRM).

RESPONSIBILITY:

1. Supervisors shall be responsible for:
 - a. When a supervisor receives notice of a potentially FMLA qualifying event either verbally or through an absence, the supervisor will immediately notify Agency Human Recourse Services (AHRS). The supervisor should direct all future FMLA related matters to AHRS to ensure appropriate timeliness, that documentation is completed, and to maintain confidentiality.

- b. Ensuring the employee's timesheet is coded correctly, once AHRS has informed the supervisor that the leave will be designated as FMLA leave pending approval.
- c. Providing AHRS with current essential functions for the employee's position.
- d. Immediately forwarding the employee's medical release to return to duty to AHRS.
- e. Monitoring employee's leave use to verify it conforms to the estimate(s) provided by AHRS. (If the leave use appears to vary from the provided estimate(s), the supervisor will document the discrepancy(s) and notify AHRS as soon as possible.)
- f. Notifying AHRS when an employee is within 80 hours of going into leave without pay status.

2. Employees are responsible for:

- a. Informing the supervisor and AHRS of the need to take leave for a potentially qualifying event.
 - i. An employee must provide notice as soon as possible and practical, taking into account all of the facts and circumstances in the individual case. Ordinarily, an employee must provide 30 days advance notice (completion of NPD-61 on DHRM website) when the need for leave is foreseeable.
 - ii. Failure to comply may result in leave being delayed or denied.
- b. Forwarding the completed physician's certification form (if applicable) to AHRS.
- c. If employee is on leave without pay, he/she must arrange for payment of his/her portion of health insurance and optional coverage to the Public Employee Benefits Program (PEBP), as noted on form NPD-62.
- d. Providing periodic updates to the employee's supervisor.
- e. Providing a medical release to return to duty to the employee's supervisor, if requested on the NPD-63.
- f. Failure to submit requested documentation may result in an unauthorized absence and be deemed absent without leave (AWOL), which may result in disciplinary action.
- g. Coding of their timesheet with the appropriate FMLA approved codes located in NEATS, and listed on the NPD-62. They can also be obtained by contacting AHRS, or your payroll clerk.

3. Agency Human Resource Services (AHRS) shall be responsible for:

- a. Providing assistance to supervisors and employees in the interpretation and explanation of the provisions and requirements of FMLA.
- b. Providing the employee with all applicable and appropriate FMLA forms and information necessary to apply for and determine the employee's eligibility.

- c. Confirming whether the employee meets the employment eligibility requirements for FMLA leave, upon receiving notification of the need for leave.
- d. Informing the employee's supervisor and the payroll clerk when the leave will be temporarily designated as FMLA, until a determination is made on whether the need for leave is FMLA qualifying.
- e. Providing the employee with the Notice of Eligibility and Rights & Responsibilities (NPD-62), (along with medical certification form and essential functions, if appropriate) within 5 business days of employee's request for leave.
- f. When medical certification or other substantiating documentation is required, notifying the employee of the deadline for returning the necessary documentation (a minimum of 15 calendar days is allowed for return of medical certification).
 - i. If employee submits an incomplete or insufficient certification, AHRS will allow the employee at least 7 calendar days to provide a corrected certification.
 - ii. Advising the employee that failure to submit the required documentation or additional requested information in a timely manner can result in a denial of the request for FMLA leave.
- g. Reviewing all submitted FMLA documentation and providing notice either of denial or approval of FMLA (NPD-63). (Notice to employee with copy to agency payroll clerk).
- h. Providing the supervisor with the following information, as stated on the approval of leave, when applicable:
 - i. Estimated beginning and ending dates of leave.
 - ii. Treatment schedule and/or scheduled appointments, time required for treatment/appointment and recovery.
 - iii. Part-time or reduced work schedule.
 - iv. If applicable, requirement for employee to submit an NPD-81 (medical release to return to work).
- i. Keeping all FMLA paperwork separately, in confidential medical files.
- j. If employee goes on unpaid leave while on FMLA, working with the employee to complete necessary documentation to notify Public Employees' Benefit Program (PEBP) of any necessary changes.
- k. Notifying Public Employees Retirement System (PERS) when an employee goes on unpaid leave, to include the starting date and the return from unpaid leave date.
- l. Notifying the employee's supervisor and the agency payroll clerk of any changes in the nature or duration of the employee's FMLA leave.
- m. Contacting the employee for clarification if there are discrepancies on the certification form.
- n. Verifying receipt of a medical release to return to duty, when applicable.
- o. If the FMLA qualifying event exceeds a single leave year (12 rolling months) (e.g. lifetime condition), requesting a new medical certification.

- p. Providing the supervisor with a worksheet for calculating available FMLA leave balances if advised or aware that employee will approach exhaustion of their entitlement.

PROCEDURES:

1. **FMLA provides eligible employees** up to 12 work weeks of unpaid leave for certain family and medical reasons during a “rolling year”. A rolling year is determined based on a rolling 12 month period measured backward from the date an employee uses his/her FMLA leave. Leave may be taken for any one, or a combination of the following reasons:
 - a. To care for the employee’s child after birth, or placement for adoption or foster care;
 - b. To care for the employee’s spouse, son, daughter or parent (but not in-law) who has a serious health condition;
 - c. For the employee’s own serious health condition (including any period of incapacity due to pregnancy, pre-natal medical care or childbirth) that makes the employee unable to perform one or more of the essential functions of the employee’s job; and/or
 - d. Because of any qualifying exigency arising out of the fact that an employee’s spouse, son, daughter or parent is a member of the Armed Forces on active duty during deployment to a foreign country.
2. **Other qualifying exigencies may include** attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
3. The FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period, measured forward from the first day of usage.
4. **Medical and Other Certifications Required:** Employees will be required to provide medical certification if the leave request is for one of the following qualifying leave events: (1) the employee’s own serious health condition; (2) to care for a qualifying family member’s serious health condition; or, (3) to care for a covered service member.
 - a. Employees will also be required to provide certification if the leave request is for a qualifying exigency.

- b. If the requested certification is not received by the date as specified in Section B of the "Notice of Eligibility and Rights & Responsibilities" (NPD-62), it may result in denial of the leave until it is provided.
 - c. If an employee refuses to provide a certification, his/her leave request may be denied and the employee may be subject to absence without approved leave (AWOL).
 - d. Approved certification forms for FMLA (available on the DHRM website under Attendance and Leave) will be used to substantiate a FMLA qualifying leave event.
 - e. Some situations not requiring a certification will still require other appropriate documentation to substantiate the need for leave. In such cases, the employee should contact AHRS for assistance.
 - f. Authentication, clarification and/or second or third opinions may be sought or requested; all of these processes will be administered by AHRS.
 - g. **Re-Certification**: An employer, through AHRS, may request re-certification of a medical condition every six months in connection with an absence by the employee. Re-certification can be requested more frequently than 6 months under some circumstances. For more information, please refer to the FMLA Overview on the DHRM website or contact an AHRS representative.
 - h. **Annual Certification**: If an employee's need for FMLA leave extends beyond a single leave year (12 rolling months), a new medical certification will be required.
5. **Release to Return to Duty**: Any employee returning from FMLA leave for his/her own serious health condition will be required to provide a medical release to return to duty signed by an appropriate health care provider on the form FMLA Medical Release (NPD-81), unless for an approved intermittent condition. In limited circumstances, a medical release to return to duty may be required for intermittent leave. For assistance contact AHRS.
6. **Type of Leave Used**: Approved FMLA leave is not an additional type of leave category available to employees. Employees approved to take FMLA leave are required to use their accumulated sick, annual, and compensatory leave as needed. If the employee has exhausted all leave balances and still has eligibility for FMLA, he/she may be approved for leave without pay or catastrophic leave. The type of leave used under approved FMLA is addressed in Nevada Administrative Code NAC 284.5811. If the employee has questions on appropriate leave to use, they may contact the department payroll clerk or AHRS.

7. **Alternative Employment While on FMLA Leave:** An employee must receive pre-approval from the AHRS Personnel Officer before accepting volunteer work, other employment, or engaging in self-employment while on FMLA leave or any other authorized leave of absence. Approval of work while on approved leave will be evaluated on a case-by-case basis. Work that is in conflict with the interest of the department will be disallowed.

POLICY COMMUNICATION:

All supervisors and managers of the Department of Agriculture will receive a copy of this policy. Supervisors will ensure all assigned employees are aware of the requirements of this policy. Supervisors or employees needing clarification should contact AHRS, or their Division Administrator for assistance/problem solving.

DIRECTOR'S POLICY AUTHORIZATION:



Jim R. Barbee, Director

3/28/13

Date

APPROVED BY THE BOARD OF AGRICULTURE ON March 26, 2013.
Effective Date

This policy is not a substitute for relevant law or regulation nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with the Family and Medical Leave Act (FMLA), federal regulations, state law, the Rules for State Personnel Administration (NRS & NAC 284) and the Overview of the Family & Medical Leave Act published by the Department of Administration, Division of Human Resources Management.