

- I. **TITLE:** **Family and Medical Leave Policy**
- II. **EFFECTIVE DATE:** 1 April 2009
- III. **APPLICABILITY:** All Spokane Transit Employees
- IV. **AUTHORIZATION:** Signature on file 17 March 2009
(Title) Date
- V. **SUPERSEDES:** 07007-03
- VII. **PROCEDURES:** NA

VI. INTRODUCTION

The 1989 Washington State Family Leave Law and the federal Family and Medical Leave Act of 1993 (FMLA) were enacted to provide employees the opportunity to take reasonable leave under certain qualifying conditions, either paid or unpaid, in order to balance the demands of the workplace with the needs of families; to provide stability and economic security for families; and to promote national interests in preserving family integrity.

The Authority's policy and procedures as set forth herein; address the requirements and provisions for compliance with both the 1989 Washington State Family Leave Law and the federal Family and Medical Leave Act of 1993, and subsequent amendments to both laws.

VII. POLICY STATEMENT

It is the policy of Spokane Transit Authority to provide employees the opportunity to balance their work and family life by taking leave for certain qualifying reasons.

The Authority, by policy, will grant eligible employees up to 12 weeks of family and medical leave, during a "rolling" 12 month period, in accordance with the applicable provisions of either the 1989 Washington State Family Leave Law or the federal Family and Medical Leave Act of 1993 (FMLA).

The Authority recognizes that it must not only comply with the federal and Washington State family leave laws, but must also grant appropriate disability-related maternity leave, comply with applicable collective bargaining agreements and grant part-time schedules, job reassignment and additional leave if required to do so under the "reasonable accommodation" provisions of the Americans With Disabilities Act and the Washington Law Against Discrimination.

VIII. DEFINITIONS

As used in this policy, the following terms shall have the meanings indicated.

A "serious health condition" is an illness, injury, impairment or physical or mental condition that involves in-patient care in a medical facility, or continuing treatment by (or under the supervision of) a health care provider.

"Continuing treatment," means a period of incapacity of more than three (3) consecutive calendar days and also involves:

- two or more visits to a health care provider or at least one visit to a health care practitioner that results in a regimen of continuing treatment under the supervision of the healthcare provider;
- any period of incapacity because of pregnancy or prenatal care;
- any period of incapacity for a chronic serious health condition;
- permanent or long-term incapacity for treatment; or
- any period of absence to receive multiple treatments.

A "health care provider" is defined as licensed doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse midwives, nurse practitioners, and clinical social workers practicing within the scope authorized by the State, and registered Christian Science practitioners.

The term "spouse" means a husband or wife as defined or recognized under state law for purposes of marriage.

"Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. **This term does include "parent- in-law."**

"Son or daughter" 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."

"Family member" means a son or daughter, spouse, parent, or grandparent of an employee.

The "rolling " 12-month period is the method used to determine the period in which the 12 weeks of leave entitlement occurs. Under this method, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks, which has not been used during the immediately preceding 12 months.

IX. ELIGIBILITY

To be "eligible" for family and medical leave under this policy, an employee must meet all of the following conditions:

be currently employed by the Authority;

have worked for the Authority for a period of not less than 12 months;
have worked for at least 1250 hours during the year preceding the start of the leave; and
be employed at a worksite where the employer employs at least 50 employees within a 75-mile radius.

X. LEAVE ENTITLEMENT

Eligible employees will be granted up to 12 weeks of family and medical leave during a "rolling" 12-month period for one or more of the following reasons:

to care for the employee's child following birth, or for the placement of a child, for adoption or foster care;
to care for an immediate family member (spouse, child, parent) with a serious health condition ; or
for a serious health condition resulting from an injury or illness "on or off the job" that makes the employee unable to perform his or her job.

XI. LIMITATIONS ON LEAVE ENTITLEMENT

The following provisions, as well as those provided in law or specified elsewhere in this policy, will apply when determining an employee's entitlement for family and medical leave.

Care of a newborn, adopted or foster child.

The right to take leave under FMLA applies equally to male and female employees. The father, as well as the mother, can take family leave for the birth, placement for adoption or foster care of a child. However, an expectant mother may take family and medical leave or qualify for other disability leave before the birth of a child for prenatal care or if her condition makes her unable to work.

An employee may be entitled to take family and medical leave prior to the actual placement or adoption of a child if his/her absence from work is required for the placement for adoption or foster care to proceed. Leave for the placement of a child for foster care is available only when the placement is made by the State.

Leave taken in connection with the birth, adoption or placement of a child for foster care or the care of a child following birth, adoption or placement of a child for foster care must be concluded within a 12 month period beginning on the date the qualifying event occurs.

Immediate family member's serious health condition.

An employee shall be entitled to take family and medical leave for the care of a spouse, son, daughter or parent when it can be medically certified that the family member has a "serious health condition" and the employee is "needed to care for" the family member.

Employee's Serious Health Condition.

An employee shall be entitled to and/or required to take family and medical leave when it can be medically certified that "the employee is unable to perform the functions of his/her position," as a result of a "serious health condition" stemming from an injury or illness which occurred on or off the job. Family and medical leave may be taken on an intermittent or reduced leave schedule when it can be certified that a medical necessity for such leave exists.

When it can be medically certified that a health condition for which an employee had previously taken sick leave has progressed into a "serious health condition", all or part of the sick leave may be designated as family and medical leave.

Husband and Wife Both Employed by the Authority

A husband and wife who are eligible for family and medical leave and are both employed by the Authority shall be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the birth of a child, adoption or placement of a child in foster care, to care for the child following birth or placement, or to care for a parent (but not a parent-in-law) with a "serious health condition." However, if one spouse were ineligible for family and medical leave, the other spouse would be entitled to a full 12-weeks of family and medical leave.

Where the husband and wife both use a portion of the combined entitlement of 12-weeks of family and medical leave, for one of the purposes set forth above, the husband and wife would each be entitled, for a purpose other than those set forth above, to the difference between the amount he/she has taken individually and the entitled 12-weeks of family and medical leave.

Military Family Leave: Section 585 (a) of the NDAA amended the FMLA to provide two new leave entitlements:

1) Military Caregiver Leave (also known as Covered Servicemember Leave): Under the first of these new military family leave entitlements, eligible employees who are family members of covered servicemembers will be able to take up to 26 workweeks of leave in a "single 12-month period" to care for a covered servicemember with a serious illness or injury incurred in the line of duty on active duty. Based on a recommendation of the President's Commission on Care for America's Returning Wounded Warriors (the Dole-Shalala Commission), this 26 workweek entitlement is a special provision that extends FMLA job-protected leave beyond the normal 12 weeks of FMLA leave. This provision also extends FMLA protection to additional family members (i.e., next of kin) beyond those who may take FMLA leave for other qualifying reasons.

2) Qualifying Exigency Leave: The second new military leave entitlement helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty

or called to active duty status in support of a contingency operation. The Department's final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

XII. PAID OR UNPAID LEAVE

Although FMLA Leave is generally unpaid, the Act permits an employee to substitute earned paid leave under certain circumstances, and the employer to require an employee to integrate earned paid leave with unpaid FMLA Leave. The following provisions, as well as those provided in the law and as specified elsewhere in this or other Authority policy and collective bargaining agreements, will be applied when determining if FMLA Leave is paid or unpaid.

Vacation Leave

An employee must use their available paid vacation leave as a portion of their approved family leave prior to taking unpaid family leave. However, an employee may retain up to forty (40) hours of available paid vacation leave for future use. The above requirement does not prohibit an employee from electing to use all of their available paid vacation leave for any FMLA qualifying purpose, without limitation.

Sick Leave

An employee requesting family leave for the care of themselves or a qualified family member as a result of a serious health condition, must use earned sick leave in conjunction with an approved family leave request prior to utilizing or being required to utilize vacation leave or unpaid family leave. Employees may retain up to forty (40) hours of earned sick leave for future use. The above requirement does not prohibit an employee from electing to use all of their available sick leave in conjunction with approved family leave.

Worker's Compensation Benefits

An employee's FMLA entitlement may run concurrently with a worker's compensation absence, when the injury is one that meets the criteria of a serious health condition. Because worker's compensation absences are not unpaid leave, the provisions for substitution of paid leave is not applicable.

However, if the health care provider treating the employee for the worker's compensation injury certifies the employee is able to return to a light duty job, but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a light duty job. As a result, the employee may lose worker's compensation benefits, but is entitled to remain on FMLA leave until the 12-week period is exhausted. The provisions for substitution of paid leave will become applicable and applied as of the date worker's compensation benefits cease.

XIII. INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE

Employees may take FMLA leave in consecutive weeks, or upon certification of medical necessity for such leave, may use the leave intermittently in separate blocks of time ranging from an hour or more to several weeks. In all cases, the leave may not exceed a total of 12 weeks over a rolling 12-month period. Employees requesting intermittent leave, must provide certification from the health care provider that such leave is medically necessary; the expected duration and schedule of such leave; and that the medical need can best be accommodated through an

intermittent or reduced work schedule. Intermittent leave or a reduced work schedule if requested for the birth, or because of placement for adoption or foster care, can only be taken with the Authority's approval.

The Authority may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

XIV. PROCEDURES

A. REQUESTING LEAVE

All requests for Family Leave must be submitted to the Human Resource Department on an authorized Leave Request Form. Leave Request Forms can be obtained in the Human Resource Department. All leave requests will be reviewed for compliance with the intent and provisions of the FMLA and these policies and procedures. The Human Resources Manager or designated Human Resources Specialist will approve eligible requests.

Employees must provide the Authority 30 days advance notice of the need to take FMLA leave when it is foreseeable, i.e., for the birth or placement of a child for adoption or foster care, or for planned medical treatment. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until 30 days from the date the Authority receives notice.

When it is not possible to formally request leave in advance, employees may provide the Authority with notification of their need for family leave. Such notice must be given within five business days of the qualifying event, or as soon as is reasonably practical. When advance notice is not practical, employees are expected to comply with the Authority's usual procedures for requesting leave as soon as can be reasonably expected.

An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the Authority's operations.

B. EMPLOYER NOTICE REQUIREMENTS

The Authority will post, in locations readily available to employees, a notice explaining employee rights under the Family and Medical Leave Act.

The Authority will provide the employee with the following information upon receipt of their request for Family Leave:

- that the leave will count against the annual FMLA entitlement;

- which certification requirements apply;

- the requirement to substitute paid leave;

- necessary medical premium payments for continuation of health care benefits and liability for premiums paid by the Authority in the event the employee fails to return to work;

and reinstatement rights.

C. EMPLOYEE REQUIREMENTS

Employees requesting FMLA leave must provide the following:

30-day advance notice of the need to take FMLA leave when the need is foreseeable;

notice to the employer within five (5) business days of returning from a qualified FML when leave is unforeseeable;

verifications or medical certifications supporting the need for requested leave;

if required, and at the Authority's expense, second or third medical opinions and periodic recertification; and

periodic reports to the Authority during the leave period regarding the employee's status and intent to return to work.

D. CERTIFICATIONS

Employees are required to provide medical certification of a serious health condition. Such certification must be provided within 15 days following the request for FMLA leave, or a reasonable explanation for the delay must be provided. Failure to provide certification may result in delay or denial of the requested leave until such certification is received.

The Authority, at its expense, may request an employee to obtain a certification from a second health care provider to support the request for leave. Should the first and second opinions differ, the Authority, at its expense, may require a third opinion. The third opinion shall be considered final.

Upon the request of the Authority, employees may be required to obtain subsequent recertification when necessary to support continued leave. Recertification may be required not more often than every 30 days, unless, an employee requests an extension of the original authorized leave period, circumstances have changed since the original certification, or the Authority has information raising a question regarding the validity of the original certification.

Employees returning from FMLA leave as a result of their serious illness required to provide a fitness-for-duty certification. An employee not providing the required fitness-for-duty certification may be denied reinstatement until such time as the certification is provided.

XV. CONTINUATION OF BENEFITS DURING LEAVE

During the time an employee is on paid family leave, the Authority will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee were at work. The employer and employee's portion of the medical premium payment (if any) will be paid in the customary manner.

While on unpaid FMLA leave, the employee is responsible for continuing to pay his or her portion of the medical insurance premium. Payments may be made either in person or by mail and must be received in the Payroll Department by the first day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. As a result of the potential financial impact on employees of not receiving a paycheck during the leave period, the Authority will, when administratively convenient, provide employees options for payment of the employee's portion of these premiums. Such arrangements must be made in advance and agreed to by both parties.

If an employee chooses not to return to work for reasons other than a continued serious health condition, or circumstances beyond their control, the company may require the employee to reimburse the company the full amount it paid on behalf of the employee to maintain their health insurance coverage and such other benefits as identified in the act, during the leave period. Request for reimbursement will be made as part of the normal separation procedure.

Life insurance or disability plan contributions made by the employee will be made through payroll deduction while an employee is on paid leave. During unpaid leave, the employee must pay his or her share of life insurance or disability plan contributions in a mutually agreeable arrangement between the Authority and the employee. If the employee does not continue these payments, the Authority may discontinue coverage during the leave period, or recover the payments at the end of the leave period, in a manner consistent with the law.

XVI. REINSTATEMENT

Employees are entitled to a return to their original job or a job with equivalent status, pay, benefits and other employment terms and which entails substantially equivalent skill, effort, responsibility and authority.

XVII. UNLAWFUL ACTS

The Authority will not interfere with, discharge or discriminate against any employee attempting to exercise their rights under the FMLA.

XVIII. ENFORCEMENT

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations of the FMLA. Eligible employees may bring civil action against the Authority for violations.

The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement, which provides greater family or medical leave rights.

