

	<b>Montana Operations Manual</b>  <b><i>Policy</i></b>	<b>Category</b>	Human Resources/Employee Benefits
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<b>Issuing Authority</b>	Department of Administration - State Human Resources Division		
<b>Family and Medical Leave Policy</b>			

## I. Purpose

This policy provides the framework under which Family and Medical Leave Act (FMLA) will be administered in Montana state government. This policy also provides employees information about FMLA entitlements and outlines any obligations employers and employees may have during such leaves. Employees and managers should direct questions regarding FMLA leave to their agency human resources office.

## II. Scope

This policy covers all agencies in Montana's executive branch except the Montana university system, the Montana State Fund, elected officials, personal staff of elected officials, and any other position specifically excluded under Section 2-18-103 and -104, Montana Code Annotated (MCA).

Any state law or collective bargaining agreement that provides greater family or medical leave rights supersedes this policy.

## III. Procedures

The Family and Medical Leave Act (FMLA) allows employees to balance their work and family life by taking reasonable leave for qualifying family and medical reasons. The FMLA provides eligible employees with job-protected leave and requires group health benefits to be maintained during the leave.

### A. Eligibility

1. To be eligible for FMLA leave, the employee must have:
  - a. worked for Montana state government a minimum of 12 months, which need not be consecutive or served just prior to taking leave; and

- b. been in a pay status for at least 1,040 hours during the 12 month period immediately preceding the commencement of leave.
2. Hours spent in service to the National Guard or Reserves will count toward FMLA eligibility.

## **B. Loss of Eligibility**

The employee's eligibility and protection under the FMLA ends when:

- a. an employee gives an agency unequivocal notice of their intent not to return to work;
- b. the employee has exhausted all FMLA leave benefits for the covered periods; or
- c. when the employee exhausts all FMLA leave and is unable to return to work.

## **C. Types and Duration of Leave**

1. An agency shall not deny employees the benefits of FMLA because they are "key employees," as that term is defined in the FMLA.
2. **Basic FMLA Year: The executive branch uses** the 12-month period measured forward from the date an eligible employee's first date of leave designated as FMLA leave. Under this method, a qualified employee is entitled to 12 weeks of leave during the 12 month period beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after the completion of any previous 12-month period.
3. **Basic Leave:**
  - a. Employees eligible for leave may take up to 12 workweeks of FMLA leave within a 12-month period for certain types of family and medical leave. The 12-month period begins on the first day leave is taken as FMLA leave. Exceptions to this are in the case of qualifying FMLA leave for adoption or birth. In these cases, the 12-month period starts on the date of the birth or adoption. Leave may be taken for any one, or for a combination, of the following reasons:
    - i. to care for the employee's child after birth, or placement for adoption or foster care;
    - ii. to care for the employee's spouse, child, or parent with a serious health condition;
    - iii. for the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of their job; and/or

- iv. because of any qualifying exigency arising when the employee's spouse, child, or parent is a member of any branch of the Armed Forces on covered active duty or has been notified of an impending call to covered active duty or order to covered active duty status.
- b. Employees are eligible to take FMLA leave for the birth or placement of a child within 12 months of the birth or placement. Maternity leave provided by the *Maternity and Parental Leave Policy* (MOM 03-0317) will run concurrently with FMLA leave.
- c. When a husband and wife are employed by the State of Montana, both may take up to 12 weeks of FMLA leave for the birth, adoption, or placement of a foster child.
- d. Eligible part-time employees will receive pro-rated leave based on the average weekly hours in a pay status. For example, a part-time employee who works 20 hours per week is entitled to 20 hours of FMLA leave per week for 12 weeks. An employer may convert the weeks to hours as long as the conversion equitably reflects the employee's normally scheduled hours.

#### 4. **Exigency Leave:**

- a. Examples of qualifying exigencies are:
  - i. short-notice deployment (limited to seven days);
  - ii. military events and related activities;
  - iii. **child** care and school activities;
  - iv. financial and legal arrangements;
  - v. counseling (provided by someone other than a health care provider);
  - vi. rest and recuperation (limited to five days for each incident); and
  - vii. post-deployment activities.
- b. Exigency activities are further described in *A Manager's Guide to the FMLA* located at: <http://hr.mt.gov/hrpp/guides.mcpv> and in 29 CFR 825.126.

#### 5. **Serious Health Conditions:**

A serious health condition is an illness, injury, impairment, or physical or mental condition either involving an overnight stay in a medical care facility, or continuing treatment by a health care provider.

#### 6. **Continuing Treatment:**

- a. The continuing treatment requirement may be met by:
  - i. a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider, or
  - ii. one visit and a regimen of continuing treatment, or
  - iii. incapacity resulting from pregnancy, or
  - iv. incapacity due to a chronic condition.

- b. Other conditions may meet the definition of continuing treatment. Agency staff should direct questions to their agency HR office.

#### **7. Military Caregiver Leave:**

- a. In addition to the basic FMLA leave entitlement above, an eligible employee who is the spouse, son, daughter, parent, or next of kin of the covered service member is entitled to take up to 26 weeks of leave in a single 12-month period to care for the service member with a serious injury or illness.
- b. Leave to care for a covered service member shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period.
- c. The 12-month period begins on the first day the employee takes leave to care for a covered service member, even if basic FMLA leave was taken within the 12 months prior. *A Manager's Guide to the FMLA* contains examples on determining the 12-month period.
- d. Eligible part-time employees will receive pro-rated leave based on the average weekly hours in a pay status. For example, a part-time employee who works 20 hours per week is entitled to 20 hours of military caregiver FMLA leave per week for 26 weeks. An employer may convert the weeks to hours as long as the conversion equitably reflects the employee's normally scheduled hours.

#### **8. Covered Service Member:**

- a. A covered service member is a member of the Armed Forces, including a member of the National Guard or Reserves undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.
- b. A member of the Armed Forces is considered to have a serious injury or illness if they incurred the injury or illness in the line of duty while on active duty provided the injury or illness renders the service member medically unfit to perform duties of their office, grade, rank, or rating. Serious injury or illness also includes conditions existing before the beginning of the member's active duty aggravated by the service in the line of duty on active duty in the Armed Forces.

#### **9. Intermittent or Reduced Schedule Leave:**

- a. FMLA leave will usually be taken for a period of consecutive days, weeks, or months. However, an employee may take FMLA leave intermittently or on a reduced schedule leave when medically necessary because of:
  - i. a qualifying exigency;
  - ii. his or her own serious health condition;
  - iii. care for a spouse, parent, child, with a serious health condition; or

- iv. care for a covered service member with a serious injury or illness.
- b. There must be a medical need for the intermittent leave unless the leave is for a qualifying exigency or following birth or adoption. When requested by agency management, the employee must provide certification that confirms the medical necessity for intermittent leave.
- c. If an employee needs leave intermittently for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so it does not unduly disrupt agency operations.
- d. When an employee takes FMLA leave for childbirth or placement of a child for adoption or foster care, intermittent or reduced leave schedules are subject to supervisor approval. In this case, the employee will notify his or her supervisor as soon as the need for leave is known and request a schedule that minimizes disruption of the work place.
- e. In all cases of intermittent and reduced schedule leaves, the agency reserves the right to transfer an employee to another position that better accommodates the employee's need for leave and the agency's operations. This decision is at the discretion of the employee's supervisor. The alternative position must have equivalent pay and benefits.

## **D. Agency FMLA Leave Obligations**

### **1. General Notice Requirements:**

- a. State agencies must provide employees with information about the FMLA, including information about the provisions and the procedures for filing complaints for violations of the FMLA. Agencies must:
  - i. post and keep posted an FMLA notice in a conspicuous place that explains the rights and responsibilities of employees under the Family and Medical Leave Act; and
  - ii. provide information about employee rights and obligations under this policy and the FMLA in employee handbooks or other written materials. Written materials should include the agency's requirements for requesting FMLA leave.
- b. Agencies should also provide ongoing FMLA training that includes information about any changes to the policy or the FMLA.

### **2. Agency Notice Requirements:**

When an employee requests FMLA leave, or when an agency manager acquires knowledge an employee's leave may be for an FMLA qualifying reason, three notice requirements are triggered.

- a. **Eligibility Notice:** Employees requesting FMLA leave are entitled to receive written notice from the agency notifying them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not

eligible. The agency must notify the employee about their eligibility to take FMLA leave within five business days.

- b. **Rights and Responsibility Notice:** The rights and responsibility notice may be included with the eligibility notice. The rights and responsibility notice must:
  - i. state the leave may be designated as FMLA leave,
  - ii. describe any certification requirements,
  - iii. state the employee's right to substitute paid leave, and
  - iv. notify the employee of their responsibility to continue paying their portion of insurance premiums.
- c. **Designation Notice:** When agency managers have enough information to determine the leave is FMLA qualifying, the designation notice must be sent to the employee within five days. The designation notice must include:
  - i. any fitness for duty requirements, and
  - ii. the amount of leave, if known, that will be counted against the employee's leave entitlement.

### 3. Recordkeeping Requirements:

Agency managers must make, keep and preserve records under the FMLA for no less than three years. These records are usually maintained in the agency's payroll or human resource offices or in the central payroll system. The following must be kept in accordance with the requirements of the FMLA, Fair Labor Standards Act (FLSA), Genetic Information Non-Discrimination Act (GINA), and Americans with Disabilities Act (ADA):

- a. Basic payroll and identifying employee data, and compensation details;
- b. Dates FMLA leave is taken by eligible employees;
- c. If leave is taken in less than full days, then the hours taken;
- d. Copies of notices given by employees and the agency (these copies may be maintained in the employee's personnel file);
- e. Policies describing employee benefits and the practice of taking paid and unpaid leave;
- f. Premium payments of employee benefits;
- g. Disputes between the agency and employee regarding the designation of leave as FMLA leave;
- h. Gina notice requirements: Agency managers must include the safe-harbor language required by the GINA regulations on all certification requests. This language should also be included in any letter addressed to a medical professional or the employee when any type of medical information is requested or may be disclosed;
- i. Agency managers should not ask employees probing questions about the FMLA qualifying event that may elicit genetic information about an employee or an employee's family members. See the Non-Discrimination EEO Policy (2.21.4001 et seq., ARM) for further guidance; and

- j. Records or documents relating to the employee or the employee's family's certifications. **\*\*\*These records shall be maintained as confidential medical records in separate files from the usual personnel files and maintained according to ADA and GINA confidentiality requirements. See the Employee Records Management Policy (2.21.6601 through -.6622, ARM) for further guidance.**

## **E. Employee FMLA Leave Obligations**

### **1. Employee Notice of Leave Requirements:**

- a. An employee requesting FMLA leave must provide:
  - i. at least a 30-day advance oral or written notice of the need to take FMLA leave when the need is foreseeable; or
  - ii. timely notice, as soon as possible and practical, when the need for FMLA leave is not foreseeable; and
  - iii. sufficient information for the employer to understand the leave is for a FMLA-qualifying reason.
- b. The following sections provide direction as to the content and timing of employee notices.

### **2. Content of Employee Notice:**

- a. To trigger protections under the FMLA, employees must inform their agency representative of the need for FMLA-qualifying leave. Employees must also notify the agency of the anticipated timing and duration of leave, if known.
- b. Employees can do this by specifically requesting FMLA leave or explaining the reason for the leave so the agency manager can make a determination if the leave is FMLA-qualifying. For example, employees might explain that:
  - i. a medical condition renders them unable to perform the functions of their job,
  - ii. they are pregnant,
  - iii. they have been hospitalized overnight,
  - iv. they or a covered family member are under continuing care of a healthcare provider,
  - v. the leave is because of a qualifying exigency caused by a covered service member being on covered active duty or notified of an impending call or order to covered active duty, or
  - vi. the leave is for a family member unable to perform daily activities or the family member is a covered service member with a serious injury or illness.
- c. Calling in "sick" without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy.

- d. Employees are expected to respond to the agency's questions to determine if absences are potentially FMLA-qualifying.
- e. When the agency manager receives enough information to make a determination, they may retroactively designate leave as FMLA leave provided the agency notify the employee about the designation.
- f. If employees fail to provide enough information to make a determination, the agency may deny the leave.
- g. Employees who are seeking additional leave because of a previously-qualified FMLA reason and who have not exhausted their FMLA leave benefits, must continue to provide sufficient information to agency management so the agency may properly record, account for and track the use of FMLA leave.
- h. Employees should never provide genetic information when responding to a request for FMLA medical certification. The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.

### **3. Timing of Employee Notice:**

- a. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable.
- b. If 30 days notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide the agency notice of the need for leave as soon as practicable under the facts and circumstances of the particular case.
- c. Employees must comply with their agency's customary notice requirements for requesting leave, absent unusual circumstances.
- d. An agency may delay or deny FMLA coverage if the employee fails to provide notice, without a reasonable reason for the delay, or otherwise fails to satisfy FMLA notice obligations.
- e. An employee who requests intermittent leave or a reduced leave schedule shall notify his or her supervisor as soon as the need for the leave is known.

### **4. Scheduling of Planned Medical Treatment and Intermittent Leave or Reduced Leave Schedules:**

- a. Employees must consult with their agency manager and make a reasonable effort to schedule medical treatment so as not to unduly disrupt the agency's operations. The employee's health care provider must approve treatment schedules.
- b. An agency manager may temporarily transfer an employee during the period of the intermittent or reduced leave schedule to an alternative position for which the employee is qualified. The alternative position must have equivalent pay and benefits and better accommodate the recurring periods of leave.

- c. Employees seeking intermittent leave or reduced schedule leave for reasons unrelated to planned medical treatment must advise their agency representative of the reason for the leave. In such cases, agency manager and employee shall attempt to work out a leave schedule meeting the employee's needs without unduly disrupting the agency's operations.
- d. Intermittent or reduced schedule FMLA leave for childbirth or placement of a child for adoption or foster care is subject to supervisor approval.
- e. Employees must provide reasonable and practicable notice to agency management when requesting intermittent leave or reduced leave schedules because of a qualifying exigency.

**5. Submit Medical Certifications Supporting Need for FMLA Leave:**

- a. Depending on the type of leave requested, employees may be required to submit medical certifications supporting their need for FMLA-qualifying leave. Employees may be required to provide medical certification for their own serious health condition, to care for a family member with a serious health condition, because of a qualify exigency, or to care for a covered service member with a serious injury or illness.
- b. There are generally three types of FMLA medical certifications: an initial certification, a recertification, and a return to work or fitness for duty certification.
- c. The employee is responsible for providing agency management with timely, complete, and sufficient medical certifications. When the agency representative requests employees provide FMLA certifications, employees must provide the requested certification within 15 working days after the agency's request unless it is not practicable to do so despite an employee's diligent, good faith efforts.

**6. Incomplete or Insufficient Medical Certifications:**

- a. The agency representative shall inform employees in writing if the medical certifications are incomplete or insufficient. The written notice must identify the specific information required.
- b. Employees will have seven working days to correct incomplete or insufficient certifications. Agency managers may deny FMLA leave for employees who fail to correct deficiencies timely or otherwise fail to timely submit requested medical certifications. Agency representatives may not contact the health care provider but must work with the employee to obtain additional information.

**7. Authenticating or Clarifying Information on a Medical Certification:**

- a. The agency representative (not the employee's direct supervisor) may contact the employee's health care provider to **authenticate or clarify completed and sufficient medical certifications**. Agency management may deny FMLA leave if certifications are unclear and the employee chooses not to provide the agency representative with sufficient and complete certification.
- b. Agency management may waive its right to receive timely, complete, and sufficient FMLA medical certifications, as it deems appropriate.

**8. Second and Third Medical Opinions:**

- a. Agency managers may request a second opinion if they doubt the validity of the medical certification for a serious health condition. Agency management will select the health care provider for the second opinion.
- b. If the first and second opinions agree, agency managers must accept the second opinion. If they disagree, the agency manager and the employee must jointly select the health care provider for the third opinion. The third opinion is final and binding.
- c. The agency must pay for the second and third opinion as well as reasonable out-of-pocket travel expenses incurred by the employee.
- d. An employee may request copies of the second and third medical opinions. Agency managers must provide the opinions within five business days of the request.

**9. Submit Certifications Supporting Need for Exigency FMLA Leave:**

- a. Upon request, employees seeking qualifying exigency leave may be required to provide:
  - i. a copy of the covered military member's covered active duty orders or call to covered active duty status, or
  - ii. other documentation issued by the military indicating the covered military member is on covered active duty, and

- iii. a certification from the employee setting forth information concerning the nature of the qualifying exigency for which the leave is requested.
- b. An agency manager may request the covered active duty orders only once. Subsequent separate calls to covered active duty may constitute a new request for exigency FMLA leave.
- c. An employee who provides an international travel order or authorization (ITO or ITA) may not be required to provide additional certification.

**10. Submit Certifications Supporting Need for Military Caregiver FMLA Leave:**

Agency managers may require employees to obtain certifications completed by authorized health care providers when military caregiver leave is taken. The agency manager may request the certification include additional information confirming entitlement to such leave.

**F. Substitute Paid Leave for Unpaid FMLA**

- 1. Employees may elect to use any accrued paid time while taking unpaid FMLA leave. Use of some paid leave may be required as described below.
- 2. The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave. Paid time off will run concurrently with an employee's entitlement.
- 3. **Annual Leave:** As provided in 2-18-615, MCA, agencies may not require employees take accrued annual leave concurrently with FMLA leave if the reason for absence is illness. However, the employee may do so voluntarily.
- 4. **Required Use of Sick Leave:**
  - a. Employees taking FMLA leave for purposes that also qualify for use of sick leave will be required to take a minimum of 20 hours of accrued sick leave each week, concurrently with FMLA leave, except as provided below. The 20 hour requirement will be prorated for part time employees based on either:
    - i. The part time employee's regular schedule at the time the employee is on a FMLA-qualified absence; or
    - ii. The average amount of time the employee is in a pay status when agency management cannot determine or has not assigned a regular schedule.
  - b. The employee may also be eligible to use sick leave fund benefits concurrently with FMLA leave.

**5. Workers Compensation:**

Leaves of absence taken in connection with worker's compensation injury or illness shall run concurrently with any FMLA leave entitlement.

**6. Required Use of Banked Holidays:**

Agency managers may require employees to use banked holidays. Banked holidays will run concurrently with FMLA leave.

**7. Required Use of Compensatory Time:**

Agency managers may require that employees use accrued FLSA (Fair Labor Standards Act) exempt and nonexempt compensatory time concurrently with all types of FMLA approved leave.

**G. Benefits During Leave**

**1. Pay Employee's Share of Insurance Benefits:**

- a. Employees on approved FMLA leave are entitled to continue insurance benefits under the same conditions as if they had continued to work.
- b. The agency will continue to pay the state contribution towards the cost of the employee's insurance while the employee is on approved FMLA leave.
- c. If the employee is receiving pay from the agency during the FMLA leave, the agency will continue to deduct the employee portion of the insurance premiums from the employee's paycheck in the same manner as if the employee was actively working.
- d. If the leave is unpaid, the employee is required to continue to pay the employee portion of any insurance premiums normally deducted from the employee's paycheck. The employee shall pay such amounts on or before the first day of each month. A check payable to the State of Montana should be sent to:

Health Care and Benefits Division  
100 N Park Avenue, Suite 320  
P.O. Box 200130  
Helena, MT 59620-0130

- e. If an employee fails to return to work for 30 calendar days after the leave entitlement has been exhausted, the agency may recover the cost of any insurance benefits provided during the FMLA leave.
- f. The employee will not be required to reimburse the agency if there is a recurrence or onset of a serious health condition or, in the opinion of agency management, there is a change of circumstances beyond the employee's control.

## **H. FMLA Leave on Holidays**

1. Employees may be paid holiday pay while on FMLA leave if they meet the requirement of the Holiday Policy (MOM #03-0325).
2. If an employee takes intermittent leave during a week a holiday occurs, the holiday is not counted towards the employee's FMLA entitlement unless the employee was scheduled to work the holiday and takes the day off for an FMLA qualifying reason.
3. If an employee is using leave for the entire week, agency managers shall count the entire week including the holiday as FMLA leave.

## **I. Return to Work or Reinstatement**

1. An employee taking leave under this policy will be returned to their same position or to an equivalent position, unless the employee would have been terminated for reasons unrelated to the FMLA leave of absence.
2. FMLA leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period unless the benefit or condition of employment has been discontinued for other agency employees during the FMLA leave. For example, an agency may discontinue employee benefits during a reduction in force lasting more than six months.

## **J. Transfers**

If an employee transfers between agencies, the record of any FMLA leave taken will transfer with the employee and will count toward an employee's FMLA leave entitlement in the new agency.

## **K. Abuse of FMLA**

FMLA leave abuse occurs when an employee uses leave for unauthorized purposes or misrepresents the actual reason for charging an absence to FMLA leave. Abuse is cause for discipline, up to and including discharge.

## **L. Enforcement Mechanisms**

1. An employee who determines that an agency has violated the FMLA may either:
  - a. File a complaint with the U.S Secretary of Labor, or
  - b. File a lawsuit.

2. Complaints should be filed within a reasonable time and may not be filed more than two years after the last action the employee contends was in violation of the FMLA or more than three years if the violation was willful.
3. A complaint to the Secretary of Labor may be made in person, by telephone or mail with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. No particular format is required. The complaint must be reduced to writing and include a full statement of acts and omissions which are believed to constitute a violation. The complaint must include all pertinent dates.
4. An employee may recover wages, benefits or other compensation denied, or actual monetary loss sustained by the employee as a direct result of being denied leave. When appropriate, the employee may be reinstated and promoted. If the employer is found in violation, then the employee may recover reasonable attorney fees and other costs of the action.
5. An employee may have additional enforcement rights under a collective bargaining agreement.

## V. Definitions

All definitions contained in the FMLA and 2-18-101, MCA apply to this policy. The following definitions also apply:

**Child:** A biological, adopted, or foster child, stepchild, 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 the FMLA leave is to commence. The term “child” who is a “covered service member” for purposes of exigency leave or military caregiver leave includes sons and daughters of any age.

**Continuing treatment:** A serious health condition by a health care provider includes any one or more of the following: incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long term conditions, or conditions requiring multiple treatments.

**Covered Active Duty:** In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, it means duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under section 101(a)(13)(B) of title 10, United States Code.

**Genetic information:** As defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that

an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

**Inpatient care:** An overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in (29 CFR) 825.113(b), or any subsequent treatment in connection with such inpatient care.

**Intermittent leave:** FMLA leave taken in separate blocks of time because of a single qualifying reason.

**Next of kin of a covered service member:** Nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

**Parent and parent of a covered service member:** A biological parent or any other individual who stood *in loco parentis* to an employee, when the employee was a son or daughter as defined in law. The terms do not include parents "in law."

**Pay status:** The employee is being paid for hours worked or for annual leave, sick leave, or other paid leave, sick leave fund grants, holidays, or compensatory time.

**A reduced leave schedule:** A leave schedule that reduces an employee's usual number of working hours per workweek or per workday.

**Serious injury or illness:** An injury or illness incurred by the covered service member in the line of duty on covered active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

**Serious health condition:** An illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

**Spouse:** A husband or wife, as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage.

#### IV. References

The State Human Resources Division publishes a guide designed to assist human resource professionals and managers in Montana state government in administering the FMLA. The guide is available at <http://hr.mt.gov/content/hrpp/docs/Guides/FMLAGuide.doc>.

The US Department of Labor provides several resources and forms which are helpful in complying with the FMLA. They can be found at <http://hr.mt.gov/hrpp/forms.mcp> and <http://hr.mt.gov/hrpp/resources.mcp>.