

NATIONAL GUARD OF ARIZONA

Human Resources Office

5636 E. McDowell Road, Phoenix, Arizona 85008-3495

Telephone: (602) 267-2790 DSN 853-2790

6 November 2000

MEMORANDUM FOR Technician Employees and Supervisors of Technicians

SUBJECT: Administration of the *FAMILY AND MEDICAL LEAVE ACT (FMLA)* and *FAMILY FRIENDLY LEAVE ACT (FFLA)*

In order to help clarify the use of leave in connection with the Family and Medical Leave Act and Family Friendly Leave Act, the following guidance is provided to supervisors and employees.

Entitlement

Employees must have been employed for at least twelve months and in pay status for at least 1,250 hours during the twelve month period immediately preceding leave use. The **Family and Medical Leave Act** entitles most Federal employees to use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a **serious health condition**. When a serious health condition no longer exists, an employee is no longer entitled to sick leave under the FMLA. A combination of annual leave, compensatory leave or leave without pay may be authorized for the remainder of the 12 weeks. Under the **Family Friendly Leave Act** an employee may use up to 40 hours (5 workdays) of sick leave for **general family care or bereavement** in a leave year. An employee may use up to a total of 104 hours (13 workdays) of sick leave in a leave year if a minimum balance of 80 hours of sick leave is maintained. If an employee has already used any portion of the 13 workdays sick leave for general family care or bereavement during the leave year, that amount must be subtracted from the 12-week entitlement. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. .

Definition of Family Member

- spouse
- children, including adopted children, and spouses thereof;
- parents
- brothers and sisters, and spouses thereof; and
- any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship
- does not include same sex partners unless recognized by state law
- does not recognize care for parents-in-law

Definition of Serious Health Condition

Includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term "serious health condition" is not intended to cover short term conditions for which treatment and recovery are very brief (i.e., the common cold, flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc.) unless serious complications arise. Serious health conditions may also include periods of incapacitation of at least three consecutive calendar days and also involves treatment 2 or more times by a health care provider. Supervisors may require medical certification of a serious health condition.

Definition of General Family Care or Bereavement

Give care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment. Make arrangements necessitated by the death of a family member or attend the funeral of a family member. In other words, an employee may use sick leave to care for a family member having an illness, injury or other condition which if the employee had such condition would justify the use of sick leave by the employee.

Documentation

Supervisors have a right to 30 days advance notice from an employee requesting leave, whenever possible. Supervisors may request what they consider to be administratively acceptable evidence. Regardless of the length of absence, the supervisor may accept an employee's certification as acceptable evidence. However, for absences in excess of 3 workdays, supervisors may also require medical certification or other administratively acceptable evidence as to the reason for an absence under the FMLA. Leave used under the FMLA must be documented as such. Supervisors cannot designate leave, paid or unpaid, as FMLA leave unless the employee has requested the leave and the supervisor has approved the employee's leave use.

Pregnancy and Care of Newborns

An expectant mother is authorized sick leave for the length of time her doctor certifies she is incapacitated as a result of her pregnancy, pre-natal care and the birth of the child. An expectant mother may take sick leave under the FMLA when her own serious health condition makes her unable to work even before the birth of the child. Under FMLA, pregnancy or pre-natal care qualifies as a serious health condition, because it involves a continuing treatment by a health care provider. Fathers may also use sick leave under the FMLA to the extent that there is a need to provide care and a "serious health condition" still exists for either the mother or newborn. **Sick leave may not be used by birth or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.**

If a medical need no longer exists, the mother and/or father may use any of the remaining twelve weeks under the FMLA. Leave used when there is no longer a medical need must be either annual leave, compensatory leave, or leave without pay. Leave used under the FMLA relating to the birth of a child must be used within 12 months following the birth of the child.

Under the FMLA, use of sick leave in combination with any other paid or unpaid leave may not exceed 12 weeks per leave year.

If the mother and father work for the same agency, the twelve week entitlement is combined (12 weeks total for mother and father).

In Summary

If the employee does not choose to invoke the FMLA, there is no entitlement to leave. Although a supervisor generally may not deny sick leave if the employee provides medical certification, he or she may deny annual leave or leave without pay if there is a need for the employee to be at work. While the taking of annual leave is a right of an employee, it is subject to the right of the supervisor to schedule the time at which annual leave may be taken.

Detailed information regarding the Family and Medical Leave Act and Family Friendly Leave Act may be reviewed on the Office of Personnel Management website (www.opm.gov). You may also receive assistance in the administration of these programs by contacting the Human Resources Office at 602-629-4834 or 602-629-4818.