

STATE OF MAINE
FAMILY AND MEDICAL LEAVE POLICY FOR EMPLOYEES TAKING LEAVE FOR A GRANDCHILD WITH A SERIOUS HEALTH CONDITION

I. Policy Statement

The Family and Medical Leave Policy for Employees of Maine State Government Taking Leave for a Grandchild with a Serious Health Condition (the “Policy”) pertains to employees needing leave to care for a grandchild or domestic partner’s grandchild with a serious health condition.¹

II. Definitions

- A. “Domestic Partner” means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other’s welfare.

- B. “*in loco parentis*” means having the day-to-day responsibilities to care for and financially support a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood *in loco parentis* to the child for purposes of FML.

- C. “Primary FML Policy” means the Primary Family and Medical Leave Policy.

- D. “Serious Health Condition” means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

III. Employee Eligibility

A. Eligibility Generally

Employees who have been employed by the State for 12 consecutive months are entitled to up to 10 workweeks of leave in a 2-year period for care of a grandchild or domestic partner’s grandchild with a serious health condition. An employee’s leave entitlement is refreshed on the two-year anniversary of when an employee uses Grandparent Leave. For example, an employee uses Grandparent Leave on June 1, 2023. That leave period runs from June 1, 2023 through May 31, 2025. On June 1, 2025, the 10 weeks would be refreshed.

¹ Grandparents who are acting as parents for a grandchild (in loco parentis) are entitled to family and medical leave under the Primary FML Policy.

B. Certification

An employer may require that an employee submit a certification from a health care provider to support the need for FML for the employee's grandchild's serious health condition. The certification form must be completed and returned within fifteen (15) calendar days. The employer shall make a decision within five (5) business days of receiving a complete and sufficient certification.

If an employee provides a certification that is incomplete or insufficient, the employer must tell the employee in writing what additional information is needed and allow seven (7) calendar days to resubmit the certification. If the information is still insufficient for the employer to make a determination, the employer must consult with its agency EEO Coordinator or the State EEO Coordinator for further action.

IV. General Provisions

A. Continuous Leave vs. Intermittent Leave

An employee may take their leave continuously or intermittently. Examples of the use of intermittent leave include attending medical appointments for the grandchild, working reduced hours, and/or not working mandatory overtime. The employing agency may not require intermittent leave time be taken in a minimum amount of time per day or per week.

B. Calculation of Leave Entitlement

An eligible employee is entitled 10 workweeks of leave every 2 years to care for a grandchild or a domestic partner's grandchild. A workweek is the employee's scheduled workweek.

Examples:

1. A full-time employee whose regular weekly schedule is 40 hours is entitled to 10 forty-hour weeks of leave every two years.
2. A part-time employee who works twenty hours per week, is entitled to 10 twenty-hour weeks of leave every two years.

C. Coordination with the Primary FML Policy

An employee who qualifies for leave under the Primary FML Policy and this Policy is entitled to 10 weeks of leave under this Policy and 12 weeks of leave under the Primary FML Policy. The time used under this Policy does not count toward the 12 weeks of leave under the Primary FML Policy, **but** the use of leave

under the Primary FML Policy counts toward the 10 weeks of leave under this Policy. If the employee has an *in loco parentis* relationship with the grandchild, this Policy does not apply and the leave must be taken consistent with the Primary FML Policy.

Examples:

1. Employee taking intermittent leave for their own serious health condition also needs intermittent leave to care for a grandchild with a serious health condition. The two leaves will be tracked separately. Once the employee has exhausted leave under this policy for care of a grandchild (10 weeks in a two-year period), they are not eligible for further leave for care of a grandchild until the following two-year period (e.g. an employee first uses grandparent FMLA on March 1, 2023. The 10 weeks of leave would be refreshed on March 1, 2025). They will continue to be eligible for leave for their own serious health condition and other leaves covered under the Policy until exhausting the 12 week per calendar year entitlement.
2. Employee is taking intermittent leave, totaling 10 weeks, to care for a grandchild with a serious health condition because the employee's child (parent of the grandchild) has to work extra hours at their job. At the end of the 10 weeks, the child is incapacitated and unable to care for the grandchild. The employee becomes the legal guardian of the grandchild and requests intermittent leave to care for the grandchild. Here, the employee's initial 10 weeks is covered under the grandparent policy. The employee is also entitled to an additional 12 weeks of leave under the Primary FML Policy because the employee now stands *in loco parentis* to the grandchild.

V. Relationship of Accrued Leave to This Policy

If leave qualifies under both this Policy and the State's sick leave benefit, an employee must use their sick leave benefit for the duration of the leave before going on unpaid leave; however, if an employee elects to use other leave, such as vacation, compensatory time, or personal leave, or is collecting income protection or short-term disability, then an employee is not required to use sick leave for the timeframe that the employee is receiving paid leave.

An employee may choose to use any accrued vacation, compensatory time, or personal leave to cover the leave that is not paid by sick leave. If an employee has exhausted their sick leave and declines to use, or does not have, accrued vacation, compensatory time, or personal leave, then the balance of the 10-week per 2-year entitlement will be provided as unpaid leave. All qualifying leave, whether paid or unpaid, will count toward the 10-week per 2-year entitlement.

VI. Employee Benefits Protection

A. Reemployment

An employee who takes FML under this policy is entitled to be restored to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions upon expiration of the leave. This does not apply if the employee cannot be restored because of conditions unrelated to the employee's exercise of rights under this policy.

B. Benefits

During any FML taken under this policy, employees shall be allowed to continue their employee benefits, e.g. health and life insurance, at the employee's expense if the employee is not in pay status. The State will not pay any share of employee benefits for leave under this policy if the employee is not in pay status during the leave period.

VII. Record Retention

The employing department must maintain records of employee leaves under this policy for a minimum of 10 years after the employee is separated from state service. 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 Human Resources.

VIII. Effective Date

The effective date of this policy is July 1, 2024.