

**SUPERIOR COURT OF GUAM
FAMILY MEDICAL LEAVE ACT OF 1993
PROVISIONS AND LIMITATIONS**

Introduction

The Superior Court of Guam has created the following policy and procedures pursuant to Title 29, Part 825 of the Code of Federal Regulations, in which the Family Medical Leave Act was enacted on February 5, 1993 and became effective August 5, 1993.

General Policy/Purpose

The Family Medical Leave Act of 1993 provides employees up to twelve (12) weeks of unpaid leave per year for birth, adoption of a child, care for an immediate family member who suffers from a serious illness, or when the employee is unable to work due to a serious health condition. While placed on "leave" status the employer must continue to provide health insurance benefits under the same terms and conditions as if the employee was not on leave. Furthermore, the employer must allow the employee to return to the same or an equivalent position upon their return to "work" status.

I. PROVISIONS

A. Eligibility

Employees eligible to apply the family and medical leave under this policy must meet all of the following requirements to qualify.

- 1) The employee must have been employed for at least a period of twelve (12) months or fifty-two (52) weeks.
- 2) The employee must have worked for the employer for at least 1,250 hours during the twelve month period prior to the commencement date the leave is to begin.

B. Reasons for Leave Coverage Under FMLA

The FMLA shall be applicable to eligible employees for one of the following reasons:

- 1) The employee is suffering from a "serious health condition".
- 2) The birth of the employee's child and in order to care for the child.
- 3) The employee must take time out for placement of an adoptive child or provide foster care for such child.
- 4) to care for an "immediate family member" who is suffering from a "serious health condition".

C. Limitations of FMLA Policy

1. The employee or his/her immediate family member is suffering from a "serious health condition" that prohibits the employee from performing work duties and responsibilities required of their position.
2. The "serious health condition" is defined as an illness or injury, impairment, or physical or mental condition of the employee or a member of his/her immediate family, that prohibits the employee to perform work duties and requires care or a recovery period for the employee or a member of the employee's immediate family.
3. For purposes of FMLA, "immediate family" is defined as, a spouse, son, daughter, mother and father only.
4. Requests for FMLA shall accompany a certification from the attending physician concerning the nature and anticipated duration of the serious health condition.

If the employee plans to take intermittent leave the certification must also include dates and the duration of treatment and a statement of medical necessity for taking such intermittent leave.

5. For purposes of FMLA, "intermittent leave" is defined as, leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from one hour or more to several weeks.
6. Eligible employees can take up to twelve (12) weeks of leave under FMLA during a twelve (12) month period. FMLA does not necessary need to be taken in consecutive weeks. Employees may make arrangements to intermittently apply FMLA within the twelve (12) month period.
7. The Court may require any "leave with pay" taken to be considered FMLA leave (twelve (12) weeks) provided such leave meets FMLA qualification. The employee has the option of applying FMLA while combining both periods of "paid and unpaid leave".

D. Status of Employees Participating in FMLA Program

Employees approved to participate in the FMLA program shall:

1. Be placed on "leave without pay" status and forfeit their benefit to accrue annual or sick leave credits until such time the employee has resumed to "work duty status" shall his/her leave benefits accrual be effectuated, pursuant to controlling rules and regulations.
2. Continue to receive health care benefits.
3. Be responsible for arranging compensation of their share of health care costs with their health care provider and life insurance benefits, and their personal debts on payroll deduction, if any.
4. Temporarily suspend their annual salary increment should the waiting period of their performance evaluation be in effect during the period of participation in FMLA program.

Should the employee participate in FMLA leave for more than twenty (20) consecutive days, the increment date shall be extended the number of days in excess of twenty (20) beyond the anniversary date thus creating a new increment date.

Example:

John Doe is a recipient in the program from June 06- July 22, 1994, a total of 30 workdays. He is due for his annual performance evaluation on June 10, 1994. Because his leave period runs beyond the twenty (20) days waiting period, the excess ten (10) days shall be the basis for calculating his newly assigned increment date. Instead of June 10, 1994, John's new increment date shall be June 24, 1995 for his next performance evaluation waiting period.

5. Discontinue to receive retirement service benefits while placed on "leave without pay" status, therefore employee and government has temporarily ceased contribution.
6. Employees approved to participate in FMLA leave may be subject to periodic requests of employee status reports of the medical condition of the employee or his/her family member and the intent to return to work.

E. Health Care Maintenance

Under the FMLA, the Court must maintain coverage for eligible employees approved to participate under the FMLA program. However, the Court shall require the employee to sign a Memorandum of Agreement that the Court is obligated to provide health care coverage during the FMLA leave period for the employee and will also contribute the

government's share. In return the employee shall make arrangements with the health care provider as to his/her share of contribution for said health care costs.

Should the employee fail to contribute his/her share of health care costs after a period of more than thirty (30) days late, the Court's obligation to maintain health insurance coverage shall cease. The Court may further recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the Court maintains health coverage by paying the employee's share after the premium payment is missed.

The Court may recover its share of health care premiums from the employee for the period of unpaid FMLA leave taken should the employee fail to return to work after the FMLA leave has exhausted or expired. Subject to FMLA regulations as defined, the Court may not recover its share of health care premiums should the employee fail to return to work.

F. Employee Status Upon Return from FMLA Leave

Eligible employees who return from FMLA leave and resume to "regular work duty" status are entitled to be returned to the same position or to an equivalent position that entails substantially equivalent pay, skill, effort, responsibility, conditions and authority, which the employee held prior to the commencement of FMLA leave, granted that the position remains available.

Furthermore, they shall be entitled to the same benefits provided by the organization to the employee at the same level prior to the commencement of FMLA leave.

With the exception of "key employees" who under FMLA are defined as employees among the highest ten (10%) percent of all the employees employed by the Court who are "paid" on a "salaried" basis, the Court may deny restoration of employment to such employees, should such restoration cause "substantial and grievous economic injury" to the operations of the Court. For purposes of this section, the Court recognizes such employees as "division heads" and "unclassified" employees.

G. Responsibilities

Financial Management Division

The Financial Management Division shall be responsible for:

1. Providing payroll information of employees applying for FMLA leave to include but not limited to:
 - a. certified copy of employee's service card
2. Processing approved program applications.

3. Monitoring employee program participation.
4. Inform Human Resources Office of employee's expiration or anticipated expiration of program participation.
5. Shall monitor employee memorandum of agreement and ensure employee's share of contribution for health insurance cost are made according to the agreement schedule.

FMD shall inform the Administrative Director of any employees who have defaulted on their payments after the thirty (30) days grace period.

6. Shall provide information on amount of monies to be recovered by the Court from the employee's failure to contribute his/her share of health insurance cost and the organization's contribution as applicable.
7. Shall maintain and make readily available for reference viewing records of employees participating in the FMLA Leave Program. The records available for viewing shall include but not be limited to:
 - a. FMLA leave applications
 - b. Employee Memorandum of Agreement (schedule of payments)
 - c. FMLA leave period (consecutive and intermittent)
 - d. amount of monies to be recovered by the organization for employee's payment default for health insurance costs.
 - e. required documents and memorandum

Human Resources Office

The Human Resources Office shall be responsible for:

1. Providing the following information: employee payroll number and employee pay grade and hourly wage.
2. In conjunction with Financial Management Division, shall monitor employee program participation and employee memorandum of agreement and ensure employee's share of contribution for health insurance cost are made according to the agreement schedule.
3. Provide policy and program guidance to the employees, the Financial Management Division, and the Administrative Director. At the request of the Administrative Director, the HRO shall conduct program application reviews to ensure policy compliance, entertain any investigations of abuse and unethical misconduct of participants and employees who default on their share of contribution for health insurance payments and FMLA inquiries not addressed in this policy.

Administrative Director

The Administrative Director shall be the approving authority for employees requesting to participate in the FMLA Leave Program who meet FMLA requirements. The Administrative Director shall have authority to terminate an employee's participation where there is good cause for revocation.

H. Procedures for Requesting FMLA Leave

Except where leave is not foreseeable, all employees requesting to participate in the FMLA leave program shall submit to the Administrative Director a completed FMLA leave program application at last thirty (30) days prior to commencement of FMLA leave to be effective.

Employees applying to participate in FMLA leave program shall be responsible for monitoring application approval with the Administrative Director.

Upon applicant approval from the Administrative Director the employee shall forward the original application and supporting documents to the Financial Management Division for processing and a copy of the application and supporting documents to the Human Resources Office.

**SUPERIOR COURT OF GUAM
FAMILY MEDICAL LEAVE ACT POLICY (FMLA)**

APPLICATION FORM

PART I - Employee

Date of Employment: _____

Employee Name

Social Security Number

Division: _____

Contact No.: _____

Address While on Leave: _____

Total FMLA Leave Hours Requested: _____

Start Date of Anticipated Leave: _____

Expected Date of Return to Work: _____

Type of Leave : Paid _____

☐ Sick ☐ Annual ☐ CTO

_____ **Unpaid**

Briefly explain reason for leave request.

NOTE:

(An employee requesting leave for a serious health condition or the serious health condition of his/her immediate family must submit a medical certification from a licensed physician and is to be attached with this application form).

I hereby authorize the Superior Court of Guam to contact my licensed physician to verify the reason for my requested FMLA leave.

I understand that if I fail to return to work at the end of my approved FMLA leave or fail to communicate with my supervisor or division head as to my leave status, I may be placed on disapproved leave without pay or an abandonment of position, as applicable.

Name & Signature of Requesting Employee

Date

Supervisor Approval:

Division Head Approval:

Comments:

Supervisor's Signature Date

Division Head Signature Date

PART II - Financial Management Division Certification

Leave Balances:

Annual : _____

Sick: _____

OT/CTO: _____

Applicant employee performed 1,250 hours of actual work time (excluding leave time and holidays) within the last 12 month period: / / Yes / / No

(For unpaid FMLA leave purposes)

Employee is enrolled under the Group Health Insurance: / / Yes / / No

Insurance Provider: _____ Insurance Premium: _____

Certification by Payroll Officer
(Print Name & Signature)

Date

PART III - Human Resources Clearance

Qualifying Reason(s):

_____ Employee's serious health condition

_____ To care for birth of employee's child

_____ To care for the adoption or foster care of a child with employee

_____ To care for an immediate family suffering from a serious health condition.

Attachment:

// Medical Certification

// Birth Certificate/adoption verification

The applicant employee is / / **Eligible** / / **Ineligible** to participate in the FMLA Leave Program.

Remarks: _____

Human Resources Administrator

Date

Part IV - Approval

(This application form will serve as official notice to employee as to the status of his/her application to participate in the FMLA leave program).

/ / Approved / / Disapproved

Administrator of the Courts

Date

MEMORANDUM OF UNDERSTANDING – FMLA LEAVE PROGRAM

I, _____, understand and agree to the following
(Print Name)
conditions set forth as an employee participating in the FMLA leave program:

1. As an employee approved for FMLA leave, I will be retained on the Court's Group Health Insurance coverage under the same conditions that applied before my leave commences.
2. Should I be approved for unpaid FMLA leave, it is my responsibility to make arrangements with my health care provider for payment of employee's share on health care coverage. Should I default on premium payments beyond thirty (30) days, the Court's responsibility to retain such health care coverage shall cease.
3. I will be responsible in making arrangements for any other payroll deduction(s) I may have while on unpaid leave status.
4. I understand that should I fail to return to work upon expiration of my FMLA leave, the Court may recover any premium payments made for maintaining health care coverage during my unpaid FMLA leave period. Recovery of such premium payments shall be subject to FMLA statutes.
5. Should I be approved for unpaid FMLA leave (LWOP), my leave accrual benefits shall be suspended until my return to work duty status and pursuant to applicable rules and regulations governing leave accrual.
6. Should I be approved for unpaid FMLA leave, the employer and employee contributions to my retirement account will temporarily cease until my return to work duty or paid leave status.
7. Should the waiting period of my performance evaluation be in effect while participating in unpaid FMLA leave, my increment date shall be extended the number of days in excess of twenty (20) consecutive LWOP days beyond the anniversary date.
8. That during my participation in the FMLA Leave Program for medical reasons, I must submit upon request, a medical verification from the attending licensed physician concerning the status and prognosis of such health condition/injury.
9. Should I be under FMLA leave for my own serious health condition, I must submit a medical clearance (release) from my attending licensed physician prior to resuming work duty status.
10. I am aware that my FMLA leave will be used only for the qualifying reasons and I may be recalled to work duty status for any abuse or violation of the FMLA policy.

Employee Name & Signature

Date