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General Information

Under the Family and Medical Leave Act of 1993 (FMLA), eligible employees are entitled to use 12 workweeks leave for an FMLA-qualifying illness or injury. The 12 workweeks leave may be taken during any 12 month period from the first day leave was taken.

Leave with or without pay that is used for an FMLA-qualifying illness or injury will be counted against the annual FMLA entitlement of 12 workweeks leave. Leave for employees who work less than full-time will be pro-rated. All accrued sick leave and vacation leave shall be used prior to the use of leave without pay for all leave that meets FMLA criteria. Absences for workers compensation may count against leave under FMLA entitlement.

The use of intermittent leave or reduced leave is limited to: 1.treatment and recovery of a serious health condition; 2.to provide care or psychological comfort to an immediate family member with a serious health condition; 3.for a serious health condition which requires periodic treatment by a health care provider, e. g., prenatal examination; 4." . . . absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even though he or she does not receive treatment by a health care provider." Note: When leave is taken after the birth of a child or placement of a child for adoption or foster care, an employee may take intermittent or reduced leave only if the employer agrees. The employer's agreement is not required, however, for leave during which the mother of a child has a serious health condition. An employee returning from FMLA leave will be returned to the same or equivalent position, including the same shift or equivalent schedule. Benefits accrued prior to leave will be retained at the same levels upon return to work.

Eligibility for FMLA Leave

An employee is eligible for leave under FMLA if he or she:

- has been in pay status for any part of a week for at least 52 weeks, including any period of paid or unpaid leave during which other benefits or compensation were provided by PSU; and
- has worked for the State of Kansas at least 1,250 hours in the 12 month period immediately before the beginning of the leave designated as FMLA.

FMLA-qualifying Illness or Injury

An employee is entitled to use leave under FMLA when taken:

- for the birth of a child and the care of the child within the 12 months immediately following birth;
- for the placement of a child in the employee's home for adoption or foster care within 12 months immediately following placement;
- for the physical or psychological care due to a serious health condition of the employee's (a) spouse; (b) child who is either under age 18, or age 18 and older and incapable of daily self care because of a mental or physical disability as defined by the Americans with Disabilities Act; or (c) parent; or
- for the employee's own serious health condition that prohibits the employee from performing all or part of the essential functions of his or her position within the meaning of the Americans with Disabilities Act.

A serious health condition means an illness, injury, impairment or physical or mental condition that involves one of the following:

- Hospital Care: inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity* or any subsequent treatment in connection with or consequent to such inpatient care;
- Absence Plus Treatment:
 - # A period of incapacity* of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
 - # treatment** two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - # one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing of regimen of treatment (e.g., prescription medication, physical therapy).
- Pregnancy: any period of incapacity due to pregnancy or for prenatal care.
- Chronic Conditions Requiring Treatments: A chronic condition is one which:
 - (a) requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (b) continues over an extended period of time (including recurring episodes of a single underlying condition; and
 - (c) may cause episodic rather than a continuing period of incapacity* (e.g., asthma, diabetes, epilepsy, etc.).
- Permanent/Long-term Conditions Requiring Supervision: a period of incapacity* which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing

supervision of , but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

- Multiple Treatment (Non-Chronic Conditions): any period of absence to receive multiple treatments (including any period of recovery therefrom by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity* of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Some conditions, such as voluntary or cosmetic treatments, are not typically considered serious health conditions but may meet the guidelines, if, for example, inpatient hospital care is required. Prenatal care is considered a serious health condition. FMLA is not intended to cover short-term conditions for which treatment and recovery are brief.

* A period of incapacity is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

**Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

***A regimen of continuing treatment includes, for example, a course of prescription medication (e. g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

A health care provider includes: doctors of medicine or osteopathy; or podiatrists, dentist, clinical psychologists, optometrists, and chiropractors (limited to subluxation correction); or nurse practitioners and nurse-midwives who are performing within the scope of their practice defined under state law; or clinical social workers; and Christian Science practitioners listed with the First Church of Christ in Boston, Massachusetts.

Requesting FMLA Leave

You must give 30 days notice or as much notice as feasible if family and medical leave is to begin in less than thirty (30) days.

To request FMLA leave, you must complete a [FMLA Leave Request Form](#). The patient must give a [Certification of Health Care Provider for Employee](#) or [Certification of Health Care Provider for Family Member](#) to their health care provider, unless your request for leave is due to the birth or adoption of a child. The FMLA Leave Request Form (completed by the employee) and the Certification of Health Care Provider for Employee or Certification of Health Care Provider for Family Member (completed by the patient's health care provider) are returned to HRS within fifteen days.

Failure to provide the required information within fifteen days would result in denial of FMLA and absence would not be protected. HRS will advise the employee of deficiencies in the information and will provide a reasonable opportunity (an additional fifteen days) to provide the information.

PSU may, at its expense, request a second opinion by a health care provider, excluding a Christian Science practitioner, who is designated by the appropriate Vice President or Department Head (President's Division). In the event that the two medical opinions differ, a third opinion by a health care provider mutually agreed upon by you and the appropriate Vice President or Department Head (President's Division) will be final and binding.

Human Resource Services will review requests for family and medical leave to determine if the request is for an FMLA-qualifying absence. You will be notified after your request is reviewed. If your request is not approved, you may appeal in writing to the appropriate Vice President or Department Head (President's Division).

PSU may request recertification at reasonable intervals but not more often than every thirty (30) days unless there has been a significant change in circumstance or the agency receives information that casts doubt upon your reason for the absence. You will be given at least fifteen (15) calendar days to return the "Certification of Health Care Provider" form.

Health Insurance & FMLA Leave

If you are on either leave with pay or without pay for an FMLA-qualifying illness or injury, your group health insurance will continue as if you were actively at work.

If you are on leave with pay (using sick leave, vacation leave or comp time), premiums will continue to be deducted from your paycheck if the paycheck is sufficient to take the deduction.

If you are on authorized leave without pay for an FMLA-qualifying illness or injury or if your check is not sufficient to cover the premiums, the following will apply:

- HRS will send a letter at your home address requesting payment of the premium. The letter will include the cost of coverage, the pay period for which the premium is due and the due date for the premium to be paid to HRS.
- If the premium is not received within 15 days of the due date, group health insurance coverage will be terminated on the first day of the month that payment was due.
- If you return to work and your coverage was terminated because of non-payment of premiums, you may reenroll in your previous coverage. You will not have a pre-existing condition waiting period. Coverage will be effective the first day of the month following your return to active employment.
- If you do not return to work for reasons other than the continuation, recurrence, or onset of a serious health condition which would entitle you to family and medical leave or other circumstances beyond your control, you must pay PSU the "agency portion" of your group health insurance premium during your leave.

Family Medical Leave Act for Military Family Leave

The National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended Family Medical Leave Act (FMLA) to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member/veteran with a serious injury or illness.

Leave with or without pay that is used for an FMLA-qualifying reason will be counted against the annual FMLA entitlement of 12 or 26 workweeks leave. Leave for employees who work less than full-time will be pro-rated. All accrued sick leave and vacation leave shall be used prior to the use of leave without pay for all leave that meets FMLA criteria.

The use of intermittent leave or reduced leave may be taken for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member; or whenever medically necessary to care for a covered servicemember/veteran with a serious injury or illness. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. An employee returning from FMLA leave will be returned to the same or equivalent position, including the same shift or equivalent schedule. Benefits accrued prior to leave will be retained at the same levels upon return to work.

Eligibility for FMLA Military Family Leave

An employee is eligible for leave under FMLA if he or she:

- has been in pay status for any part of a week for at least 52 weeks, including any period of paid or unpaid leave during which other benefits or compensation were provided by PSU; and
- has worked for the state at least 1,250 hours in the 12 month period immediately before the beginning of the leave designated as FMLA.

Military Family Leave Entitlements

An employee is entitled to use leave under FMLA when taken:

- for certain qualifying exigencies arising out of the fact that the employee's [spouse](#), son, daughter, or parent is a covered military member on active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation;
- for a covered servicemember*/veteran** recovering from a serious injury or illness incurred in the line of duty on active duty or incurred because service on active

duty aggravated an existing or preexisting injury if the employee is the spouse, son, daughter, parent, or next of kin*** of the servicemember/veteran.

Qualifying exigencies include one or more of the following:

- To address any issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events and information briefings or family support or assistance programs sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the member's deployment;
- Certain childcare and related activities arising from military member's covered active duty, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility;
- Certain activities arising from the military member's covered active duty related to the care of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers;
- Making or updating financial and legal arrangements to address a covered military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards;
- Attending counseling the employee, the military member, or the child of the military member when the need for which arises from the covered active duty or call to active duty of the military member and is provided by someone other than a health care provider;
- Taking up to 15 days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military addressing issues arising from the death of a military member, including attending the funeral;
- Any other event that the employee and employer agree is a qualifying exigency.

* A covered servicemember is defined as a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

** A veteran is defined as undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred or aggravated in the line of duty and that manifested before or after the veteran left active duty as long as the veteran was a member of the Armed Forces, National Guard or Reserves within 5 years of requiring care.

****** Next of kin is defined as the nearest blood relative, other than the covered servicemember's/veteran's spouse, parent, son, or daughter, in the following order of priority: a blood relative who has been designated in writing by the servicemember as the next of kin for FMLA purposes, blood relatives who have been granted legal custody of the servicemember/veteran by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative. When no such designation is made and there are multiple family members with the same level of relationship to the covered servicemember/veteran, all such family members shall be considered next of kin.

Requesting FMLA Military Family Leave

You must give 30 days notice or as much notice as feasible if family and medical leave is to begin in less than thirty (30) days.

To request FMLA leave due to a qualifying exigency, you must complete a [FMLA Leave Request Form](#) and a [Certification of Qualifying Exigency for Military Family Leave](#).

To request FMLA leave due to a serious injury or illness of a covered servicemember/veteran, you must complete a [FMLA Leave Request Form](#) and a [Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave](#). Section II of this certification must be completed by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either:

- a United States Department of Veterans Affairs ("VA") health care provider; or
- a DOD TRICARE network authorized private health care provider; or
- a DOD non-TRICARE authorized private health care provider.

Failure to provide the required information within fifteen days would result in denial of FMLA and absence would not be protected. HRS will advise the employee of deficiencies in the information and will provide a reasonable opportunity (an additional fifteen days) to provide the information.

Human Resource Services will review requests for family and medical leave to determine if the request is for an FMLA-qualifying absence. You will be notified after your request is reviewed. If your request is not approved, you may appeal in writing to the appropriate Vice President or Department Head (in the President's Division).

Health Insurance & FMLA Leave

If you are on either leave with pay or without pay for an FMLA-qualifying reason, your group health insurance will continue as if you were actively at work.

If you are on leave with pay (using sick leave, vacation leave or comp time), premiums will continue to be deducted from your paycheck if the paycheck is sufficient to take the deduction.

If you are on authorized leave without pay for an FMLA-qualifying reason or if your check is not sufficient to cover the premiums, the following will apply:

- HRS will send a letter at your home address requesting payment of the premium. The letter will include the cost of coverage, the pay period for which the premium is due and the due date for the premium to be paid to HRS.
- If the premium is not received within 15 days of the due date, group health insurance coverage will be terminated on the first day of the month that payment was due.
- If you return to work and your coverage was terminated because of non-payment of premiums, you may reenroll in your previous coverage. You will not have a pre-existing condition waiting period. Coverage will be effective the first day of the month following your return to active employment.
- If you do not return to work for reasons other than the continuation, recurrence, or onset of a serious health condition which would entitle you to family and medical leave or other circumstances beyond your control, you must pay PSU the "agency portion" of your group health insurance premium during your leave.

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