
 <b>HAWAII HEALTH SYSTEMS CORPORATION</b> <i>Quality Healthcare for All</i>  <b>PROCEDURE</b>	<b>Department:</b>  Human Resources	<b>Procedure No.:</b>  <b>HR 0012B</b>
		<b>Supersedes Procedure No.:</b>
<b>Subject:</b>  <b>FAMILY LEAVE</b>	<b>Approved By:</b>    By: Linda Rosen, M.D., M.P.H. Its: President & CEO	<b>Approved Date:</b>  January 27, 2022
		<b>Last Reviewed:</b>  October 22, 2021

**I. PURPOSE:**

To establish procedures for the administration of Policy No. HR 0012A, Family Leave in accordance with Chapter 398, Hawaii Revised Statutes titled "Family Leave" ("HFLA") and the Federal Family and Medical Leave Act of 1993, 29 U.S. Code Chapter 28 ("FMLA").

**II. PROCEDURES:**

**A. Eligibility**

1. Under the FMLA, an Eligible Employee is an employee who: (a) has been employed by HHSC for at least 12 months (need not be consecutive); (b) worked at least 1250 hours during the 12-month period immediately preceding the commencement of the leave; and (c) is employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.
2. Under the HFLA, an Eligible Employee is an employee who has been employed by HHSC for at least 6 consecutive months without a break due to resignation, termination or layoff. Periods of paid leave or authorized leave without pay are not considered to cause a break in employment.

**B. Benefit Entitlement**

1. Eligible Employees under the FMLA may take up to 12 weeks of job-protected leave per calendar year (or other 12-month period indicated below) for approved absences due to the following qualifying reasons:
  - a. Upon the birth and care of the employee's newborn Child;
  - b. Upon the placement of a Child with the employee for adoption or foster care and to care for newly placed Child;
  - c. To care for the employee's Child, Spouse, or Parent with a Serious Health Condition;
  - d. The employee's own Serious Health Condition that makes the employee unable to perform one or more of the essential functions of the position, including incapacity due to pregnancy (prenatal care, childbirth, and related medical conditions); and

- e. Any qualifying exigency arising out of the fact that the employee's Spouse, Child, or Parent is on active duty or call to (or notified of an order to) active duty as a member of the National Guard, Reserves, or Regular Armed Forces in support of a contingency operation. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- 2. Also under the FMLA, Eligible Employees who are the Spouse, Parent, Child, or "next of kin" (i.e. nearest blood relative) of a covered service member injured in the line of active duty may take up to 26 weeks of leave in a single 12-month period beginning on the first day the employee takes leave for this reason (as reduced by any other FMLA leave taken) to care for the service member ("military caregiver leave"). A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties, for which the service member is: (a) undergoing medical treatment, recuperation, or therapy; or (b) is in outpatient status; or (c) is on the temporary disability retired list. A covered service member also includes a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred or aggravated in the line of duty while on active duty within the five years prior to undergoing the treatment, recuperation or therapy.
  - 3. Eligible Employees under the HFLA may take up to 4 weeks of job-protected leave per calendar year for approved absences due to the following:
    - a. Upon the birth or adoption of a Child; or
    - b. To care for the employee's Child, Spouse, reciprocal beneficiary, sibling, grandchild or Parent with a Serious Health Condition.
  - 4. FMLA-eligible Spouses who both work for HHSC are limited to a combined total of 12 weeks of leave during the applicable period if the leave is taken for the birth of a Child and bonding with the newborn Child, placement of a Child for adoption or foster care and bonding with a newly-placed Child, and to care for a Parent with a Serious Health Condition, provided that each Spouse is entitled to a minimum of four weeks of family leave for any purpose that qualifies as both HFLA and FMLA leave. Eligible Spouses are also limited to a combined total of 26 weeks of military caregiver leave.
  - 5. An Eligible Employee's entitlement to take FMLA or HFLA leave to care for a newborn Child or an adopted or foster Child (other than in a case where the Child has a Serious Health Condition) expires twelve (12) months after the birth of the Child or the placement of the Child with the employee.
  - 6. Leaves that are allowed under both the FMLA and the HFLA will be counted as both FMLA and HFLA leave to the extent permitted by applicable law, and employees' FMLA and HFLA leave balances will be adjusted accordingly.
- C. Procedural requirements for the application, documentation, and reporting of family leave
- 1. When A Family Leave Request Has Not Been Made by an Employee
    - a. If an employee requests paid leave and HR has information to believe that the leave is an FMLA and/or HFLA qualifying event, HR must first determine whether the employee is eligible for FMLA and/or HFLA leave and provide the "Eligibility

Notification to Employees and Rights and Responsibilities Regarding Family Leave" form (Attachment 5).

- b. If an employee has been out on sick leave for four or more consecutive days, FMLA-Eligible Employees will be sent the "Notification to Employees Who Are Eligible for Federal Family and Medical Leave" (FMLA) form (Attachment 6) informing the employee that FMLA will be asserted.
- c. If an Eligible Employee calls and informs their supervisor/HR of a situation that is potentially FMLA/HFLA qualifying, the "Eligibility Notification to Employees and Rights and Responsibilities Regarding Family Leave" form (Attachment 5) must be sent to an Eligible Employee within five (5) business days following the notice, with the date of the call inserted as the notification date.
- d. If additional information is needed from the employee in order to designate the leave as FMLA and/or HFLA qualifying leave (e.g., medical certification), the Family Leave Request Form (Attachment 3) must be completed by the employee and required certifications submitted. The employee will be provided with at least 15 days to submit the additional information.

2. Requests for FMLA/HFLA Leave

- a. If an employee provides notice of a need for FMLA/HFLA leave, HR will first determine whether the employee meets the eligibility requirements and provide the employee with the "Eligibility Notification to Employees and Rights and Responsibilities Regarding Family Leave" form (Attachment 5) within five (5) business days informing the employee of their eligibility status. If the employee is eligible and HR needs additional information to determine whether the leave is FMLA or HFLA qualifying, the Family Leave Request Form (Attachment 3) must be completed by the employee and required certifications submitted so HR can determine whether the requested leave is FMLA and/or HFLA qualifying.
- b. If leave is foreseeable, an employee must provide at least 30 days advanced notice of their need for FMLA/HFLA leave before such leave is to begin. If 30 days' notice is not practicable (such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency) notice must be given as soon as practicable.

Note: "As soon as practicable" means as soon as both possible and practicable taking into account all of the facts and circumstances in the individual case.

- 1) If an employee fails to give 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the employer may delay the taking of the family leave until at least 30 days after the date the employee provides notice to the employer of the need for the leave.
- 2) For foreseeable leave where it is not possible to give as much as 30 days' notice, "as soon as practicable" would mean at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee.
- c. If the need for the family leave is not foreseeable, an employee should give notice of the need for FMLA/HFLA leave as soon as practicable (typically within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances).

### 3. Notification to Employees Regarding Family Leave

- a. Once HHSC has enough information to determine that the leave being taken by an Eligible Employee is for an FMLA/HFLA qualifying reason, HR must send the employee a "Designation Notice" (Form WH-382) within five (5) business days, notifying the employee whether or not the leave is FMLA and/or HFLA protected. If the leave is protected, the Designation Notice will inform the employee of the amount of leave that will be counted against the employee's annual FMLA/HFLA leave entitlement and that, for FMLA, paid leave will be used if available. If the leave is for the employee's own Serious Health Condition, the employee will be notified that they will be required to submit a fitness-for-duty certification prior to returning to work.

Form WH-382 Designation Notice under the FMLA can be found on the Department of Labor website: <https://www.dol.gov/whd/fmla>.

- b. An employee can be verbally informed that the leave has been designated as FMLA/HFLA Leave, but the Designation Notice must be sent within five (5) business days of the determination.
- c. If upon receipt of the Family Leave Request Form (Attachment 3) and any additional information and certifications received from the employee HR does not have enough information to determine whether a leave request should be designated as FMLA and/or HFLA protected leave, HR may use the Designation Notice to inform the employee that the information is incomplete or insufficient, and identify what additional information is needed.
- d. If HHSC has knowledge that paid leave is for an FMLA/HFLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA/HFLA leave, HR reserves the right to make a retroactive designation in the future, but only under appropriate circumstances and where such a retroactive designation does not cause prejudice to the employee.
- e. If HHSC determines that an Eligible Employee is on leave for an FMLA/HFLA leave purpose after leave has begun, all or a portion of the paid leave period may be retroactively counted as FMLA/HFLA leave.
- f. HR may also designate leave as FMLA/HFLA leave after the employee has returned to work under the following circumstances:
  - 1) If HHSC did not learn of the FMLA/HFLA leave reason until the employee's return, a retroactive designation can be made, if it is made within five (5) business days of the employee's return to work and with appropriate notice to the employee.
  - 2) If HHSC knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA/HFLA leave, or if there is an outstanding medical certification, second medical opinion has not been obtained, etc.

### 4. Completion of a G-1 and Appropriate Paperwork

- a. Once an employee is informed that he/she is eligible for the requested family leave (either verbally or via the Eligibility Notification to Employees and Rights and

Responsibilities Regarding Family Leave form, Attachment 5), the employee must complete a G-1 for supervisor's approval.

- b. If an employee is not at work and it is determined that the leave is FMLA/HFLA-qualifying, a G-1 and appropriate paperwork should be sent to the employee for completion.
- c. The forms below should be sent with instructions that they are to be returned within 15 days.
  - G-1, Application for Leave of Absence
  - Family Leave Request Form (Attachment 3) OR
  - Notification to Employees Who Are Eligible for Federal Family and Medical Leave (FMLA) (Attachment 6),
  - Applicable Certifications (see Section III.C.5 below),
  - Addendum to the Certification of Health Care Provider (Attachment 4) (if applicable)

When necessary, a request for an extension to return the forms can be made; however the total time (including the initial request that the forms be returned within 15 days) should generally not exceed 30 days.

## 5. Certifications

- a. Generally, FMLA/HFLA leaves due to the Serious Health Condition of an employee or family member must be supported by a medical certification or a medical slip issued by the employee's health care provider. Military family leave for qualifying exigencies under the FMLA will also require certification.

Certifications with the exception of Attachment 4 listed below can be found on the Department of Labor website: <https://www.dol.gov/whd/fmla/>

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
  - WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
  - WH-384 Certification of Qualifying Exigency for Military Family Leave
  - WH-385 Certification for Serious Injury or Illness of Covered Service member – for Military Family Leave
  - WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Care giver Leave
  - Addendum to the Certification of Health Care Provider must also be completed for the employee's Serious Health Condition and family member's Serious Health Condition.
- c. HR shall notify employees each time a certification is required and provide the employee with at least fifteen calendar days to provide the certification. The employee must provide the requested certification within 15 calendar days after the request unless it is not practicable to do so under the circumstances despite the employee's diligent good faith efforts. When the employee makes diligent good faith efforts but is unable to meet the 15-calendar day deadline, the employee shall be entitled to additional time to provide the certification.
  - d. If a certification is incomplete, the employee will be provided a reasonable period of time to provide a complete certification (at least seven calendar days).

e. Failure to provide a required certification will result in an unauthorized leave.

f. Periodic certifications

- 1) For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider, HR may request re-certification no more often than every 30 days and only in connection with an absence by the employee, unless 1) the employee requests an extension of leave, or 2) circumstances described by the previous certification have changed significantly, or 3) HR receives information that casts doubt upon the employee's stated reason for the absence.
- 2) If the minimum duration of the period of incapacity specified on a certification is more than 30 days, generally HR may not request recertification until that minimum duration has passed.
- 3) For intermittent or reduced schedule leave, HR may not request certification in less than the minimum period specified on the certification as necessary for such leave unless 1) the employee requests an extension of leave, 2) the circumstances described by the previous certification have changed significantly, or 3) HR receives information that casts doubt upon the continuing validity of the certification. If the initial certification indicates that the employee will need intermittent or reduced schedule leave for longer than six months, including cases where the Serious Health Condition has no anticipated end, the employer may request a recertification every six months, but only in connection with an absence by the employee.
- 4) Recertification must be provided within the time frame requested by HR (which must allow at least 15 calendar days after HR's request), unless it is not practicable under the particular circumstances despite the employee's diligent, good faith effort.
- 5) If the employee is on an FMLA leave, any recertification must be at the employee's expense unless HR provides otherwise. If the employee is on an HFLA or FMLA/HFLA leave, any recertification must be at the employer's expense.

6. Effect of Bargaining Unit Contracts on Documentation

- a. If the employee uses available sick leave at the time of FMLA and/or HFLA leave, the Bargaining Unit (BU) contract governs certification. This means that the employee does not need to submit any documentation to cover the first four days. However, from the fifth day of a consecutive absence until the sick leave is no longer used, the employee must submit a medical certificate or the Certification of Health Care Provider for Employee's Serious Health Condition Form, WH-380 E.
- b. If the employee uses available vacation leave for the FMLA and/or HFLA leave, the BU contract governs its application. This means that the employee needs to submit a G-1 requesting vacation.

D. Use of Available Credits

1. FMLA

- a. If leave is due to the employee's own Serious Health Condition, the employee must use available sick leave credits. After the available sick leave credits are used, vacation credits and/or compensatory time shall be used. Once all credits are exhausted, the employee will be placed on a leave of absence without pay for the duration of the leave.
- b. For other qualifying absences, the employee must use available vacation credits and/or compensatory time. Once all credits are exhausted, the employee will be placed on a leave of absence without pay for the duration of the leave.

Note: The employer will not apply FMLA during an employee's WC leave of absence; however, if the employee requests FMLA during his/her WC leave and the FMLA eligibility and qualifying requirements are met, the FMLA leave cannot be denied.

## 2. HFLA

- a. For all qualifying absences, the employee may elect paid (use of sick, vacation or compensatory credits) or unpaid leave for any part of the four weeks of family leave. The employer may not require the use of paid leave.
  - b. If sick leave credits are elected, the employee may use available sick leave credits provided the employee's sick leave balance does not go below 120 hours.
3. The employee's use of paid leave credits (sick, vacation or compensatory credits) in lieu of unpaid FMLA or HFLA qualifying leave does not extend the maximum allowable leave period beyond the four (4) weeks of HFLA leave or the twelve (12) weeks (or twenty-six (26) weeks for service member family leave) of FMLA leave.

## E. Updating Record

1. The employee's record must then be updated showing the codes as follows, FL for Family Leave, the next alpha to designate type of leave, F for Federal, S for State.
  - LWOP: FLL – F, FLL – S,
  - Sick: FLS – F, FLS – S,
  - Vacation: FLV – F, FLV – S,
  - Compensatory Time: FLT –F, FLT – S
2. Family leave shall be monitored and administered on a calendar year basis.

## F. Intermittent Leaves

1. Under the FMLA, intermittent or reduced schedule leave may be taken when medically necessary for planned and/or unanticipated medical treatment of a related Serious Health Condition. An employee who takes intermittent or reduced schedule FMLA leave must make reasonable efforts to schedule his or her leave for planned medical treatment so as not to unduly disrupt HHSC's operations. FMLA leave may also be taken intermittently or on a reduced leave schedule for qualifying military exigencies. Under the HFLA, intermittent leave may be taken for any HFLA-qualifying reason.
2. Under the FMLA, intermittent leave may be taken after the birth or placement of a Child for adoption or foster care only if the supervisor/HR agrees, unless the Child has a Serious Health Condition for which intermittent leave or reduced schedule leave is medically necessary. Under the HFLA, leave may be taken intermittently even without the agreement of the supervisor/HR.



3. In order for an employee to take intermittent leave or be allowed to have a reduced leave schedule, the doctor's certification (Certification of Health Care Provider Form) must provide the appropriate information to support and explain the need for such leave. Once the doctor's certification is obtained, a completed G-1 should be submitted so the employee's record/file can be coded accurately.
4. Under the FMLA, the supervisor/HR can require the employee to transfer temporarily or can modify the employee's existing duties during a period of intermittent or reduced schedule leave to better accommodate recurring periods of leave.

Under the HFLA, the transfer or modification of the position will be permitted if the employee agrees and it is in compliance with the applicable bargaining agreement and federal and state laws.

Under both the FMLA and HFLA, an employee who is temporarily transferred to an alternative or modified position will maintain an equivalent rate of pay and benefits.

5. Only the amount of leave actually taken will be counted toward the 12 or 4 weeks of leave to which an employee is entitled. The shortest incremental period allowed is one hour.

#### G. Group Health Benefits

1. Group health benefits will be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period.
2. If the employee is on a paid leave, the employee's share of the premiums will continue to be deducted from the employee's wages as if the employee were still at work.
3. If the employee is on an unpaid leave, the employee will be informed that the employee's share of the premium payments must be made directly to Hawaii Employer-Union Health Benefits Trust Fund (EUTF) for continued coverage.
4. The EUTF will provide information directly to the employee regarding continued medical coverage and will inform the employee that health insurance coverage will cease if premiums are not received in a timely manner.

Note: Since HHSC is ultimately responsible to ensure that the employee is notified appropriately that benefits will cease if premiums are not received in a timely manner, it is recommended that the facility follow up with EUTF to confirm that this has occurred.

5. If coverage lapses because the employee has not made the required premium payments, upon payment of the required premiums, the employee will be restored to coverage/benefits equivalent to those the employee would have had if the leave had not been taken and the premium payments had not been missed.
6. If an employee fails to return after the employee's FMLA leave entitlement has exhausted or expires, the HHSC facility may recover its share of the health plan premiums paid during the period of unpaid FMLA leave, unless the reason the employee cannot return to work is due to the continuance, recurrence, or onset of a Serious Health Condition or other circumstances beyond the employee's control.



#### H. Other Benefits

If the employee has optional benefits for which premiums are being paid, the employee must make arrangements to pay premiums if the employee is on an unpaid leave of absence, so that these benefits can continue.

#### I. Returning Employees

1. Returning employees, who were on leave due to their own Serious Health Condition, will be required to provide a doctor's release certifying that the employee is able to perform the essential functions of the position held prior to returning to work.
2. The fitness for duty certification must only be for the particular health condition that caused the employee's need for FMLA leave.
3. Employees failing to return to work after an approved leave and in the absence of any additional approved leave shall be subject to appropriate action.
4. Except in limited circumstances, upon returning from leave, the employee is entitled to be returned to the same or equivalent position with equivalent benefits, pay and other terms and conditions of employment.
5. Restoration may be denied to a "key employee" where such denial is necessary to prevent substantial and grievous economic injury to the operations. Refer to applicable laws, rules and regulations for details.

#### J. Other Requirements

1. "Your Rights under the Family and Medical Leave Act (FMLA) of 1993" must be posted in a conspicuous place where employees are employed and where applicants can see it.
2. Employee Handout for Leaves Under the Family and Medical Leave Act of 1993 and the Hawaii Family Leave Law (Attachment 1) must be provided at the time of hire and when an employee requests or is eligible for an FMLA and/or HFLA leave.

#### K. For additional information and/or guidance, refer to the applicable laws, rules and regulations.

##### 1. FMLA

- a. FMLA – The Family and Medical Leave Act of 1993, 29 U.S. Code Chapter 28
- b. U.S. Department of Labor, 29 Code of Federal Regulations (CFR) Part 825

##### 2. HFLA

- a. Hawaii Revised Statutes (HRS), Chapter 398, Family Leave
- b. State of Hawaii, Department of Labor and Industrial Relations, Administrative Rules, Title 12, Chapter 27, The Administration and Enforcement of the Family Leave Law

**III. ATTACHMENT(S):**

- Attachment 1: Employee Handout for Leaves Under the Family and Medical Leave Act of 1993 and the Hawaii Family Leave Act
- Attachment 2: Summary of Federal and State Family Leaves and How BU Contracts May Affect Family Leaves
- Attachment 3: Family Leave Request Form
- Attachment 4: Addendum for Certification of Health Care Provider
- Attachment 5: Eligibility Notification to Employees and Rights and Responsibilities Regarding Family Leave
- Attachment 6: Notification to Employees Who Are Eligible for Federal Family and Medical Leave (FMLA)
- Attachment 7: Questions and Answers for Family Leave

## **EMPLOYEE HANDOUT FOR LEAVES UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 and THE HAWAII FAMILY LEAVE LAW**

DETAILS OF LEAVE	HAWAII STATE FAMILY LEAVE ("HFLA")	FEDERAL FAMILY AND MEDICAL LEAVE ("FMLA")
<b>Eligibility</b>	An employee must have performed actual work for at least six consecutive months without a break due to resignation, termination or layoff.	An employee must be employed for at least 12 months (does not have to be consecutive) and have at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.
<b>Total Leave Entitlement</b>	An eligible employee is entitled to a total of four weeks of job-protected leave during a calendar year.	An eligible employee is entitled to a total of 12 weeks of job-protected leave during a calendar year, except as set forth below when leave is to care for a covered service member with a serious injury or illness.
<b>Qualifying Absences</b>	<ol style="list-style-type: none"> <li>1. Upon the birth of the employee's child or placement for adoption of a child with the employee.</li> <li>2. To care for the employee's child, spouse, reciprocal beneficiary, sibling, grandchild or parent with a serious health condition.</li> </ol> <p>Parent means a biological, foster or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, a grandparent-in-law.</p> <p>Child means an individual who is a biological, adopted, or foster son or daughter, a stepchild, or a legal ward of an employee.</p> <p>Note: An employee's entitlement to four weeks of family leave upon the birth of a child expires twelve months after the child's birth.</p>	<ol style="list-style-type: none"> <li>1. The birth and care of the employee's child (must be taken within one year of birth);</li> <li>2. The placement of a child for adoption or foster care (must be taken within one year placement);</li> <li>3. To care for the employee's spouse, child or parent with a serious health condition;</li> <li>4. The employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's job; or</li> <li>5. "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status as a member of the National Guard or Reserves in support of a contingency operation</li> </ol> <p>Eligible employees may also take up to twenty-six (26) workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).</p>
<b>Intermittent Leave</b>	Family leave may be taken intermittently.	FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances and may require that the employer agree.

### **FMLA LEAVE DESIGNATION**

In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid as FMLA-qualifying and to give notice of the designation to the employee. Therefore, any period of incapacity of more than three consecutive calendar days that falls under the definition of a serious health condition will be designated as FMLA leave for employees meeting FMLA eligibility requirements.

Definition of serious health condition:

An illness, injury, impairment, or physical or mental condition that involves

1. Inpatient care in a hospital, hospice, or residential medical care facility; or
2. Continuing treatment (two or more times) for a period of incapacity of more than three consecutive calendar days or treatment on at least one occasion that results in a regimen of continuing treatment.

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3. Any period of incapacity due to pregnancy or pre-natal care.
4. Any period of incapacity due to a chronic serious health condition.
5. A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective.
6. Any period of absence to receive multiple treatments for restorative surgery 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.

In addition to leaves because of a serious health condition, employees are eligible for leaves under the HFLA and the FMLA as stated in the above chart, under "Qualifying Absences."

When appropriate, FMLA and HFLA leaves will apply concurrently.

Employees requesting a FMLA leave must provide requested information related to the leave to allow the respective HHSC facility ("Facility" or "employer") to determine if the leave qualifies under the law. If not, the Facility will use available information to determine if the leave is covered under FMLA or HFLA.

A written notice will be provided to the employee informing the employee whether he or she is eligible for FMLA and/or HFLA leave, and, if eligible, their rights and responsibilities under the FMLA. If the employee is eligible and the leave has been designated as FMLA and/or HFLA leave, the employee will be notified as to how much leave will be counted against the employee's annual FMLA and HFLA leave entitlements, as applicable.

#### **NOTICE REQUIREMENT**

An employee must provide the employer at least 30 days advanced notice before leave is to begin if the need for a leave is foreseeable. Examples of leave that is foreseeable are an expected birth, placement for adoption or foster care or planned medical treatment for a serious health condition of the employee or a family member.

If 30 days' notice is not possible or practicable or if the need for leave is not foreseeable, a verbal notification on the same day or within two business days of when the need for leave becomes known to the employee must be made.

An employee must provide sufficient information for the employer to determine if the leave may qualify for FMLA or HFLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. An employee also must inform the employer if the requested leave is for a reason for which FMLA or HFLA leave was previously taken or certified. An employee also may be required to provide a certification and periodic recertification supporting the need for leave.

#### **MEDICAL CERTIFICATION**

For leaves due to the serious health condition of the employee or the employee's family member, when leave is foreseeable and at least 30 days' notice has been provided, the employee should provide medical certification supporting the need for leave before the leave begins. When this is not possible, the employee must provide the requested certification within 15 calendar days after the Employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

In the case of unforeseen leave, the employee must furnish certification within 2 business days after the leave commences. Failure to provide medical certification and other required paperwork (including a G-1, Application For Leave of Absence) will result in an unauthorized leave, unless it is not practicable under the particular circumstances to provide the medical certification within the applicable time frame despite the employee's diligent, good faith efforts.

**NOTE:** If employee substitutes sick or vacation credits during this absence, procedural requirements contained in the collective bargaining agreement for the respective leave will apply. E.g., Medical certification will only be required for illnesses of five (5) or more consecutive working days.

However, since it is the employer's responsibility to designate leave as FMLA-qualifying, in any circumstance where the employer does not have sufficient information about the reason for the employee's use of paid leave, the employer should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

### **SUBSTITUTION OF PAID LEAVE**

For approved FMLA leave periods, the Employer may require the employee to use appropriate accumulated leave credits for qualifying leave periods after which the remaining period will be considered a leave of absence without pay. For approved HFLA leave periods, an employee may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the four-week period. However if sick leave credits are used, its usage must be followed as detailed in HAR § 12-27-9 and the employee's applicable collective bargaining agreement. Employees can also elect to use compensatory time off. The employee's use of paid leave credits (sick, vacation, or compensatory credits) in lieu of unpaid FMLA or HFLA leave does not extend the maximum allowable leave period beyond the four (4) weeks of HFLA leave or the twelve (12) weeks (or twenty-six [26] weeks for service member family leave) of FMLA Leave.

### **INTERMITTENT LEAVE AND REDUCED SCHEDULE LEAVE**

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take FMLA leave intermittently or on a reduced leave schedule. Employees may take HFLA leave intermittently for any HFLA-qualifying reason.

### **GROUP HEALTH BENEFIT PREMIUMS**

Health plan benefits will continue during the FMLA leave, however, the employee will be required to pay their portion of the premiums. If the leave is paid, the premiums will be deducted through payroll deduction. If the leave is unpaid, the employee will be informed that premium payments must be made directly to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) for continued coverage. Failure to pay premiums in a timely manner may result in a discontinuation of the employee's health benefits coverage.

### **FITNESS FOR DUTY CERTIFICATE**

For leaves due to the employee's own serious health condition, prior to returning to work from the serious health condition for which the leave was granted, the employee must obtain and present a certification from the employee's health care provider that the employee is able to perform the essential functions of the position held prior to returning to work.

### **EMPLOYEE'S RIGHTS ON RETURNING FROM FMLA LEAVE**

On return from FMLA or HFLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits,

pay and other terms and conditions of employment, except in very limited circumstances (for example, the employee's failure to provide a fitness-for-duty certificate, a mass layoff, designation of the employee as a "key employee", the employee's fraudulent use of FMLA or HFLA leave, etc.).

#### **RECOVERING COSTS IF EMPLOYEE FAILS TO RETURN TO WORK AFTER TAKING FMLA LEAVE**

If an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, the Facility may recover its share of the health plan premiums during the period of unpaid FMLA leave, unless the reason the employee cannot return to work is due to the continuance, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

#### **PROTECTIONS**

The FMLA and HFLA make it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under the FMLA or HFLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or HFLA or for involvement in any proceeding under or relating to the FMLA or HFLA.

The FMLA and HFLA do not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

#### **BARGAINING UNIT CONTRACTS**

##### **ADMINISTRATION AND ENFORCEMENT**

Administration and enforcement of the FMLA and HFLA shall be in accordance with applicable laws and regulations. Complaints with regard to FMLA and HFLA shall be filed with the U.S. Department of Labor (in the case of FMLA), or the Hawaii Department of Labor and Industrial Relations (in the case of HFLA). Employees may also bring a private lawsuit against an employer.

Complaints shall not be filed through the grievance procedure found in the collective bargaining agreement, unless a representative of the applicable State or Federal agency first determines that the agency does not have jurisdiction over the administrative complaint.

11/09/2021

## SUMMARY OF FEDERAL AND STATE FAMILY LEAVES AND HOW BU CONTRACTS MAY AFFECT FAMILY LEAVES

DETAILS OF LEAVE	APPLICABLE BARGAINING UNIT CONTRACT PROVISIONS	HAWAII STATE FAMILY LEAVE ("HFLA")	FEDERAL FAMILY AND MEDICAL LEAVE ("FMLA")
<b>Eligibility</b>	<p>Covers anyone in the following collective bargaining agreements:</p> <p>UPW, AFSCME, Local 646, AFL-CIO Unit 1 HGEA, AFSCME, Local 152, AFL-CIO Unit 2 HGEA, AFSCME, Local 152, AFL-CIO Unit 3 HGEA, AFSCME, Local 152, AFL-CIO Unit 4 HGEA, AFSCME, Local 152, AFL-CIO Unit 9 UPW, AFSCME, Local 646, AFL-CIO Unit 10 HGEA, AFSCME, Local 152, AFL-CIO Unit 13</p>	<p>To be eligible, an employee must have performed actual work for at least six consecutive months without a break due to resignation, termination or layoff. Periods of paid leave or authorized leave without pay are not considered to cause a break in employment.</p> <p>Note: There is no requirement that an employee work a minimum number of hours within the six-month period.</p>	<p>To be eligible, an employee must be employed at least 12 months, which need not be consecutive; worked at least 1250 hours during the previous 12 month period immediately preceding the commencement of the leave; and employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.</p>
<b>Total Leave Entitlement</b>	<p><u>UPW</u> <b>BU 1 Section 38A, BU 10 Section 38B. Family Leave</b> Defers to state family leave as set forth in Chapter 398, HRS. Accrued vacation leave and/or sick leave may be substituted for any part of all of the allowable state family leave up to a maximum of four (4) weeks per designated twelve (12) month period.</p> <p>Employee entitlement to federal family leave is set forth in the Family and Medical Leave Act of 1993.</p> <p><u>HGEA</u> <b>BU 2, 3, 4 Article 36A, BU 9 Article 42A, BU 13 Article 37A – Family Leave</b> Defers to state family leave as set forth in Chapter 398, HRS. Accrued vacation leave and/or sick</p>	<p>Entitled to up to four (4) weeks of job-protected leave during a twelve (12) month period.</p> <p>Eligible spouses who both work for HHSC are each entitled to four weeks of family leave.</p> <p>An eligible employee's entitlement to take HFLA leave due to the birth of a child or the placement of an adopted or foster child (other than in a case where the child has a serious health condition) expires twelve (12) months after the birth of the child or the placement of the child with the employee.</p>	<p>Eligible employees are entitled to up to 12 work weeks of job-protected leave during a 12-month period, except in the case of military caregiver leave (see below), in which case eligible employees are entitled to up to 26 work weeks of leave in a single 12-month period.</p> <p>Eligible spouses who both work for HHSC are limited to a combined total of 12 weeks of leave during the applicable period if the leave is taken for the birth of a child and bonding with the newborn child, placement of a child for adoption or foster care and bonding with a newly-placed child, and to care for a parent with a serious health condition. Eligible spouses are also limited to a combined total of 26 weeks of military caregiver leave.</p> <p>An eligible employee's entitlement to take leave due to</p>



	leave may be substituted for any part or all of the allowable state family leave up to a maximum of four (4) weeks per designated twelve (12) month period.  Employee entitlement to federal family leave is set forth in the Family and Medical Leave Act of 1993.		the birth of a child or the placement of an adopted or foster child (other than in a case where the child has a serious health condition) expires twelve (12) months after the birth of the child or the placement of the child with the employee..
<b>Qualifying Absences</b>		<p>Family leave is for:</p> <ol style="list-style-type: none"> <li>1. The birth of the employee's child or placement for adoption of a child with the employee.</li> <li>2. The care for the employee's child, spouse, reciprocal beneficiary, sibling, grandchild, or parent with a serious health condition.</li> </ol> <p>HFLA does not apply to Employee's own health condition.</p>	<p>Family leave is for:</p> <ol style="list-style-type: none"> <li>1. The birth and care of the employee's newborn child and to bond with a newborn child within one year of the child's birth.</li> <li>2. The placement and care of a child for adoption or foster care with the employee and to bond with the child within one year of placement.</li> <li>3. The care for employee's spouse, child or parent with serious health condition.</li> <li>4. A serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.</li> <li>5. "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status as a member of the Armed Forces, National Guard or Reserves in support of a contingency operation.</li> <li>6. To care for a qualifying relative who is a member of the Armed Forces and is injured in the line of active duty. For this purpose, an employee may take up to 26 weeks, as reduced by any other FMLA leave taken, and shall be administered in a "12-month period" (as opposed to calendar year) commencing on the first date approved for FMLA.</li> </ol>
<b>Serious Health Condition</b>		<p>Serious health condition is defined as a physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider and</p> <ol style="list-style-type: none"> <li>1. involves inpatient care in a hospital, hospice, or residential health care facility;</li> </ol> <p><u>OR</u>,</p> <ol style="list-style-type: none"> <li>2. requires continuing treatment or continuing supervision by a health care provider.</li> </ol>	<p>Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:</p> <ol style="list-style-type: none"> <li>1. inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (inability to work due to the serious health condition, treatment for and recovery from) or any subsequent treatment in connection with this inpatient care,</li> </ol> <p><u>OR</u>,</p> <ol style="list-style-type: none"> <li>2. continuing treatment by a health care provider that includes any one or more of the following: <ol style="list-style-type: none"> <li>a. A period of incapacity of more than 3</li> </ol> </li> </ol>

			<p>full consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves</p> <ul style="list-style-type: none"> <li>❖ Treatment two or more times by or under the supervision of a health care provider within 30 days of the beginning of the period of incapacity, with the first visit to the health care provider taking place within the first seven days.</li> </ul> <p><u>OR</u></p> <ul style="list-style-type: none"> <li>❖ Treatment by a health care provider on at least one occasion 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 (e.g. prescribing medication, physical therapy)</li> </ul> <p>b. Any period of incapacity due to pregnancy or for prenatal care.</p> <p>c. Any period of incapacity or treatment due to a chronic serious health condition that:</p> <ul style="list-style-type: none"> <li>❖ requires periodic visits (at least twice a year) to a health care provider for treatment by a health care provider,</li> <li>❖ continues over an extended period of time (including recurring episodes of a single underlying condition); or</li> <li>❖ may cause episodic rather than continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)</li> </ul> <p>d. Any period of incapacity that is permanent or long term due to a condition for which treatment may not be effective. (e.g., Alzheimer's, severe stroke, terminal stages of a disease).</p> <p>e. Any period of absence to receive multiple treatments 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.</p>
<b>Health Care Provider</b>			<p>A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices or any other person determined by the Secretary to be capable of providing healthcare</p>

<p><b>Intermittent Leave</b></p>	<p><b>UPW</b>  <b>Section 36.09a.</b>  <u>Vacation leave shall be administered on a calendar year basis and recorded at the end of each calendar year.</u>  <b>Section 36.14a.</b>  <u>Vacation leave of less than one (1) hour shall not be granted</u>  <b>Section 37.01a.</b>  <b>SICKNESS:</b> a physical or mental disability not willfully or intentionally provoked by the Employee, preventing the performance of regular or usual work, including disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom.  <b>Section 37.07</b>  <u>No sick leave of less than one (1) hour may be granted.</u>  <b>Section 37.09a.</b>  <u>Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year.</u>  <b>HGEA</b>  <b>BU 2, 3, 4 Article 35, BU 9 Article 41, BU 13</b>  <b>Article 37 - Vacation Leave</b>  <u>Vacation leave shall be administered on a</u></p>		<p>services.</p> <p>Others "capable of providing health care services" include: podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited treatment covered) nurse practitioners, nurse-midwives, physician assistants, and clinical social workers that are authorized to practice in the State and performing within the scope of their practice as defined under State law.</p> <p>Any health care provider from whom an employer or the employer's group health plans benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.</p> <p>A health care provider listed above who practices in a country other than the United States and who is authorized to practice in accordance with the law of that country and who is performing within the scope of his or her practice as defined under such law.</p>
		<p>Family leave may be taken intermittently during each calendar year and need not be taken immediately upon the birth or adoption of a child or upon commencement of a serious health condition. An employer is allowed to convert the four-week entitlement to an equivalent number of hours based on the current regular work week of the employee.</p> <p>Employer may determine the size of intermittent family leave increments provided that the shortest incremental period is one hour or less.</p> <p>The employer may offer to modify existing duties and conditions of the employee's regular job to better accommodate the intermittent leave. The employer may also offer the employee a temporary transfer for which the employee is qualified, provided the employee agrees to the alternative position or modification of the employee's regular position, the transfer or modification is in compliance with any collective bargaining agreement and any federal and state law, and the alternative transfer or modified position has equivalent pay and benefits of the employee's regular job, even if the employer must increase the pay and benefits of the alternative position in order to meet the equivalency.</p>	<p>Intermittent leave is permitted for serious health conditions when medically necessary. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition. Leave may also be taken intermittently for qualifying military exigencies.</p> <p>If FMLA leave is for the birth and care of a newborn or placement of a child for adoption or foster care, use of intermittent leave is subject to the employer's approval.</p> <p>There is no limit on the size of an increment of leave however an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences.</p> <p>An employee who takes intermittent or reduced schedule FMLA leave must make reasonable efforts to schedule his or her leave for planned medical treatment so as not to unduly disrupt HHSC's operations.</p> <p>Leave may also be taken on a reduced leave schedule in which the employee's usual number of working hours per week or hours per workday are reduced.</p>

	<p>calendar year basis and recorded at the end of each calendar year. No vacation time of less than one (1) hour may be granted.</p> <p><b>BU 2, 3, 4 Article 36, BU 9 Article 42, BU 13 Article 37 – Sick Leave</b> Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year. Absence due to sickness lasting less than one (1) hour shall not be charged to sick leave when such sickness occurs during the final hour of work and the employee is released from work. Sick leave shall be allowed for temporary disabilities as defined under the Equal Employment Opportunity Commission Guidelines.</p>		
<p><b>Substitution of Paid Leave</b></p>	<p><b>UPW</b> <b>BU 1 Section 38A, BU 10 Section 38B. – Family Leave</b> Employee entitlement to state family leave is set forth in Chapter 398, HRS. Accrued vacation leave and/or sick leave may be substituted for any part or all of the allowable state family leave up to a maximum of four (4) weeks per designated twelve (12) month period. Employee entitlement to federal family leave is set forth in the Family and Medical Leave Act of 1993. <b>HGEA</b> <b>BU 2, 3, 4 Article 36A, BU 9 Article 42A, BU 13 Article 37A – Family Leave</b> Accrued vacation leave and/or sick leave may be substituted for any part or all of the allowable state family leave up to a maximum of four (4) weeks per designated twelve (12) month period. Employee entitlement to federal family leave is set forth in the Family and Medical Leave Act of 1993.</p>	<p>HFLA leave may consist of unpaid or paid leave (use of sick, vacation, or compensatory time off credits) or a combination of paid and unpaid leave. The election to use paid leave can only be made by the employee. The employer cannot require the employee to use paid leave.  However, the employer is not required to diminish an employee's accrued and available sick leave below the amount required pursuant to section 392-41; provided that any sick leave in excess of the minimum statutory equivalent for temporary disability benefits as determined by the department may be used in lieu of unpaid HFLA leave.</p>	<p>FMLA leave is unpaid; however, the employer may require the employee to substitute accrued paid leave for FMLA leave. Substitution of paid sick leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of sick leave. <u>Note:</u> Employee may not substitute sick leave credits for other than their own illness.  Compensatory time off used for FMLA will be counted against the employee's FMLA leave entitlement.  Shared leave donations are not a form of accrued paid leave that an employer may require the employee to substitute for unpaid family leave.  If shared leave donations are used, this time will not be counted towards family leave entitlement.</p>

<p><b>Benefit Year</b></p>	<p><u><b>UPW</b></u>  <b>Section 36.09a. and 37.09a.</b>            Vacation leave/Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year.  <u><b>HGEA</b></u>  <b>BU 2, 3, 4 Article 35, BU 9 Article 41, BU 13 Article 37 – Vacation Leave</b>            Vacation leave/Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year.</p>	<p>Any 12-month period. HHSC uses calendar year.</p>	<p>Any 12-month period. HHSC uses calendar year except when 26 weeks of leave is being taken in accordance with Military Caregiver Leave (also known as Covered Service Member Leave). The 12-month period for Military Caregiver Leave begins on the first day an employee takes leave for this reason.</p> <p><b>Example #1</b>            26 weeks = Date leave commenced is Oct. 16, 2009            Date leave ends is April 15, 2010            Qualified employee is eligible for another 26 weeks of Military Caregiver Leave beginning Oct. 16, 2010</p> <p><b>Example #2</b>            26 weeks = Date leave commenced is Dec. 16, 2009            Date leave ends is June 15, 2010            Qualified employee is eligible for another 26 weeks of Military Caregiver Leave beginning Dec. 16, 2010</p>
<p><b>Notice Requirements</b></p>	<p><u><b>UPW</b></u>  <b>Section 37.04a</b>            Notification of absence on account of sickness shall be given as soon as possible on the first day of absence or if impracticable, as soon thereafter as circumstances permit. If notification has not been given the absences shall be charged to unauthorized leave of absence without pay and subject to discipline.</p> <p>For HHSC employees in BU 10 who are on shifts and where employees normally relieve employees on the previous shift, sick leave notification shall be given not less than 2 hours prior to the scheduled shift. (SA dated 7/1/07)</p> <p><u><b>HGEA</b></u>  <b>BU 2, 3, 4 Article 36, BU 9 Article 42, BU 13 Article 37 – Sick Leave</b>            Notification of absence on account of sickness shall be given at least thirty (30) minutes prior to the start of the employee's scheduled workday or if impracticable as soon thereafter as circumstances permit. However, in operations where Employees on a shift normally relieve Employees on the previous shift, notification of absence shall be given at least two (2) hours prior to the start of the Employee's scheduled shift, except in extenuating circumstances whereby an</p>	<p>1. If the need for family leave is foreseeable, a written request for the leave should be submitted at least thirty (30) days before the date family leave is expected to commence.</p> <p>2. For family leave that is foreseeable, but it is not possible or practicable to give as much as thirty (30) days written notice before commencement of family leave, the employee needs to give at least verbal notification to the employer within two working days before the commencement of family leave, with a written notice to follow as soon as practicable.</p> <p>3. If need for family leave is not foreseeable, the employee shall give at least a verbal notice to the employer within two working days of learning of the need for family leave or as soon as practicable. If the verbal notice is provided as soon as practicable, the employer shall not deny or delay family leave. The employee shall submit written notice as soon as practicable thereafter.</p> <p>Notice can be in the form of a letter, facsimile or by other electronic means except that notice in (3) is considered sufficient if it is provided in person or by telephone. In cases where the employee is unable to provide notice personally, the employee's designated spokesperson such as the spouse, adult family member, or other responsible party is allowed to provide the notice.</p>	<p>The employee needing FMLA leave must follow the employer's usual and customary call-in procedures for reporting an absence absent unusual circumstances.</p> <ol style="list-style-type: none"> <li>1. If the need for family leave is foreseeable, a written notification should be given at least 30 days before the date the FMLA leave is expected to commence. If proper notice is not given without a reasonable excuse for the delay, the employer may delay approval of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave.</li> <li>2. For family leave that is foreseeable but it is not possible to give as much as thirty days notice, the employee needs to provide notification as soon as possible and practical. For family leave where it is not possible to give as much as 30 days notification, as soon as practicable would mean at least verbal notification to the employer within one or two business days of when the need for the leave becomes known to the employee.</li> <li>3. For unforeseeable leave, an employee should give notice to the employer as soon as practicable, which is expected to be within two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.</li> </ol>

	<p>Employee is unable to provide such notice.</p> <p><b>UPW</b>  <b>Section 37.05a, 37.05c</b>  Application for sick leave shall be filed on a form prescribed by the Employer within five (5) workdays after returning to work. The sick leave shall be granted when the Employer is satisfied that the absence from work was because of sickness, even though a physician's certificate may not be available.</p> <p><b>HGEA</b>  <b>BU 2, 3, 4 Article 36, BU 9 Article 42, BU 13 Article 37 – Sick Leave</b>  Application for sick leave shall be filed on a form prescribed by the Employer or designee within five (5) working days after return to work. Sick leave shall not be granted unless it is provided to the satisfaction of the department head that the Employee's absence from work was necessary because of sickness.</p> <p><b>UPW</b>  <b>Section 36.10a, 36.10b.</b>  An Employee desiring to use vacation leave shall submit an application in advance of the beginning date of the vacation to enable the Employer to make necessary readjustment of work. The requirement for advance notice may be waived for emergency situations or when the Employee does not have accumulated sick leave and elects to use accumulated vacation leave in place of authorized leave without pay for sick leave.</p> <p><b>HGEA</b>  <b>BU 2, 3, 4 Article 35, BU 9 Article 41, BU 13 Article 37 – Vacation Leave</b>  When a vacation is requested on a proper application by an Employee, it shall be granted and taken at such time or times as the department head may designate; provided, that it shall be as close to the requested period as conditions in the department will permit, and so as to prevent any forfeiture of vacation allowance.</p>	<p>If known, the employee should provide the reason for the request, the anticipated start of the leave and the anticipated duration of the leave. The employer may not deny or delay family leave if the start or duration of the family leave is not known if the employee has otherwise provided timely verbal or other notice.</p> <p>However, the employer can request further information in order to make a determination as to whether certification will be needed to support the approval of family leave.</p> <p>If an employee fails without a reasonable excuse to provide notice as required, the employer may delay the taking of family leave until the employee is able to provide proper notice, or until at least thirty days after the employee first notified the employer of the need for family leave.</p>	<p>The notice requirement should be in the form of at least a verbal notice sufficient to provide the employer with enough information to determine that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave. If the employee does not specifically request FMLA, the employer should inquire further to determine if the leave may be FMLA-qualifying.</p> <p>In the case of a medical emergency, the notice should be in person or by phone, or other electronic means and may also be given by the employee's spokesperson if the employee is not able to personally submit it.</p>
<b>Employer Designation for Family Leave</b>		<p>Can follow federal rules.</p>	<p>In all circumstances it is the employer's responsibility to designate leave as FMLA-qualifying within five (5) business days of receiving enough information in order to determine that the leave qualifies as FMLA leave.</p>



<p><b>Medical Certification and Re-Certification</b></p>	<p><b>UPW Section 37.06</b> The Employee shall submit a licensed physician's certificate for absences of five (5) or more consecutive workdays to substantiate that the absence was due entirely to sickness and that the Employee is physically and/or mentally able to resume the duties of the Employee's position.</p> <p><b>HGEA BU 2,3, 4 Article 36, BU 9 Article 42, BU 13 Article 37 – Sick Leave</b> The department head shall require the Employee to submit a licensed physician's certificate for absences of five (5) or more consecutive working days to substantiate the fact that the period of absence was due entirely to sickness and that the Employee is physically and/or mentally able to resume the duties of the Employee's position.</p>	<p>The employee must complete a HHSC "Certification of Health Care Provider" form.</p> <p>When the leave is foreseeable, the employee shall furnish certification prior to the commencement of the family leave.</p> <p>If leave is unforeseeable, the employee shall furnish certification no later than two working days after the family leave commences.</p> <p>Acceptable certification: Birth of child – Written statement issued by health care provider Adoption – Petition filed by the employee with the court, or a written statement from attorney handling the adoption, an individual officially designated by the birth parent to select and approve the adoptive family, or from the adoption agency.</p> <p>Serious health condition of eligible family member – Certification of Health Care Provider</p> <p>If the serious health condition is chronic and continuous and the employee foresees the need for family leave in another twelve-month period, the employer may require the employee to provide certification by the health care provider for the serious health condition for each twelve-month period.</p> <p>At the employer's expense (e.g. Employer pays for physician visit), an employer may require re-certification during the course of any twelve-month period, but not more often than thirty days, if: (1) circumstances described by the previous certification have changed significantly (duration of the illness, nature, complications, etc.), or (2) the employer receives information that casts doubt upon the employee's stated reason for the absence.</p> <p>In cases where the employee's original family leave request was under the four-week maximum and the</p>	<p>However, HR reserves the right to make a retroactive designation in the future, but only under appropriate circumstances and where such a retroactive designation does not cause prejudice to the employee.</p> <p>An employer may require that a FMLA absence be supported by a certification issued by a health care provider. An employer must give notice of the requirement for medical certification each time a certification is required. Oral request for any subsequent medical certification is sufficient.</p> <p>The requested certification must be provided within the timeframe requested by the employer (at least 15 calendar days after the employer's request) unless it is not practicable under the particular circumstances despite the employee's good faith efforts.</p> <p>At the time the employer requests certification, the employer must also advise the employee of the anticipated consequences of failure to provide adequate certification.</p> <p>If the medical certification is deemed to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee at least seven (7) calendar days to cure the deficiency.</p> <p>Should there be a need to contact the employee's health care provider (e.g. to authenticate or clarify certification), such contact may be made by a health care provider, human resource professional, leave administrator, or management official but in no case may it be the employee's direct supervisor. The employer may not ask the health care provider for additional information beyond that required by the certification form.</p> <p><b>RECERTIFICATION</b> For pregnancy, chronic or permanent/long-term conditions, an employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless</p> <ul style="list-style-type: none"> <li>• The employee requests an extension of leave, or</li> <li>• Circumstances described by the previous certification have changed significantly; or</li> </ul>
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		<p>employee requests an extension of the approved family leave within the twelve-month period, the employer may require another certification from the employee of the need for the extension.</p> <p>For purposes of confirming family relationships, the employer may require the employee to provide reasonable documentation or statement of the relationship (e.g., court document, or a certificate of birth, marriage or reciprocal beneficiary status).</p> <p>If certification is incomplete, the employer shall advise the employee and provide the employee a reasonable opportunity to remedy such deficiency.</p> <p>For a birth or serious health condition occurring or situated outside the State of Hawaii, certification is sufficient if provided by a health care provider who is</p> <ol style="list-style-type: none"> <li>1) authorized and performing within the scope of practice as defined under a state law; or</li> <li>2) authorized to practice in accordance with the law of another country and who is performing within the scope of the practice as defined under that law.</li> </ol>	<ul style="list-style-type: none"> <li>The employer receives information that casts doubt upon the employee's stated reason for absence.</li> </ul> <p>If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employer may not request recertification until that minimum duration has passed.</p> <p>In all cases recertification may be requested for an ongoing serious health condition every six months in conjunction with an absence.</p> <p>Requested recertification must be provided within the timeframe requested (must allow at least 15 days after employer's request) unless it is not practicable despite the employee's good faith efforts.</p> <p>Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.</p>	<ul style="list-style-type: none"> <li>The employer receives information that casts doubt upon the employee's stated reason for absence.</li> </ul> <p>If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employer may not request recertification until that minimum duration has passed.</p> <p>In all cases recertification may be requested for an ongoing serious health condition every six months in conjunction with an absence.</p> <p>Requested recertification must be provided within the timeframe requested (must allow at least 15 days after employer's request) unless it is not practicable despite the employee's good faith efforts.</p> <p>Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.</p>
<b>Return from Leave</b>			<p><b>RETURN TO WORK</b></p> <p>An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work; however such reporting policy may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.</p> <p>If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee to employment shall cease.</p> <p>If an employee needs more or less leave than originally anticipated, the employer may require that the employee provide the employer reasonable notice (i.e. within two business days) of the changed circumstances where foreseeable.</p> <p>The employer may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for leave to address the employee's ability to resume the essential functions of</p>	<p><b>RETURN TO WORK</b></p> <p>An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work; however such reporting policy may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.</p> <p>If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee to employment shall cease.</p> <p>If an employee needs more or less leave than originally anticipated, the employer may require that the employee provide the employer reasonable notice (i.e. within two business days) of the changed circumstances where foreseeable.</p> <p>The employer may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for leave to address the employee's ability to resume the essential functions of</p>

			his/her job. Where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification up to once every 30 days for employees on an intermittent or reduced leave schedule.	
<b>Definitions</b>			<p><b>Definitions:</b>  <b>Child:</b> Means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.  For military family leave – there is no age limitation for child.  <b>Parent:</b> A biological, adoptive, step or foster parent or an individual who stood in loco parentis to an employee when the employee was a child.</p>	
<b>Employment and Benefits Protection</b>	<p><u>UPW</u>  Various sections.  Employment and certain benefits protection, if leave is approved.  <u>HGEA</u>  Various sections.  Employment and certain benefits protection, if leave is approved.</p>	Yes		Yes
<b>Administration over Unlawful Acts</b>	<p><u>UPW</u>  Section 36.02  Administration and enforcement of the state and federal family leave provisions shall be in accordance with applicable laws and regulations.  (Note: grievance may be filed if state or federal agency rules that the applicable agency does not have jurisdiction over the appeal).  <u>HGEA</u>  BU 2, 3, 4 Article 36A, BU 9 Article 42A, BU 37A – Family Leave  Appeals with regard to state and federal family leave shall be filed with the appropriate state or federal agency that is responsible for administering and enforcing the respective provisions. If the appeal concerns the interpretation and/or application of the contract, the appellant or the Union may file a grievance.</p>	<p>Hawaii Department of Labor and Industrial Relations – Wage Standards Division</p>	<p>Hawaii Department of Labor – Wage and Hour Division</p>	



**HAWAII HEALTH SYSTEMS**  
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Attachment 3

11/09/2021

**Hawaii Health Systems Corporation**  
**FAMILY LEAVE REQUEST FORM**

Employee's Name:	Department:
Address:	Job Title:
Contact Phone Number:	Bargaining Unit:

**INSTRUCTIONS:**

**Application Process**

Step 1: Read the "Eligibility and Entitlement" for Federal and State leaves.

Step 2: If eligible, specify the reason for the leave by checking the appropriate block

Step 3: Read the details of Federal and State Leave and "Certification Information."

Step 4: Sign the form acknowledging your understanding and agreement with the leave conditions and submit this form to HR with required documents.  
The Family Leave Request Form must be submitted to Human Resources at least 30 days before the leave is expected to commence for approval. If 30 days notice is not possible, submission should be as soon as practicable.

**Upon Notifying Employees of Eligibility**

Once notified that you are eligible for requested leave, you are to complete a G-1 with the dates of the leave for your supervisor's approval.

**STEP 1: ELIGIBILITY AND ENTITLEMENT**

**FEDERAL LEAVE (FMLA):**

An employee must be employed by HHSC for at least 12 months (does not need to be consecutive), have worked at least 1,250 hours in the 12-month period immediately preceding the commencement of the leave, and be employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.

An employee is entitled to up to 12 work weeks of leave during a calendar year, except in the case of military caregiver leave (see below), in which case employees are entitled to up to 26 work weeks of leave in a single 12-month period.

**STATE LEAVE (HFLA):**

An employee must be employed by HHSC for at least 6 consecutive months without a break due to resignation, termination, or layoff.

An employee is entitled to up to four weeks of family leave each calendar year.

**STEP 2: SPECIFY THE REASON FOR THE FAMILY LEAVE BY CHECKING THE APPROPRIATE BLOCK:**

FEDERAL LEAVE (FMLA)	STATE LEAVE (HFLA)	REQUIRED DOCUMENTS
<input type="checkbox"/> The birth and care of an employee's newborn child (must be taken within 12 months of birth).	<input type="checkbox"/> Upon birth of a child.	Documentation confirming family relationship
<input type="checkbox"/> Placement of child for adoption or foster care (must be taken within 12 months of event).	<input type="checkbox"/> Upon adoption of a child.	Legal documentation confirming the event.
<input type="checkbox"/> Care of spouse, child (under age 18 or 18 or older and "incapable of self-care") or parent with a serious health condition. Specify relationship: _____	<input type="checkbox"/> Care for employee's child, spouse, reciprocal beneficiary, sibling, grandchild or parent with a serious health condition. Specify relationship: _____ Note: Parent means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent or a grandparent-in-law.	Family Leave Cert of Health Care Provider
<input type="checkbox"/> Employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's job.	Does not apply.	Family Leave Cert of Health Care Provider

<b>Military Family Leave</b>		
<input type="checkbox"/> To care for a covered service member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, or is on the temporary disability retired list for an illness or injury that was incurred in the line of active duty and that makes the member medically unfit to perform his or her duties. (Military Caregiver Leave)	Does not apply.	Military Family Leave Cert for Serious Injury or Illness of Covered Service member
<input type="checkbox"/> "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status as a member of the Armed Forces, National Guard or Reserves, in support of a contingency operation.	Does not apply.	Certification of Qualifying Exigency
<b>Intermittent Leave</b>	<b>Intermittent Leave</b>	
<input type="checkbox"/> I am requesting intermittent leave.	<input type="checkbox"/> I am requesting intermittent leave.	

### **STEP 3:**

#### **DETAILS OF FEDERAL LEAVE (FMLA):**

Although FMLA leave is unpaid, for all periods of FMLA leave not covered by the HFLA, an employee will first be required to substitute any accumulated paid sick leave (for leave due to the employee's own illness) or paid vacation (for all other FMLA-qualifying leave otherwise unpaid). Employees may also elect to use compensatory time off and if so, the absence that is being paid from the employee's accrued compensatory time off will be counted against the employee's FMLA leave entitlement. The substitution of paid leave time for unpaid leave time does not extend an employee's maximum allowable FMLA leave.

Intermittent or reduced schedule leave may be taken in increments of 1 hour, if approved.

Note: Spouses employed by HHSC are limited in the amount of family leave they may take for the birth & care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a **combined** total of 12 weeks (or 26 weeks for Military Caregiver Leave).

#### **DETAILS OF STATE LEAVE (HFLA):**

An employee may elect to substitute any of his or her accrued paid leave for any part of the four-week period.

An employee may use up to ten (10) days of sick leave for any HFLA-qualifying leave unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten (10) days, and provided the employee's accrued and available sick leave credits does not go below 120 hours. HGEA and UPW bargaining unit contracts provide for the use of sick leave up to a maximum of four (4) weeks for family leave, per designated twelve (12) month period.

Intermittent leave may be taken in increments of 1 hour.

Note: A husband and wife who are eligible for HFLA and are both employed by HHSC are each entitled to four weeks of family leave.

**When the Employer requires the use of paid leave or the employee elects to use paid leave, the requirements for such use must be followed under the respective BU agreement.**

#### **CERTIFICATION INFORMATION**

All leaves require documentation identified in the above "Required Documents" block (see Step 2). When leave is foreseeable, the employee should provide notice 30 days in advance, and should then provide the completed certification within 15 days of receiving notice from HHSC, which in most cases will be before the leave begins. Failure to submit this certification may result in a denial of leave until it is provided.

When leave is not foreseeable, the employee should provide notice as soon as practicable, and should then provide the completed certification within 15 days after receiving Attachment 5 ("Eligibility Notification To Employees and Rights and Responsibilities Regarding Family Leave"). If the employee fails to provide timely certification under the circumstances, HHSC may delay the approval of FMLA leave. If the certification is never provided, the leave will not be FMLA covered.

If the circumstances described in your initial certification have changed significantly such as the duration, frequency or severity of your condition, a subsequent recertification of your condition may be requested.

**WHEN APPLICABLE, STATE LEAVE SHALL RUN CONCURRENTLY WITH FEDERAL LEAVE**

**STEP 4:** I certify that I have read and agree to the above and that the above request is true and accurate. In addition, I understand my request may be subject to verification by HHSC.

I understand that failure to return to work at the end of my family leave period will be treated as any other failure to return to duty at the expiration of the leave.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's/Manager's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
HR Representative's Signature

\_\_\_\_\_  
Date

**TO BE COMPLETED BY HR/PAYROLL PERSON AFTER REQUEST IS MADE BY EMPLOYEE AND APPROVED BY HR/SUPERVISOR.**

Enter the period of leave (dates) and total number of working hours to be utilized for family leave:

Type of Leave	Date(s) Requested	Work Hours
Sick		
Vacation		
Comp Time		
LWOP		



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**ADDENDUM FOR CERTIFICATION OF HEALTH CARE PROVIDER**

**For Completion by the HEALTH CARE PROVIDER**

1. Listed below describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.

(1)\_\_\_\_ (2)\_\_\_\_ (3)\_\_\_\_ (4)\_\_\_\_ (5)\_\_\_\_ (6)\_\_\_\_, or none of the above \_\_\_\_

**DEFINITION OF "SERIOUS HEALTH CONDITION"**

"Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves one of the following:

1. **Hospital Care.** Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity<sup>2</sup> or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment.**
  - (a) A period of incapacity<sup>2</sup> of more than three consecutive calendar days and any subsequent treatment or period of incapacity<sup>2</sup> relating to the same condition, that also involves:
    - (1) Treatment<sup>3</sup> two or more times within 30 days of the first day of incapacity by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of or on referral by, a health care provider, with the first visit within 7 days of the first day of incapacity; or
    - (2) Treatment by a health care provider on at least one occasion within 7 days of the first day of incapacity, which results in a regimen of continuing treatment<sup>4</sup> under the supervision of the health care provider.
3. **Pregnancy.** Any period of incapacity due to pregnancy, or for prenatal care.
4. **Chronic Conditions Requiring Treatments.** A chronic condition which:
  - (a) Requires periodic visits 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<sup>2</sup> (e.g., asthma, diabetes, epilepsy, etc.)
5. **Permanent/Long-Term Conditions Requiring Supervision.** A period of incapacity<sup>2</sup> 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 (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease).
6. **Multiple Treatments (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<sup>2</sup> 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).

Note 1: Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

Note 2: "Incapacity" for purposes of FMLA, 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.

Note 3: Treatment includes examination 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.

Note 4: 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.



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11/09/2021

**ELIGIBILITY NOTIFICATION TO EMPLOYEES AND RIGHTS AND RESPONSIBILITIES  
REGARDING FAMILY LEAVE**

Date: \_\_\_\_\_ To: \_\_\_\_\_ From: \_\_\_\_\_  
(Employee's Name) (Name of Employer Representative)

On \_\_\_\_\_, you notified us of your need to take family/medical leave due to:  
(NOTE: This could have been either verbal notice or written notice such as the Family Leave Request Form.)

- ☐ The birth and care of a newborn child or to bond with the child within 12 months of birth; or
- ☐ The placement and care of a child for adoption or to bond with the child within one year of placement; or
- ☐ The placement and care of a child for foster care or to bond with the child within one year of placement; or
- ☐ A serious health condition affecting your ☐ spouse, ☐ child, ☐ parent, ☐ sibling, ☐ grandchild, ☐ other, for which you are needed to provide care. If other, please list relationship: \_\_\_\_\_
- ☐ A serious health condition that makes you unable to perform one or more of the essential functions of your job.
- ☐ To care for a covered service member who is undergoing medical treatment, recuperation, or therapy or is on the temporary disability retired list ("military caregiver leave").
- ☐ "Any qualifying exigency" arising out of the fact that your spouse, son, daughter, or parent is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

You notified us that you need this leave beginning on \_\_\_\_\_ and that you expect the leave to continue until on or about \_\_\_\_\_.  
(Date) (Date)

This is to inform you that you are:

- ☐ eligible for family leave under: ☐ Federal Leave (Family Medical Leave Act or FMLA)  
☐ State Family Leave (Hawaii Family Leave Act or HFLA)
- ☐ ineligible for family leave.

Reason for denial: \_\_\_\_\_

The 12-month period for FMLA and HFLA leave is designated as a calendar year. If applicable, the single 12-month period for military caregiver leave started on \_\_\_\_\_.

**INSTRUCTIONS:**

If you are eligible for requested leave (see above), please 1) complete a G-1 with the dates of the leave and submit to your supervisor; and 2) have your health care provider complete a "Certification of Health Care Provider" (provided this was not submitted earlier) and submit it to HR within 15 days of your receipt of this request. Failure to timely submit a completed certification may result in the delay or denial of FMLA coverage and, therefore, discipline (up to and including discharge) for unexcused absence.

**RIGHTS AND RESPONSIBILITIES:**

1. For Federal leaves only: If your leave is for your own serious health condition, you will be required to use available sick leave credits, and then available vacation credits. If your leave is for other qualifying reasons, you will be required to exhaust available vacation credits and/or compensatory time.



For State leaves and Federal/State leaves (until State leave expires): You may elect, but are not required, to use available vacation credits and/or up to 10 days of sick leave (or more if required by a collective bargaining agreement), provided your sick leave balance does not go below 120 hours.

In addition, a completed G-1 must be submitted so HR can properly apply the appropriate number of credits.

2. During your leave, you may continue to participate in HHSC's health plan. In the event your leave becomes unpaid, you will receive a L-1 Form from your HR Office giving you an opportunity to either cancel health benefit plan enrollment or continue the enrollment during the LWOP. If you elect to continue the enrollment, you will be responsible for payment of your portion of the health insurance payments directly to the Hawaii Employer Union Health Benefits Trust Fund (EUTF) by a specified date. You have a minimum 30-day grace period in which to make premium payments. Failure to make payments may result in a discontinuation of your benefits, provided you are notified in writing at least 15 days before the date that the benefits would lapse. HHSC's portion of the health insurance premiums will continue during authorized leaves. If you are currently enrolled in optional benefit programs for which you are paying premiums, you must make arrangements to pay these premiums if you will be on an unpaid leave.
3. While you are on leave, you must contact your supervisor to report on your condition if the circumstances described in your initial certification have changed significantly such as the duration, frequency or severity of your condition. If so, a subsequent recertification of your medical condition may be requested.
4. If you have taken FMLA leave because of your own serious health condition and you are ready to return to work, you must provide a medical certificate that verifies you are able to resume the duties of your position. Failure to do so will result in a delay of your return.
5. Upon your return to work, except in very limited circumstances you will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment.
6. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration would cause substantial and grievous economic injury to HHSC as discussed in 29 CFR §825.218.

We have determined that you \_\_\_ are \_\_\_ are not a "key employee" – a salaried employee who is within the highest paid 10% of employees within 75 miles of his or her worksite.

We currently \_\_\_ have \_\_\_ have not determined that restoring you to employment at the conclusion of FMLA leave would cause substantial and grievous economic harm. We will give you prompt notice if this determination changes.

7. If you do not return to work following an authorized leave, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your leave, and you may be subject to appropriate action.

8. Other:

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**IF YOU HAVE ANY QUESTIONS ABOUT THE FMLA AND/OR HFLA OR NEED TO DISCUSS YOUR REQUEST FURTHER, PLEASE CONTACT YOUR FACILITY'S HUMAN RESOURCES OFFICE AT \_\_\_\_\_.**



11/09/2021

**NOTIFICATION TO EMPLOYEES WHO ARE ELIGIBLE FOR  
FEDERAL FAMILY AND MEDICAL LEAVE (FMLA)**

To: \_\_\_\_\_ Date: \_\_\_\_\_  
(Employee's Name)

From: \_\_\_\_\_  
(Name of Employer Representative)

Our records show that, as of \_\_\_\_\_, you have been out on sick leave for four or more consecutive days. Unless you provide appropriate information to the contrary, your leave is being counted under the federal Family and Medical Leave Act (FMLA) which covers, among other things, serious health conditions involving more than three consecutive days of incapacity, plus either two treatments by a health care provider or one treatment followed by a prescription for medication or therapy under continuing supervision of the health care provider.

If your absence is not for a serious health condition as described above, please inform your HR Office or \_\_\_\_\_ as soon as possible (within five working days from the date you receive this notice) so your records can be changed. If we do not hear from you, your total leave period will be counted against your annual FMLA leave entitlement.

**CONDITIONS AND OTHER IMPORTANT INFORMATION ABOUT FMLA LEAVE**

1. If your leave is designated as FMLA, your use of sick leave credits will apply concurrently.
2. If your leave is for five (5) or more consecutive working days, you will be required to submit a licensed physician's certificate as noted in your BU contract.
3. If you exhaust your sick leave credits, we will utilize your available vacation credits. In order for us to properly apply your vacation credits, a G-1 requesting the use of vacation credits, a Family Leave Request Form, Attachment 3 and the Certification of Health Care Provider, must be submitted in advance or as soon as practicable. Failure to provide the requested documents will result in an unauthorized leave of absence without pay. Once your forms are submitted, you will receive a response within two business days. If you have any compensatory time available, approval for its use can only be considered if a request on a G-1 is made. If approved, the period of time that compensatory time is utilized will be counted towards your annual FMLA leave entitlement.
4. Once all available credits are exhausted, a subsequent G-1 requesting a leave of absence without pay for FMLA purposes must be submitted. If an earlier FMLA request for this period of time was submitted, the G-1 must be submitted so HR can account for the absence and the type of leave that is being taken.
5. As a reminder, appropriate and timely documentation supporting your requested leave is required. Failure to comply may result in discipline.
6. During your leave, you may continue to participate in HHSC's health plan. In the event your leave becomes unpaid, you will receive a L-1 Form from your HR Office giving you an opportunity to either cancel health benefit plan enrollment or continue the enrollment during the LWOP. If you elect to continue the enrollment, you will be responsible for payment of your portion of the health insurance payments directly to the Hawaii Employer Union Health Benefits Trust Fund (EUTF) by a specified date. You have a minimum 30-day grace period in which to make premium payments. Failure to make payments may result in a discontinuation of your benefits, provided you are notified in writing at least 15 days before the

date that the benefits would lapse. HHSC's portion of the health insurance premiums will continue during authorized leaves.

7. While you are on leave, you must contact your supervisor to report on your condition if the circumstances described in your initial certification have changed significantly such as the duration, frequency or severity of your condition. If so, a subsequent recertification of your medical condition may be requested.
8. Since your FMLA leave was taken because of your own serious health condition, once you are ready to return to work you must provide a medical certificate that verifies you are able to resume the duties of your position. Failure to do so will result in a delay of your return.
9. Except in limited circumstances, upon your return to work, you will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment.
10. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration would cause substantial and grievous economic injury to HHSC.

We have determined that you \_\_\_ are \_\_\_ are not a "key employee" – a salaried employee who is within the highest paid 10% of employees within 75 miles of his or her worksite.

We currently \_\_\_ have \_\_\_ have not determined that restoring you to employment at the conclusion of FMLA leave would cause substantial and grievous economic harm. We will give you prompt notice if this determination changes.

11. If you do not return to work following an authorized leave, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your leave, and you may be subject to appropriate action.
12. Other:

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IF YOU HAVE ANY QUESTIONS ABOUT THE FMLA OR NEED TO DISCUSS YOUR REQUEST FURTHER, PLEASE CONTACT YOUR FACILITY'S HUMAN RESOURCES OFFICE AT \_\_\_\_\_.

## Questions and Answers for Family Leave

**Q:** Is a holiday whether paid or unpaid count towards an employee's four (4) or twelve (12) week allotment for family leave?

**A:** Yes, a holiday (paid or unpaid) that occurs during the period of an employee's family leave will be counted towards an employee's four (4) or twelve (12) week allotment of family leave. The collective bargaining agreements governs when an employee is to receive a paid holiday (see the various contracts as it relates to holiday pay).

**Q:** What is a "qualifying exigency"?

**A:** The U.S. DOL has developed a list of qualifying exigencies that encompass a wide range of specific activities in the following broad categories. Qualifying Exigencies include:

- Issue arising from a covered military member's short notice deployment (i.e., deployment within 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 sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, 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, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to **fifteen** 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, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days

following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;

- Certain parental care activities for the military member's parent who is incapable of self-care; and
- Any other event that the employee and employer agree is a qualifying exigency.