

**ARKANSAS FORESTRY COMMISSION
FAMILY & MEDICAL LEAVE ACT (FMLA) OF 1993**

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Required forms: A72.100(a), A72.100(b), A72.200, A72.300(a) and (b), A72.400, A72.500 as applicable

Definitions

- **Health care provider:** a doctor of medicine or osteopathy licensed to practice medicine by the state of the physician's practice. Other persons determined by the United States Department of Labor as capable of providing health care services e.g., nurse or physician's assistant under direct supervision of physician, podiatrists, dentists, clinical psychologist and social workers, optometrists, Christian Science practitioners, and chiropractors. Chiropractors' treatment is limited to manual manipulation of the spine to correct a subluxation shown by an X-ray.
- **Serious Health Condition** is an illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care: any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility;
 - Continuing treatment by a health care provider: any period of incapacity of more than three consecutive calendar days, that also involves continuing treatment as follows:
 1. Treatment two or more times by a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or
 2. The first visit must occur within seven days of onset of incapacity. The first and second visit must occur within 30 days of the period of incapacity.
 3. Treatments by a health care provider on a least one occasion that result in a regiment of continuing treatment under supervision of a health care provider. A regiment of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. It does not include the over-the-counter medications or other similar activities that can be initiated without a visit to a health care provider.
 - Any period of incapacity due to pregnancy;
 - Treatment for a chronic health condition that 1) requires periodic visits for treatment by a health care provider, 2) continues over an extended period of time (including recurring episodes of a single underlying condition), and 3) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, *et cetera*).
 - A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be

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- receiving active treatment by a health care provider. Examples include Alzheimer's, severe stroke, or the terminal stages of a disease.
- Multiple treatments for non-chronic conditions: any period of absence to receive multiple treatments (including any period of recovery) by a health care provider either for restorative surgery after an accident or injury or for a condition such as cancer, severe arthritis, or kidney disease that would result in a period of incapacity or more than three consecutive calendar days in absence of medical treatment.
 - Continuing supervision of a health care provider due to a serious long-term or chronic condition or disability, which cannot be cured.
 - FMLA only allows leave for substance abuse if under treatment by a health care provider. FMLA specifically excludes employee absence because of use of the substance.
 - Stress qualifies as a serious health condition only if it rises to the level of a mental illness or results in physical illness.
 - Any qualifying exigency arising out of fact that the spouse, son, daughter, or parent of the employee is on active military duty, or has been notified of an impending call to active duty status, in support of a contingency operation under terms of Public Law 110-181, Section 585(a).
- **Period of incapacity** is period of time when an employee or family member is unable to work, attend school, or perform other regular daily activities due to the serious health condition, treatment or recovery.
 - **Light Duty**, for FMLA purposes, time spent in "light duty" work does not count against an employee's FMLA leave entitlement, and the employee's right to job restoration is held in abeyance during the light duty period. If an employee is voluntarily doing light duty work, he or she is not on FMLA leave.
 - **Fitness for Duty Certification**, for FMLA purposes, employers may require a fitness-for-duty certification to address an employee's ability to perform essential job functions. The AFC will provide the employee with a list of essential job functions.
 - **Treatments**, for purposes of FMLA, include examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine physical, eye, or dental examinations.
 - **Spouse** is defined in accordance with applicable state law.
 - **Parent** is the biological parent of an employee, or an individual who stands *in loco parentis* to an employee. It does not include parents-in-law.
 - **Son or daughter** is the biological, adopted, foster child, stepchild, legal ward, or child of a person standing *in loco parentis*
 - Under eighteen years of age; or
 - Eighteen years of age or older and incapable of self-care due to mental or physical disability.
 - **Group health plan**, for FMLA purposes, this term shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

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- The employer makes no contributions.
- Participation the program is completely voluntary for employees.
- The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions.
- The employer receives no consideration or profit in connection with the program for administrative services rendered in connection with payroll deduction.
- The premium charges with respect to such coverage do not increase in the event the employment relationship terminates.

The same group health plan benefits provided to an employee prior to FMLA leave must be maintained during FMLA. For example, if family member coverage is provided to an employee, family member coverage must be maintained during FMLA. Similarly, benefit coverage during FMLA for medical, surgical, hospital, dental, and eye care and mental health counseling, substance abuse treatment, *et cetera* must be maintained during FMLA if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

1. FMLA Entitlements – FMLA entitles full time employees to a total of twelve workweeks of leave during any 12-month period for one of the following reasons.
 - a. The birth of a son or daughter, and to care for the newborn child;
 - b. Placement with the employee of a son or daughter for adoption or foster care;
 - c. Care of employee's spouse, son, daughter, or parent with a serious health condition,
 - d. A serious health condition that makes the employee unable to perform the functions of their job.

2. Designation of FMLA Leave
 - a. Family leave is leave without pay. Eligible employees may elect during a period of incapacity, or the AFC may require the employee, to substitute paid leave for any part of the 12-week period.
 - b. Employee will request FMLA by completion of Form A72.200, Request for Family and Medical Leave.
 - c. If a supervisor has knowledge that an employee's requested leave meets FMLA eligibility, then it is the responsibility of that supervisor to notify the employee that they have been placed on FMLA. Contact the AFC Human Resources Administrator for procedural assistance.
 - d. FMLA may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent use is permitted; however employees have

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a statutory obligation to make a reasonable effort to schedule leave so as not to disrupt operations of the AFC unduly:

- when it is medically necessary. The AFC may require employee to transfer temporarily to an alternative position with equivalent pay and benefits but which better accommodate recurring periods of leave,
- when leave is taken after the birth or placement of a child for adoption or foster care, if the AFC agrees. AFC agreement is not required for leave if the mother has a serious health condition in connection with the birth of the child or if the newborn has a serious health condition,
- if an expectant mother needs time off for prenatal care or if she is unable to work due to pregnancy,
- when an employee requests leave before actual placement of a child for adoption or foster care to attend counseling sessions, appear in court, consult with attorney or physician,
- when an employee needs to care for a family member,
- when a serious health condition requires periodic care by a health care provider,
- when the employee or family member is incapacitated because of a chronic serious health condition.

3. Military Family Leave – FMLA entitles full time employees to a total of twenty-six weeks of leave in a single 12-month period to care for a military service member;
 - a. National Guard and/or Reserves may take FMLA for qualifying exigencies; use Form A72.400 Certification of Qualifying Exigency for Military Family Leave.
 - b. An employee who is the spouse, son, daughter, parent, or next of kin of a military service member who is recovering from a serious illness or injury sustained in the line of active duty may use FMLA to care for the service member, use Form A72.500 Certification for Serious Injury or Illness of Covered Servicemember - for Military Family Leave

4. Eligibility

- a. An employee must have been employed by the State of Arkansas for 12 months, and worked at least 1250 hours before FMLA begins.
- b. Spouses who are both employed by the State of Arkansas are entitled to a total of 12 weeks for the birth or adoption of a child or care of a qualifying family member (not 12 weeks each). Each employee is entitled to FMLA for the care of his/her own parent only.
- c. The 12-month period used by FMLA determining eligibility is the calendar year. In the case of birth or adoption eligibility for FMLA will expire at the end of the 12-month beginning on the date of a child's birth or placement. However, leave used for this purpose is calculated on a calendar year basis.

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5. Certification

- a. A request for leave for an employee's own serious health condition or to care for a seriously qualifying family member must be supported by a certificate issued by a health care provider and completed in full, as applicable: Form A72.100(a) Certification of Health Care Provider for Employee's Serious Health Condition or A72.100(b) Certification of Health Care Provider for Family Member's Serious Health Condition.
- b. The employee shall provide the AFC with completed A72.100(a) or A72.100(b) thirty days prior to the date leave begins and make efforts to schedule leave that will not disrupt AFC operations. If circumstances require that leave begin in less than 30 days, the employee shall notify the AFC the same day or next business day. The outside limit to respond to all requests for certification is 15 days. In cases of illness, the employee is required to report periodically on their leave status and intention to return to work.
- c. The employee and the AFC will obtain all certifications in good faith.
- d. Once the AFC receives certification, it must notify the employee if certification is insufficient and explain why. The employee then has seven calendar days to correct the problem.
- e. The State Forester may require that the employee obtain subsequent recertification on a reasonable basis, but not more often than every 30 days.
- f. The AFC Human Resources Administrator will complete Form A72.300(a), Notice of Eligibility and Rights & Responsibilities and A72.300(b) Designation Notice.
- g. Medical information gathered is confidential and protected under HIPAA (Health Insurance Portability and Accountability Act) regulations.

6. Employment and Benefits Protection

- a. Upon return from FMLA an employee will return to their former position or an equivalent position including pay, benefits, and other conditions of employment.
- b. No seniority or employment benefits will accrue while an employee is on FMLA.
- c. The AFC shall continue to pay the "employer matching" on the employee's group health insurance and the employee is responsible for their portion. Contact Employee Benefits Division (877/815-1017) for procedure and due date(s).

7. FMLA Record Keeping Requirements: Employers must keep the following records for no less than three years and will make them available for inspection, copying, and transcription by the Department of Labor representatives upon request (29 CFR 825.500:

- a. Basic payroll and identifying employee data, rate of compensated pay, daily and weekly hours worked per pay period (unless FLSA exempt status), additions to or deductions from wages, and total compensation paid,

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- b. dates FMLA taken,
 - c. if FMLA taken in increments of less than one full day, the hours of the leave,
 - d. copies of employee notices of leave and copies of general and specific notices given to the employee as required under FMLA regulations,
 - e. any documents describing employee benefits or AFC policies regarding paid and unpaid leave,
 - f. premium payments of employee benefits.
 - g. records of any dispute between the AFC and employee regarding designation of leave as FMLA including any requests of second or third opinions,
 - h. AFC /employee agreement on work schedules for any intermittent leave.
 - i. Records and documents relating to medication certifications of employees are confidential medical records. The only persons who can obtain access to these confidential records are 1) supervisors who need to know of restrictions on work duties of an employee and necessary accommodations, 2) first aid and safety personnel if emergency treatment required, and 3) government officials investigating compliance with FMLA.
8. Affect of other laws and employer practices on FMLA employee rights:
- a. Nothing in FMLA supersedes a provision of state or local law that provides greater family or medical leave rights than those provided by FMLA.
 - b. Americans with Disabilities Act (ADA) disability and FMLA serious health condition definitions are difference concepts and must be analyzed separately. For information on the different concepts and how the two laws may interact, contact the AFC Human Resources Administrator.
 - c. Workers' compensation and FMLA may run concurrently, subject to proper notice and designation by the employer.
 - d. Consolidate Omnibus Budget Reconciliation Act of 1986 (COBRA): The employer's obligation under FMLA ceases and a COBRA qualifying event may occur when and if 1) the employment relationship would have terminated if the employee had not taken FMLA, 2) an employee informs the employer of intent not to return from leave, or if the employee fails to return from leave after FMLA entitlement exhausted.
 - e. Employment Retirement Security Act (ERISA): There is no requirement that unpaid FMLA leave be counted as additional service for eligibility, vesting, or benefit accrual purposes. Contact Arkansas Public Employees Retirement System for vesting information.

9. FMLA Posting Requirements

All state agencies will post in conspicuous place notices explaining FMLA provisions and provide information for procedure to file complaint of violations of the act with the Wage and Hour Division of the Department of Labor.

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This revised AFC FMLA policy and procedure § 72 supersedes all earlier versions of AFC § 72 FMLA policy and procedure and interpretative memoranda, which are hereby repealed.