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# ADS Chapter 481

## Family and Medical Leave (FML)

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ADS 481 – Family and Medical Leave (FML)

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## **ADS 481 – Family and Medical Leave (FML)**

### **481.1 OVERVIEW**

This chapter provides guidance on unpaid family and medical leave (FML) to employees. (Paid leave may be substituted for unpaid leave under section 481.3.6).

This chapter applies to all full-time and part-time employees serving under permanent appointments who have completed at least 12 months of service, which does not have to be recent or consecutive. Up to six (6) months of leave without pay is creditable toward meeting the 12-month service requirement. This chapter also applies to employees serving under temporary or intermittent appointments who have at least 12 months of federal service, which does not have to be consecutive, including at least 1,250 hours of federal service during the 12-month period immediately preceding an event that would establish eligibility for the program. Foreign Service National employees and temporary and intermittent employees serving overseas are not covered by the regulations in this chapter.

### **481.2 PRIMARY RESPONSIBILITIES**

**a. The supervisor** is responsible for:

- (1)** Providing information to the employee on rights and obligations under the FMLA.
- (2)** Approving employee's request for leave under FMLA ensuring that all procedural requirements have been met and appropriate medical certification provided.

**b. The employee** is responsible for:

- (1)** Invoking entitlement to FMLA by providing all the necessary notifications and certifications for agency approval.

**c. The Bureau for Management, Office of Human Resources (M/HR)** is responsible for:

- (1)** Informing employees and supervisors of their entitlements and responsibilities under the FMLA.

### **481.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

The following are the official Agency policies and corresponding essential procedures:

### **481.3.1 Entitlement to Leave**

An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- a.** The birth of a son or daughter of the employee and the initial care of such son or daughter;
- b.** The placement of a child with the employee for adoption or foster care and the initial care of such child;
- c.** The care of a spouse, son, daughter, or parent of the employee, if such family member has a serious health condition; or
- d.** A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of the employee's position.

A total of 12 administrative workweeks of Family Medical Leave (FML) will begin prior to or on the actual date of birth or placement for adoption or foster care and shall expire 12 months after the date of birth or placement. Leave for a birth or placement must be concluded within 12 months after the date of birth or placement.

- a.** A mother and father are each entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care, or for the care of a son or daughter with a serious health condition.
- b.** For FML purposes other than birth or adoption, the 12-month period begins on the date an employee first takes FML and continues for 12 months.
- c.** Part-time employees are entitled to FML calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek.
- d.** An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of FML. A continuation of a previous situation or circumstance may be included.

### **481.3.2 Duration of Family and Medical Leave**

An employee shall take only the amount of family and medical leave (FML) that is necessary to manage the circumstances that prompted the need for the leave.

### **481.3.3 Family and Medical Leave in Addition to Other Available Leave**

An employee is entitled to unpaid leave under the Family and Medical Leave Act in addition to any annual leave, sick leave, advanced annual or sick leave, other leave without pay, or compensatory time off available to an employee. An employee has the option to take FML in combination with any other available leave; however, an employee must obtain approval and/or meet statutory and regulatory requirements to take additional leave or other periods of paid time off.

### **481.3.4 Notice of Intent to Invoke Entitlement to Family and Medical Leave**

An employee who chooses to take leave under the Family and Medical Leave Act must invoke the entitlement to Family and Medical Leave (FML), subject to the notification and certification requirements set forth in E481.3.4 as well as sections 481.3.7 and 481.3.8 (**See Mandatory References [5 CFR 630.1206](#) and [5 CFR 630.1207](#)**) An employee who meets the criteria for FML and has complied with the requirements and obligations under this issuance shall not be denied FML. When an employee requests FML, the supervisor must provide information concerning an employee's rights and obligations under FMLA.

- a.** An employee must complete a Family and Medical Leave Application Request, Form AID 400-4 (2/97), to invoke entitlement to family and medical leave and submit it to the immediate supervisor.
- b.** The approved application form, medical certificate, and other related documents shall be retained with the employee's time and attendance records. A copy of all documents shall be forwarded through the appropriate administrative management office to M/HR/POD or M/HR/EM for processing and retention in a central file for reporting purposes. For IG employees, IG/RM is the receiving office for family and medical leave (FML) requests. M/HR/POD or M/HR/EM will issue an SF-50, Notification of Personnel Action, when an employee invoking FML takes leave without pay for 30 calendar days or more.
- c.** If the need for family and medical leave (FML) is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide not less than 30 days notice, before the date the leave is to begin, of the employee's intention to take FML. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as soon as is practicable.
- d.** If the need for leave is foreseeable, and the employee fails to give 30 days notice with no reasonable excuse for the delay of notification, the Agency has the right to delay the taking of family and medical leave (FML) until at least 30 days after the date the employee provides official notice of intent to take FML.

- e. If the need for family and medical leave is not foreseeable for such reasons as a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days advance notification, the employee or personal representative (e.g., a family member) shall provide notice within a reasonable period of time appropriate to the circumstances involved.

#### **481.3.5 Intermittent Leave or Reduced Leave Schedule**

An employee has the entitlement to take family and medical leave (FML) on an intermittent basis or on a reduced leave schedule as follows:

- a. An employee must obtain approval from the supervisor to take FML on an intermittent basis or on a reduced leave schedule for the birth of a child or placement for adoption or foster care.
- b. An employee has the option to take FML intermittently or on a reduced leave schedule, when medically necessary, for the care of eligible family members with a serious health condition or for the employee's own serious health condition. The employee must consult with the supervisor and make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the workplace, subject to the approval of the health care provider.
- c. If an employee takes leave intermittently or on a reduced leave schedule for planned medical treatment or recovery, the supervisor has the option to place the employee temporarily in an available alternative position for which the employee is qualified and which can better accommodate recurring periods of leave. An alternative position is not required to have duties that are equivalent to those of the employee's original position. Upon returning to duty, the employee shall be returned to the employee's permanent position or an equivalent position, as provided in section 481.3.9, Protection of Employment and Benefits.

#### **481.3.6 Substitution of Paid Leave**

For time and attendance purposes, unpaid leave taken under the Family and Medical Leave Act (FMLA) 12-week entitlement shall be carried as leave without pay (LWOP). However, an employee has the right to elect to substitute the following paid leave for any or all of the FML taken:

- a. Accrued or accumulated annual or sick leave consistent with current law or regulations for granting and using annual or sick leave;
- b. Advanced annual or sick leave approved under the provisions of ADS Chapter 480; and
- c. Donated annual leave made available to an employee in accordance with

the Agency Voluntary Leave Transfer Program ([ADS Chapter 482](#)).

A supervisor shall not deny an employee's right to substitute the aforementioned paid leave for any or all of the period of leave taken under the 12-week entitlement. A supervisor shall not require an employee to substitute paid leave for any or all of the unpaid FMLA leave.

An employee must notify the supervisor of the intent to substitute paid leave for unpaid Family and Medical Leave Act (FMLA) leave prior to the date such paid leave commences. An employee who has invoked entitlement to FMLA shall not retroactively substitute paid leave for any leave without pay previously taken under the FMLA.

#### **481.3.7 Certification for Birth, Adoption, or Foster Care**

An employee must provide a certificate or other administratively acceptable evidence in support of a request to take family and medical leave for the birth of a child or placement of a child for adoption or foster care.

#### **481.3.8 Medical Certification**

A request for family and medical leave for an employee's serious health condition, or for care of an eligible family member with a serious health condition, must be supported by written medical certification issued by the health care provider of the employee or the health care provider of the eligible family member, as appropriate.

- a.** US Department of Labor, Form WH-380, Certification of Health Care Provider, shall be used as written medical certification. The employee shall provide medical certification to the supervisor in a timely manner.
- b.** For family and medical leave for an employee with a serious health condition, a statement is required from the health care provider that the employee is unable to perform the essential functions of the employee's position. The essential functions of the employee's position are based on written information provided by the supervisor or, if not provided, discussion with the employee.
- c.** For family and medical leave for the care of an eligible family member with a serious health condition, the following is also required:
  - (1)** A statement from the health care provider that the eligible family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and
  - (2)** A statement from the employee on the care the employee will

provide and an estimate of the amount of time needed to care for the eligible family member.

- d. Medical certification for intermittent leave or leave on a reduced leave schedule to care for a family member or to receive medical care must include the dates on which such treatment is expected to be given and the duration such treatment is required.
- e. All medical information must be protected under the provisions of the Privacy Act and released only to those who have a need to know.

#### **481.3.8.1 Second Opinion**

A supervisor has the right to request that the employee obtain an opinion of a second health care provider, subject to approval by the Agency, in cases where the validity of the original medical certification concerning the employee or a family member is questioned or doubted. The Agency will reimburse an employee, upon submittal of written proof of payment, for the cost of obtaining a second opinion.

#### **481.3.8.2 Third Opinion**

If the opinion of the second health care provider differs from the original certification, the supervisor has the right to require, at Agency expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Agency and the employee. The opinion of the third health care provider shall be binding on the Agency and the employee.

#### **481.3.8.3 Granting Family and Medical Leave on a Provisional Basis Pending Medical Certification**

A supervisor will permit an employee to take family and medical leave (FML) on a provisional basis pending receipt of written medical certification.

- a. If an employee is unable to provide the required medical certification before leave begins, or if the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, a supervisor will grant FML on a provisional basis pending final written medical certification.
- b. If, after the leave has commenced, the employee fails to provide the requested medical certification, the supervisor has the option to:
  - (1) Charge the employee as absent without leave (AWOL); or
  - (2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or

sick leave account, as appropriate.

#### **481.3.8.4 Medical Recertification**

While an employee is on family and medical leave, a supervisor has the right to obtain from the employee subsequent medical recertification on a periodic basis, not more often than every 30 days. However, a supervisor has the right to require more frequent medical recertification if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or if the Agency receives information that casts doubt upon the continuing validity of the medical certification. The Agency will reimburse an employee, upon submittal of written proof of payment, for the cost of the medical recertification.

#### **481.3.8.5 Medical Certification to Return to Work**

If an employee subject to a medical evaluation program (Foreign Service employees) is approved for leave because of a serious health condition that renders the employee unable to perform the essential functions of the employee's position, that employee will be required to provide written medical certification from the health care provider that the employee is able to perform these functions prior to return to duty. Employees shall be informed of this requirement before FML commences, or to the extent practicable in emergency medical situations. The Agency will reimburse an employee, upon submittal of written proof of payment, for the cost of the required medical certification.

#### **481.3.9 Protection of Employment and Benefits**

Any employee who takes leave under the Family and Medical Leave Act shall be entitled, upon return to the Agency, to be restored to:

- a. The same position held by the employee when the leave commenced; or
- b. An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

#### **481.3.10 Continuation Of Health Benefits**

An employee enrolled in a health benefits plan under the Federal Employee's Health Benefits Program (FEHB) who is placed in a leave without pay status under the Family and Medical Leave Act shall have the option to continue health benefits enrollment as follows:

- a. An employee who is placed in a leave without pay status for a period that does not exceed 365 days has the option to pay the appropriate employee contributions during the time of unpaid leave or upon returning to duty.
- b. An employee who is placed in a leave without pay status for a period

which will exceed 365 days must pay the employee contributions for FEHB directly to the employing office on a current basis to retain coverage.

When applying for family and medical leave, the employee must indicate on the application form whether or not health benefits enrollment will be continued while in a leave without pay status.

#### **481.3.11 Records and Reports**

The Office of Human Resources (M/HR) shall maintain records on the use of leave under the Family and Medical Leave Act to comply with reporting requirements from the U.S. Office of Personnel Management.

**a.** The following information will be collected on each employee who uses family and medical leave:

- (1)** The employee's rate of basic pay;
- (2)** The occupational series for the employee's position;
- (3)** The number of hours of leave taken; and
- (4)** The specific reason for which FML was taken:

Family leave (for a birth, adoption/foster care, or the care of an eligible family member with a serious health condition);

Medical leave (for the employee's serious health condition).

**b.** When an employee transfers outside the Agency, information shall be provided to the gaining agency on family and medical leave (FML) taken by the employee during the 12-month period prior to the date of transfer. The following information shall be provided along with the form SF-1150, Record of Leave Data:

- (1)** The beginning and ending dates of the employee's 12-month period during which the employee is/was entitled to FML; and
- (2)** The number of hours of FML taken during the employee's 12-month period during which the employee is/was entitled to FML.

## 481.4 MANDATORY REFERENCES

### 481.4.1 External Mandatory References

a. [PL 103-3, Family and Medical Leave Act \(FMLA\) of 1993, Section II provisions \(5 USC 6381-6387\)](#)

b. [5 CFR 630, Subpart L, Absence and Leave](#)

### 481.4.2 Internal Mandatory References

## 481.5 ADDITIONAL HELP

## 481.6 DEFINITIONS

### **accrued leave**

The leave earned by an employee during the current leave year that is unused at any given time in that year. (Chapter 481)

### **accumulated leave**

The unused leave remaining to the credit of an employee at the beginning of the leave year. (Chapter 481)

### **administrative workweek**

A period of seven consecutive calendar days beginning on Sunday and ending on the following Saturday. (Chapters 481 ad [479](#))

### **adoption**

A legal process in which an individual becomes the legal parent of another's child. The source of an adopted child-e.g., whether from a licensed placement agency or otherwise-is not a factor in determining eligibility for leave. (Chapter 481)

### **essential functions**

Job duties that are so fundamental to the position that the individual cannot do the job without performing them. A function may be essential if, among other things,

- The position exists specifically to perform that function;
- There are a limited number of other employees who could perform the function;
- or
- The function is specialized and an individual is hired based on his or her ability to perform it.

Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description. (Chapter 481)

**family and medical leave**

An employee's entitlement to 12 administrative workweeks of unpaid leave for certain specified family and medical needs. (An employee has the option of substituting paid leave in accordance with section 481.5.6.) (Chapter 481)

**foster care**

Twenty-four hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Removal of a child from parental custody must be the result of State action even if the placement for foster care is with relatives. (Chapter 481)

**health care provider**

Includes:

- a. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations;
- b. Any health care provider recognized by the Federal Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;
- c. A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of such practice as defined under those laws;
- d. A Christian Science Practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts; or
- e. A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with the Native American Religious Freedom Act.

(Chapter 481)

**incapacity**

The inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

(Chapter 481)

**in loco parentis**

The situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. (Chapter 481)

**intermittent leave or leave taken intermittently**

Leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of one hour to several weeks. (Chapter 481)

**leave without pay**

An absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek. (Chapter 481)

**parent**

A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. This term does not include parents "in law." (Chapter 481)

**Reduced Leave Schedule**

A work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly work schedule is reduced are counted as leave against the 12-week entitlement. (Chapter 481)

**Serious Health Condition**

An illness, injury, impairment, or physical or mental condition that involves:

- a.** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
- b.** Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following:
  - (1)** A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - (A)** Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or
    - (B)** Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of

prescription medication or therapy requiring special equipment to resolve or alleviate the health condition.)

- (2)** Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.
- (3)** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:
  - (A)** Requires periodic visits for treatment by a health care provider under the direct supervision of the affected individual's health care provider,
  - (B)** Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - (C)** May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.
- (4)** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).
- (5)** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.)
  - (A)** (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health

conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.) (Chapter 481)

**son or daughter**

A biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis who is:

- a. Under 18 years of age; or
- b. 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2(h), (i), and (j). (Chapter 481)

**spouse**

An individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized. (Chapter 481)

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