



West Virginia Division of Personnel

## FAMILY AND MEDICAL LEAVE ACT/PARENTAL LEAVE ACT

**NOTE: This policy replaces DOP Interpretive Bulletin DOP-B1.**

**I. PURPOSE:** The purpose of this policy is to ensure a clear and uniform understanding and administration of employees' rights to leave under the federal Family and Medical Leave Act (FMLA) and the West Virginia Parental Leave Act (PLA).

### II. POLICY

- A. It is the policy of the State of West Virginia that all eligible employees receive their full benefits under FMLA and PLA. The State shall consider employees to be entitled to FMLA and PLA leave according to the provisions set forth in the PLA and FMLA and accompanying regulations. For purposes of applying the FMLA and PLA, the State is considered one employer, but each Appointing Authority shall administer leave for their respective employees.
- B. In addition to the FMLA and PLA, the *Administrative Rule* of the West Virginia Division of Personnel, W. Va. Code R. §143-1-1 *et seq.*, also provides for leave, both paid and unpaid, if an employee meets eligibility requirements, and requests the leave for a qualifying event. Due to the complexity of these laws and rule, and their differing eligibility requirements, as well as their differing entitlement provisions, it is necessary that each request for family or medical leave be individually evaluated, and guidance provided on a case-by-case basis.
- C. Employees eligible for leave under both FMLA and PLA, and/or the *Administrative Rule*, are entitled to the greatest benefit or most generous rights provided under the different parts of each. The determination of the most generous benefit will be at the employee's discretion and the employee shall notify the employer of the benefit/right he or she wishes to use. If the paid and/or unpaid leave qualifies under both FMLA and PLA, and/or the *Administrative Rule*, the leave entitlement under each shall exhaust concurrently.
- D. For purposes of FMLA and PLA administration, the following shall apply:
1. The 12-month period shall be calculated on a rolling 12-month period, measured backward from the date of leave use. (**Exception:** the 12-month period for FMLA military caregiver leave requires the leave period to be based upon the first day the employee uses leave, measured forward.)
  2. Appropriate, available paid sick and annual leave shall be utilized to cover leave taken for FMLA qualifying events. The paid leave shall run concurrently with the employee's entitlement to unpaid FMLA leave starting on the date the agency provides the required notice.

### III. RESPONSIBILITIES

- A. It shall be the responsibility of the Division of Personnel to prescribe forms necessary for compliance with the provisions of FMLA and PLA.
- B. It shall be the responsibility of each Appointing Authority to comply with the provisions of FMLA and PLA including, but not limited to, the following:
1. Post notice explaining rights and responsibilities under FMLA and PLA, including the same general information in employee handbooks or other written guidance to employees concerning benefits.



2. When employees request FMLA and/or PLA leave, or the Appointing Authority acquires knowledge that leave requested may be for a qualifying purpose, notify the employees of eligibility to take leave, and inform employees of rights and responsibilities. If an employee is not eligible, the Appointing Authority must provide a reason for the ineligibility.
  3. Notify employees that leave is designated and will be counted as FMLA and/or PLA leave, including the amount of paid leave counted against FMLA leave entitlement.
  4. Require certification, as necessary.
  5. Continue applicable benefits.
  6. Restore eligible employees to employment at the conclusion of the period of leave.
  7. Not interfere with, restrain, or deny the exercise of any right provided by FMLA and/or PLA.
- C. It shall be the responsibility of each employee to comply with the provisions of FMLA and PLA including, but not limited to, the following:
1. Provide notice of the need for leave.
  2. Complete leave request forms and submit required certification, providing sufficient information for determination of leave eligibility.
  3. Make a reasonable effort to schedule leave so as not to unduly disrupt the agency's operations.
  4. Comply with procedural requirements for requesting leave established by the Appointing Authority, including call-in procedures.
  5. Submit necessary payment for continuation of benefits.

#### **IV. REFERENCES**

- A. West Virginia Parental Leave Act, W. Va. Code §21-5D-1 *et seq.*
- B. Family and Medical Leave Act, 29 USC 2601 *et seq.*
- C. United States Department of Labor, Family and Medical Leave Act Regulations, 29 CFR 825.
- D. West Virginia Division of Personnel, *Administrative Rule*, W. Va. Code R. §143-1-14.8(b).

**V. EFFECTIVE DATE:** October 1, 2010.

**VI. POLICY NUMBER:** DOP-P23.

Approved and issued by:

Sara P. Walker, Director of Personnel

Date signed: August 1, 2010.