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Section I
Annual Leave

Purpose

The purpose of this policy is to provide the procedures for earning paid leave for time away from work for personal reasons including vacation time.

Scope

This policy applies to all employees who are not in temporary or emergency positions or in restricted positions for which the funding sources do not provide benefits. A part-time employee is one who works at least one half the normal work week hours or greater.

A. Annual Leave Accrual

1. Rate

   Employees earn paid annual leave on a pay period basis as follows:

   a. A full-time employee earns annual leave based upon years of service.

   b. A part-time employee earns annual leave at a proportionate rate.

   c. If the LDSS does not have monthly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned on a monthly basis.

   d. The following chart sets forth the amounts of annual leave that may be accrued during each month based on years of service. A day equates to eight hours if the normal work schedule is forty hours. For LDSS that have bi-monthly or bi-weekly pay periods, the accrual rate can be adjusted accordingly.

Years of Service	Monthly Accrual Rate
Up to 5 years	1 day
5 years	1-1/4 days
10 years	1-1/2 days
15 years	1-3/4 days
20 years	2 days
25 years	2-1/4 days

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e. When hiring an employee who left a position without a break in service with another LDSS or the Virginia Department of Social Services, the LDSS has the authority to provide the employee with the same accrual rate of the previous position.

2. Accrual of Leave

Annual leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period or work week.

3. Effect of Leave without Pay on Accrual

An employee on leave without pay for any part of the pay period or work week does not earn annual leave for that pay period or work week and may have the accrual rate affected (see Leave without Pay policy).

4. Carrying Over

a. The following limits apply to the amount of annual leave that is permitted to be carried over to the next year as well as the amount that will be paid at termination.

Years of Service	Maximum Yearly Carryover
Up to 5 years	24 day
5 years	30 days
10 years	36 days
15 years	42 days
20 years	48 days
25 years	54 days

b. For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period.

B. Use of Annual Leave

1. Use

Annual leave may be used for any reason provided advanced approval is given.

2. Leave Must Be Accrued

Annual leave cannot be used until it is accrued. There is no borrowing against future accruals.

C. Notice and Approval

1. Advanced Approval

Annual leave may be not used without prior approval. Although every effort will be made to accommodate a request for annual leave, not all requests can be granted during high peak times. Therefore, requests for annual leave should be submitted as soon as the need is known. For annual leave to be taken around a holiday, a request should be made as early as possible.

2. Approval Required at All Times

For absences that are not foreseeable, or for emergency situations, the employee must provide notice of the need to use the leave as soon as practicable. Until approval is provided, the absence will count as unauthorized leave without pay.

D. Treatment of Annual Leave upon Change in Status

1. Payment at Termination

a. When employment is terminated, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued annual leave.

b. For the purpose of unemployment compensation benefits the lump sum payment will be allocated as wages for the equivalent daily/weekly periods.

2. Payment at Death

Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Right to Repurchase

An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the

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annual leave balances restored by paying the amount of any annual leave payment received at termination.

E. Change in Employment Status

If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

F. Employee Accountability

1. The employee is responsible for knowing the amount of annual leave balances that should have been accrued.

2. An employee will be required to reimburse the LDSS from his/her salary for leave taken when there was a recordkeeping error and there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals.

3. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.

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Section II
Civil Leave

Purpose

The purpose of this policy is to provide employees with paid leave for time away from work for civic and administrative purposes.

Scope

This policy applies to all regular employees.

A. Use

1. Purposes

   Civil leave may be granted for the following purposes:

   a. To serve on a jury, to appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant, or to accompany the employee's child to court when the child is required to appear in court.

   b. To participate in the resolution of work related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS.

   c. To participate in a workers' compensation or unemployment compensation hearing or administrative proceeding involving the employee or another employee within the LDSS.

   d. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees.

2. Reasonable Use of Civil Leave

   a. The amount of civil leave requested must be reasonable.

   b. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day.

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c. If because of distance and/or inconvenience, reporting to work before or after civil leave is not feasible, the employee with permission of the Director may use annual leave for the remaining hours of that work day.

3. Advance Approval Required

As soon as the employee knows of the need for the civil leave, the supervisor must be notified. If there should be a problem with the leave, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action.

4. For service on a jury, the employee is to receive his full salary and not have the leave time charged to annual or compensatory leave.

B. Compensation Received

1. Reimbursements

An employee may keep any money received from the administrative or judicial tribunal while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the mileage reimbursement equivalent).

2. Compensation

If an employee receives compensation for the services provided while on civil leave (e.g., expert witness fees or for service as a juror), the employee must report such compensation to the LDSS and have the hours taken not recorded as civil leave. The employee may use accrued annual leave, or take leave without pay, for the hours of compensated service.

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Section III
Leave without Pay

Purpose

The purpose of this policy is to provide procedures for LDSS to allow employees to be placed on leave without pay (LWOP).

Scope

This policy applies to all employees.

A. Use of Unpaid Leave

1. Use

   If the needs of the LDSS permit, and if the grant of such time away from work is not burdensome to the LDSS, an employee may request the use of unpaid leave for a specified period of time. LWOP must be granted to eligible employees for FMLA and military leave purposes.

2. LWOP Not Granted if Paid Leave Available

   Except for FMLA and military leaves of absence, an employee cannot be on LWOP until all accrued paid leave available for such purposes has been exhausted. In extenuating circumstances a LDSS may permit the *pro rata* use of paid leave and unpaid leave so that the employee would not lose benefits such as health plan and retirement participation.

3. Duration

   LWOP will not be granted for more than three (3) months except for an employee on intermittent FMLA or military leave.

4. Job Restoration

   a. Except as noted below, if the LDSS cannot hold the position open during the period of LWOP, the LDSS should notify the employee at the commencement of the leave or as soon as such a determination is made that the LDSS will fill the position. The employee should be informed of the need to fill the position and that employee must report back to work on full-time status within a specified period of time. Such notice should be provided in writing and delivered to or sent by certified mail to the employee.

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b. Employees on FMLA or military leave status are entitled to job restoration under the conditions set forth in each respective policy.

5. If an employee does not report back to work at the end of the LWOP period, the employee will be deemed to have resigned.

B. Effect of Unpaid Leave Status on Benefits

1. Accrued Leave

An employee who is on LWOP does not accrue annual or sick leave for that pay period.

2. Leave Anniversary Dates

After fourteen (14) consecutive calendar days of LWOP, the employee's next leave anniversary date for the purposes of accruing annual leave will be adjusted according to the following chart:

Calendar Days on Leave without Pay	Extension of Anniversary Date (Pay Periods)
1-14	0
15-31	1
32-46	2
47-61	3
62-76	4
77-91	5

3. Effect on Raises and Bonuses

An employee on LWOP may have performance raises and bonuses affected by the absence from work.

4. Retirement

LWOP is to be reported to the Virginia Retirement System. An employee's years of service may be affected by such absence.

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5. Life Insurance

   The LDSS may elect to make its contribution for life insurance for all or part of the LWOP or permit an employee on LWOP to continue coverage at the employee's expense. If such election is permitted, the LDSS must provide the employee with notice and an election form at commencement of the LWOP.

6. Health Care Coverage

   a. Except as provided below, upon the commencement of LWOP, the employee will be provided with a COBRA Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for 18 months (longer if disabled or with the occurrence of a second qualifying event). The full cost of the continued coverage is borne fully by the employee.

      (1) If LWOP is taken under FMLA, the employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs.

      (2) For short and/or intermittent periods of LWOP, the LDSS has the option of providing continuing coverage on the same terms as if the employee was not on LWOP. If such is elected, the COBRA procedures do not apply.

7. Other Benefits

   If other benefits are provided to the employee, the LDSS should establish a policy on whether they continue during LWOP.

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Section IV
Military Leave

Purpose

The purpose of this policy is to provide the procedures governing leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees' job restoration rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and § 44-93 and 44-93.1 of the *Code of Virginia*.

Scope

This policy applies to all employees who are in non-temporary positions and who are called to covered service in the U.S. Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services. Covered service includes: voluntary and involuntary duty; active or inactive duty; training; and full-time duty with the National Guard, Naval Militia, or Public Health Service.

A. Military Leave

An employee is eligible for military leave if the employee has not used five years of military leave during his employment with the LDSS.

1. Advanced Notice of Need for Leave

   a. To retain job restoration rights, and to be granted leave, an employee must provide the LDSS with advanced notice, either in writing or orally, of the call to military service which includes training duty.

   b. Advanced notice must be provided unless providing such notice is not possible or reasonable under the circumstances.

   c. The employee should provide the LDSS with a copy of the military orders at time of notice, but if not presented at that time, may be provided to the LDSS after the leave is granted.

2. Military Leave with Pay

   a. Per federal fiscal year, a public employee must be granted up to 15 workdays (120 hours) of military leave with pay per federally funded tour of duty.

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b. For employees who do not normally work approximately equal workdays of five or more days per calendar week, a "workday" shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not taking into account any holidays, paid or unpaid leaves of absence, or other absences.

c. Benefits received while on military leave with pay are the same as if the employee were employed.

3. Military Leave without Pay

a. Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five years and they have not been dishonorably discharged.

b. Benefits during military leave without pay:

(1) Leave Benefits

(a) Annual Leave

(i) Employees will not accrue annual leave when they are on leave without pay status.

(ii) Employees may retain all or a portion of their accrued annual leave, may use all or part of the accrued leave to supplement military pay, or be paid for the accrued annual leave at the commencement of military leave without pay.

(iii) Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes.

(b) Compensatory and Special Duty Leave

Employees may retain all or a portion of their compensatory and special duty leave, may use all or part of the leave to supplement military pay, or be paid for the leave at the commencement of military leave without pay.

(c) Sick Leave

(i) Employees will not accrue sick leave while on leave without pay status.

(ii) Employees with less than five years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances, which are reactivated upon reinstatement to local service.

(iii) Employees with five or more years of continuous employment with the LDSS at the time military leave begins may retain their entire sick leave balances (which shall be reactivated upon reinstatement) or may receive payment for the accrued sick leave under the provisions of the sick leave policy. Once payment for sick leave is made, all remaining balances are lost and can not be reinstated upon reemployment.

- § Employees who received payment for their sick leave balances and then return to work must serve another five years of continuous local service before being eligible for sick leave payment upon termination.

- § Employees may not repurchase any sick leave for which they have been paid.

(2) Health Plan Participation

(a) Employees called for active duty have the right to continue participating in the LDSS's health care plan for 24 months beginning one month after the date leave without pay commences provided that they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents.

(b) Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. (Note: under USERRA, an employee who is on military leave for less than 31 days is entitled to participate in the health plan on the same terms as if employment was not interrupted.)

(c) The election rights are for the employee as well as other qualified beneficiaries.

(d) Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted–e.g., the plan can not impose a waiting period or other exclusion provisions.

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(3) Retirement Plan

Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.

B. Reinstatement from Military Service

1. An employee who has been on military leave for a period of 31 days or longer should notify the LDSS of the employee's intention to be reemployed and the expected date of return.

2. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee:

   a. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service.

   b. Returns to work within the following time periods (in addition to the time periods set forth below, reasonable time for safe travel and rest must be allowed):

      (1) Military leave of less than 30 days – after 8 hours of rest the employee must report to work on the first regularly scheduled workday following return home from military service;

      (2) Military leave of 31 to 180 days – must either send an application to return to work or report to work within 14 days of completing military service;

      (3) Military leave of 181 days or longer – must either send an application to return to work or report to work within 90 days of completing military service.

      (4) Service related incapacities – the reporting deadlines for employees who are hospitalized or convalescing because of a service related injury or illness are extended to up to two years.

   c. Is qualified, or can reasonably be retrained, for the position that the employee:

      (1) Would have held if employment had not been interrupted due to the military leave;

      (2) Held at the time military leave commenced; or

      (3) Of like seniority, pay, and status.

3. In determining the position to which the employee may be entitled, the "escalator principle" is to be used. Under the escalator principle, an employee is to be placed in the position with the highest priority in the re-employment options. The returning employee is to step back in the seniority escalator at the point the employee would have occupied had no military leave been taken. The position would not necessarily be the same job the person previously held.

4. When an employee becomes disabled during military service and cannot perform duties of the previous position and reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies.

5. If employee no longer meets the minimum qualifications of the former position because of changes in job duties, the employee must meet the changed requirements within a reasonable time after reemployment or be offered a position requiring skills comparable to those required in the former position with regard to seniority, status, pay and location.

6. Reinstatement is not required if the LDSS's circumstances have changed thereby making it impossible or unreasonable to reinstate the employee.

   (a) If the employee's formerly held position has been abolished, the employee shall be placed in a position comparable in status and pay to those previously held.

   (b) If such comparable position is not available, the employee shall be considered affected by a lay-off and lay-off policies shall apply.

C. Family and Medical Leave Act

Employees returning from military service who request Family and Medical Leave upon return to work are entitled to additional considerations in the determination of their eligibility for Family and Medical Leave under USERRA. Refer to Section X. Family and Medical Leave for further policy specifications.

D. Annual Notice of Military Leave Rights

Annually the LDSS must provide every employee with a notice of the rights afforded under this policy. The LDSS can meet this obligation by providing an employee a copy of this policy or by referring the employee to the policy and having it available for distribution.

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Section V
Educational Leave

Purpose

The purpose of this policy is to afford employees the opportunity to pursue educational pursuits that further their employment skills.

Scope

This policy applies to all employees.

A. Use of Educational Leave

1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the Director setting forth the course or program, the benefits to the LDSS from the employee's attendance in this course, dates for the leave and suggested means to execute the employee's duties during the absence.

2. An employee may be granted educational leave for specific course(s) of study related to the work of the LDSS provided reasonably adequate provisions can be made for the performance of the employee's assigned duties.

3. Educational leave can be with or without pay. If leave with pay is granted its duration shall not be longer than three months.

4. The LDSS may consider a schedule adjustment in lieu of granting leave.

B. Return from Educational Leave

1. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position.

2. The employee shall have all creditable years of service before the date of separation plus the period of educational leave considered in determining the rate of accrual.

3. An employee returning from educational leave with pay will be placed in his or her former position. With educational leave without pay, there is no obligation to hold the position vacant during the period of leave.

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C. Educational Pursuits Required by the LDSS

If attendance in a course of study, a seminar, or conference is required by the LDSS, the hours in attendance count as hours worked and the employee is to receive his or her regular rate of pay. Educational leave shall not be used for this purpose.

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Section VI
Administrative Leave

Purpose

The purpose of this policy is to provide procedures for the use of administrative leave.

Scope

This policy applies to all employees.

A. Use of Administrative Leave

1. Administrative leave is leave with or without pay granted by the LDSS for an employee to be away from the worksite performing non-work activities. Administrative leave is not an entitlement and its use is purely discretionary on the part of the LDSS.

2. A LDSS may place an employee on administrative leave with pay when

   a. The LDSS is investigating the employee for misconduct and the LDSS has not determined whether discipline is warranted; or

   b. Other legitimate LDSS reasons.

B. Benefits While on Administrative Leave with Pay

An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled to including earned annual and sick leave. Administrative leave with pay, however, does not count as hours worked for the purposes of overtime.

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Section VII
Bereavement Leave

Purpose

The purpose of this policy is to set forth the provisions for leave for the death of a family member.

Scope

This policy applies to all employees.

A. Use of Bereavement Leave

1. Leave for Death of Family Member

   a. An employee may use annual leave for absences that are due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes provided that the leave time is requested in advance or as soon as practical under the circumstances and the time requested is reasonable under the circumstances.

   b. During a calendar year, an employee may use three (3) days of sick leave for the death of a family member and no more than a total of six (6) days when there are multiple family member deaths during the calendar year. Under the Sick Leave policy, a family member (whether the relationship is by birth, adoption, foster care, marriage) is defined as parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home.

   c. Leave without pay may also be granted for bereavement purposes subject to the rules set forth in that policy.

   d. Bereavement leave is permitted if taken within eight weeks of the death of the family member.

2. Death of Child or Spouse

   For the death of an employee's child or spouse, the LDSS may grant the use of up to three weeks of accrued sick leave during the period immediately following the death.

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Section VIII
Sick Leave

Purpose

The purpose of this policy is to provide employees with paid leave for time away from work for personal illness or injury, medical appointments that cannot be scheduled outside work hours, or for the illness or injury of a family member.

Scope

This policy applies to full-time and part-time employees who are not in temporary or emergency positions. Part-time status is working half-time hours or greater.

A. Americans With Disabilities Act

The Americans with Disabilities Act (ADA) requires consideration of accommodations for qualified employees who have disabilities. Such accommodation may be in the form of intermittent sick leave. Further policy regarding ADA can be found in Section X.O. The Family Medical Leave Act (FMLA), the American with Disabilities Act (ADA) as amended and the Pregnancy Discrimination Act (PDA).

B. Sick Leave Accrual

1. Rate

   Employees earn paid sick leave on a pay period basis as follows:

   a. A full-time employee earns sick leave at the rate of 1.25 days a month.

   b. A part-time employee earns sick leave at a proportionate rate: e.g., and employee working half-time would earn ½ day of sick leave monthly and an employee working three quarters time would earn ¾ day a month.

   c. For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned on a monthly basis: e.g., for LDSS with a semi-monthly pay period, the rate would be ½ day for each pay period for full time employees (for half-time employees the rate would be ¼ day).

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2. Monthly and Semi-monthly Sick Leave Accrual Charts:

40 Hour Workweek (8 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	10.00	5.00

37.5 Hour Workweek (7.5 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	9.375	4.6875

35 Hour Workweek (7 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	8.75	4.375

3. Accrual

Sick leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period.

4. Effect of Leave without Pay on Accrual

If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.

5. Carry Over

There is no limit to the amount of sick leave that is permitted to be carried over to the next year.

C. Use of Sick Leave

1. Use

Sick leave cannot be used until it is accrued. There is no borrowing against future accruals.

2. Reasons for Use

Sick leave may be used for either personal or family reasons.

a. Employee's Own Use of Sick Leave

Unless the LDSS has set a limitation, an employee may use the full amount of accrued sick leave for the employee's own care as follows:

(1) When medically necessary and the employee is unable to perform the essential functions of the position;

(2) Pregnancy and child-birth related medical conditions;

(3) Medically documented chronic conditions;

(4) Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or

(5) Family and Medical Leave Act leave.

b. Use of Sick Leave for Family Purposes

Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use accrued sick leave for the care of family members as follows:

(1) Circumstances in which sick leave may be used for family.

(a) When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member;

(b) The death of a family member;

(c) Family and Medical Leave Act leave.

(2) A family member for the purposes of circumstances (a) and (b) above (whether the relationship is by birth, adoption, foster care, or marriage) includes parents, stepparents, spouse, children, step-children, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home (refer to Section X. Family and Medical Leave Act leave).

(3) During a calendar year, an employee may use up to eight days of accrued Sick Leave for family sick leave.

D. Notice and Approval

1. Advanced Notice

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If an employee has a medical condition that necessitates an absence from work, the employee must notify the supervisor on the leave request form as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include but are not limited to elective and non emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

2. Notice and Approval Required at All Times

For absences that are not foreseeable, or for emergency situations, the employee must provide notice as soon as practicable. **Until notice is provided and the request is approved, the time will count as leave without pay.**

E. Verification of Need for Sick Leave

1. Verification of Need May Be Required

Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave. The use of sick leave will not be approved until requested verification is provided.

2. Types of Verification

The following types of verification will be deemed sufficient:

a. FMLA health care provider certification;

b. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period of time that the employee will be absent from work; or

c. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

3. Re-Verification

If an employee is absent for an extended period of time or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave can be conditioned on providing the requested verification.

F. Treatment of Sick Leave upon Change in Status

1. Payment at Termination

a. An employee must have worked continuously for the same LDSS for five years or longer to be entitled to a payment for accrued sick leave at termination or death.

b. When employment is terminated, the employee may be paid for accrued sick leave in a lump sum up to the maximum allowable amount. The amount of payment is the lesser of 25% of the accrued leave or the maximum payout amount as determined by the local Board and approved by VDSS.

c. For the purpose of unemployment compensation such leave payment will be allocated as wages for the equivalent daily/weekly periods as the employee would have received had employment continued.

2. Payment at Death

In the case of death, payment shall be made to the executor of the estate. If no executor has been qualified by a court, and if sixty days have lapsed, payment for accrued sick leave, if less than $15,000, will be made to the surviving spouse and if no surviving spouse, then to the next of kin as provided in § 64.1-132.3 of the *Code of Virginia*.

3. Right to Repurchase

An employee, who is rehired by the same LDSS within twelve (12) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the sick leave balances restored by paying the amount of any payout received at termination for accrued sick leave.

4. Leaves of Absence are Not Terminations

Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued sick leave.

G. Transfer of Leave

As an inducement to accept an offer of employment, an LDSS may offer to credit an employee with some or all of the sick leave balances that would be uncompensated when the employee resigns from employment with another LDSS or the Virginia Department of Social Services. An employee may only be credited with sick leave if there is no break in service.

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H. Change in Employment Status

If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

I. Employee Accountability

1. The employee is responsible for knowing the amount of sick leave balances that should have been accrued.

2. An employee will be required to reimburse the LDSS for leave taken if there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement or charging the time to other accrued paid leave. LDSS may work out a repayment plan with the employee.

3. If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.

4. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.

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Section IX
Disability Leave Program

Purpose

To provide an alternative leave system for use by local boards to address the leave needs of employees covered under employer paid short and long term disability programs. Local boards may choose to allow employees covered under short and long term disability programs to follow: 1) State Board sick leave accrual policy; 2) local jurisdiction's leave policy; or 3) State Board disability leave program policy. If the local jurisdiction's leave policy is chosen, it must apply to all local jurisdiction employees, including employees of the local department of social services.

It is recommended that local departments work with their local boards and their locality to determine the best approach for local department employees under a disability plan. If a local jurisdiction policy is chosen, local departments will submit an updated Local Policy Request Form to VDSS HR for approval.

Scope

This policy applies to full-time or part-time employees who are not in temporary or emergency positions and whose local boards have chosen to limit their sick leave as part of a short and long term disability plan. This group of employees includes full-time employees hired or rehired on or after January 1, 2014; full time employees who choose to opt-in to the hybrid retirement plan; or other employees as determined by the local board.

A. <u>Sick Leave Credit</u> – Sick leave will be credited on the following basis:

1. <u>Sick Leave Credit</u>

   a. Full-time employees employed between January 1 and June 30 or other current full-time employees as determined by their local boards are credited the entire sick leave credit on the first day of their first full payroll period.

   b. Full-time employees participating in the hybrid retirement plan and hired July 1 or later or current employees who opt in to the hybrid retirement plan are credited 50% of the sick leave credit on the first day of their first full pay period or on the effective date of their election as applicable.

   c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate sick leave credit as determined by their local boards.

   d. In subsequent years, the sick leave credit will be credited to eligible employees on the first day of the first full payroll period in January.

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2. Sick Leave Credit Charts

Eligible full-time employees hired from January 1 and June 30:

40 Hour Workweek (8 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 through 4	8	64
5 through 9	9	72
10 and beyond	10	80

37.5 Hour Workweek (7.5 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	8	60
5 to 9	9	67.5
10 and beyond	10	75

35 Hour Workweek (7 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Leave Credit in Hours
0 to 4	8	56
5 to 9	9	63
10 and beyond	10	70

Eligible full-time employees hired from July 1-December 31:

40 Hour Workweek (8 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	32
5 to 9	4.5	36
10 and beyond	5	40

37.5 Hour Workweek (7.5 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	30
5 to 9	4.5	33.75
10 and beyond	5	37.5

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35 Hour Workweek (7 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	28
5 to 9	4.5	31.5
10 and beyond	5	35

3. Effect of Leave without Pay on Sick Leave Credit

   If an employee is on leave without pay on the day that the sick leave credit is granted, the sick leave credit is not granted until the employee is on paid status.

4. No Carry Over or Payment Upon Separation

   The sick leave credit does not accrue. No carryover of the sick leave credit from year to year is allowed. Sick leave credit balances are not paid out upon separation.

5. Use of Sick Leave Credit

   a. Use

      The sick leave credit cannot be used until it is granted. There is no borrowing against future credits.

   b. Reasons for Use

      The sick leave credit may be used for either personal or family reasons.

      (1) Employee's Own Use of Sick Leave Credit

         Unless the LDSS has set a limitation, an employee may use the full amount of the sick leave credit for the employee's own care as follows:

         (a) When medically necessary and the employee is unable to perform the essential functions of the position;

         (b) Pregnancy and child-birth related medical conditions;

         (c) Medically documented chronic conditions;

         (d) Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or

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(e) Family and Medical Leave Act leave (see Section X).

(2) Use of Sick Leave Credit for Family Purposes

Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use the sick leave credit for the care of family members as follows:

(a) Circumstances in which the sick leave credit may be used for family:

(i) When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member;

(ii) The death of a family member;

(iii) Family and Medical Leave Act leave (see Section X).

(b) A family member for the purposes of circumstances (i) and (ii) above (whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship) includes parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage or through legal custody or guardianship who resides in the employee's home. For Family and Medical Leave Act leave see Section X.

(c) During a calendar year, an employee may use up to 33% of their unused sick leave credit balance for family sick leave.

6. Sick Leave Balances of Employees Opting In to the Hybrid Retirement Plan

a. Purpose

To address the sick leave balances of employees opting-in to the VRS hybrid retirement plan or other employees whose local boards have decided to limit sick leave in connection with participation in a short and long term disability plan.

b. Use of Previous Sick Leave Balance

Upon participation in the local short and long term disability plan, the sick leave balances of eligible employees will be frozen. At the discretion of the local board, these frozen sick leave balances may be used as follows:

- To supplement income during periods when an employee is receiving short or long term disability benefits. Total income replacement from the disability

benefit and leave cannot exceed 100% of an employee's pre-disability income per pay period.

- For any allowable use of accrued sick leave, as noted in Chapter 4. Section VIII. C., during the one year waiting period prior to disability benefits.

The local board may also choose to:

- Make a payout of the frozen sick leave balance. Payout options include:

  1) Treatment of frozen sick leave upon Change in Status

     Upon a change in status, treatment of frozen sick leave balances should be consistent with the treatment of accrued sick leave balances as noted in Chapter 4, Section VIII.F.

  2) Prior to separation, payout of the remaining frozen sick leave balance may be made as follows:

     (a) A one-time lump sum payout up to the maximum allowable amount. The amount of payment is the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS; or

     (b) A lump sum payout up to the maximum allowable payout, whereby payment is split over two or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS.

- Convert a portion of each employee's frozen sick leave balance to annual leave (not to exceed the maximum carryover for annual leave).

c. Compensation Plan

The option or options approved by the local board to address the sick leave balances of employees opting in to the hybrid retirement plan will be documented on the Local Department of Social Services Compensation Plan.

B. Family and Personal Leave Credit – Family and personal leave will be credited on the following basis:

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1. Family and Personal Leave Credit

   a. Eligible full-time employees employed from January 1 to June 30 will be credited with the entire annual family and personnel leave credit on the first day of their first full pay period.

   b. Eligible full-time employees hired on or after July 1 and those current employees who opt-in to the hybrid retirement plan will have family and personal leave credited at 50% of the annual credit on the first day of the first full pay period after the effective date of their election or hire date as applicable.

   c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate annual family and personal leave credit as determined by their local boards.

   d. In subsequent years, eligible employees will have the entire annual family and personal leave credit credited on the first day of the first full payroll period in January.

   e. Family and personal leave may not be used before it is credited.

2. Family and Personal Leave Credit Charts

Employees with less than 120 months of employment:

Employment (or election) Date	Amount for 40 hour work week/ 8 hour work day	Amount for 37.5 hour work week/ 7.5 hour work day	Amount for 35 hour work week/ 7 hour work day
January 1- June 30	32 hours (4 days)	30 hours (4 days)	28 hours (4 days)
July 1- December 31	16 hours (2 days)	15 hours (2 days)	14 hours (2 days)

Employees with 120 or greater months of employment:

Employment (or election) Date	Amount for 40 hour work week/ 8 hour work day	Amount for 37.5 hour work week/7.5 hour work day	Amount for 35 hour work week/ 7 hour work day
January 1- June 30	40 hours (5 days)	37.5 hours (5 days)	35 hours (5 days)
July 1- December 31	20 hours (2.5 days)	18.75 hours (2.5 days)	17.5 hours (2.5 days)

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3. Effect of Leave without Pay on Family and Personal Leave Credit

   If an employee is on leave without pay on the day that the family and personal leave is granted, the family and personal leave credit is not granted until the employee is on paid status.

4. No Carryover or Payment Upon Separation

   The family and personal leave credit does not accrue. No carryover of the family and personal leave credit from year to year is allowed. Family and personal leave credit balances are not paid out upon separation.

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Section X
Family and Medical Leave Act (FMLA)

Purpose

This policy sets forth the requirements for obtaining leave under the Family and Medical Leave Act.

More detailed information regarding the Family and Medical Leave Act (FMLA) can be found at the Department of Labor (DOL) FMLA website http://www.dol.gov/whd/fmla/index.htm.

Scope

This policy applies to all employees who meet the eligibility criteria.

A. Definitions

1. Child (Son or Daughter)

   A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or physical disability.

2. Employment Benefits

   All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.

3. Equivalent Position

   One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility and authority

4. Covered Servicemember

   A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time

during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

5. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) is a federally mandated program that was signed into law on February 5, 1993 and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee's family member or for adoption, placement, or the birth of a child, or up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.

6. Family Member

Child, spouse or parent.

7. Health Care Provider

a. The Act defines "health care provider" as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Secretary to be capable of providing health care services.

b. Others "capable of providing health care services" include only the following categories of medical professionals as they perform services within the scope of their practice as defined under state law:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object

to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manage will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

c. The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

8. Incapacity

Inability to work, attend school, perform other regular daily activities due to a serious health condition.

9. Intermittent Leave

A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments.

10. Key Employees

Employees who are among the highest paid 10% of the LDSS workforce.

11. Parent

Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.

12. Qualifying Exigency

A reason for taking FMLA leave, arising out of the fact that the employee's spouse, son, daughter or parent is on active duty in the Armed Forces, or has been notified of an impending call or order to active duty in the National Guard or Reserves. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school related activities, 4) financial and legal

arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or call to active duty, provided that the employee and agency agree.

13. Reduced Schedule

A work schedule less than the usual number of hours worked per workweek or per workday.

14. Serious Health Condition

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

a. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:

(1) Treatment two or more times within 30 days by or under the supervision of a health care provider the first of which must occur within seven days of the first day of incapacity; or

(2) One treatment by a health care provider, within the first seven days of incapacity, with a continuing regimen of treatment; or

b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visit to a health care provider at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

15. Spouse

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Husband or wife as recognized under the laws of the Commonwealth for the purpose of marriage.

16. Twelve Month Period

For the purpose of calculating FMLA leave, an LDSS may use a calendar, fiscal year, another fixed 12-month period, or a rolling 12-month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating Family Medical Leave Act leave.

B. Eligibility Requirements

To be eligible to take Family Medical Leave Act leave, the following criteria must be met by full time and part time employees:

1. The employee must have been employed by the LDSS for a total of at least 12 consecutive or non-consecutive months in the past seven years.

2. For the 12 months immediately proceeding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked (paid leave is not counted).

   a. Employees returning from military service who request Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for the employer during the year to determine if they meet the 1250 hour requirement in the determination of their eligibility for Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

3. Twelve weeks of FMLA leave must not have been used in the current 12 month period.

4. For part time employees, the amount of FMLA leave will be equivalent to twelve times their normal workweek, not to exceed 12 weeks.

C. Qualifying Reasons

Eligible employees may take up to 12 weeks of unpaid Family Medical Leave Act leave per leave year for the following reasons:

1. For Family Member's Care

a. The birth of a child (to be taken within 12 months of the child's birth);

b. The placement of a child with the employee for adoption or foster care (to be taken within 12 months following date of placement);

c. Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.

2. For Employee's Care

A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.

3. Qualifying Exigency

A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is an active duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.

D. Restrictions on Usage

1. Parental Leave

a. Leave taken for the birth or placement of a child must be used within the 12 months following the birth/placement.

b. If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave.

2. FMLA leave is Not Cumulative

Any unused leave cannot be carried over to the next 12-month period.

3. Short-Term Conditions

FMLA leave may not be used for short-term conditions for which treatment and recovery are brief.

4. Appointments with Health Care Provider

Routine appointments with a health care provider should be scheduled whenever possible during non- work hours.

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E. FMLA leave is unpaid.

1. FMLA leave is unpaid. The LDSS may require, or the employee may request, the use of paid leave concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under the Family and Medical Leave Act. An agency may designate such leave as Family and Medical Leave Act leave, if it meets the conditions set forth in this policy. See Form WH-382 entitled *Designation Notice (Family and Medical Leave Act)* found at http://www.dol.gov/whd/forms/WH-382.pdf.

2. **Although paid time off may be required by the LDSS or requested by the employee to be used at the same time as FMLA leave, this does not apply to compensatory time. If the use of compensatory time is approved, it does not count toward the 12 week entitlement of FMLA.**

F. Procedures Regarding Usage

1. Request from Employee

   The Employee should submit a written request to his/her supervisor at least 30 calendar days in advance or as soon as practicable. (Notice may be given by a family member if employee is unable to provide notice.)

2. Notice of Eligibility and Rights & Responsibilities

   The form *Notice of Eligibility and Rights & Responsibilities (WH-381) found at* http://www.dol.gov/whd/forms/WH-381.pdf must be given to the employee five (5) business days from the request for leave under FMLA. Once all of the required information requested on the form is completed, the Local Department of Social Services (LDSS) must inform the employee within five (5) business days whether or not the leave will be designated as FMLA leave and count towards the employee's leave entitlement. This determination must be provided using the *Designation Notice (WH-382)* found at http://www.dol.gov/whd/forms/WH-382.pdf .

3. Certification from Health Care Provider

   A request for FML must be supported by either a *Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E)* or a *Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)* These forms can be located at http://www.dol.gov/whd/forms/WH-380-E.pdf and http://www.dol.gov/whd/forms/WH-380-F.pdf. **Medical certification shall be obtained by the employee and returned to his/her agency within 15 calendar days of the request or when feasible or upon return to work from an absence that may qualify under the FMLA (absent extenuating circumstances).** If an

employee fails to provide certification, recertification, or clarification in a timely manner then the agency may deny FMLA leave until the required certification is provided.

4. Second and Third Health Care Provider Opinions

a. Second Opinion

In general, in any case in which the employer has reason to doubt the validity of the certification provided, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified on the *Certification of Health Care Provider for Employee's Serious Health Condition* (WH-380-E) or a *Certification of Health Care Provider for Family Member's Serious Health Condition* (WH-380-F). The health care provider designated or approved shall not be employed on a regular basis by the employer.

b. Resolution of Conflicting Opinions – Third Opinion

In general, in any case in which the second opinion differs from the opinion in the original certification provided, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified.

The opinion of the third health care provider concerning the information certified shall be considered to be final and shall be binding on the employer and the employee.

(1) Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to FMLA benefits, including maintenance of group health benefits.

(2) If the health care providers' certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave.

(a) A copy of the second (and third) medical opinions must be provided to the employee if requested. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

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(b) When an employee is required to obtain a second (or third) opinion the LDSS must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain these opinions.

(c) The LDSS may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinion except in very unusual circumstances.

(d) Without the written consent of the employee, the LDSS should not discuss with the health care provider the serious health condition of the employee or family member nor should the LDSS require more information than is requested on the certification form.

c. Approval of Leave

The LDSS must respond to an employee's request for FMLA leave on the form entitled *Designation Notice (WH-382).* Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request or within five (5) business days of receiving all of the required documentation from the employee. This form can be found at http://www.dol.gov/whd/forms/WH-382.pdf.

5. Provisional Designation of Leave

Without a request from an employee, the LDSS may designate provisional absences as FMLA leave if the LDSS has a reasonable basis that such leave qualifies. The LDSS may also designate provisional leave at the request of the employee pending submission of the health care provider's certification. Such designation may be done even if the employee has been granted permission to use paid leave. Upon receipt of the medical certification, the LDSS must notify the employee of approval or denial on the form entitled *Designation Notice (WH-382)* found at http://www.dol.gov/whd/forms/WH-382.pdf.

6. Designating FMLA Leave Retroactively

The agency may go back 5 business days from the date of designation, to include those 5 business days under FMLA.

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G. Intention to Return to Work

The LDSS may require an employee to report periodically during the leave period on intention to return to work. This includes both Intermittent and full-time FMLA leave.

H. Intermittent Leave or Leave on a Reduced Schedule

1. Intermittent/Reduced Schedule Leave

   When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave.

2. Advanced Approval for Care of a Newborn or Recently Placed Child

   Only if approval is granted in advance, may an employee take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. (This does not apply if the leave is taken because of the serious health condition of the child.)

3. Reassignment During Intermittent Leave or Reduced Schedule Leave

   An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.

I. FMLA Military Entitlements

Under the FMLA, there are military leave entitlements in the form of qualifying exigency leave and military caregiver leave for a covered service member.

1. Qualifying Exigency Leave

   An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation.

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Employees should submit a complete and sufficient *"Certification of Qualifying Exigency for Military Family Leave"* (Form WH-384) form to their supervisor.

The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member's active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member's active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. This form entitled: *Certification for Qualifying Exigency for Military Family Leave* can be found at http://www.dol.gov/whd/forms/WH-384.pdf .

2. Military Caregiver Leave

An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later.

Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason.

Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child.

The employee should submit a completed *"Certification for Serious Injury or Illness of Covered Service member"* form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.

J. Effect on Employment Benefits

1. Health Care Coverage

   a. During any FMLA leave, the employee's participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period.

b. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave.

c. The failure to timely make premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed.

d. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work as a result of:

(1) the onset, recurrence, or continuation of serious health conditions that would have would have entitled the employee to the FMLA leave; or

(2) other circumstances beyond the employee's control.

2. Other Benefits

Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay.

LWOP is to be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee's years of service may be affected by such absence.

K. Workers' Compensation and FMLA

When a Workers' Compensation injury causes an absence that would otherwise qualify under the FMLA, the two leaves may run concurrently and count towards FMLA leave.

L. Returning From Leave

1. Job Restoration

Upon returning from Family and Medical Leave Act leave, an employee is entitled to be reinstated to their original position, or an "equivalent position," one with comparable duties, terms, conditions, compensation, and privileges of the employee's previous position.

2. Key Employee

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If an employee's position is determined to be key (within the highest paid 10% of the salaried workforce in the LDSS), job restoration may be denied if the following procedures have been taken:

a. The LDSS gives written notice to the key employee at the time the employee requests FMLA leave or as soon as practicable thereafter that the employee qualifies as a Key Employee. The notice must also state the potential consequences with respect to reinstatement and maintenance of health benefits if the employee is denied job restoration.

b. If a determination is made that a substantial and grievous economic injury to the LDSS's operations will result if the Key Employee is reinstated at the end of the leave, the LDSS shall notify the employee in writing of its determination and that it intends to deny job restoration.

   (1) This notice must be given either in person or by certified mail.

   (2) This notice must explain the basis for the finding that substantial and grievous economic injury will result.

   (3) If leave has commenced, the Key Employee must be allowed a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

   (4) If a Key Employee does not return to work in response to the notice, the employee continues to be entitled to maintenance of health benefits during the remaining period of FMLA leave and the LDSS must continue payment of its share of health benefit premiums.

   (5) A Key Employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to the position or the LDSS denies the reinstatement at the conclusion of the leave period.

c. A Key Employee is entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the notice. At the time of the request, the LDSS must again determine whether there will be substantial and grievous economic injury if the employee is reinstated. If it is determined that substantial and grievous economic injury will result, the employee must be notified in writing, delivered in person or by certified mail of the denial of restoration.

d. Although the employee may be denied job restoration, the employee remains on FMLA leave status for the requested period of leave and all benefits of FMLA continue until the end of the leave.

M. FMLA Records Management

Agencies must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years and must include the information listed below:

1. Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

2. Leave designated as FMLA, both paid and unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)

3. Copies of employee's notices of leave furnished to agency.

4. Any documents (including written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves.

5. Records of premium payments.

6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement.

7. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employee's family members are to be maintained in separate files/records and treated as confidential medical records except:

8. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations.

9. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.

10. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

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N. Violations

An employee who believes that FMLA benefits have not been applied consistently with the provisions of this policy or the law may make a complaint to the Director and if not resolved may file a complaint with the U.S. Department of Labor, Wage and Hour Division. A non-probationary employee may also initiate a grievance.

O. The Family Medical Leave Act (FMLA), the American with Disabilities Act (ADA) as amended and the Pregnancy Discrimination Act (PDA)

The FMLA, ADA and PDA all require a covered employer grant leave to an employee in certain circumstances. Unlike the FMLA, there is no eligibility period for leave granted under the provisions of the ADA or the PDA. Requests for leave under these provisions should be made to the employee's supervisor.

The ADA requires employers to consider reasonable accommodation requests for qualified employees in order to perform essential job functions. The accommodation can include a modified work schedule and may include leave requests. There is no set leave period mandated. The leave could be granted as requested by the employee unless doing so would result in "undue hardship" to the employer (see Chapter 1 for more information about ADA).

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. The PDA requires that leave be administered in a way that does not discriminate based on gender.

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Section XI
Leave Sharing

Purpose

The following are suggested procedures for the implementation of a leave sharing program for those LDSSs that elect to have such a program. An LDSS has the discretion to design a program that fits its needs.

Scope

This policy applies to employees in regular or restricted positions.

A. Eligibility

1. Exhaustion of Paid Leave Balances

   An employee who desires to receive donated leave must have used all paid leave that is available for such absences (e.g., annual, sick, compensatory, special duty).

2. Family and Medical Leave Act Purposes

   An employee who requests donated leave may only use such for a "serious health condition" of the employee, the employee's immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. The fact that the employee may not otherwise qualify for FMLA leave (e.g., has exhausted the allowed 12-weeks or has not worked the 1250 hours in the past 12 months) is not disqualifying under this policy.

3. Certification of Health Care Provider

   An employee is not eligible for donated leave until such time as the FMLA *Certification of Health Care Provider* form (Form WH-380*E or WH-380-F) establishes qualification for such leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for the leave.

4. Disqualifying Absences

   Employees in the following categories are ineligible for leave sharing donations:
   - An employee who is on a disciplinary suspension;

- An employee who is absent because of an occupationally related illness or injury that falls within that definition under the Virginia Worker's Compensation Act (whether or not benefits have been received under the Act),
- an employee who is absent because of an injury or illness that is deliberately self inflicted
- or an employee who is absent because of an injury or illness which has occurred while the employee was engaging in an unlawful act.

5. Waiting Period

   An LDSS may require a waiting period to establish eligibility for leave share donations.

B. Requests / Approvals

Each LDSS participating in this program must develop a form by which an employee may request donated leave. The form should be designed so that when the employee is physically or mentally unable to make the leave request, an agent may make the request on behalf of the employee.

C. Status While on Donated Leave

An employee must be on leave without pay (LWOP) status in order to receive donated leave. Donated leave is intended to provide supplemental compensation only and does not place the employee on the equivalent of paid leave status. Accordingly, the LWOP policy benefit provisions apply to this leave period.

D. Discretionary Benefits

In developing a policy on leave sharing, an LDSS may provide greater benefits than those allowed under the LWOP policy. These augmented benefits may include

1. Health Benefits

   The LDSS may pay out of local funds its portion of the health care premium for up to 12 months inclusive of the health care premium payments required under FMLA.

2. Payroll Deductions

   Federal and state withholding payments will be deducted from the compensation that the employee receives due to leave sharing.

Voluntary payroll deductions may continue while an employee is receiving leave share donations provided that the compensation that the employee receives is sufficient to cover the deductions. If the compensation received through leave share donations is insufficient to cover such voluntary deductions, participation in the programs will be terminated unless the employee makes arrangements for timely payments.

3. Group Life Insurance

   If local funds are available the LDSS may permit employees receiving leave share donations to continue to be covered under the LDSS's group life insurance policy for up to two years.

E. Leave Bank Requirements

Each LDSS that provides a leave sharing program has discretion to structure the program based on its needs. However, annual leave is the only leave that may be donated to the leave bank.

1. Annual Leave Donations

   Annual leave may be donated in the following ways:

   a. Annual leave that will be lost if not used by the end of the year;

   b. Annual leave that is within the maximum accrual amount;

   c. A fixed amount per donation or per year per employee; and/or

   d. No limitations on amount or timing of donated leave.

2. Establishing a Leave Bank

   There are three types of leave banks that may be established:

   a. A non-designated leave bank which permits donating to a pool to be used by any eligible employee;

   b. Donation to a designated employee of the LDSS; or

   c. A combination of the above.

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3. Returning Leave Donation

   If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is in excess of the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in: (1) reverse order of the receipt of donations; or (2) a pro-rata amount per donor.

4. Reclaiming Leave

   Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.

F. Penalties for Abuse

If abuse of this policy is found, the employee will be required to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay. Additionally, the employee may be disciplined in accordance with provisions of the VDSS Standards of Conduct.

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SECTION XII
Virginia Workers' Compensation

Purpose

The purpose of this policy is to advise employees of benefits that may be available to them under the Virginia Workers' Compensation Act (WCA). Employees may be eligible for benefits under the Act if they sustain a compensable injury by accident, suffer from an occupational disease or a compensable ordinary disease of life.

Scope

This policy applies to all employees.

A. Definitions

1. Injury

   A physical injury by accident both arising out of and in the course of employment.

2. Occupational Disease

   A disease arising out of and in the course of employment, but, unless otherwise provided by the WCA. It is not an ordinary disease of life to which the general public is exposed outside of employment.

3. Permanent Partial Disability

   A permanent loss to the body that was caused by an injury or occupational disease that does not result in the employee's total incapacity. An example of a permanent partial disability is the loss of, or partial loss of, a finger.

4. Pre-Injury Average Weekly Wage

   The injured employee's actual wages during the 52 week period preceding the date of injury, divided by 52.

5. Workers' Compensation Leave

   A type of leave from employment which results from an employee's incapacity to work and which has been determined to have resulted from an injury or

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occupational disease such that the employee is entitled to benefits required by the WCA.

B. Benefits to Which an Employee May be Entitled

Once an employee has a compensable injury or illness, the following benefits may be available:

1. Wage Replacement

   An employee who suffers an injury or occupational disease may be entitled to wage loss benefits, as set forth under the WCA, if the employee is temporarily unable to return to regular employment and suffers a wage loss as a result of that disability.

2. Medical Benefits

   Under the WCA, an employee may be entitled to lifetime medical benefits for treatment that is reasonable, necessary and causally related to the work related injury or disease as set forth and authorized under the WCA.

3. Permanent Partial Disability Benefits

   An employee may be entitled to compensation for permanent loss of use of a "scheduled" body part as set forth under the WCA.

C. Responsibilities of an Injured Employee

1. Once an injury has occurred, the employee must notify the employer immediately. The LDSS, not the employee, is to complete the accident report.

2. The employee must choose a treating physician from a panel of at least three physicians which will be provided by the LDSS.

3. If the employee is released to "light duty work," he or she must accept "light duty work" if offered by the LDSS.

4. If "light duty" employment is not offered by the LDSS, the employee must seek his own employment within his light duty restrictions.