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**Family Medical Leave Act of 1993  
(FMLA)  
29 CFR 825**

**Arizona Department of Corrections**

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Revised by Dspence May 2013

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**FMLA Leave Entitlement**

- ▶ The employee is entitled to 12 workweeks of unpaid, job protected leave for the following reasons:
  - ▶ Incapacity due to pregnancy, prenatal care or child birth.
  - ▶ The placement and care for a foster or adopted child.
  - ▶ To care for the employee's spouse, child, or parent with a serious health condition.
  - ▶ A serious health condition makes the employee unable to perform the functions of the job.

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## Eligible Employee

- ▶ An employee of the state of Arizona.
- ▶ One who has worked for the employer for at least 12 months.
- ▶ Has worked 1250 hours in the 12 months prior to **taking** FMLA leave.

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## Requesting FMLA Leave Full Time or Intermittent

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### Employee:

- ▶ Must provide 30 days advance notice when foreseeable. If not, as soon as practicable.
- ▶ If husband and wife are both state employees, they are entitled to 12 weeks **jointly**.
  - ▶ i.e. birth or care of a child. Either parent can take this leave, or 6 weeks each.
- ▶ Prior to the request for intermittent leave, must consult with the employer.
- ▶ Must make reasonable effort to schedule treatment or Dr's appointments so as not to disrupt the employer's operations.

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▶ 4

## Requesting FMLA Leave Full Time or Intermittent

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### Process:

- ▶ The employee must complete top portion of the request for FMLA leave, form 519-1, and submit to the supervisor for acknowledgement signature.
- ▶ Take it to the HR liaison for eligibility verification.
- ▶ The form is forwarded to the OHN for determination of qualifying medical reason and forwards to the approving authority.
- ▶ Employee must provide the Certificate of Health Care Provider (CHCP) to the OHN within 15 calendar days.
  - ▶ OHN notifies Supervisor and Administrator regarding the estimated frequency and duration of the absence.

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▶ 5

## Requesting FMLA Leave Full Time or Intermittent

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### Process:

Signature of approval (DD, Warden, Administrator):

1. If there are concerns, consult with the OHN and or ER before approving or denying the FMLA request.
2. Responsible to notify the employee *in writing* if eligible for FMLA.
3. The notification must specify any additional information required as well as the employee's rights and responsibilities.
4. If the employee is not eligible, must provide the reason.

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## Industrial Leave

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- ▶ If an employee who is on leave under Workers' Comp meets the eligibility requirements for FMLA leave, the industrial leave and FMLA leave shall apply concurrently.
- The OHN will contact Workers' Comp and or the physician for the needed medical documentation.
- Supervisor must consult with Payroll for guidance to ensure this is coded in the PAR or ETE correctly.

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## Returning to Work After Full Time FMLA Leave (for self)

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- ▶ Clearance by the OHN is required.
- ▶ Before returning to work the employee must provide the completed Health Status Report form (519-3) to the OHN.
- ▶ The OHN will notify the supervisor or manager if the employee is cleared to return on full duty or with restrictions.

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▶ 8

## Job Reinstatement

- ▶ Upon return from FMLA leave, an employee must be restored to his original job or to an equivalent job.
- ▶ An equivalent job is one that is identical to the employee's former position in terms of pay, benefits, working conditions, privileges, prerequisites, and status and has the same or similar duties and responsibilities that should entail substantially equivalent skill, effort, responsibility, and authority.

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## Use of leave – Intermittent FMLA

Employee:

- ▶ Must follow established call-in procedures and indicate that the leave is due to the approved Int-FMLA.
- ▶ Not required to provide specific medical reasons for calling-in sick.
- ▶ Not required to provide Dr's note each time he/she calls-in sick due to approved Int-FMLA.
- ▶ When FMLA leave request is approved, must record FMLA usage on the PAR or ETE.

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## Use of leave – Intermittent FMLA

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### Supervisors/ Managers:

- ▶ Keep track of FMLA usage. Ensure it is coded in the PAR or ETE prior to approving.
  - ▶ This is not the timekeeper's responsibility.
- ▶ May ask the employee if the call-in is due to the approved FMLA
  - ▶ DO NOT ask for specific medical reasons.
- ▶ If misuse is suspected, always consult with the OHN and or ER.
- ▶ Do not discipline the employee for using approved FMLA leave.
  - ▶ i.e. negative MAP entries or inappropriate comments
  
- ▶ If the employee is absent for 3+ consecutive days for a qualifying medical condition for self, spouse, parent, child; FMLA can be initiated by the supervisor. Consult with the OHN.

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## Requests for Medical Recertification (updated CHCP)

- ▶ Certification may be requested periodically during leave but no more than once every 30 days, unless:
  - ▶ Employee's circumstances have changed significantly;
  - ▶ Employer receives information that casts doubt on the employee's stated reason for leave; or
  - ▶ If the employee requests an extension of FMLA leave.
  
- ▶ If intermittent leave is requested the employee must reapply every 6 months (new request for Int-FMLA and CHCP), if necessary;
  - ▶ i.e. lifetime conditions.

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▶ 12

## Care for Child, Spouse or Parent

- ▶ “Family member” is limited to:
  - ▶ Spouse: either a husband or wife as defined by state law;
  - ▶ Child: either a biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee is standing *in loco parentis*;
    - ▶ Includes child 18 years or older incapable of self care due to mental or physical disability
    - ▶ Disability definition under ADA: “physical or mental impairment that substantially limits a major life activity”
  - ▶ Parent: the employee’s biological or adoptive parents or a person who stood *in loco parentis* when they were younger.

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▶ 13

## Substance Abuse

- ▶ FMLA leave is available for substance abuse treatment if the employee has a serious health condition.
- ▶ Absence because of the employee’s *use* of a substance, rather than for **treatment**, does **not** qualify for FMLA leave.
- ▶ Treatment for substance abuse does not prevent an employer from taking employment action against an employee, but it can not be because the employee took FMLA leave for this purpose.

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## Prohibited Acts Under FMLA

- ▶ Interfere with an employee's exercise of their rights.
- ▶ Discrimination.
- ▶ Interference with proceedings or inquiries.
- ▶ Factor in employment decisions.

## FMLA Amendment:

### Active Duty Leave

### Military Caregiver Leave

## Active Duty Leave Qualifying Exigency

Applicable to employees whose spouse, son, daughter or parent is on covered active duty or call to active duty may use 12 weeks of leave under FMLA for certain qualifying exigencies:

- Attend military events
- Arrange alternative childcare
- Financial and legal arrangements
- Counseling sessions
- Attend post deployment reintegration briefings

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## Military Caregiver Leave

- ▶ An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of **26 workweeks** of leave during a 12-month period to **care** for the service member.
- ▶ Applicable to covered veteran who was discharged or released under conditions, other than dishonorable, in the past 5 years from the date of request for FMLA leave.

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## Details

- ▶ If spouses are employed by the same employer, they may be entitled to a total of 12 or 26 workweeks between them.
- ▶ Service member Family Leave may be taken intermittently or on a reduced leave schedule.
- ▶ Notice requirements are the same as for traditional FMLA leave.

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▶ 19

## Enforcement

- ▶ FMLA: Enforced by the Department of Labor  
[www.dol.gov](http://www.dol.gov)
- ▶ ADA: Enforced by the EEOC [www.eeoc.gov](http://www.eeoc.gov)

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▶ 20

What improvements can we make to ensure compliance and to ensure we hold employees accountable for their obligations?

- 1.) Review internal call-in procedures.
- 2.) Enforce policies on foreseeable leave (30-days notice).
- 3.) Ensure the physician's estimate of time off needed or duration of intermittent leave is consistent with the employee's request.
- 4.) Ensure employee's are providing the Certification within the allotted time frame (15-days) and ensure thorough completion.
- 5.) Request recertification every six months for those on intermittent leave of periods over 6 months. These requests must be consistent throughout.

ARIZONA DEPARTMENT OF CORRECTIONS  
COMMUNITY CORRECTIONS SUPERVISORS MEETING

MEETING AGENDA  
MAY 15, 2013

10:00 AM – 5:00 PM

<del>10:00am</del>	Welcome	Paul O'Connell
<del>10:15am</del>	Employee Recognition	Paul O'Connell
<del>10:45am</del>	Break	
<del>11:00am</del>	Use of Incentives and Sanctions to Promote Compliance with Supervision Conditions during Reentry: An Implementation Strategy	Justice Center Webex
<del>12:00pm</del>	Lunch	
<del>1:00pm</del>	FMLA	Derleen Spence, Administrator Occupational Health
<del>2:00pm</del>	Break	
<del>2:15pm</del>	ITH Requirements	Karen Hellman, Administrator Counseling and Treatment Services
<del>3:00pm</del>	CORE Testing	Nicole Studer
<del>3:30 pm</del>	Training-Update	Holly Dorman
<del>4:00 pm</del>	Warrants-Current status Cost of Supervision-money orders	Jeff Sanders Jerry Eitnrear
	SRCCC Population	All
	Supervisor Audits	All
<del>5:00pm</del>	Adjournment	

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CORE TESTING SIGN UPS - ON SHARED DRIVE