

# **3 FAM 3530 THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)**

*(TL:PER-474; 06-06-2003)  
(Office of Origin HR/ER)*

## **3 FAM 3531 AUTHORITY**

*(TL:PER-474; 06-06-2003)  
(State Only)  
(Applies to Foreign Service and Civil Service Employees)*

The following authorities apply to FMLA:

- (1) 5 U.S.C. 6381 - 6387;
- (2) 5 CFR 630.1201-1211 and 890.502

## **3 FAM 3532 PURPOSE AND RESPONSIBILITIES**

### **3 FAM 3532.1 PURPOSE**

*(TL:PER-474; 06-06-2003)  
(State Only)  
(Applies to Foreign Service and Civil Service Employees)*

These regulations provide statutory and regulatory requirements for employee entitlement to family and medical leave of up to 12 administrative workweeks of unpaid leave or the substitution of applicable paid leave during any 12-month period for certain specified family and medical needs.

### **3 FAM 3532.2 RESPONSIBILITIES**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

a. Executive Directors are responsible to:

- (1) Advise domestic and abroad managers, supervisors, and employees on the provisions of the Family Medical Leave Act (FMLA), and ensure that supervisors and managers are provided with training and/or guidance, as needed, on the statutory entitlements and Regulatory requirements of the Act; and
- (2) Provide oversight of applications for Family Medical Leave Act to determine that requests meet all requirements of the FMLA, employees have not exhausted their entitlement within the previous 12 months, and appropriate documentation has been submitted. He or she approves or disapproves applications accordingly and returns to originating office.

b. Supervisors and Managers are responsible to:

- (1) Provide employees with available information on Family Medical Leave Act.
- (2) Advise employees of right to invoke the FMLA when aware that an employee is experiencing family and/or medical needs identified in 3 FAM 3534.
- (3) Advise employees invoking the FMLA to complete form DS-1923, *Application Request (FMLA)* and an SF-71, *Request for Leave or Approval of Absence*, and to provide medical documentation in accordance with 3 FAM 3534.6.
- (4) Sign Form DS-1923, *Application Request (FMLA)*, and submit to Bureau Executive Director for review and signature.
- (5) Arrange an intermittent or reduced leave schedule for employee if medically necessary under 3 FAM 3534.1 a(3) or (4).
- (6) Provide written notice to employees who are subject to a medical evaluation program advising them of the requirement for medical certification before returning to duty following an absence due to a serious health condition (3 FAM 3535.1 b).

- c. Employees are responsible to:
- (1) Keep abreast of, and seek guidance on, as necessary, provisions of the FMLA and sick and annual leave.
  - (2) Provide notice to the supervisor 30 calendar days before the date that the unpaid or paid absence pursuant to the Act is to begin or as soon as is practicable.
  - (3) Complete, sign, and submit to supervisor a DS-1923, *Application Request (FMLA)* and SF-71, *Request for Leave or Approval of Absence*. Submit medical documentation in accordance with 3 FAM 3534.6.

### **3 FAM 3533 APPLICABILITY**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. These regulations apply to the following employees in accordance with the FMLA:
- (1) All full-time and part-time employees serving under permanent appointments who have completed at least 12 months of qualifying Federal government service (not required to be recent or consecutive months);
  - (2) Employees serving under temporary appointments of more than one year provided they have completed at least 12 months of qualifying Federal Government service, consecutive or nonconsecutive; and
  - (3) Employees serving on Family Member Appointments who have completed at least 12 months of qualifying Federal Government service, consecutive or nonconsecutive.
- b. Foreign Service National employees, all intermittent employees, and temporary employees employed abroad are not covered by these regulations.
- c. Time spent on a temporary appointment of one year or less is not creditable towards the 12 months of service required for eligibility under the FMLA.

## **3 FAM 3534 GENERAL**

### **3 FAM 3534.1 Leave Entitlement**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. 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:
  - (1) The birth of a son or daughter of the employee and the care of such son or daughter;
  - (2) The placement of a child with the employee for adoption or foster care;
  - (3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
  - (4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.
- b. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave as described above, up to the 12-week limitation.
- c. Except as provided in 3 FAM 3534.1 paragraph d, the 12-month period referred to in 3 FAM 3534.1 paragraph a begins on the date an employee first takes leave for a family or medical need specified in 3 FAM 3534.1, paragraph a and continues for 12 months. 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 family or medical leave. (This may include a continuation of a previous situation or circumstance.)
- d. The entitlement total not-to-exceed 12 administrative workweeks of leave under 3 FAM 3534.1 paragraphs a(1) and (2)
  - (1) May begin prior to or on the actual date of birth or placement for adoption or foster care; and
  - (2) 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.

- e. Holidays authorized under 5 U.S.C. 6103 or Executive Order are not counted against the 12-week entitlement.
- f. A total of 12 weeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 weeks of time off under the FMLA will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies, a weekly average of the hours scheduled over the 12 weeks prior to the date the time off under the FMLA commences shall be used as the basis for this calculation.
- g. Additional details are found in 5 CFR 630.1203.

### **3 FAM 3534.2 Intermittent Leave or Reduced Leave Schedule**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. Paid leave or leave without pay under 3 FAM 3534.1 paragraphs a(1) or (2) may not be taken intermittently or on a reduced leave schedule unless the employee and the supervisor both agree.
- b. Paid leave or leave without pay under 3 FAM 3534.1 paragraphs a(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to the provisions of 3 FAM 3534.5 and 3 FAM 3534.6.
- c. 5 CFR 630.1204 provides additional details on employees under an intermittent or reduced leave schedule.

### **3 FAM 3534.3 Stacking Leave**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. An employee may choose to use his or her entitlement to accrued sick leave to care for a family member with a serious health condition or for

the employee's serious health condition (3 FAM 3534.1 paragraphs a(3) and (4)) before invoking the Family Medical Leave Act. See 3 FAH-1 H-3425 on limitations on the use of sick leave to care for a family member.

- b. An employee may also use accrued annual leave before invoking the FMLA for the purposes listed under 3 FAM 3534.1 paragraph a, subject to the approval of the supervisor. If disapproved, the employee may invoke the FMLA and substitute accrued annual leave for any or all of the period of unpaid leave.

### **3 FAM 3534.4 Substitution of Paid Leave**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. Except as provided in 3 FAM 3534.4 paragraph b, leave taken under the 12-week entitlement shall be leave without pay. See 3 FAH-1 H-3500 regarding the issuance of an SF-50, *Notification of Personnel Action, for leave without pay*.
- b. An employee may elect to substitute the following paid time off for any or all of the period of unpaid leave:
  - (1) Accrued or accumulated annual or sick leave, including sick leave to care for a seriously ill family member (3 FAH-1 H-3425), consistent with regulations in 3 FAM 3410, 3420, 3 FAH-1 H-3410 and 3420, governing the granting and use of annual or sick leave;
  - (2) Advanced annual or sick leave approved under the provisions of 3 FAM 3415 and 3 FAM 3424;
  - (3) Leave made available to an employee under the Voluntary Leave Transfer Program, but only for the purposes specified in 3 FAM 3340;
  - (4) Compensatory time off; and
  - (5) Credit hours accrued under a flexible work schedule.
- c. A supervisor may not deny an employee's right to substitute paid leave under paragraph b above for any or all of the period of leave taken under the 12-week entitlement.

- d. A supervisor may not require an employee to substitute paid leave under paragraph b above for any or all of the period of leave taken under the 12-week entitlement.

### **3 FAM 3534.5 Advance Notification to Invoke FMLA**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. An employee who seeks leave for one of the reasons in 3 FAM 3534.1 paragraph a is responsible for invoking his or her entitlement to the FMLA. Supervisors must be aware of employee rights under the FMLA and advise employees accordingly. If the employee's absence is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the supervisor of his or her intention to take leave or leave without pay not less than 30 calendar days before the date the absence is to begin. If one of these events requires the absence to begin within 30 calendar days, the employee shall provide notice as soon as is practicable.
- b. An employee may not retroactively invoke entitlement to the FMLA unless the employee and his or her personal representative are physically or mentally incapable of invoking entitlement to the FMLA during the entire period of absence from work. In this situation, the employee must retroactively invoke entitlement to FMLA within two workdays after returning to work, the incapacity documented by a written medical certification from a health care provider.
- c. Employees assigned in the United States or abroad who invoke the Family and Medical Leave Act (FMLA) are required to complete and submit form SF-71, *Request for Leave or Approval of Absence* and form DS-1923, *Application Request (FMLA)* forms to the immediate supervisor who will in turn forward it through appropriate supervisory channels to the Bureau Office of the Executive Director. The Bureau Executive Director approves the request if the applicant meets the requirements of the FMLA.
- d. 5 CFR 630.1206 provides additional regulatory provisions on notice of leave.

### **3 FAM 3534.6 Medical Certificates**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. An employee seeking leave or leave without pay to care for a family member, or because of personal medical care or treatment, must submit medical certification completed by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the completed medical certification to the supervisor along with the application form, or as soon as possible thereafter, but no later than 15 calendar days after the supervisor requests it. If it is not practicable, despite the employee's diligent good faith efforts, to obtain the medical certificate within 15 calendar days, the employee must provide the medical certificate no later than 30 calendar days from the time the supervisor first requests it.
- b. The written medical certification shall include:
  - (1) The date the serious health condition commenced;
  - (2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
  - (3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;
  - (4) In the case of an employee caring for a family member, a statement from the health care provider that the spouse, son, daughter, or parent of the employee 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
  - (5) A statement from the employee on the care he or she will provide and an estimate of the amount of time to care for his/her spouse, parent, son or daughter.

- c. The U.S. Department of Labor Form, WH-380, *Certification of Health Care Provider*, may be used by the health care provider to provide the required information.

## **3 FAM 3535 EFFECT ON EMPLOYEE BENEFITS**

### **3 FAM 3535.1 Protection of Employment and Benefits**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. Any employee who takes leave under the FMLA shall be entitled, upon return to the agency, to be returned to:
  - (1) The same position held by the employee when the leave commenced; or
  - (2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment (see 5 CFR 630.1208).
- b. If an employee subject to a medical evaluation program (e.g., FS employees) is approved for leave because of a serious health condition that renders an employee unable to perform the essential functions of his or her 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 returning to duty. Employees shall be notified of this requirement by the employee's supervisor before leave commences, and the cost of the written medical certification will be paid by the agency (5 CFR 630.1208(i)).

### **3 FAM 3535.2 Health Benefits**

*(TL:PER-474; 06-06-2003)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. An employee enrolled in a health benefits plan under the Federal Employees' Health Benefits Program (FEHB) who is placed in an unpaid leave status under the FMLA, may continue his or her health benefits enrollment while in the unpaid leave status and arrange to pay the appropriate employee contributions during the time of unpaid leave or upon returning to duty. Human Resources Offices are responsible for

ensuring that each employee going on Leave Without Pay (LWOP) is counseled about health benefits, and that each employee completes the appropriate statement electing to continue or stop health benefits coverage.

- b. In most circumstances, an employee may not retain FEHB coverage beyond 365 days of LWOP, except when an employee is granted LWOP status under the FMLA, which in combination with other leave without pay exceeds 365 days of continued coverage. In the latter circumstance, the employee must pay the employee contributions for FEHB directly to the employing office on a current basis to retain coverage.

### **3 FAM 3536 THROUGH 3599 UNASSIGNED**