

FAMILY AND MEDICAL LEAVE POLICY FOR EMPLOYEES OF MAINE STATE GOVERNMENT

Policy Statement

The Maine State Government Family and Medical Leave (MSGFML) Policy is established for employees of Maine State Government to integrate the provisions and entitlements of State and Federal Family and Medical Leave Laws with the family and medical leave benefits available to employees of Maine State Government by collective bargaining agreement, the Civil Service Law and Rule and other authorities.

The purpose of the MSGFML Policy, and the State and Federal Laws on which this policy is based, is to balance the family and work needs of State employees by providing eligible State employees up to 12 weeks of unpaid and/or paid leave per year for family and serious health matters, with the assurance that they will be restored to the position, status, benefits and benefit levels that were in effect for them immediately prior to their leave.

The MSGFML Policy takes effect on August 5, 1993, the effective date of the Federal Family Medical Leave Act, and has been carefully constructed to ensure that Maine State employees are provided family and medical leave entitlements that meet or exceed the entitlements that are provided by State and Federal Law.

Eligible Employees

The provisions and benefits of the Maine State Government Family and Medical Leave Policy are available to all classified and unclassified employees of Maine State Government who, at the time the leave begins or is scheduled to begin, have at least one year of State employment (at any time and in any position, including acting and project appointments).

1. For permanent and limited period positions (full-time and part-time), the one-year employment requirement must include all periods of authorized leave, paid or unpaid. **Note: hours of work is not a consideration. A part-time employee who works for 12 months satisfies the same eligibility requirements as a full-time employee who works for 12 months.**

2. For seasonal positions (full-time and part-time), the one-year employment requirement will include only those months worked during the season. Time on authorized leaves during the season must be counted as time worked for this purpose. As example, a seasonal employee who works four months per season would be eligible at the start of the fourth season.
3. For acting and project appointments to full-time and part-time positions, the one-year requirement must include all employment time from the begin date to the end date.
4. For intermittent positions, the one-year eligibility requirement will be met upon the completion of 2080 hours in intermittent status.

Leaves Provided by MSGFML Policy

1. The Maint State Government Family and Medical Leave Policy provides eligible State employees up to 12 weeks of paid and/or unpaid leave each calendar year for one or more of the following reasons:
 - (a) the birth and first-year care of a child;
 - (b) placement of a child for adoption or foster care;
 - (c) serious health condition of the employee's spouse, child or parent and due to this serious health condition the employee is needed for care purposes; and
 - (d) employee's own serious health condition that prevents the employee from performing the employee's essential job functions (or from working at all).
2. "Child" means the employee's biological son or daughter, the employee's adopted son or daughter, the employee's ward or a child for whom the employee is functioning as parent. A "child" must be under the age of 18 unless incapable of self-care due to a disability.
3. "Parent" means the biological parents of the employee or an individual who functioned as the parent of the employee when the employee was a child.

4. “Spouse” means the legal husband or wife of the employee.
5. “Serious health condition” means an illness, injury, impairment, or physical or mental condition that requires inpatient care or that results in an absence from work, school or daily life activities for more than three days **and that also requires continuing treatment by a health care provider.**
6. “Health care provider” means a doctor of medicine or osteopathic medicine and other health care professionals such as podiatrists, dentists, clinical psychologists, physician assistants, nurse midwives, nurses certified for advanced practice, optometrists and chiropractors. State and Federal laws also recognize Christian Scientist practitioners and other practitioners of a recognized church or religious denomination on whom the employee relies for treatment through prayer or spiritual means.
7. “Continuing treatment” means that two or more visits to a health care provider or a referred health care practitioner are required of that the employee must adhere to a prescribed treatment plan such as therapy or a course of medication. **Employees who take leave for medical treatment are deemed to be temporarily unable to perform the essential functions of their position.**
8. A part-time employee who works twenty hours per week, is entitled to 12 twenty-hour weeks of leave each calendar year. A full-time employee is entitled to 12 forty-hour weeks of leave each calendar year.
9. The weekly hours for an intermittent employee must be averaged by dividing the number of hours worked during the 12 months immediately preceding the leave period by 52, and rounding up to whole hours. As example, if the intermittent employee worked 500 hours in the 12 months prior to leave, the employee’s average = 10 hours/week. Accordingly, this employee must be treated in the same way as a part-time employee who works 10 hours per week and provided 12 ten-hour weeks of leave per year.
10. For any of the qualifying MSGFML leaves, the employee may choose to substitute some or all of the 12-week per year entitlement with accrued vacation, compensatory time or personal leave. **See section titled “Employee Options to Leave Under MSGFML Policy.**

11. When the request is made for the birth (excluding pregnancy disability) or first-year care of a child of the placement of a child for adoption or foster care (uses a and b), and the employee does not have, or has but does not choose to use, accrued vacation, compensatory time or personal leave, the 12-week per year entitlement must be unpaid leave. **Note: Some employees are provided up to one year of unpaid leave for childbearing and adoption purposes. This leave is still available, but any time taken under this provision must be counted toward the 12-week per year entitlement.**

12. When the request is made for a use covered by the State's sick leave benefit (use a if pregnancy disability, and uses c and d), and the employee does not have, or has but does not choose to use, accrued vacation, compensatory time or personal leave, the **employing department must require the employee to use accrued sick leave time.** For these uses, the 12-week per year entitlement will be provided as unpaid leave only if other paid leaves are not used and sick leave is exhausted.

13. **The employing department must maintain the health/dental insurance coverage for employees on unpaid MSGFML leave on the same conditions that this insurance would have been provided if the employee were employed and not on leave.**

14. **Employees on unpaid MSGFML leave must be informed that their life insurance coverages may be continued at their own expense by contacting the Maine State Retirement System within 31 calendar days of the start of the unpaid leave.**

First and Subsequent Calendar Years

January 1, 1993 to December 31, 1993 is the first calendar year for the Maine State Government Family and Medical Leave Policy, except that an employee's entitlement to the 12 weeks of family and/or medical leave provided by this policy will take effect on August 5, 1993. **Thus, for the first calendar year, eligible employees will be entitled to 12 weeks of family and/or medical leave between August 5, 1993 and December 31, 1993.** On January 1, 1994, eligible

employees will be entitled to 12 weeks of family and/or medical leave for the second year, and so on.

Employee Options to Leave Under MSGFML Policy

1. Employees do not need to assert their rights or to give any explanation to the employing department in all instances when family/medical leave is needed. Employees who have accrued vacation, compensatory time or personal leave have this leave time available to them, and if use of this time is approved by the employing department in accordance with standard practice, the employee is not required under the MSGFML Policy to report that all or some of this leave time will be used for a family or medical reason. And, if vacation, compensatory time or personal leave is used for this purpose, and the employee returns from this authorized leave, the amount of leave taken must not reduce the employee's 12-week per year entitlement unless the employee requests additional MSGFML leave within thirty calendar days of this return. **Note: An employee must be treated as returned at the end of thirty calendar days.**

2. Supervisors and managers must not ask questions concerning the possible use of vacation, compensatory time or personal leave as MSGFML leave. The employee must volunteer this information.

3. If an employee requests to use vacation, compensatory time or personal leave for family or medical leave reasons without explanation and is denied this leave for operational reasons in accordance with standard practice, the employee may then request family/medical leave under the MSGFML Policy. With this notice that the leave is for family/medical reasons, the employing department must approve the use of vacation, compensatory time or personal leave, but all of time taken by the use of vacation, compensatory time or personal leave for family/medical leave purposes must be counted toward the 12-week per year entitlement, **and the employee so informed.**

4. As explained, an employee can use approved vacation leave, compensatory time or personal days for family/medical leave without any obligation to tell the employing department that the paid leave is being used for that purpose. However, if the employee should later need to request a **continuous** extension to this paid leave with MSGFML leave, the employee must provide information

concerning the terms of the family or medical leave, and if the family or medical leave circumstances began while the employee was on paid leave, all of the vacation, compensatory time or personal leave that was used for family/medical leave must be counted toward the 12-week per year entitlement, **and the employee so informed**. This retroactive treatment of vacation, personal leave or compensatory time as MSGFML leave will also apply if the employee returns from one of these paid leaves and requests MSGFML leave within 30 calendar days of this return. **Note: The employee is not considered to have returned from leave until the employee has been back to work for 30 calendar days.**

Leaves for Birth/Care of Child and Adoption/Foster Care

1. The entitlement to leave for these purposes (uses a and b) ends on the first anniversary of the birth or placement.
2. Leave taken for the birth and first-year care of a child or for the placement of a child for adoption or foster care must be taken as continuous leave unless the employing department approves leave for these purposes on a reduced work week or intermittent basis. **See next section titled “Serious Health Condition Leaves”.**
3. If both parents are employed by the same State department, the employing department may, for operational reasons, limit their leave for these purposes (uses a and b) to a combined total of 12 weeks (e.g. to 12 weeks between them). If the employing department does limit the use of MSGFML leaves for the birth, care or a placement of a child to a combined total of 12 weeks, and if either or both of the employees who are effected by this limit should later find it necessary to take additional leave for a serious health condition reason or to care for a parent, spouse or child with a serious health condition, the limit that was imposed must be withdrawn, provided that the actual time taken by each employee for birth/placement reasons and the additional time needed for serious health condition leave does not exceed the 12-week per year entitlement.
4. If both spouses are State employees and work for different departments, each must be allowed the full 12-week per year entitlement for these purposes.

Serious Health Condition Leaves

1. When the 12-week per year entitlement is used for the serious health condition of the employee or for the serious health condition of a family member (uses c and d), the employee has the choice of taking this leave all at once or, **if medically necessary**, by working reduced workweeks or taking time off intermittently.

2. The employing department may require the employee to provide a medical statement from the health care provider and may request a second opinion at its own expense. If the opinions differ, a third opinion may be obtained from a health care provider jointly selected by the employing department and the employee.

3. The employing department may require medical statement updates for long-term health condition leaves (but not more frequently than every 30 days), for changes to leave circumstances, for extensions to health condition leaves, and for failures to return because of an existing health condition when the 12-week per year entitlement is exhausted.

4. When an employee requests a reduced work schedule, the employee must be allowed to take leave in this manner until the 12 week per year entitlement is exhausted. For example, if a full-time employee works five days per week and chooses to work three days and use two days for medical reasons, the employee must be allowed to work this schedule for a maximum of 30 weeks (leave taken at the rate of two-fifths of a week for 30 weeks – 12 weeks). If a part-time employee works 10 hours for medical purposes, the employee must be allowed to work this schedule for a maximum of 36 weeks (leave used at the rate of one-third of a week for 36 weeks = 12 weeks).

5. When the employee requests intermittent time off, the employee must be allowed to take time off in this manner until the 12-week per year entitlement is exhausted. For example, a full-time employee must be allowed 40 hours of intermittent leave for each week of the 12 week entitlement. A 32 hour per week part-time employee must be allowed 32 hours of intermittent leave for each week of the 12 weeks entitlement.

6. The employing department may not require that intermittent time off be taken in any minimum amount of time per day or per week.

7. If the employee's spouse is also a State employee, both the employee and the spouse must be provided the 12-week per year entitlement for these purposes, even if both employees work for the same employing department.

8. Examples of reduced work week situations follow:

Situation 1: The employee has MSGFML leave time remaining for the year, and because of medical reasons, requests to work a reduced work week and to substitute accrued vacation, compensatory time or personal leave for all of the time not worked. This request for a reduced work week and the use of vacation, compensatory time or personal leave to cover time not worked must be approved. If the employee chooses to use vacation, compensatory time or personal leave for only part of the time not worked, and has accrued sick leave to cover some or part of the balance of the 12-week per year entitlement, this sick leave must be exhausted before the employee is placed on unpaid leave for the hours not worked.

Situation 2: The employee has MSGFML leave time remaining for the year, and because of medical reasons, requests to work a reduced work week. The employee does not request to use vacation, compensatory time or personal leave. If the employee has accrued sick leave, this sick leave must be exhausted before the employee is placed on unpaid leave (or the position hours temporarily reduced) for the hours not worked.

Relationship of Sick Leave Benefit to MSGFML Policy

1. The State's sick leave benefit provides leave for short-term illness and disability and other leave uses that are not covered by the MSGFML Policy (leave to care for a seriously ill sister, parent-in-law, etc.). These uses of sick leave must be approved or disapproved in accordance with established practice and must not be counted toward the 12-week per year entitlement.

2. In addition, the State's sick leave benefit provides leave that is covered by MSGFML Policy – e.g., leave for the employee's own serious health condition

or leave to care for the employee's spouse, son, daughter or parent (uses c and d). These uses of sick leave must be approved and counted toward the 12-week per year entitlement.

3. For leaves that employees request under the State's sick leave benefit, supervisors and managers must ask questions concerning the reason for the request to ensure that the sick leave benefit is appropriately used (e.g., is being used for one of the purposes identified in the published description of this benefit). The information provided by the employee in response to these questions will determine whether or not the use of sick leave that is being requested will or will not count toward the employee's 12-week per year entitlement.

4. If the employee has accumulated sick leave but requests unpaid leave for a serious health condition reason that is covered by both the MSGFML policy and the State's sick leave benefit, the employing department must inform the employee that all available sick leave must be used before unpaid leave can be used, and that this sick leave will be counted as part of the employee's 12-week entitlement. If the employee does not have enough sick leave accrued to cover all of the leave time requested, the employing agency must approve unpaid leave for the balance of the leave, provided this leave is within the 12-week per year entitlement.

5. In cases of the employee's emergency use of sick leave, the determination as to whether or not the use of sick leave is covered by MSGFML Policy must be made, and the employee informed, as soon as the explanation is provided by the employee.

Health/Dental Insurances

1. When paid leave is used for MSGFML, the State's share of health/dental insurance and the employee's share will be accomplished through the payroll process as usual.

2. When unpaid leave is used for MSGFML, the State will continue to pay its share of the employee's health/dental insurance coverage and the employee will be billed for the employee's share of dependent coverage costs. Employees must make the payment for their share of the monthly payment within 30 days of the

payment due date. If the employee does not meet this payment schedule, the employee's health/dental insurance coverage will be discontinued.

3. Employee's who have their health/dental insurance discontinued by failure to make timely payment of their share of the premium cost while on unpaid MSGFML must be restored to full coverage without need for proof of insurability or any other qualification requirement when they return from leave.

4. If the employee resigns while on MSGFML or after the 12-week per year entitlement is exhausted, the employee may be terminated in accordance with standard practice and the employing department may take whatever means are available to recover the health and dental insurance costs that were paid by the State for that part of the leave that was unpaid leave, including withholding this amount from any final pays due and possible legal action.

5. In those cases where the employee exhausts MSGFML leave and does not return to work, **and the employee does not have an acceptable reason for not returning**, the employing department must give the employee notice that the basis for continued leave is not satisfactory and that failure to return to work within 30 calendar days will result in termination and recovery of health/ dental insurance payments made by the State for the unpaid portion of the employee's leave. If after this notice is made, the employee does not return, the employing department may terminate the employee and take whatever means are available to recover the health and dental costs that were paid by the State for that part of the leave that was unpaid leave.

6. If the employee exhausts MSGFML leave and does not return to employment because of a circumstance outside of the employee's control (e.g., the employee must move from the area because the employee's wife is transferred out of state; employee is needed to care for the relative not covered by the MSGFML policy), the employing department must give the employee notice that failure to return to work within 30 calendar days will result in termination **without recovery of the health/dental insurance payments paid by the State** during the unpaid portion of the employee's leave.

7. If the employee exhausts MSGFML leave and is unable to return to work because of a new or continuing serious health condition covered by the MSGFML policy and the State's sick leave benefit, the employing department:

- a. May approve the use of accrued sick leave, if available; and/or;
- b. May approve the use of unpaid sick leave.

To support his use of sick leave, the employing department must require the employee to provide a medical statement from the health care provider within 30 days of the end of MSGFML leave.

If the employing department decides to end the use of unpaid sick leave, the employing department must give the employee notice that failure to return within a reasonable period of time (but no sooner than 30 days from the date MSGFML leave is exhausted) will result in termination. And, if the required medical statement has not been provided by the employee, the employing department may recover its cost for health and dental insurance for any part of the MSGFML leave that was unpaid leave.

8. The decision to terminate an employee who fails to return from a serious health condition leave covered by the MSGFML Policy after MSGFML leave is exhausted or after MSGFML leave supplemented by paid and/or unpaid sick leave must not be made until the employee has been provided accommodation rights in accordance with State law and State policy.

9. Health/dental insurance costs paid by the employing agency during any paid leave under the MSGFML policy must not be recovered for any reason.

10. An eligible seasonal employee is provided family/medical leave under the MSGFML policy during the established season. If family/medical leave is taken during the season and if this leave continues beyond the employee's season end date, the employee must assume the full cost of health insurance coverage after the end date is reached since, as a matter of usual employment, the State does not pay a seasonal employee's health/dental insurance during the off-season.

11. Similarly, eligible project or non-State acting capacity employees are provided family/medical leave under the MSGFML policy between the begin and end dates of their appointment. If family/medical leave is taken during this temporary employment period and if this leave extends beyond the established end date, the employee must pay the full cost of health/dental insurance coverage after the end date is reached.

12. Employees who take more than 12 weeks of unpaid leave in accordance with the childbearing and adoption benefit of their collective bargaining agreement will be eligible for State-paid health/dental insurance for only that portion of the childbearing and adoption leave covered by MSGFML policy (e.g., for only their 12-week per year entitlement).

Life Insurance Coverage

1. Employees on unpaid MSGFML leave must be allowed to continue their life, accidental death and dismemberment, supplemental and dependent insurance at their own expense. Employees who choose to continue their life insurance coverages must contact the Maine State Retirement System to make the arrangements for their premium payments within 31 days of their last paycheck.

2. Employees who do not continue their life insurance coverages during an unpaid MSGFML leave or whose coverages are discontinued due to their failure to make premium payments must be restored to the coverages in effect immediately prior to this leave and must not be required to meet any qualification requirement.

Reemployment Upon Completion of MSGFML Leave

Upon the completion of MSGFML leave, employees must be returned to their positions with pay, status and benefits that were in effect for them **prior to the start of their unpaid leave**, in accordance with the following:

1. The employee must not accrue vacation and sick leave while on unpaid MSGFML leave and unpaid MSGFML leave must not count as service needed to advance the vacation accrual rate.

2. Time on unpaid MSGFML leave must be credited to longevity service as required for all authorized leaves.
3. Time on unpaid MSGFML leave must be credited for seniority purposes.
4. The Performance Review Date (anniversary for step increases) must not be changed as the result of unpaid MSGFML leave. Decisions to grant or deny merit step increases must be made on a case-by-case basis, in accordance with the amount of lost work time.
5. Time on unpaid MSGFML leave for a serious health condition reason that is covered by the State's sick leave benefit must not automatically advance the employee's end probation date. However, the employee's probation end date may be extended by the employing department if the employee has not worked long enough for the employing department to complete a valid probationary evaluation.
6. Time on unpaid MSGFML leave for the birth (excluding pregnancy disability) or care of a child or for adoption/foster care placement must advance the employee's end of probation date.
7. Employees on unpaid MSGFML leave who are affected by a layoff action must be notified of their rights in accordance with the layoff notice requirements for active employees.
8. Project and non-State acting capacity employees must not be provided reemployment rights beyond the established end date of their appointment.
9. Employees who are returning from an MSGFML leave for their own serious health condition (paid or unpaid) may be required by the employing department to establish their fitness to return.
10. Employees who are unable to return to their positions at the end of a MSGFML leave (paid or unpaid) because they are physically or mentally incapable of performing the essential functions of these positions must be

provided the accommodation rights to which they are entitled by State Law and State Policy.

11. Employees may be reemployed in positions other than those held prior to the start of unpaid MSGFML leave, provided these positions provide equivalent benefits and status.

Advance Notice of Leave

1. Whenever possible, employees must give 30 days of advance notice for those leaves that are foreseeable. When 30 days advance notice is not possible for foreseeable leave, the employee must give as much advance notice to their employing department as they can. This early notice requirement is especially necessary for the scheduling changes that must be made for reduced work weeks and intermittent time off.

2. Employee must give as much advance notice as possible for all unforeseeable leaves.

Maine State Government Family and Medical Certification Form

1. The Maine State Government Family and Medical Certification Form must be completed by the employee for each paid and/or unpaid leave that is covered by the MSGFML Policy.

2. The identification of MSGFML qualifying leaves must be made using information provided by the employee, either voluntarily or in connection with the practice for leave approval (e.g., the employee asks to use vacation to care for a seriously ill parent; the employee asks to use sick leave and the employing department asks the employee for information to determine that the use reason is covered by the State's sick leave benefit; the employee asks for childbearing and adoption leave).

3. For MSGFML leaves that are covered by the State's sick leave benefit, the employing department may require the employee to provide a medical statement whenever a medical statement is ordinarily required as part of the employing

department's standard procedure for approving or disapproving the use of sick leave.

4. The employing department must identify and keep account of all leaves that must be counted toward the employee's 12-week per year entitlement under the MSGFML Policy.

5. When leaves are identified as MSGFML qualifying leaves, the employing department must inform the employee of the following rights and requirements of MSGFML Leaves:

- a. Unpaid leave for the employee's serious health condition or for the serious health condition of a family member must not be approved until all of the employee's accrued sick leave is exhausted.
- b. All leave time, paid and unpaid, that is identified as MSGFML qualifying leave must count towards the employee's 12-week per year entitlement.
- c. The employee may use accrued vacation, compensatory time or personal leave for any MSGFML purpose.
- d. The State's share of the employee's health and dental insurance costs must be maintained by the State for time on unpaid MSGFML leave, and the employee must pay the employee's share.
- e. If the employee's health/dental insurances are discontinued due to the employee's failure to pay the employee's share of the premium costs, the health/dental insurances that were in effect immediately prior to leave must be restored without proof of insurability or other qualification requirement when the employee returns from leave.
- f. Health and dental insurance costs paid by the State during any unpaid MSGFML leave may be recovered if the employee does not return from leave. **The State's cost of health and dental insurance must not be recovered if the employee is unable to return to work at the end of MSGFML leave because the employee has a serious health condition**

or is unable to return for some other valid reason outside of the employee's control.

- g. The employee may continue life insurance coverage at the employee's own expense during an unpaid MSGFML leave, provided arrangements for this continuance are made with the Maine State Retirement System within 31 days of the start of the unpaid leave.
- h. If life insurance coverages are discontinued by choice or by failure to make premium payments during unpaid MSGFML leave, these life insurance coverages must be restored without proof of insurability or other qualification requirement when the employee returns from leave.
- i. The employee must be reemployed to the employee's position (or another position with equivalent benefits and status) at the end of MSGFML leave, and benefits must be restored to the level in effect prior to this leave. The right to reemployment for project and non-State acting capacity employees does not apply beyond the end date of appointment.
- j. The employing department may request a fitness for duty report from employees who are returning from a serious health condition leave.
- k. The employing department may require medical certification updates for long-term health condition leaves (but not more frequently than every 30 days), for changes to leave circumstances, for extensions to health condition leaves, and for failures to return due to health condition when the 12-week per year entitlement is exhausted.

Departmental Records of MSGFML Leaves

The employing department must maintain records of employee leaves under the MSGFML Policy for a minimum of three years. The employing department will have the only record of those leaves that are taken as vacation, compensatory time, personal leave and sick leave. Leaves that are unpaid will be included in the employee records maintained by the Bureau of Human Resources.

Employee Protection

The employing department can not interfere with, restrain or deny the leave rights that are provided to employees by the MSGFML Policy and the Federal Family and Medical Leave Act, or discriminate against an employee who files a complaint or grievance under this policy.

Employee grievances that are not resolved by the employing department or the Bureau of Human Resources may be submitted to the U.S. Department of Labor. And, the employee may bring civil action against the State for violations of the Federal Family and Medical Leave Act.

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