



Governed by: Human Resources

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Policy: Family Medical Leave Act (FMLA)

Overview of Purpose:

CEO complies with the provisions of the Family and Medical Leave Act (“FMLA”) and provides eligible employees with leave for qualifying reasons. FMLA entitles an eligible employee to a maximum of 12 workweeks (defined by the employee's regularly scheduled workweek) of job-protected, unpaid leave in a 12-month period for certain family and medical reasons. Additionally, eligible employees may take up to 26 weeks of unpaid leave for “military caregiver” leave.

For the purposes of this FMLA policy, the 12-month period is a rolling period measured backwards from the last date an employee used FMLA leave. Under the rolling 12-month period, each time FMLA leave is taken the remaining FMLA leave is the balance of the 12 weeks which have not been used during the immediately preceding 12 months. When leave is taken to care for a military service member, the 12-month period is measured from the first day the eligible employee takes such leave.

In some instances, leaves that qualify as FMLA may also qualify under the New York Paid Family Leave (PFL) policy. Leaves under this policy and the PFL policy will run concurrently, provided the leave qualifies under both policies. Please refer to the PFL policy for further information.

Eligibility:

To be eligible to take unpaid leave under FMLA, an employee must meet the following requirements:

- The employee must have been employed by CEO for at least 12 months, which need not be consecutive.
- The employee must have worked for CEO for at least 1,250 hours during the 12- month period immediately preceding the commencement of the leave; and
- The employee must work at, or report to, a work site which has 50 or more employees or is within 75 miles of work sites that taken together have a total of 50 or more employees.

Entitlement for Leave:

An eligible employee will receive up to twelve (12) weeks of unpaid leave under the FMLA for the following reasons:

- Inability of the employee to perform one or more of the essential functions of the employee’s job due to the employee's own serious health condition.

- Upon the birth of the employee's child and to care for the newborn child, Upon the placement of a child with the employee for adoption or foster care.
- To care for the employee's spouse, child, or parent who has a serious health condition; or
- Address certain qualifying exigencies when a spouse, son, daughter, or parent is on active duty or called to active duty in the Armed Forces, National Guard or Reserves in support of a contingency operation. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial or legal arrangements, attending certain counseling sessions; or attending post-deployment reintegration briefings.
- Spouses who both work for CEO are allowed a combined maximum of 12 weeks of leave within a 12- month period for the birth or care of a newborn child, adoption or foster care of a child and to care for such newly placed child, or to care for a parent (but not parent “in law”) with a serious health condition. Each spouse is entitled to 12 weeks of leave in a 12-month period to care for the employee’s spouse, son, or daughter, who has a serious health condition, or for a serious health condition that makes the employee’s spouse unable to perform their job duties. However, the parents may be eligible for separate periods of leave under the New York Paid Family Leave (PFL) policy.
- In addition, eligible employees may take up to 26 weeks of unpaid leave under the FMLA in a single 12-month period to care for a covered service member (“military caregiver leave”). A “covered service member” is a spouse, son, daughter, parent, or next of kin who:
 - Serves as a current member of the Armed Forces, including a member of the National Guard or Reserves, and
 - who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties and for which the service member is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list.

During this 12-month period, an eligible employee’s FMLA leave entitlement is limited to a combined total of 26 weeks for any FMLA-qualifying condition.

Intermittent and Reduced Leave Schedules:

A leave related to the serious health condition of an employee or an employee’s immediate family member and leave necessitated by a qualifying exigency may be scheduled on an intermittent or reduced schedule basis when medically necessary. For intermittent or reduced hours leave necessitated by planned medical treatment for the employee, a family member or a covered service member, CEO may require a temporary transfer of the employee to accommodate the leave. The employee will receive equivalent pay and benefits.

In cases where an employee is taking intermittent FMLA leave in partial-day increments for a PFL-qualifying reason, and the employee is paid for working part of a day, CEO will track the hours taken as FMLA. When the total hours taken reaches the number of hours in the employee’s usual workday, CEO will deduct one day of PFL benefits from the employee’s available PFL benefit.

Definitions:

The following terms are fully defined in the federal regulations pertaining to FMLA. For the purposes of this policy, the following definitions will apply:

- Serious Health Condition will mean an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity (as contained in the federal regulations), or any subsequent treatment in connection with such inpatient care; or continuing treatment by a healthcare provider, including, but not limited to:
- A period of incapacity of more than three consecutive, full calendar days and: treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services; or 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;
- Any period of incapacity due to pregnancy or prenatal care.
- A period of incapacity or treatment for such incapacity due to a chronic serious health condition.
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- A period of absence to receive multiple treatments, including any period of recovery, by a healthcare provider or by a provider of healthcare services under orders of or on referral by a healthcare provider, for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment.

Notification Requirements:

If the need for leave is foreseeable, the employee must submit written notice to the Human Resources Department at least 30 calendar days prior to the commencement date of the unpaid leave. Failure to give 30 days' notice of foreseeable leave with no reasonable excuse for the delay may result in the FMLA leave being delayed until 30 days from the date of notice. When the need for leave is not foreseeable or if 30 days' notice is not practicable, verbal notice given to the employee's manager as soon as practicable (at least within 1 or 2 business days of when the need for leave becomes known) will be sufficient. Employees must continue to comply with CEO's call-in procedures.

Notification should include the date leave will begin, justification, qualification for the leave and approximate length of the leave. A failure to comply with these notice rules may result in a denial or postponement of the requested leave until the employee complies with these rules. However, if the need for an FMLA leave results from an emergency or is otherwise unforeseeable, the leave will not be denied simply because an employee fails to provide advance notice.

An employee undergoing planned medical treatment and in need of intermittent or reduced schedule leave for that purpose is required to make a reasonable effort to schedule the treatment to minimize disruptions to the Agency's operations. To that end, the employee is required to consult with the Agency when arranging the date(s) of treatment to identify dates on which absences will not unduly disrupt operations, subject to the approval of the health care provider.

While on leave for their own serious health condition, employees are required to report periodically to the company regarding the status of the medical condition, and their intent to return to work.

Certification:

An employee may be required to submit medical certification from a health care provider to support a request for leave for the employee's or a family member's serious health condition. When leave is requested because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member, the Agency may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation and the dates of the covered military member's active duty status. When military caregiver leave is requested, the Agency may require an employee to obtain a certification completed by an authorized health care provider of the covered service member. The Human Resources Department will provide you with the applicable medical certification form upon notification of your need for leave.

It is the employee's responsibility to provide complete and sufficient certifications in a timely manner (generally within 15 days of receipt of the Eligibility and Rights and Responsibilities Notices). If the Agency has reason to doubt the initial certification, the Agency may: (i) with the employee's permission, contact the employee's health care provider in an effort to clarify or authenticate the initial certification; and/or (ii) require the employee to obtain a second opinion by an independent Agency-designated provider at the Agency's expense. If the initial and second certifications differ, the Agency may, at its expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider.

During FMLA leave, the Agency may request that the employee provide recertification of a serious health condition at intervals in accordance with the FMLA and to provide periodic reports regarding the employee's status and intent to return to work. Before the employee returns to work from FMLA leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider.

Failure to submit required certification may result in denial of FMLA leave. Employees who are unable to work for seven or more days due to a non-work-related injury or illness are also responsible for completing the required disability insurance forms. FMLA certification forms are available from the Human Resource Department.

Leave for the Birth, Adoption, or Foster Care Placement of a Child:

Leave for the birth of a child or the placement of a child for adoption or foster care must be taken within 12 months from the date of the birth or placement of the child or the commencement of leave, whichever is earlier. Provided the leave also qualifies as PFL, employees may also take leave for the birth, adoption, or foster care of a child intermittently - in one day increments. If the employee is eligible for FMLA only and not PFL, leave for the birth, adoption or foster care may only be taken intermittently or on a reduced schedule if the employee and the Agency mutually agree to such.

Interaction with New York Paid Family Leave (PFL):

Certain approved FMLA leaves (i.e., bonding, caring for a family member, military qualifying exigencies.) will also qualify for partial wage replacement under the Agency's New York Paid Family Leave (PFL) policy. An employee applying for FMLA leave for reasons that also qualify for PFL will be notified by CEO. Upon such notification, the employee will be responsible for filing a claim with

CEO's PFL carrier, in order to receive PFL wage replacement benefits. If the employee is PFL-eligible, yet declines to file a PFL claim, the leave period will still count against the employee's PFL entitlement (as well as the FMLA entitlement.)

Benefits during an FMLA Leave of Absence:

For the purpose of this policy, the following will apply:

- **Use of PTO**– While on FMLA leave, employees are required to use accrued, unused PTO or sick leave reserve that is available for use, except for those employees receiving workers' compensation or disability benefits, in which case, said employees may elect to use accrued, unused paid time off to bring them to no more than 100% of compensation while receiving workers' compensation or disability benefits.
- The substitution of PTO for unpaid FMLA leave does not extend the 12-week period. At an employee's request, a maximum of 5 PTO days may be left unused during an approved consecutive FMLA absence.
- **Holidays/PTO** - An employee shall not be paid for holidays during a leave of absence, except during any period of the leave in which earned paid leave was being used. A new allocation of PTO benefits will resume, if applicable, upon the employee's return to work based on the number of months left in the year.
- **Group Benefits Continuation** – For employees enrolled at the time of leave, an employee's eligibility status for health insurance coverage will continue under the same conditions as if the employee had continued to work, for up to the maximum number of weeks as permitted under FMLA. Contributions will be at the same level as if the employee was working. While on unpaid leave or on concurrent PFL receiving only wage replacement benefits from CEO's PFL carrier, the employee must continue to make this payment, in person by mail. All employee contributions must be paid by the 1st day of each month to maintain the continuous coverage of benefits. Coverage will cease if payments are not made within a 30-calendar day grace period of the due date. CEO will provide 15 days' notification prior to the employee's loss of coverage. Premium payments or policy coverage are subject to change.
- If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the Employer may require the employee to reimburse the company the amount it paid for the employee's health insurance premium during the leave period.
- **Statutory Benefits** - Leave taken while receiving New York State Disability or Workers' Compensation law will run concurrently with FMLA leave provided the employee is eligible and the reason for the absence is due to an FMLA-qualifying serious illness or injury. All employees eligible for NYS Disability or Worker's Compensation are required to submit the appropriate forms to Human Resources.
- **New York Paid Family Leave (PFL)** - As set forth above, certain leaves will count as both FMLA and PFL time for the employee. (See Interaction with New York Paid Family Leave, above.) If an employee is taking PFL and FMLA concurrently and is receiving PFL wage replacement benefit, the employee may elect, but is not required, to supplement his/her PFL wage replacement benefit with available paid time off. In no event can the combination of PFL benefits and paid time off result in the receipt of more than 100% of an employee's

regular wages.

Employment Restrictions During Leave of Absence:

While on an approved leave, the employee may not be employed by another employer during the same hours that the employee was normally scheduled to work for CEO, unless the employee receives prior, written authorization from the President/CEO or Designee.

Return to Work:

Employees returning from FMLA leave will be restored to their original job or to an equal/equivalent job with equal benefits and other employment terms/conditions. The following conditions for returning to work will apply:

- **Medical Statement** – Before resuming employment, an employee who took leave because of their own serious health condition must provide a fitness-for-duty certification from the employee’s healthcare provider indicating that the employee is able to return to work.
- Employees who are returning from FMLA leave taken for their own serious health condition, but who are unable to perform the essential functions of their job because of a disability may request an accommodation by contacting the Human Resources Department. Please see the Americans with Disabilities Act section of this handbook for more information.
- **Early Return** - An employee who intends to return to work earlier than anticipated must notify the Human Resources Department at least two business days prior to the date the employee is able to return.
- **Extension of Unpaid Leave of Absence** – An employee who would like an extension of the leave previously approved must request such from the Human Resources Department at least two business days from the date the change occurred which necessitates the change in leave time.
- **Failure to Return** – Employees who otherwise fail to return to work following the conclusion of an approved FMLA leave will be considered to have abandoned their position and their employment will be terminated.

CEO is committed to complying with the Family and Medical Leave Act and will not interfere with, restrain, or deny the exercise of any right provided under FMLA or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. An employee may file a complaint with the US Department of Labor or may bring a private lawsuit against an employer for violations of FMLA. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement providing greater family or medical leave rights.