

	<b>Montana Operations Manual</b> <b><i>Policy</i></b>	Category	Human Resources/ Employee Benefits
		Effective Date	07/09/2010
		Last Revised	09/25/2012
Issuing Authority	<b>Department of Administration</b> <b>State Human Resources Division</b>		
<b>Leave of Absence Without Pay Policy</b>			

**I. Purpose**

This policy establishes uniform procedures for managing employee leaves of absence without pay in Montana state government.

**II. Scope**

This policy covers Montana’s executive branch employees, except those employed by the Montana State Fund, the Montana university system, elected officials, the personally appointed staff of elected officials, and other employees exempt from policy under [2-18-103](#) and [-104](#), MCA.

Any collective bargaining agreement providing greater leave-without-pay benefits supersedes this policy.

**III. Procedures**

Agency management may approve leaves of absence without pay for employees on a case-by-case basis. A leave of absence without pay is a period of unpaid absence from employment provided by agency management and does not result in a break in service. The leave must be approved in advance whenever possible or practical.

Eligible employees taking a leave of absence without pay concurrently with Family and Medical Leave (FMLA) must comply with the FMLA Policy and regulations. The FMLA Policy requirements take precedence over this policy to the extent any differences exist.

## A. Requests for Leave

1. A leave of absence without pay is usually requested when an employee has exhausted all applicable leave balances and requests to be absent from work for personal reasons. Employees must request a leave of absence without pay in compliance with procedures established by their employing agency.
2. Agency management may require an employee to use all appropriate accrued leave or compensatory time before approving a leave of absence without pay. However, agency management may not require an employee to exhaust annual vacation leave balances for reasons of illness unless the employee agrees (2-18-615, MCA).
3. In most cases, agency management may approve or deny the request for leave of absence without pay at its discretion. However, agency management must approve the request if the reason for leave is to serve in a public office, for qualifying military service, or for qualifying reasons under the FMLA or ADA as required by applicable policies and statutes.
4. Agency management must approve leave for purposes of serving in an elected or appointed public office up to a maximum of 180 days annually (39-2-104, MCA).
5. Employees ordered to state-active duty are entitled to a leave of absence from employment during the period of state-active duty. A leave of absence for state-active duty may not be deducted from sick leave, vacation leave, military leave, or other paid-leave balances unless requested by the employee ([10-1-1006](#), MCA).
6. Agency managers must provide reasonable accommodations for qualified employees with disabilities. Leave without pay may be a reasonable accommodation in some circumstances. An employee who requests leave because of a disability may be required to provide medical certification indicating the disabling condition requires a leave of absence. See the Reasonable Accommodation Policy (ARM [2.21.4101](#) et. Seq.) for further guidance.
7. Agency management must grant eligible employees FMLA leave for qualifying reasons outlined in the FMLA Policy. Employees taking FMLA who have available sick leave must use at least 20

hours of sick leave each week until exhausted before a leave of absence without pay may be approved.

8. Agency managers should not ask employees probing questions about an FMLA-qualifying event or ADA-reasonable accommodation request that may elicit genetic information about an employee or an employee's family members. See the Non-Discrimination EEO Policy (ARM 2.21.4001 et seq.) for further guidance.
9. 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 documentation addressed to a medical professional or the employee when any type of medical information is requested or may be disclosed.
10. Records or documents relating to the employee's or the employee's family's certifications 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 (ARM [2.21.6601 through -.6622](#)) for further guidance.

## **B. Approving Requests for Leave**

1. Agency management must establish procedures for considering employee requests for leaves of absence without pay.
2. When approving a leave of absence without pay, agency managers must consider the Americans with Disabilities Act and Family and Medical Leave Act requirements as well as previous precedence set by the agency for similarly situated employees and circumstances.
3. Management may also consider requests using a cost-benefit analysis, weighing both direct and indirect costs against benefits to the agency. Costs to the agency include loss of productivity, increase in overtime or compensatory time for other employees, hiring and training a temporary replacement, and the impact on the agency budget and customers. Benefits might include long-term retention, improved job performance, and improved morale following leave.

### **C. Pay and Benefits**

1. An approved leave of absence without pay is not a break in service. Employees maintain their rate of pay and accrued-leave and compensatory-time balances upon return to work.
2. Employees on leave of absence without pay do not accrue sick leave or annual vacation leave ([2-18-611](#) and [2-18-618](#), MCA).
3. Employees who return to a pay status from a leave of absence without pay the day after an observed holiday are not eligible to receive holiday benefits.
4. During approved leaves of absence without pay, employees may self-pay the state's share of insurance premiums for the employee group benefits plan for a total of 12 consecutive months. After that, employees are eligible to continue to self-pay insurance premiums under the [Consolidated Omnibus Budget Reconciliation Act \(COBRA\)](#).
5. Agencies must continue to pay the state contribution for the group benefit plan for employees on an approved leaves of absence without pay for FMLA-qualifying reasons.

### **D. Reinstatement**

1. Agency management may establish a schedule of reinstatement rights for all employees on leaves of absence without pay based on the length of absence, or management may determine reinstatement rights on a case-by-case basis.
2. Agency management should inform employees in writing of their reinstatement rights and obligations at the time the leave is approved. A return-to-work date should be determined prior to leave commencing. Employees who fail to comply with the return-to-work requirement and do not arrange for an approved extension of leave may lose all reinstatement rights, and employment may be terminated.
3. Employees who take an approved leave of absence and have not completed their initial probationary period will not be required to begin a new probationary period. However, the agency may extend the probationary period by the length of the leave of absence.

## **E. Seasonal Employees**

Seasonal employees are considered to be on an approved leave of absence without pay between seasons.

## **F. Payroll Records**

1. Agency management must maintain leave documentation for requests and use of leaves of absence without pay.
2. The Department of Administration central payroll office maintains employees' leave accrual and usage records.

## **IV. Resources**

### **A. Montana Code Annotated:**

1. Annual Leave – [2-18-611](#), MCA
2. Sick Leave – [2-18-618](#), MCA
3. Entitlement to Leave of Absence – [10-1-1006](#), MCA
4. Mandatory Leave of Absence for Employees Holding Public Office – [39-2-104](#), MCA
5. Absence Because of Illness not Chargeable Against Vacation Unless Employee Approves – [2-18-615](#), MCA

### **B. State Policy**

1. Family and Medical Leave Act Policy
2. Sick Leave Policy
3. Annual Leave Policy
4. Overtime and Non-Exempt Compensatory Time Policy
5. Exempt Compensatory Time

## V. Definitions

All definitions under [2-18-101](#), MCA, apply to this policy. The following definitions also apply.

**Initial probationary period:** The initial six to twelve months when an employee is newly hired to state government into permanent or seasonal employment. The length of the probationary period is established by the hiring agency and used to assess the employee's abilities to perform job duties, to assess the employee's conduct on the job, and to determine if the employee should be retained beyond the probationary period and attain permanent status.

**State-active duty:** Service performed by a member of the National Guard and the Montana Home Guard when a disaster or an emergency has been declared by the proper authority of the state and to include the time period, if any, required to recover from an illness or injury incurred while performing the active duty. The term does not include federally funded military duty as provided in [10-1-1003](#) and [10-1-103](#), MCA.

**A pay status:** An employee is being paid for time worked or for annual leave, sick leave, sick leave fund grants, holidays, compensatory time, or other paid leave.

**Termination:** The employment relationship is severed either voluntarily by the employee or involuntarily by the agency. A termination is considered a break in service, as defined in [2-18-601](#)(4), MCA, for purposes of longevity, sick **leave**, and annual leave, and therefore ends permanent status.