

	Montana Operations Manual Policy	Category	Human Resources/ Employee Benefits
		Effective Date	11/25/2011
		Last Revised	Not Approved Yet
Issuing Authority	Department of Administration State Human Resources Division		
Maternity and Parental Leave Policy			

I. Purpose

This policy establishes uniform procedures for managing maternity and parental leaves in Montana state government. ~~This policy also outlines prohibited employment practices in relation to maternity leave.~~

II. Scope

~~This policy~~ ~~Parental leave~~ covers Montana's executive branch employees, except those employed by the Montana State Fund, the Montana university system, student interns, short-term workers, elected officials, the personal appointed staff of elected officials, and other employees exempt from policy under [2-18-103](#), [-104](#), and [-601](#)(6), MCA.

~~Maternity leave must be~~ Agency management shall extended maternity leave to ~~all~~ female employees meeting the definition of employee as defined in [49-2-101](#), MCA, ~~and follow this policy unless it conflicts with a collective bargaining agreement, which will take precedence to the extent applicable.~~

~~Agencies must follow the provisions of this policy unless they conflict with collective bargaining agreements, which will take precedence to the extent applicable.~~

III. Procedures

A. Leave Types

~~B. III.~~ Procedures

1. Maternity leave is an unpaid leave of absence available to female employees for pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. ~~temporary disability because of pregnancy and delivery.~~

2. Parental leave is an unpaid leave of absence ~~not to exceed 15 working days~~ available to birth fathers and mothers or permanent employees ~~who are~~ adopting a child.

~~Eligible employees taking maternity or parental leave concurrently with and eligible for leave under the Family and Medical Leave Act (FMLA) leave must follow the FMLA Leave. The FMLA Leave Policy takes precedence over this policy.~~

~~C.B.~~ Requesting Leave

- ~~1. Employees must request maternity or parental leave according to the procedures established by their agency. Employees should give at least a 30-day advance oral or written notice of the need to take leave or as soon as practical when advance notice is not possible.~~
1. Agency management may establish procedures for the request and approval of leave in compliance with this policy. ~~The leave~~Leave requests should include the anticipated length of absence and the employee's intended use of accrued paid leave while on maternity or parental leave.
2. Employees shall request maternity or parental leave according to their agency's established procedures and give management a 30-day advance notice of the need for leave. Employees shall notify management as soon as practical when advance notice is not possible. The notice may be oral or written.

~~D.C.~~ Maternity- Leave Use

1. Montana law requires ~~employers to grant~~ female employees ~~receive a~~ reasonable leave of absence for ~~pregnancy maternity leave (49-2-310, MCA). "Reasonable" is determined case-by-case and is based upon the employee's ability to perform her job. Montana's executive branch recognizes six weeks as a reasonable leave of absence for recovery following childbirth. Any leave taken prior to childbirth, whether paid or unpaid, because of a medical condition related to pregnancy, will not count against this six-week period.~~In the case of normalfor pregnancy and delivery, agency management must grant a minimum of six calendar weeks after the birth of a child as a reasonable period for recovery. Leave may be longer if the employee is unable to perform her job prior to delivery or if there are complications like illness or surgical delivery. If the agency and the employee cannot agree on a reasonable period for maternity leave, agency management should rely on the judgment of the employee's medical provider.

2. Agency management may request medical certification when an employee requests leave for a health-related condition during pregnancy.
3. Management may not require medical certification for the initial six calendar weeks of leave following childbirth.
- 4.4. Agency management may extend maternity leave beyond six weeks following childbirth if an employee cannot perform her job duties because of medical complications associated with childbirth or a medical condition related to childbirth.
- 2.5. ~~An employee shall not be required to obtain medical certification of a temporary disability for the initial six calendar weeks of leave following the birth of a child. However, agency~~Agency management may require an the employee to provide medical certification to extend ~~the~~ maternity leave beyond the minimum six-calendar-week period. ~~The certification should state that the employee is unable to perform her employment duties and give the estimated duration of the extended leave. The employee is responsible for providing timely, complete, and sufficient medical certification. Employee~~ The employee must provide complete and sufficient medical ~~the~~ certification within 15 calendar days following after the agency's request, unless it is not practicable to do so despite an employee's diligent, good-faith efforts. The certification must state the employee is unable to perform her employment duties because of a medical condition related to childbirth and give the estimated duration of the extended leave.
- 3.6. ~~Agency managers should~~may not ask ~~employees~~ probing questions regarding about their employee's medical condition ~~that may to avoid~~ eliciting genetic information about an employee or an employee's family members. ~~See the Non-Discrimination EEO Policy (ARM 2.21.4001 et seq.) and the Sick Leave Policy for further guidance. Refer to Equal Employment Opportunity (EEO), Nondiscrimination, and Harrasment Provention Policy Rule 2.21.4009 for more information.~~
- 4.7. Nothing in this policy prohibits an employee from voluntarily returning to work sooner~~earlier~~ than six calendar weeks after the birth of a child.

E.D. Parental Leave Use

1. ~~Parental leave is available to~~Agency managers shall allow birth fathers and mothers and immediately following a child's birth or to permanent employees ~~who are adopting a child~~ a reasonable leave of absence immediately following birth or placement of a child with the employee for adoption (2-18-606, MCA). This statutory provision only applies to permanent employees of Montana state government.

- ~~2. Agency management must approve a reasonable leave of absence not to exceed 15 working days for parental leave immediately following the birth of a child or placement of a child with the employee for adoption.~~
- ~~3. Agency management may approve less than 15 working days if they determine the length of leave requested is unreasonable. Agency management must provide the employee a written response explaining why the request is unreasonable. The written notice must also include the length of leave considered reasonable and approved.~~
- ~~2. A reasonable leave of absence is at least 15 working days and may be longer with management approval.~~
- ~~4.3. An agency Agency management may require documentation for ~~the~~ use of parental leave. ~~For example,~~ Management may, for example, require a birth father ~~may need~~ to provide a birth certificate or another document identifying him as the birth father. ~~Documentation from~~ Likewise, management may require an adoptive parent ~~may include, but is not limited to,~~ to provide an affidavit of intent to adopt or another agreement indicating a child's placement for adoption.~~

~~F. Accrued Paid Leave Use~~

- ~~1. Both maternity and parental leaves are unpaid. However, employees may use accrued paid leave concurrently with maternity or parental leave. Employees must request the use of additional leave consistent with state and agency policy applicable to the type of leave requested.~~
- ~~2. Agencies may also require employees to use accrued sick leave, annual leave, compensatory time, or other accrued paid leave concurrently with maternity or parental leave.~~
- ~~3. State law limits the use of sick leave to 15 days for birth fathers and adoptive parents (2-18-606, MCA) unless the absence qualifies for the use of sick leave for another reason.~~

~~G.E. Concurrent FMLA Leave~~

- ~~1. Eligible employees Employees eligible for FMLA leave may take up to 12 weeks of unpaid FMLA leave for the birth of a child or placement of a child with the employee for foster care or adoption of a child. ~~Maternity and parental leave run concurrently with FMLA leave. Agency management should count maternity and parental leave towards an eligible employee's FMLA leave entitlement. Employees may not use maternity or parental leave to extend the length of FMLA leave entitlements.~~ FMLA leave generally runs concurrently with other forms of paid leave (sick, compensatory, annual) or unpaid (maternity, parental) leaves.~~

2. Employees eligible for FMLA leave shall use 20 hours of sick leave a week concurrently with FMLA leave if the employee's absence qualifies for sick leave under this policy or the state's Sick Leave Policy.
 3. While state law limits a birth mother's use of sick leave to "maternity or pregnancy-related disability or treatment," eligible employees may use an additional six weeks of unpaid FMLA leave for bonding with a newborn child, which may run concurrently with other forms of paid leave. For example, if a full-time employee is eligible for leave under the FMLA policy and gives birth, maternity leave shall run concurrently with FMLA leave for up to six weeks immediately following birth. According to the FMLA policy, the employee shall use 20 hours of sick leave a week, if available, concurrently with unpaid maternity leave. The employee may also opt to use other forms of paid leave (compensatory, annual vacation) concurrently with unpaid maternity leave and sick leave for up to six weeks following birth. If the employee uses the full six weeks of maternity leave, she may use other forms of paid leave (compensatory, annual vacation) concurrently with unpaid FMLA for an additional six weeks within the 12-month period immediately following birth.
 4. Likewise, birth fathers or employees adopting a child may use available FMLA leave for bonding with a newborn or adopted child if they are eligible under the Family and Medical Leave Policy. While state law limits the use of sick leave to 15 working days for parental leave, employees may use other forms of paid leave concurrently with FMLA leave.
 5. Leave used for prenatal care, bed rest, or other pregnancy-related disability or treatment, counseling or legal matters related to adoption or foster care, or for any other FMLA-qualifying event before the birth or adoption of a child counts towards an employee's 12 weeks of FMLA leave entitlement
 6. Use of maternity or parental leave will not extend the length of an employee's FMLA leave entitlement.
- 4.7. The Family and Medical Leave Policy takes precedence over this policy. Agency management and the employee ~~must~~ shall follow all medical certification procedures and timelines required by the FMLA Family and Medical Leave Policy and federal FMLA regulations (29 CFR 825).

F. Use of Accrued Paid Leave During Unpaid Leaves

1. Maternity and parental leaves are unpaid. Use of accrued sick leave, compensatory time, or other accrued paid leave will run concurrently with a maternity or parental leave. Employees may elect to use annual leave, but management cannot require use of annual leave during a maternity or parental leave.

2. During a maternity leave, birth mothers may not use more than six weeks of sick leave concurrently with maternity leave and FMLA leave (if eligible), unless management extends the employee's leave beyond the initial six weeks for a medical reason. Montana state law, under 2-18-601(15)(b)(ii), MCA, limits an employee's use of sick leave to "maternity or pregnancy-related disability or treatment, including prenatal care, birth or medical care for the employee or the employee's child."
3. During a parental leave, state law limits an employee's use of sick leave to 15 working days for birth fathers and adoptive parents immediately following birth or adoption (2-18-606, MCA), unless the absence qualifies for the use of sick leave for another reason.

H.G. Reinstatement

Agency management shall reinstate an employee to the employee's original position or an equivalent position with equivalent pay and accumulated longevity, retirement, and leave benefits ~~Employees returning to work at the end of following a reasonable leave of absence for maternity or parental leave, must be reinstated to their original job or to an equivalent position with equivalent pay and accumulated longevity, retirement, and leave benefits.~~

H.H. Payroll Records

1. Agency management ~~must shall~~ maintain documentation for requests and use of maternity ~~and or~~ parental leaves as part of the employee's ~~permanent~~ employment record.
2. The ~~central payroll office in the~~ Department of Administration's central payroll office maintains ~~records of employee's~~ leave accrual and usage records for all Montana state government employees.

J.I. Prohibited Acts

1. As provided in 49-2-310, MCA, it is unlawful to:
 - a. terminate an employee employment because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth;
 - b. refuse to grant an the employee a reasonable leave of absence for the pregnancy, childbirth, or a medical condition related to pregnancy or childbirth;
 - c. deny birth fathers or employees adopting children a reasonable leave of absence following birth or adoption;
 - ~~b.d.~~ deny the an employee who is disabled as a result of pregnancy any compensation to which the employee is entitled as a result of the accumulation of disability or leave or benefits for which the employee is entitled because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth accrued, provided that the employer requires the

~~disability to be verified by medical certification indicating the employee is not able to perform employment duties; or~~
~~G.E.~~ require an employee to take a mandatory maternity leave for an unreasonable length of time.

IV. Resources

A. Montana Code Annotated:

1. Parental Leave for State Employees - [2-18-606](#), MCA.
2. Maternity Leave - Unlawful Acts of Employers - [49-2-310](#), MCA.
3. Reinstatement to Job Following Pregnancy-Related Leave of Absence - [49-2-311](#), MCA.

B. Federal Regulations and Enforcement Guidance:

1. [Family and Medical Leave Act - 29 CFR 825](#)
- ~~1.2.~~ [EEO Commission Enforcement Guidance on Pregnancy Discrimination and Related Issues](#)

C. State Policy

1. ~~Family and Medical Leave Act~~ Policy - [MOM](#)
- ~~1.2.~~ Sick Leave Policy - [MOM](#)
- ~~2.3.~~ [Equal Employment Opporuntiy \(EEO\), Nondiscrimination and Harrasment Prevention Non-Discrimination EEO](#) Policy – [ARM 2.21.4001](#) et seq.
- ~~3.4.~~ Annual Leave Policy - [MOM](#)
- ~~4.~~ [Overtime and Non-Exempt Compensatory Time Policy](#)
5. [Exempt Compensatory Time](#)

V. Definitions

This policy includes all definitions under [2-18-601](#), MCA. ~~For the purposes of this policy, the~~ The following definitions ~~also apply~~ for the purposes of this policy:

Birthfather: The individual identified as the child's father on a certificate issued at birth, on a document used to file for a birth certificate, or in a manner acceptable to the supervisor approving leave.

Immediately following: The day a child is born or is physically transferred to the custody of the adoptive parent(s).

Placement: The transfer of physical custody of a child for adoption to the person(s) who intends to adopt the child.

DRAFT