

Policy 2.1.14

Family and Medical Leave Act (FMLA)

Contact: Human Resources Director

2.1.14.1 Purpose

The purpose of this policy is to assist employees in balancing workplace demands with personal and family needs consistent with the requirements of the federal [Family and Medical Leave Act \(FMLA\) of 1993](#) and [Chapter 357-31 WAC](#).

Washington Technology Solutions (WaTech) refers to the “consolidated technology services (CTS) agency” identified in RCW 43.105.

2.1.14.2 Applicability

This policy applies in its entirety to all Non-Represented General Service, WMS, and Exempt employees of Consolidated Technology Services (CTS). Represented employees shall refer to the master agreement provisions that may supersede any portion of this policy.

2.1.14.3 Definitions

“**Appointing Authority**” - Director, Deputy Director, or Assistant Director.

“**FMLA**” - Family and Medical Leave Act.

“**Foreseeable**” - Leave under the Family and Medical Leave Act is foreseeable if it involves an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or family member.

“**Family Member**” - includes children, spouse, and parents, but not son-in-law, daughter-in-law or parents-in-law.

“**Spouse**” - means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

“**Parent**” - means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter.

“**Son or daughter**” - for purposes of FMLA used for care of a family member with a serious health condition that is not military caregiver leave, means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under age 18 or age 18 or older and “incapable of self-care because of a mental or physical disability”.

“Son or daughter” - for purposes of FMLA used for military family leave for an exigency or for military caregiver leave for a covered service member, means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is of any age.

“In loco parentis” - Persons who are In loco parentis include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

“Covered Service Member” - Member of the Armed Forces, including National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

“Next of kin” - Used with respect to an individual means the nearest blood relative of that individual other than spouse, parent or child, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member;
- brothers and sisters;
- grandparents;
- aunts and uncles;
- cousins

If the covered service member designates another blood relative as their nearest blood relative that designation takes precedent over the above list. That person would be the only next of kin.

“Serious Injury or Illness” - in the case of a member of the Armed Forces or National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

“Serious Health Condition” - an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care including period of incapacity or subsequent treatment; or
- Continuing treatment by a health care provider (HCP). This includes any one or more of the following:
 1. Period of incapacity of more than 3 consecutive full calendar days and any subsequent treatment or incapacity that relates to the same condition that also involves:
 - a. Treatment 2 or more times within 30 days of the first day of incapacity (absent extenuating circumstances) by HCP etc, or
 - b. Treatment by HCP at least once and continuing treatment under the supervision of HCP. This requirement means an in person visit to a HCP. The first (or only) visit must occur within 7 days of the first day of incapacity.
- Incapacity due to pregnancy.

- Incapacity due to chronic serious health condition (SHC). A chronic SHC is one which:
 1. Requires periodic visits (at least twice per year) to HCP etc;
 2. Continues over extended period; and
 3. May cause episodic rather than continuing incapacity (asthma, diabetes, epilepsy, etc).
- Incapacity which is permanent or long term where treatment may not be effective. (Alzheimer's, severe stroke, terminal stages of a disease, etc.)
- Absence to receive multiple treatments for restorative surgery after accident, or for a condition that would result in incapacity for 3 consecutive full calendar days or more absent medical intervention (cancer, kidney disease, etc.)

"Health Care Provider" -

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- Nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

2.1.14.4 Family and Medical Leave Entitlement

The Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee up to 12 weeks of leave in a 12-month period for the listed reasons identified in section 2.1.14.5, Use of Family and Medical Leave. The 2008 Amendments to the FMLA allow the 12 week FMLA entitlement to also be used for exigency leave for family members of military personnel relating to certain military duty. Those amendments also provide for leave of up to 26 weeks in a single 12 month period for eligible employees to care for a covered service member injured in the line of duty. In addition to the leave provided under the FMLA as outlined in this policy, there may be other leave entitlements under state law, WaTech/CTS policy or contract that an employee may be entitled to.

2.1.14.5 Use of Family and Medical Leave

WaTech/CTS will grant up to 12 weeks of FMLA leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 and its amendments, for one or more of the following reasons:

- The birth and care of a newborn child;

- The placement for adoption or foster care of a child with the eligible employee and to care for that child;
 1. Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement of the foster or adopted child.
- To care for an employee's spouse, parent or child (child must be under the age of 18 or over 18 and incapable of self care due to a disability) with a serious health condition;
- Due to the employee's own serious health condition; or
- Due to a qualifying exigency arising from the fact that spouse, child of any age, or parent of an eligible employee is on active duty or has been notified of pending call to active duty in the Armed Forces in support of a contingency operation.
 1. This leave applies only to family members of the Reserves, National Guard and certain retired members of the Regular Armed Forces and Retired Reserves. Exigency leave does not apply to leave for family members of those in the regular Armed Forces on active duty.
 2. Exigency leave may be taken for one or more of the following reasons and as defined in the FMLA regulations:
 - a. Short-notice deployment - notified 7 days or less before deployment. Leave for this purpose can be used for up to 7 days.
 - b. Military events and related activities - To attend official ceremonies or events related to active duty; to attend family support assistance programs, briefings, etc.
 - c. Childcare and school activities
 - d. Financial and legal arrangements
 - e. Counseling
 - f. Rest and Recuperation - To spend time with covered military member. Eligible Employees can take up to 5 days for each instance of R&R
 - g. Post-deployment activities
 - h. Additional activities - Anything that the Employer and Employee agree upon relating to the exigency

WaTech/CTS will grant an eligible employee who is spouse, child, parent of a child of any age or next of kin of a covered service member:

- Up to 26 weeks of service member caregiver leave in a single 12-month period to care for the service member.
 1. During the single 12-month period, an eligible employee is limited to a combined total of 26 weeks of leave for service member caregiver leave and FMLA leave for other qualifying reasons.

2. Caregiver leave applies to care for current members (or those on temporary disability) of the Armed Forces, National Guard or Reserves. It is not available to care for former members of the Armed Forces, National Guard or Reserves and members on the permanent disability list.

2.1.14.6 Family and Medical Leave Eligibility

An eligible employee must meet all of the following conditions:

- The employee must have worked for WaTech/CTS or another Washington state agency or institution of higher education for at least 12 months (need not be consecutive) prior to the commencement of the leave; (periods of service prior to a break in service of 7 years or longer will generally not be counted toward the 12 months)
 1. The employee must have worked at least 1,250 hours of service in the previous twelve month period immediately preceding the commencement of the leave. The 1,250 requirement does not count paid time off such as time uses as annual leave, sick leave, exchange time, personal holiday, compensatory time off, or shared leave.

2.1.14.7 Requesting and Reporting Family and Medical Leave

Leave Coverage and 12-Month Period

Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of leave during a 12-month period. WaTech/CTS will measure the 12-month period forward from the date the requesting employee's first FMLA leave begins. The employee's next FMLA leave year would begin the first time FMLA leave is taken after completion of the previous 12-month period. For example, if an eligible employee's first request for FMLA leave is on October 1, 2002, for leave to begin on November 1, 2002, the 12-month period begins on November 1, 2002. That employee would be entitled to use 12 weeks of FMLA leave between November 1, 2002, and October 31, 2003. If that employee uses 12 weeks between November 1, 2002, and February 1, 2003, they would not be eligible again until November 1, 2003. If they next use FMLA beginning April 1, 2004, their next 12-month period would run from April 1, 2004, through March 31, 2005. Should WaTech/CTS elect to change the 12-month period, they will provide employees a minimum of 60 days' notice prior to the change.

The 12 month period for Caregiver leave for a covered service member will always begin on the first day leave is taken.

Both Spouses Employed by WaTech/CTS

If a husband and wife both work for WaTech/CTS, they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of taking leave for the birth and care of a child, adoption and care of a child, placement and care of a child in foster care, or to care for the employee's parent with a serious health condition. If either spouse uses a portion of the 12-week entitlement for

the above reasons, they would still have their remaining entitlement for other FMLA purposes. For example, if a husband and wife each use six weeks of FMLA to care for a newborn child, they would each have an additional six weeks available for their own serious health condition or to care for a sick child or spouse with a serious health condition.

If a husband and wife both work for WaTech/CTS they may be limited to a combined total of 26 weeks of leave during the single 12 month period described for service member caregiver leave if the leave is taken for the birth and care of a child, adoption and care of a child, placement and care of a child in foster care, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury or illness.

Accounting for Leave

Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

For employees who normally work less than a full-time schedule, the amount of leave will be determined on a pro rata basis and will be determined based on the employee's status at the time of the request for leave. For example, an employee working on a .75 FTE basis will be entitled to 12 weeks or 360 hours of FMLA leave in each 12-month period.

Additional Leave for Disability Related to Pregnancy and Child Care

Pursuant to Washington state law, RCW 49.78.390, leave provided for the birth and care of a child or for placement for adoption or foster care shall be in addition to any leave used by the mother for sickness or temporary disability because of pregnancy or childbirth.

(1) Leave under this chapter and leave under the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Leave taken under this chapter must be taken concurrently with any leave taken under the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6). [2006 c 59 § 20] RCW 49.78.390

Therefore if the mother has a disability relating to her pregnancy or childbirth and takes time off due to that disability, she is still entitled to the full 12 weeks to be used for FMLA qualifying purposes assuming she is eligible and has not already used those 12 weeks.

2.1.14.8 Employee Request for Leave and Employer Designation

FMLA designation is the responsibility of WaTech/CTS. WaTech/CTS will normally determine eligibility and notify the employee of the employees' rights and responsibilities within five business days, absent extenuating circumstances, of the date WaTech/CTS receives knowledge that the leave is being requested for a FMLA qualifying reason. WaTech/CTS may request appropriate certification to support the request for leave, including for military exigency leave. After receipt of complete and sufficient information to allow WaTech/CTS to determine that the leave is FMLA qualifying, WaTech/CTS will notify the employee within 5 business days (absent extenuating circumstances) that the leave is being designated as FMLA leave.

FMLA can also be designated retroactively unless the employee suffers injury or harm as a result of the retroactive designation, or if the employee and the employer agree.

It is the employee's responsibility to notify their supervisor of the need for leave and to provide reasons for the leave to determine if the leave qualifies for FMLA leave. The employee should also provide the anticipated timing and duration of the leave. The employee should notify their supervisor at least 30 days in advance of the need for leave if the need for leave is foreseeable. If the need for leave is not foreseeable, notice must be given as soon as possible.

The Human Resource Office (HRO) may inquire further regarding the need for leave if the employee does not initially provide enough information to determine if the leave request qualifies for FMLA designation. The Human Resource Office will provide the employee with a FMLA request form to be completed by the employee and a medical certification form to be completed by the employee's or family member's health care provider, or the covered service member's health care provider.

The employee requesting military family leave will be provided with certification forms to be completed and a request for a copy of the Active Duty Orders of the military member.

The employee should return these forms within 15 calendar days (absent extenuating circumstances) after the employee receives them.

2.1.14.9 Intermittent or Reduced Schedule Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition or to care for a family member with a serious health condition. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

Intermittent leave may also be taken for military family leave.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment, must work with their supervisor and make reasonable efforts to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the WaTech/CTS' operations.

WaTech/CTS may choose to grant leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case by case basis. Requests for intermittent or reduced schedule leave taken after the birth of, or for placement of a child for adoption or foster care, may be denied based on operational necessity. If such leave is granted, the employee and WaTech/CTS must mutually agree to the schedule to be worked before the employee may take the intermittent leave. Requests to care for a newborn or newly placed adopted or foster child must be approved in writing by the immediate supervisor prior to any schedule changes.

WaTech/CTS may temporarily transfer an employee using intermittent leave for planned medical treatment, including during a period of recovery from one's own serious health condition, to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

2.1.14.10 Paid Leave

WaTech/CTS employees may use any combination of paid or unpaid leave to which they are entitled to toward the FMLA entitlement. The use of any leave paid or unpaid for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. The types of leave that can be substituted for otherwise unpaid FMLA leave include annual leave, sick leave, shared leave, and/or personal holidays. Leave for an absence covered by worker's compensation will also run concurrently with FMLA.

Time off for state designated holidays, including personal holidays, will be counted toward an employee's 12 week FMLA entitlement.

Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed for pursuant to state laws or WaTech/CTS policy, as applicable.

Supervisors notified of FMLA approval should ensure all FMLA qualifying leave during the approval period is identified as FMLA. Employees must follow the procedures established by their supervisor for reporting absences, submitting leave, and providing status updates.

2.1.14.11 Certification

Medical certification may be required for any request for use of leave for an employee's own serious health condition, to care for a family member with a serious health condition, or to care for a covered service member with a serious injury or illness. Certification may be required for any request for military exigency leave. The employee will be asked to respond to the request for a complete certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial or continuation of leave, or the loss of FMLA protection for the leave. Certification should be provided by using the appropriate certification form. All applicable information should be included.

If WaTech/CTS has questions regarding the initial medical certification they may, with a release from the employee, contact the employee's health care professional to clarify the original certificate. WaTech/CTS may also contact the employee's health care professional to authenticate the certificate.

If WaTech/CTS has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at WaTech/CTS' expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at WaTech/CTS' expense from a health care provider mutually chosen by the employee and WaTech/CTS. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

WaTech/CTS may ask for re-certification under the provisions of the FMLA. Re-certifications are provided at the employee's expense.

Employees on FMLA may be contacted by their supervisor or HRO to determine their status and intent to return to work.

Under the provisions of the FMLA, prior to returning to work, an employee will be required to provide a medical certificate that the employee is able to resume work if the leave was for his/her own serious health condition.

Fitness for duty certifications are at the employee's expense.

2.1.14.12 Benefits

During approved FMLA leave, WaTech/CTS will continue an eligible employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA absence.

During paid leave, WaTech/CTS will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave the employee must continue to make these payments. Payment should be made to the Payroll Office. If the employee on unpaid leave does not pay their share of the premiums, WaTech/CTS may elect to make these payments on behalf of the employee, thus continuing their benefits, and collect the amounts due from the employee upon their return to work. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their absence.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, WaTech/CTS may require the employee to reimburse WaTech/CTS the amount of health care benefit premiums paid by WaTech/CTS for the employee during the unpaid FMLA leave period.

Employees are not entitled to additional benefits or seniority while on unpaid FMLA. Unpaid FMLA shall not be treated as credited service for purposes of retirement benefit accrual and vesting. Employees may maintain benefits beyond employer-paid health insurance such as long-term disability, as well as any health benefit premiums paid, at their own expense. Employees wishing to do so must contact the Payroll Office immediately to determine the amount to be paid by personal check. Failure to make payments within 30 days will result in coverage being discontinued and will require re-enrollment but not re-qualification of these benefits.

Employees who exhaust the 12 weeks of FMLA and require continued absence from work in an approved leave without pay status will be required to self-pay all employer-paid benefits. Employees must make arrangements with the Payroll Office to do so.

2.1.14.13 Returning to Work

Upon returning to work after the employee's own FMLA qualifying illness, the employee will be required to provide a fitness for duty certificate from a health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage unless there are safety concerns regarding the employee's ability to perform their duties based on the serious health condition.

If the employee is unable to perform the essential functions of the position, reasonable accommodation or a disability separation may be necessary. The notice period of a disability separation and FMLA may run concurrently.

The appointing authority may temporarily transfer an employee during FMLA to an available alternative position, for which the employee qualifies, of equal pay and benefits if the position would better accommodate an employee's medical restriction(s) and/or WaTech/CTS's business needs.

Following absence granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence.

An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

Should a layoff occur during FMLA, and the employee's position is eliminated, layoff rules and policies shall apply. Upon any separation from state service as a result of layoff, FMLA and all employment benefits shall cease.

2.1.14.14 Miscellaneous

Employees should seek assistance from the Human Resources Office (HRO) to determine if they are eligible for other types of leave in addition to the leave covered by this policy; e.g. disability leave, parental leave, leave to care for a sick child or family member with a serious health condition, shared leave, etc.

This policy will be construed in accordance with the FMLA and its accompanying regulations. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy, those gaps will be construed in accordance with the FMLA and its regulations.

2.1.14.15 Violations

An employee's failure to comply with FMLA procedures may result in withdrawal of FMLA, denial of continuation of FMLA, and/or disciplinary action. The HRO shall notify the employee in writing of any denial or withdrawal of FMLA.

References

- [Family and Medical Leave Act \(FMLA\) of 1993](#), U.S. Department of Labor Final Rules, Title 29, Part 825 of the Code of Federal Regulations
- [Chapter 357-31 WAC](#)
- [Chapter 296-134 WAC](#)
- [Certification of Health Care Provider Form](#) (Family and Medical Leave Act of 1993)

Procedure 2.1.14

For Requesting Family Medical Leave Act (FMLA)

Action by	Action
Employee	Notifies supervisor of the need and reason for leave within 30 days of the need for leave if the need is foreseeable, otherwise, as soon as possible after discovering the need for leave. Provides the anticipated timing and duration of the needed leave.

Fills out the appropriate forms and certification. Returns these documents to Human Resources within 15 days of receiving the forms.

Submit written FMLA request through the leave system indicating type of leave to be utilized to immediate supervisor.

During the leave period, provides supervisor/manager with periodic reports on status and intent to return to work as requested.

Provides medical re-certification as requested.

Provides a fitness for duty certification at the completion of the leave as requested if leave is taken for the employee's own serious health condition.

Consults with Human Resources to determine if any other leave entitlements are available.

Immediate
Supervisor

Receives request from employee for leave. May need to make further inquiries if need for FMLA and/or whether the requested leave is FMLA qualifying are not apparent.

Notifies Human Resources immediately about the FMLA request.

Communicates with employee periodically to request reports on status and intent to return to work.

Requests assistance from Human Resources as needed.

Human Resources

Within 5 business days of receipt of the request, notifies the employee of their eligibility and provides to the employee the medical or other certification form, essential functions form, if applicable, and written notice to the employee of their rights and responsibilities, including need to provide certification. (Eligibility Notice and Rights and Responsibilities Notice)

Upon receipt of the completed certification notifies employee that the leave will be designated as FMLA leave within 5 business days of receipt of information confirming that the leave is FMLA qualifying. (Designation Notice)

Keeps data on FMLA status and usage up to date.

Provides advice and assistance as needed.

Revised: June 16, 2010

Revised: April 1, 2010

Revised: July 1, 2005

Revised: June 3, 2003

Posted: April 8, 2002
