Chapter 4:
Leave & Related Areas

Administrative/HR Manual for Virginia Local Departments of Social Services

TABLE OF CONTENTS

Part I: Types of Leave 9
Policy Statement 9
Scope 9
Section I: Annual Leave 10
General Information 10
Qualification to Receive Annual Leave 10
Accrual of Annual Leave 10
Rate 10
Receipt & Use of Accrued Leave 11
Notice & Approval 11
Responsibility 11
Agency Responsibility 11
Supervisor Responsibility 12
Employee Responsibility 12
Employee Requirement to Reimburse 12
Carryover 12
Carryover Exceptions 13
No Payment of Carryover Exception Amounts Upon Separation 14
Effect of Leave Without Pay on Accruals 14
Treatment of Annual Leave upon Change in Status 14
Payment upon Separation 14
Payment at Death 14
Right to Repurchase 14
Change in Employment Status 14
Section II: Sick Leave 15
General Information 15
Qualification to Receive Sick Leave 15
Associated Federal Laws 15
Accrual of Sick Leave 15
Rate 16
Receipt & Use of Accrued Leave 16

Receipt 16
Personal Use of Sick Leave 16
Use of Sick Leave for Family Purposes 17
Reasons for Use 17
Definition of a Family Member 18
Amounts Available for Use for Family Purposes 18
Notice & Approval of Sick Leave 18
Advance Notice & Approval 18
Notice & Approval for Unforeseeable or Emergency Situations 18
Verification of Need for Sick Leave 19
Verification of Need May be Required 19
Types of Verification 19
Re-Verification 19
Treatment of Sick Leave upon Change in Status 19
Payment at Termination 19
Payment at Death 19
Right to Repurchase 20
Leaves of Absence are Not Terminations 20
Transfer of Leave 20
Change in Employment Status 20
Employee Accountability 20
Section III: LDSS Disability Leave Program 22
General Information 22
Background 22
Options for Local Boards 22
Scope 23
Applicable Federal Laws 24
Receipt of Sick Leave Credit 25
Sick Leave Credit Charts 25
Use of Sick Leave Credit 26
Personal Use of Sick Leave 26
Use of Sick Leave for Family Purposes 27
Definition of a Family Member 27

Notice & Approval of Sick Leave Credits 27
Advance Notice & Approval 27
Notice & Approval for Unforeseeable or Emergency Situations 27
Verification of Need for Sick Leave 28
Verification of Need May be Required 28
Types of Verification 28
Re-Verification 28
Effect of Leave without Pay on Sick Leave Credit 28
No Sick Leave Carryover or Payment Upon Separation 28
Electing to Move from the State Board-Approved Leave System ("Traditional" Sick Leave) at a Later Date 29
Addressing Remaining "Traditional" Sick Leave Balances 29
Allowing Use or Conversion of a Frozen Balance 29
Payout of a Frozen Balance 29
Receipt of Family & Personal Leave 30
Family & Personal Leave Credit Charts 30
Use of Family & Personal Leave Credit 31
Effect of Leave without Pay on Family & Personal Leave Credit 31
No Family & Personal Leave Carryover or Payment upon Separation 32
Section IV: Leave without Pay 33
General Information 33
Reasons for Requesting Leave without Pay 33
Reasons Including Job Restoration 33
Reasons where Job Restoration is not Guaranteed 33
Notice & Approval of Leave without Pay 34
Advance Notice 34
Notice of Unforeseeable or Emergency Situations 34
Approval 34
Effect of Leave without Pay on Benefits 34
Accrued Leave & Leave Anniversary Dates 34
Effect on Raises & Bonuses 35
Retirement 35
Life Insurance 35

Health Insurance 35
Other Benefits 36
Abuse of Leave without Pay 36
Section V: Military Leave 37
General Information 37
Purpose 37
Scope 37
Requirements for the Use of Military Leave with Job Restoration Coverage 37
Military Leave with Pay 38
Military Leave without Pay 39
Leave Benefits 39
Annual Leave 39
Compensatory & Special Duty Leave 39
"Traditional" Sick Leave 39
"Hybrid" Leave 40
Health Plan Participation 40
Retirement Plan 40
Reinstatement from Military Service 40
Reinstatement Position Determination Process 41
Escalator Principle 41
Position Determination where Disability is a Factor 41
Position Determination when the Employee no Longer Meets Minimum Requirements 41
Circumstances where Reinstatement is not Required 42
Family & Medical Leave Act (FMLA) 42
Annual Notice of Military Leave Rights 42
Section VI: Bereavement Leave 43
General Information 43
Use of Bereavement Leave 43
Leave for Death of Family Member 43
Annual Leave 43
Sick Leave 43
Leave without Pay (LWOP) 44
Section VII: Civil Leave 45

General Information 45
Use of Civil Leave 45
Reasonableness of Request 45
Requirement of Advance Approval 46
Jury Duty 46
Provisions for Crime Victims 46
Compensation 47
Reimbursements 47
Compensation Received from the Court 47
Section VIII: Educational Leave 48
General Information 48
Use of Educational Leave 48
Return from Educational Leave 48
Educational Pursuits Required by the LDSS 49
Section IX: Administrative Leave 50
General Information 50
Use of Administrative Leave 50
Benefits While on Administrative Leave with Pay 50
Section X: Leave Sharing Program 51
General Information 51
Purpose 51
Eligibility 51
Exhaustion of Paid Leave Balances 51
Certification of Health Care Provider 51
FMLA-Eligible Employees 51
FMLA-Ineligible Employees 51
Disqualifying Absences 52
Waiting Period 52
Request/Approval Form 52
Status While on Donated Leave 52
Discretionary Benefits 52
Leave Bank Requirements 53
Annual Leave Donations 53

Establishing a Leave Bank 53
Returning a Leave Donation 53
Reclaiming Leave 53
Penalties for Abuse 53
Part II: Family & Medical Leave Act 54
Policy Statement 54
Scope 54
Section I: Eligibility & Qualifications for Family & Medical Leave 55
General Information 55
Resources 55
Eligibility 55
Qualifying Reasons 56
Restrictions on Usage 57
SECTION II: FMLA CERTIFICATION PROCESS 58
FMLA Form Access 58
Request for Initiation of FMLA 58
Advance Notice & Approval 58
LDSS Initiation of FMLA Under Certain Circumstances 58
Notice of Eligibility and Rights & Responsibilities 58
Designation Notice 58
Certification Process 59
Initial Request 59
Employee Responsibility: Certification of a Health Care Provider 59
LDSS Responsibility: Response to Employee Request 59
Intention to Return to Work 59
Second & Third Opinions 59
Intermittent Leave 60
Advanced Approval for Care of a Newborn or Recently Placed Child 60
Reassignment During Intermittent Leave or Reduced Schedule Leave 60
Returning from Leave 60
Job Restoration 60
Key Employees 60
Section III: FMLA Military Leave Entitlements 61

General Information 61
Military Caregiver Leave 61
Military Caregiver Leave Certification Process 61
Timeframes for Certification & Approval 62
Job Restoration 62
Key Employees 62
Qualifying Exigency 63
Qualifying Exigency Certification Process 64
Timeframes for Certification & Approval 64
Job Restoration 64
Key Employees 64
Section IV: FMLA Records Management & Impact on Employee Benefits 65
FMLA Records Management 65
FMLA Impact on Employment Benefits 66
Health Care Coverage 66
Other Benefits 66
Workers' Compensation & FMLA 66
Section V: FMLA & Other Laws 67
General Information 67
The Americans with Disabilities Act (ADA) as Amended 67
The Pregnant Workers Fairness Act (PWFA) 67
Analysis of Requests for Leave 68
Requests for Leave Under the ADA & PWFA 68
Establishing a Maximum Leave Policy 68
Importance of Analysis 68
Part III: Workers' Compensation 70
Policy Statement 70
Scope 70
Section I: Workers' Compensation 71
General Information 71
Benefits to Which an Employee May be entitled 71
Wage Replacement 71
Medical Benefits 71

Permanent Partial Disability Benefits 71

Accessing Benefits Under the VWCA 71

Responsibilities of an Injured Employee 72

Glossary: 73

Part I: Types of Leave 73

Part II: Family & Medical Leave Act 75

Part III: Workers' Compensation 78

PART I: TYPES OF LEAVE

POLICY STATEMENT

The Virginia State Board of Social Services establishes policies to afford employees of Local Departments of Social Services (LDSS) paid time away from work for several purposes. Part I of this policy describes most of the types of leave available to LDSS employees and their appropriate use.

Compensatory Leave and Special Duty Leave are not addressed in this chapter. These leave types may be substituted in lieu of compensation in specific situations and are discussed in detail in **Chapter 2** of the LDSS Administrative/HR Manual.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:
Per § 22VAC40-675-50 of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to locality policy, provided the deviation is approved by the VDSS HR Policy Team (**hr.employeerelations@dss.virginia.gov**) as being in substantial conformity with this policy.

SECTION I: ANNUAL LEAVE

GENERAL INFORMATION

QUALIFICATION TO RECEIVE ANNUAL LEAVE

1. Annual leave is available to all LDSS employees **except**:
    a. Employees in temporary or emergency positions; or
    b. Employees in restricted positions where benefits are not provided by the funding source.

Part-time employees must work at least ***one half*** of the agency's workweek hours or greater to qualify to earn annual leave. Please note the following:

Agency Workweek Schedule	Part-Time Minimum Weekly Hours
40 Hours Per Week	20 Hours Per Week
37.5 Hours Per Week	18.75 Hours Per Week
35 Hours Per Week	17.5 Hours Per Week

ACCRUAL OF ANNUAL LEAVE

RATE

Employees earn paid annual leave on a pay period. For alternate agency workweek schedules (37.5 hours, 35 hours), annual leave accrual **must be prorated based on the number of hours in the workweek**.

1. A full-time employee earns annual leave based upon years of service. One (1) day equates to eight (8) hours if the agency workweek schedule is forty (40) hours per week.
2. A part-time employee earns annual leave at a proportionate rate based on the number of hours worked ***per week***. See "Helpful Hints – Calculating Annual Leave for Part-Time Employees" for more information.
3. For LDSS that have bi-monthly or bi-weekly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned monthly.
4. When hiring an employee from another LDSS or the Virginia Department of Social Services (VDSS) without a break in service, the LDSS has the authority to provide the employee with the same *accrual rate* as the previous position.

The following chart provides the amounts of annual leave that may be accrued during each month based on years of service:

Years of Service	Monthly Accrual Rate (40-Hour Week)	Monthly Accrual Rate (37.5-Hour Week)	Monthly Accrual Rate (35-Hour Week)
Up to 5 Years	8 Hours	7.5 Hours	7 Hours
5 Years	10 Hours	9.375 Hours	8.75 Hours
10 Years	12 Hours	11.25 Hours	10.5 Hours
15 Years	14 Hours	13.125 Hours	12.25 Hours
20 Years	16 Hours	15 Hours	14 Hours
25 Years	18 Hours	16.875 Hours	15.75 Hours

Receipt & Use of Accrued Leave

1. Annual leave does not accrue until the end of the pay period in which it is earned.
2. Annual leave must not be used before it is earned and borrowing against future leave accruals is not permitted.
3. Newly accrued annual leave hours are available for use the first day of the following pay period or workweek.
4. Annual leave may be used for any reason provided the employee receives advance approval.

Notice & Approval

Advance approval of annual leave is always required. When unforeseeable absences or emergency situations occur, employees must provide notice of the need to use leave as soon as it is reasonably possible for them to contact their supervisor. Until approval is provided, the absence will count as unauthorized leave without pay.

No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when the employee's accrual amount is not sufficient to cover the request.

Responsibility

Agency Responsibility

The agency is responsible for:

1. Ensuring annual leave accrual calculations are correct based on the weekly schedule of the LDSS (40 hours, 37.5 hours, or 35 hours per week).
2. Setting expectations for annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.).
3. Ensuring that leave accrual calculations are updated if the weekly schedule of the LDSS should change. See **Chapter 5** of the LDSS Administrative/HR Manual for more information on changing the weekly schedule of the LDSS.

The LDSS is responsible for reimbursement due to errors resulting from miscalculation of accrual amounts by the LDSS. Contact the VDSS Division of Finance Local Reimbursement Unit (LRU) **for more information on reimbursement.**

Supervisor Responsibility

The supervisor is responsible for:

1. Providing timely responses to employee leave requests.
2. Setting expectations with direct reports for submission of regular annual leave requests (not holidays, peak times).
3. Adhering to agency expectations for approving annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.).

Employee Responsibility

The employee is responsible for:

1. Knowing the amount of annual leave balances that have accrued or will have accrued before requesting leave.
2. Requesting leave in a timely manner per supervisor or agency expectations.
3. Reporting to work, as required, if an annual leave request is denied.

EMPLOYEE REQUIREMENT TO REIMBURSE

Employees are required to reimburse the LDSS from their salary for leave taken when:

1. There is not sufficient accrued leave to cover the time requested.
2. The error occurs because of miscalculation by the employee.

Reimbursement due to employee error 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. LDSS employees are ***not*** responsible for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).

CARRYOVER

An LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period as the annual carryover period for the agency. The following limits apply to the amount of annual leave permitted to be carried over to the next year, as well as the amount that will be paid at termination.

For alternate agency workweek schedules (37.5 hours, 35 hours), the maximum 'days' in the chart below **must be prorated based on the number of hours in the workweek**.

Years of Service	Maximum Annual Carryover Amount	Max. Carryover Hours 40-Hour Week	Max. Carryover Hours 37.5-Hour Week	Max. Carryover Hours 35-Hour Week
Up to 5 Years	24 Days	192 Hours	180 Hours	168 Hours
5 Years	30 Days	240 Hours	225 Hours	210 Hours
10 Years	36 Days	288 Hours	270 Hours	252 Hours
15 Years	42 Days	336 Hours	315 Hours	294 Hours
20 Years	48 Days	384 Hours	360 Hours	336 Hours
25 Years	54 Days	432 Hours	405 Hours	378 Hours

CARRYOVER EXCEPTIONS

An exception to annual leave carryover amounts may only be granted when employees have not been allowed to use their leave because of agency work demands over a substantial period. Such exceptions must be approved by the local board in writing and will expire in twelve (12) months.



Helpful Hints: Calculating Annual Leave for Part-Time Employees

Annual leave accruals for part-time employees are prorated based on the number of hours they work ***on a weekly basis***. Look at this example:

Jane has been with her agency for one year and works a set schedule of 22.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jane's hours equate to 60% of the full-time schedule. The full-time accrual rate for a one-year employee is 7.5 hours per month (based on a 37.5- workweek). Jane's accrual rate would be 4.5 hours per month, or 60% of the full-time accrual rate.

Here are some recommendations to make leave calculation for part-time employees easier:

- Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for *all* employees, and it can also aid in preventing miscalculation of pay and overtime hours.
- Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week).

Need help with calculating leave accrual amounts? Contact the VDSS Local HR Support Team with questions.

No Payment of Carryover Exception Amounts Upon Separation

Carryover exception amounts do not apply to the amount of annual leave that will be paid upon separation of employment. Employees will only receive payout for the maximum yearly carryover limits listed in the Maximum Annual Carryover chart.

Effect of Leave Without Pay on Accruals

Employees on leave without pay for any part of the pay period or workweek do not earn annual leave for that pay period or workweek. Please see Section IV, "Leave without Pay (LWOP)," for more information.

Treatment of Annual Leave upon Change in Status

Payment upon Separation

When an employee separates from the LDSS, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, and other forms of extended leave are not considered separations for the purposes of receiving payment for accrued annual leave. Under certain circumstances, employees on military leave may qualify for receipt of payment.

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

Payment at Death

Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §§ 64.2-601 and 64.2-602, which govern the process by which those payments are made. The guidelines and legal requirements governing wages earned by an employee prior to death can be complicated. Individual circumstances can vary and may require additional guidance from the locality payroll office and attorney.

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

Change in Employment Status

Provisions of Section III, "Disability Leave Program," may apply if the status of an employee is changed from temporary to probationary, regular, or restricted. 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.

SECTION II: SICK LEAVE

GENERAL INFORMATION

Sick leave, also referred to as "traditional" sick leave, exists to provide employees with paid leave for time away from work for:

1. Personal illness or injury.
2. Medical appointments that cannot be scheduled outside of work hours.
3. For the illness or injury of a family member.

QUALIFICATION TO RECEIVE SICK LEAVE

1. Sick leave is available to all LDSS employees **except:**
    a. Employees in temporary or emergency positions.
    b. Employees in restricted positions where benefits are not provided by the funding source.
    c. Employees who were hired after January 1, 2014, **AND** whose locality has chosen to adopt the LDSS Disability Leave Program ("hybrid" leave) or a comparable locality leave policy.
2. Part-time employees must work at least ***one half*** of the agency's workweek hours or greater to qualify to earn "traditional" sick leave. Please note the following:

Agency Workweek Schedule	Part-Time Minimum Weekly Hours
40 Hours Per Week	20 Hours Per Week
37.5 Hours Per Week	18.75 Hours Per Week
35 Hours Per Week	17.5 Hours Per Week

ASSOCIATED FEDERAL LAWS

Employee disclosure of a serious medical condition, personal injury, or disability may trigger applicable federal laws. Please refer to Part II – "The Family & Medical Leave Act," and Part II - Section V, "FMLA & Other Federal Laws," for more information on these laws, employer/employee responsibilities, and associated resources and training.

ACCRUAL OF SICK LEAVE

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.

RATE

Employees earn paid sick leave on a per-pay-period basis. **If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave accrual must be prorated based on the number of hours in the workweek.**

Based on a forty (40) hour-per-week schedule:

1. A full-time employee earns sick leave at the rate of 1.25 days (10 hours) per month.
2. A part-time employee earns sick leave at a proportionate rate. See "Helpful Hints – Calculating "Traditional" Sick Leave for Part-Time Employees" for additional information.
3. For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned monthly. For instance, for an LDSS with a semi-monthly pay period, the rate would be ½ day (5 hours) for each pay period for full-time employees.

Workweek Hours	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
40 Hours (8 hours per Day)	1.25	10	5
37.5 Hours (7.5 Hours per Day)	1.25	9.375	4.6875
35 Hours (7 Hours per Day)	1.25	8.75	4.375

RECEIPT & USE OF ACCRUED LEAVE

RECEIPT

Sick leave does not accrue until the end of the pay period in which it is earned. Newly accrued sick leave hours are available for use the first day of the following pay period or workweek. Borrowing against future leave accruals is not permitted.

PERSONAL USE OF SICK LEAVE

Employees are permitted to **use the full amount** of their accrued sick leave for their own care. The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use.

Personal reasons for use include:

1. When leave from work is medically necessary, and the employee is unable to perform the essential functions of the position.
2. Pregnancy and childbirth related medical conditions.
3. Medically documented chronic conditions.
4. Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").

5. Medical appointments that cannot be scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours.



Helpful Hints: Calculating "Traditional" Sick Leave for Part-Time Employees

Sick leave accruals for part-time employees are prorated based on the number of hours they work ***on a weekly basis***. For instance, an employee working one-half of the agency's workweek hours would earn ½ of a day (5 hours) of sick leave per month and an employee working three-quarters of the agency's workweek hours would earn ¾ of a day (7.5 hours) per month. However, it can get tricky when an employee's hours vary from those amounts.

Look at this example:

Jake has been with his agency for one year and works a set schedule of 19.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jake's hours equate to 52% of the full-time schedule. The full-time accrual rate for a one-year employee is 9.375 hours per month (based on a 37.5- workweek). Jake's accrual rate would be 4.875 hours per month, or 52% of the full-time accrual rate.

Here are some recommendations to make leave calculation for part-time employees easier:

- Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for *all* employees, and it can also aid in preventing miscalculation of pay and overtime hours.
- Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week).

Need help with calculating leave accrual amounts? Contact the VDSS Local HR Support Team with questions.

USE OF SICK LEAVE FOR FAMILY PURPOSES

Reasons for Use

1. Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").
2. When an employee's family member has a medical condition that requires the employee to directly assist in the family member's care or provide transportation for care-related activities.

3. The death of a family member.

Definition of a Family Member

1. For use of "traditional" sick leave in conjunction with the Family and Medical Leave Act (FMLA), the agency must follow the definition of a "family member" as specified by the FMLA, which is a child, parent, or spouse.
2. For use of "traditional" sick leave for reasons that **do not** qualify for FMLA, the definition of a "family member" includes:

    a. Parents
    b. Stepparents
    c. Spouse
    d. Children
    e. Stepchildren
    f. Siblings
    g. Grandparents
    h. Grandchildren
    i. Any relative by blood, marriage, or through legal custody or guardianship who resides in the employee's home.

    This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship.

Amounts Available for Use for Family Purposes

During a calendar year:

1. Employees may use **up to 33%** of their accrued sick leave balance in conjunction with FMLA.
2. Employees may use **up to eight (8) days** of their accrued sick leave balance for the care of family members for reasons that **do not** qualify for FMLA.

The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use for family purposes.

Notice & Approval of Sick Leave

Advance Notice & Approval

Employees are required to notify their supervisor of sick leave requests for approved reasons 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.

Notice & Approval for Unforeseeable or Emergency Situations

Notice and approval are required in all circumstances. However, the employee must provide notice as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. **The time will count as leave without pay until notice is provided and the request is approved.** See Section

IV, "Leave without Pay (LWOP)," for more information on the appropriate use of LWOP and potential impacts of the use of LWOP on employee benefits.

VERIFICATION OF NEED FOR SICK LEAVE

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.

TYPES OF VERIFICATION

The following types of verification will be deemed sufficient:

1. FMLA health care provider certification.
2. 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 that the employee will be absent from work.
3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

RE-VERIFICATION

If an employee is absent for an extended period 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.

TREATMENT OF SICK LEAVE UPON CHANGE IN STATUS

PAYMENT AT TERMINATION

1. An employee must have worked continuously for the same LDSS for five (5) years or longer to be entitled to a payment for accrued sick leave at termination or death.
2. 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.
3. For 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.

PAYMENT AT DEATH

Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §§ 64.2-601 and 64.2-602, which govern the process by which those payments are made. The guidelines

and legal requirements governing wages earned by an employee prior to death can be complicated. Individual circumstances can vary and may require additional guidance from the locality payroll office and attorney.

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.

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.

Transfer of Leave

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

Change in Employment Status

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

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. The LDSS may work out a repayment plan with the employee. LDSS employees are **not responsible** for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).

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.
5. Reimbursement due to employee error 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.

SECTION III: LDSS DISABILITY LEAVE PROGRAM

GENERAL INFORMATION

BACKGROUND

On January 1, 2014, the Virginia Retirement System (VRS) implemented the Hybrid Retirement Plan. With the implementation came the requirement that all Commonwealth of Virginia localities covered under the VRS Hybrid Retirement Plan automatically enroll in the VRS Virginia Local Disability Program (VLDP) or a comparable program provided by the local jurisdiction[1]. As a result of this change, full-time employees enrolled in the VRS Hybrid Retirement Plan would have access to short- and long-term disability benefits that may not have been previously available. A leave system was not a part of the implementation of the Hybrid Retirement Plan or the VLDP, thus the creation of a leave system was necessary.

The LDSS Disability Leave Program was created to fill the need for a leave system by allowing local boards to address the leave needs of employees covered under employer paid short- and long-term disability programs. High employee sick leave balances result from pairing the "traditional" sick leave accrual system (Section II of this chapter) with an employer paid short- and long-term disability program. The LDSS Disability Leave Program was created to prevent high “traditional” sick leave balances by offering a leave system where employees receive a finite amount of leave credits each year that do not accrue and are lost if unused within the agency’s leave year.

The leave associated with the LDSS Disability Leave Program is often referred to as “hybrid” leave because the VRS Hybrid Retirement Plan was introduced during the same timeframe; however, the two are indirectly related. Employees who have questions about the VRS Hybrid Retirement Plan or the VLDP should contact VRS.

OPTIONS FOR LOCAL BOARDS

Local boards may choose one of the following leave systems for employees covered under short- and long-term disability programs:

1. The LDSS Disability Leave Program.
2. The local jurisdiction’s leave policy.
3. The State Board sick leave accrual policy (also referred to as “traditional” sick leave).

It is recommended that LDSSs work with their local boards and their locality to determine the best approach for local department employees under a disability plan. The LDSS must have an approved deviation to follow the local jurisdiction’s leave policy.

[1] § 51.1-1153

Check the LDSS Profile Summary to verify deviation status or contact the VDSS HR Policy Team (**hr.employeerelations@dss.virginia.gov**) to inquire about the policy deviation process. 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.

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:

1. Full-time employees hired or rehired on or after January 1, 2014, and who are enrolled in the Virginia Retirement System (VRS) Hybrid Retirement Plan.
2. Full-time employees who choose to opt into the VRS Hybrid Retirement Plan.
3. Other employees as determined by the local board.

Employees eligible for sick leave accrual and who were hired before January 1, 2014, are covered under the State Board sick leave accrual policy ("traditional" sick leave). This policy is covered in Section II of this chapter. Employees who continue to participate in VRS Plan 1 or VRS Plan 2 will continue to accrue "traditional" sick leave. Employees should contact VRS with questions about their retirement plans.

Helpful Hints: Key Differences Between the LDSS Disability Leave Plan & "Traditional" Sick Leave

There are some important differences between the sick leave credit offered under the LDSS Disability Leave Plan and what is commonly referred to as "traditional" sick leave.

Let's look:

LDSS Disability Leave Plan

- Accompanies a short- and long-term disability program.
- The Disability Leave Plan provides both a sick leave ('hybrid') and family and personal leave credit.
- Leave types do not accrue. Employees receive either partial* or full leave credit amounts at a specific time during the year.
- Neither sick leave nor family and personal leave credits roll over. Leave credits not used in the previous year will be lost when leave credit amounts renew for the following year.
- There is no payout upon separation.

"Traditional" Sick Leave

- Stand-alone leave; no short- and long-term disability plan.
- Employees only receive sick leave ('traditional'); family and personal leave are not included.
- Accrues on a pay period basis.
- Sick leave accrual amount rolls over from year to year.
- May be paid out upon separation from the LDSS.

Questions? Contact the VDSS Local HR Support Team for assistance.

*New employees starting on or after July 1 only receive partial leave amounts until the beginning of the following year.

APPLICABLE FEDERAL LAWS

Employee disclosure of a serious medical condition, personal injury, or disability may trigger applicable federal laws. Please refer to Part II – "The Family & Medical Leave Act," for more information on the FMLA, employer/employee responsibilities, other federal laws that may intersect with the FMLA, and associated resources and training.

RECEIPT OF SICK LEAVE CREDIT

1. Full-time employees participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive the full sick leave credit amount on the first day of their first full payroll period.
2. Full-time employees participating in the VRS Hybrid Retirement Plan and hired July 1 or later will receive 50% of the full sick leave credit amount. Receipt occurs on the first day of their first full pay period.
    a. In subsequent years, employee hired after July 1 or later will receive the full sick leave credit amount on the first day of the first full payroll period in January.
3. Part-time employees hired on or after January 1, 2014, may receive a proportionate sick leave credit amount, as determined by their local boards.

If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave credit amounts must be prorated based on the number of hours in the workweek.

SICK LEAVE CREDIT CHARTS

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

40-Hour Workweek – 8 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	64
5-9	9	72
10+	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
0-4	8	60
5-9	9	67.5
10+	10	75

35-Hour Workweek – 7 Hours Per Day

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

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

40-Hour Workweek – 8 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	4	32
5-9	4.5	36
10+	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
0-4	4	30
5-9	4.5	33.75
10+	5	37.5

35-Hour Workweek – 7 Hours Per Day

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

USE OF SICK LEAVE CREDIT

Sick leave credit cannot be used until it is credited. Employees are not permitted to borrow against future credit. Sick leave credit may only be used for either personal or family illness, injury, or a medically documented condition(s).

PERSONAL USE OF SICK LEAVE

Employees are permitted to use the full amount of sick leave credit available for the calendar year for their own care. The LDSS local board and local director may choose to establish different limits on the amount of sick leave credits available for use.

Reasons for use include:

1. When leave from work is medically necessary, and the employee is unable to perform the essential functions of the position.
2. Pregnancy and childbirth related medical conditions.
3. Medically documented chronic conditions.
4. Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").
5. Medical appointments that cannot be scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours.

Use of Sick Leave for Family Purposes

During a calendar year, employees may **use up to 33%** of their unused sick leave credit balance for family sick leave. The LDSS local board and local director may choose to establish different limits on the amount of family sick leave credits available for use for family purposes.
Sick leave credits may be used for family purposes in the following situations:

1. Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").
2. When an employee's family member has a medical condition that requires the employee to directly assist in the family member's care or provide transportation for care-related activities.
3. The death of a family member.

Definition of a Family Member

1. For use of sick leave credits in conjunction with the Family and Medical Leave Act (FMLA), the agency must follow the definition of a "family member" as specified by the FMLA, which is a child, parent, or spouse.
2. For use of sick leave credits for reasons that **do not** qualify for FMLA, the definition of a "family member" includes:

    a. Parents
    b. Stepparents
    c. Spouse
    d. Children
    e. Stepchildren
    f. Siblings
    g. Grandparents
    h. Grandchildren
    i. Any relative by blood, marriage, or through legal custody/guardianship who resides in the employee's home.

    This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody/guardianship.

Notice & Approval of Sick Leave Credits

Advance Notice & Approval

Employees are required to notify their supervisor of sick leave credit requests for approved reasons 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.

Notice & Approval for Unforeseeable or Emergency Situations

Notice and approval are required in all circumstances. However, the employee must provide notice as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. **The**

time will count as leave without pay until notice is provided and the request is approved. See Section IV, "Leave without Pay (LWOP)," for more information on the appropriate use of LWOP and potential impacts of the use of LWOP on employee benefits.

VERIFICATION OF NEED FOR SICK LEAVE

VERIFICATION OF NEED MAY BE REQUIRED

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

TYPES OF VERIFICATION

The following types of verification will be deemed sufficient:

1. FMLA health care provider certification.
2. 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 that the employee will be absent from work.
3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

RE-VERIFICATION

If an employee is absent for an extended period 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 credits can be conditioned on providing the requested verification.

EFFECT OF LEAVE WITHOUT PAY ON SICK LEAVE CREDIT

Employees who are on approved leave without pay when sick leave credit balances are granted will not receive their sick leave credit balance until they return to paid status.

NO SICK LEAVE CARRYOVER OR PAYMENT UPON SEPARATION

Sick leave credit does not accrue. Remaining sick leave credit balances do not carry over from year to year, nor are they paid out upon separation.

ELECTING TO MOVE FROM THE STATE BOARD-APPROVED LEAVE SYSTEM ("TRADITIONAL" SICK LEAVE) AT A LATER DATE

The requirements of § 51.1-1153 dictate that all localities must participate in a short- and long-term disability program. LDSS local boards were initially given three options to choose from for a leave system to accompany the short- and long-term disability plan for employees enrolled in the VRS Hybrid Retirement Plan. One option was to continue to follow the State Board-Approved Leave System ("traditional" sick leave).

Any LDSS that initially elected to keep the "traditional" sick leave policy may elect to move to either the LDSS Disability Leave Program, or a comparable locality leave policy[1] at a future date. However, when making this choice, the LDSS must determine how to address employees' remaining "traditional" sick leave balances.

ADDRESSING REMAINING "TRADITIONAL" SICK LEAVE BALANCES

Once the decision is made to move to another leave program option, the eligible employees' "traditional" sick leave balances must be frozen. The local board may choose from the following options to address the frozen balances. The option(s) chosen and approved by the local board must be documented on the Local Department of Social Services Compensation Plan.

Available options are:

1. To allow employees to use the frozen balance, which may also include conversion of a portion of the frozen leave balance to annual leave; or
2. Make a payout of the frozen balance.

Allowing Use or Conversion of a Frozen Balance

An employee may use the remaining leave balance:

1. For any allowable use of "traditional" sick leave as noted in Section II of this chapter; or
2. To supplement income during periods when the 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.

The local board may also choose to allow the conversion of a portion of the frozen balance to annual leave. However, conversion amounts must not exceed the maximum carryover amount for annual leave.

Payout of a Frozen Balance

Payout may occur with a change in status or prior to separation.

[1] Per §22VAC40-675-50, LDSS seeking to follow a comparable locality leave policy are required to complete the policy deviation process and receive approval from the Virginia State Board of Social Services.

1. **Change in Status:** Treatment of accrued "traditional" sick leave balances should be consistent with Section II of this chapter.
2. **Separation:** 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 the payment is 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 (2) 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.

RECEIPT OF FAMILY & PERSONAL LEAVE

1. Full-time employees participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive the full family and personal leave credit amount on the first day of their first full payroll period.
2. Full-time employees participating in the VRS Hybrid Retirement Plan and hired July 1 or later will receive 50% of the full family and personal leave credit amount. Receipt occurs on the first day of their first full pay period.
    a. In subsequent years, employees hired after July 1 or later will receive the full family and personal leave credit amount on the first day of the first full payroll period in January.
3. Part-time employees hired on or after January 1, 2014, may receive a proportionate family and personal leave credit amount, as determined by their local boards.

If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), family and personal leave credit amounts must be prorated based on the number of hours in the workweek.

FAMILY & PERSONAL LEAVE CREDIT CHARTS

Eligible full-time with **LESS** than 120 Months of Employment:

40-Hour Workweek – 8 Hours Per day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	32	4
July 1 – December 31	16	2

37.5 Hour Workweek – 7.5 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	30	4
July 1 – December 31	15	2

35 Hour Workweek – 7 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	28	4
July 1 – December 31	14	2

Eligible full-time employees with **MORE** than 120 Months of Employment:

40-Hour Workweek – 8 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	40	5
July 1 – December 31	20	2.5

37.5-Hour Workweek – 7.5 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	37.5	5
July 1 – December 31	18.75	2.5

35-Hour Workweek – 7 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	35	5
July 1 – December 31	17.5	2.5

USE OF FAMILY & PERSONAL LEAVE CREDIT

Family and personal leave credit may be used for any reason but cannot be used until it is credited. Employees are not permitted to borrow against future credit.

EFFECT OF LEAVE WITHOUT PAY ON FAMILY & PERSONAL LEAVE CREDIT

Employees who are on approved leave without pay when family and personal leave credit balances are granted will not receive their family and personal leave credit balance until they return to paid status.

NO FAMILY & PERSONAL LEAVE CARRYOVER OR PAYMENT UPON SEPARATION

Family and personal leave credit does not accrue. Remaining family and personal leave credit balances do not carry over from year to year, nor are they paid out upon separation.



Helpful Hints: Understanding the Benefits of a Short- or Long-Term Disability Plan

A short- and long-term disability (STD/LTD) plan is designed to provide income protection in the event a serious non-work or work-related illness or injury prevents an employee from working. All Virginia localities are required to adopt STD/LTD plans (§51.1-1153), giving the LDSS local boards the option to move away from the use of "traditional" sick leave, where employees accumulate sick leave over time. STD/LTD plans offer more consistency for coverage of illness/injury for the LDSS's entire employee group, while also providing financial relief for the LDSS.

Let's take a closer look at STD/LTD benefits:

Employees with less tenure in the organization will have had less time to earn sick leave, creating gaps in coverage should serious illness, injury, or another covered condition (i.e., pregnancy, etc.) occur. The STD/LTD plan allows more protection by reducing gaps in coverage for employees in these types of situations.

Sick leave balances are eligible for payout in certain circumstances (see Section II – Sick Leave; *Treatment of Sick Leave Upon Change in Status*). Depending upon how many employees are eligible in any given year, sick leave payouts can be financially burdensome for an agency.

a. While LDSS local board have three (3) leave program options to select from to accompany the locality STD/LTD plan, selecting the LDSS Disability Leave Plan can eliminate the financial burden of payouts.
b. The locality STD/LTD plan provides eligible employees with income protection and the LDSS Disability Leave Plan provides employees a set amount of sick leave and family and personal leave credits each year. The credits are lost if not used within the year and are not eligible for payout.

Questions? Contact the locality HR or human resources department for specific questions about the STD/LTD program available to the LDSS. Contact the **VDSS Local HR Support Team** with questions about the LDSS Disability Leave Program.

SECTION IV: LEAVE WITHOUT PAY

GENERAL INFORMATION

Leave without pay (LWOP), or unpaid leave, is available to all LDSS employees in specific situations. The procedures and information outlined in this section must be followed when requesting and approving LWOP. Extended periods of LWOP may impact accrued leave, benefits, and the employee's ability to receive bonuses and performance raises.

REASONS FOR REQUESTING LEAVE WITHOUT PAY

REASONS INCLUDING JOB RESTORATION

There are two (2) reasons that LWOP may be requested where employees are entitled to job restoration:

1. Personal or family illness covered under the Family and Medical Leave Act (see Part II – The Family & Medical Leave Act).
2. Military Leave (see Section V; Military Leave).

REASONS WHERE JOB RESTORATION IS NOT GUARANTEED

Outside of FMLA or military leave, LWOP may be requested for educational purposes (see Section VIII; "Educational Leave") or for any reason deemed appropriate by the LDSS local board and local director. The director and local board should carefully consider the business needs of the LDSS and whether the request will be burdensome. Please review "Abuse of Leave without Pay" for examples of requests for LWOP that are not appropriate.

Job restoration is **not** guaranteed for the duration of the period of LWOP. If possible, the LDSS will hold the position open until the employee returns from the approved period of LWOP. However, the LDSS is responsible for notifying the employee immediately once there is awareness that the position needs to be filled and is unable to be restored.

Written notification must be sent to employees by United States Postal Service (USPS) Certified Mail, alerting the employee of the need to fill the position, and set the expectation that the employee:

1. Must return to work in full capacity; and
2. Must return by a specific date to avoid forfeiture of the position.

The return date should offer a reasonable amount of time for the employee to receive and respond to the notification (e.g., one calendar week). USPS tracking documentation should be retained for recordkeeping purposes.

An employee will be deemed to have resigned his/her position if the employee does not return to work at the end of LWOP, or if the position cannot be held and the employee fails to respond to the notification to return to work.

NOTICE & APPROVAL OF LEAVE WITHOUT PAY

ADVANCE NOTICE

Employees are required to notify their supervisor of the need for LWOP as soon as the absence is foreseeable. If the LWOP request is for a medical condition, foreseeable absences include, but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

NOTICE OF UNFORESEEABLE OR EMERGENCY SITUATIONS

Notice and approval are required in all circumstances. However, the employee must provide notice of the need for LWOP as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency.

APPROVAL

1. LWOP must be approved and granted to eligible employees for FMLA and military leave, **regardless of whether or not the employees have other accrued or credited leave types available**.
2. For all other requests, approval of LWOP is dependent upon the current needs/priorities of the LDSS and the amount of leave requested by the employee.
3. Except for LWOP requests for FMLA and military leave, an employee cannot be on LWOP until all available accrued or credited leave types are exhausted. In extenuating circumstances, an LDSS may permit prorated or proportional use of paid leave and unpaid leave to prevent the employee from losing benefits (e.g., health insurance, retirement, etc.).
4. LWOP shall not be granted for more than three (3) months, except in instances where employees are on intermittent FMLA or military leave.

EFFECT OF LEAVE WITHOUT PAY ON BENEFITS

ACCRUED LEAVE & LEAVE ANNIVERSARY DATES

An employee who is on LWOP does not accrue annual or "traditional" sick leave for that pay period. "Hybrid" leaves do not accrue. However, employees who are on approved LWOP when "hybrid" leave credit balances (sick, family and personal) are granted, will not receive their leave credit balances until they return to paid status.

After fourteen (14) consecutive days of LWOP, the LDSS must adjust the employee's ***annual*** leave anniversary date as follows:

Calendar Days on Leave without Pay	Extension of Anniversary Date (Pay Periods)
1-14 Days	No Extension of Anniversary Date
15-31 Days	1 Pay Period
32-46 Days	2 Pay Periods
47-61 Days	3 Pay Periods
62-76 Days	4 Pay Periods
77-91 Days	5 Pay Periods

Effect on Raises & Bonuses

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

Retirement

LWOP must be reported to the Virginia Retirement System (VRS), which may result in impacts to an employee's years of service. VRS is the resource for policies and procedures for maintaining retirement contributions.

Life Insurance

LDSS have the following options:

1. The LDSS may elect to make its contribution for life insurance for all or part of the employee's LWOP period; or
2. The LDSS may permit the employee to continue coverage at the employee's expense for the duration of the LWOP period. The employee must receive notice and be provided with the election form at the beginning of the LWOP period.

Employees should contact the locality with any questions concerning life insurance coverage.

Health Insurance

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

1. **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. **Short/intermittent periods of LWOP unrelated to FMLA:** The LDSS should follow the practices set by the locality, the plan administrator, for all employees under the healthcare plan. If the locality permits continued coverage during a short/intermittent period of LWOP, COBRA procedures do not apply.

Employees should contact the locality with any questions concerning health insurance coverage.

Other Benefits

Benefits may vary from locality to locality. It is recommended that the LDSS establish an internal policy indicating how other benefits specific to the locality will continue during periods of LWOP.

Abuse of Leave without Pay

LWOP is not intended for casual use based on an employee's failure to manage available leave balances to cover future planned events or for unexpected, noncritical events (i.e., minor illness or injury, car trouble, etc.). Employees must adhere to the request and approval process outlined in this section.

Abuse of LWOP occurs when an employee *continually* exhausts all available leave balances and makes *repeated* requests to use LWOP due to the failure to maintain a leave balance throughout the year. Abuse of LWOP may be met with disciplinary action, up to and including termination of employment.

The LDSS local board and local director may establish a limit to the amount of LWOP an employee may request within a calendar year for purposes incidental to this policy.

Contact the VDSS Local HR Support Team with general questions about LWOP and the VDSS Employee Relations Team (**hr.employeerelations@dss.virginia.gov**) with questions about the abuse of LWOP.

SECTION V: MILITARY LEAVE

GENERAL INFORMATION

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 United States 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:

1. Voluntary and involuntary duty
2. Active or inactive duty
3. Training
4. Full-time duty with the National Guard, Naval Militia, or Public Health Service

REQUIREMENTS FOR THE USE OF MILITARY LEAVE WITH JOB RESTORATION COVERAGE

1. The employee's absence request must be on account of service in the uniformed services.
2. The employee must give advance notice (written or oral) to the LDSS that he/she is requesting leave for service (including training) in the uniformed services, unless such notice was precluded by military necessity or otherwise impossible or unreasonable.
3. The employee must provide a copy of his/her military orders either at the time of the advance notice, or if the orders are not yet available, after the leave is granted.
4. The cumulative period of military leave granted by the LDSS must not have exceeded five (5) years (see "Helpful Hints – Additional Information on Calculating the Five-Year Period" for more information).
5. The employee must not have been released from military service under dishonorable or other punitive conditions.
6. Unless impossible or unreasonable, the employee must have reported back to work at the LDSS in a timely manner or have submitted a timely application for reemployment.

Helpful Hints: Additional Information on Calculating the Five-Year Cumulative Period

An employee is eligible for military leave if he/she has not used five (5) cumulative years of military leave during employment with the LDSS. Per the Department of Labor, most types of service will be covered within the five (5) year cumulative period limit. However, there are eight (8) exceptions to this rule where military leave must be granted regardless of the five-year cumulative cap.

These exceptions are:

1. Service required beyond five (5) years to complete an initial period of obligated service.
2. An obligation to service that, through no fault of his/her own, the employee is unable to obtain release.
3. The required two-week annual training for Reservists/National Guard members.
4. Involuntary calls to service for a domestic emergency.
5. Being ordered to service during a time of war or national emergency declared by the President or Congress.
6. Selected Reservists who are ordered active duty for "operational missions."
7. Service members who are ordered to active duty by the Secretary involved to support a "critical mission requirement."
8. A member(s) of the National Guard who are called by the President to execute the laws of the United States.

Contact the VDSS Local HR Support Team with questions about this calculation.

MILITARY LEAVE WITH PAY

1. Per federal fiscal year, a public employee must be granted up to fifteen (15) workdays of military leave with pay per federally funded tour of duty. **The total number of hours in the workday must be consistent with the weekly schedule of the LDSS (40-hour week = 8-hour day, 37.5-hour week = 7.5-hour day, or 35-hour week = 7-hour day).** The federal fiscal year runs from October 1 of one calendar year through September 30 of the next.
2. The minimum charge to leave is one hour. An employee may be charged military leave only for the hours that the employee would otherwise have worked and received pay.
3. Inactive Duty Training is authorized training performed by members of a Reserve or National Guard component not on Active Duty. It is performed in connection with the prescribed activities of the Reserve or National Guard. It consists of regularly scheduled unit training periods, additional training

periods, and equivalent training. Employees who request military leave for Inactive Duty Training (generally two, four, or six hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel.

4. For employees who do not normally work approximately equal workdays of five (5) 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 considering any holidays, paid or unpaid leaves of absence, or other absences.
5. Benefits received while on military leave with pay are the same as if the employee were employed.

MILITARY LEAVE WITHOUT PAY

Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five (5) years, and they have not been dishonorably discharged.

LEAVE BENEFITS

Annual Leave

1. Employees will not accrue annual leave when they are on leave without pay status.
2. Employees may:
    a. Retain all or a portion of their accrued annual leave.
    b. Use all or part of the accrued leave to supplement military pay.
    c. Be paid for the accrued annual leave at the commencement of military leave without pay.
3. Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining seniority for layoff purposes.

COMPENSATORY & SPECIAL DUTY LEAVE

Employees may:

1. Retain all or a portion of their compensatory and special duty leave.
2. Use all or part of the leave to supplement military pay.
3. Be paid for the leave at the commencement of military leave without pay.

"Traditional" Sick Leave

1. Employees will not accrue sick leave while on leave without pay status.
2. Employees with less than five (5) years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances. Sick leave balances will be reactivated upon reinstatement to local service.
3. Employees with five (5) or more years of continuous employment with the LDSS at the time military leave begins may:

   a. Retain their entire sick leave balance.
   b. Receive payment for the accrued sick leave under the provisions of the Section II, "Sick Leave ("Traditional").".
4. If the balance is retained, it must be reactivated upon reinstatement to local service. If payment is processed, all remaining balances are lost and cannot be reinstated upon reemployment.
5. Employees who received payment for their sick leave balances and return to work must serve another five (5) years of continuous local service before being eligible for sick leave payment upon termination.
6. Employees may not repurchase any sick leave for which they have been paid.

"Hybrid" Leave

"Hybrid" leaves do not accrue. However, employees who are on approved leave without pay when "hybrid" leave credit balances (sick, family and personal) are granted, will not receive their leave credit balances until they return to paid status.

Health Plan Participation

Health insurance plans and other benefit options are facilitated by the locality and may differ from locality to locality. Questions specific to the benefit plans, coverage options, etc., should be addressed to the locality.

1. Employees called for active duty have the right to continue participating in the LDSS's health care plan for twenty-four (24) months beginning one (1) month after the date leave without pay commences, if they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents.
2. 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 thirty-one (31) days is entitled to participate in the health plan on the same terms as if employment was not interrupted.
3. Election rights are for the employee as well as other qualified beneficiaries.
4. Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted–e.g., the plan cannot impose a waiting period or other exclusion provisions.

Retirement Plan

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

Reinstatement from Military Service

Employees who have been on military leave for a period of thirty-one (31) days or longer should notify the LDSS of their intention to be reemployed and the expected date of return. 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:

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

2. Returns to work within the period specified in the "Reinstatement Reporting Timeline" chart below.
3. Is qualified, or can reasonably be retrained, for the position that the employee would have held if employment had not been interrupted due to the military leave; held at the time military leave commenced; or is of like seniority, pay, and status.

Military Leave Amount	Reinstatement Reporting Timeline
In **addition** to the time periods set forth below, reasonable time for ***safe travel and rest MUST*** be allowed.	
Military leave of less than 30 days	**After eight (8) hours** of rest, the employee must report to work on the first regularly scheduled workday following return home from military service.
Military leave of 31 to 180 days	Must either send an application to return to work or report to work **within fourteen (14) days** of completing military service.
Military leave of 181 days or longer	Must either send an application to return to work or report to work **within ninety (90) days** of completing military service.
Service-related incapacities	the reporting deadlines for employees who are hospitalized/recovering because of a service-related injury/illness are **extended to up to two (2) years.**

Reinstatement Position Determination Process

Escalator Principle

In determining the position to which the employee may be entitled, the "escalator principle" is to be used. Meaning that the employee must be reemployed in a position that reflects "with reasonable certainty" the pay, benefits, seniority, and any other position benefits that he/she would have attained if not for the period of absence due to military service. Also, the position may not necessarily be the same job the employee previously held.

Position Determination where Disability is a Factor

When an employee becomes disabled during military service and cannot perform duties of the previous position, the LDSS must attempt to provide reasonable accommodations. If 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.

Position Determination when the Employee no Longer Meets Minimum Requirements

Cases may occur where the employee no longer meets the minimum qualifications of the former position because of changes in job duties. In the event the employee no longer meets the minimum qualifications of the position:

1. The employee must be offered an opportunity to meet the new requirements within a reasonable time after reinstatement.

2. The employee must be offered a position requiring skills comparable to those required in the former position regarding seniority, status, pay, and location.

Circumstances where Reinstatement is not Required

Reinstatement is not required if the LDSS's circumstances have changed thereby making it impossible or unreasonable to reinstate the employee. However, the LDSS remains responsible for:

1. Placing the employee in a position comparable in status in pay to the position the employee previously held if the employee's former has been abolished.
2. Considering the employee to be affected by lay-off and following lay-off policies if a comparable position is not available. See **Chapter 7** of the LDSS Administrative/HR Manual for more information on lay-offs.

FAMILY & MEDICAL LEAVE ACT (FMLA)

USERRA requires that the reinstated employee be given credit for any months and hours of service he or she would have been employed but for the USERRA-covered service in determining eligibility for FMLA leave. Part II - Section III, "FMLA Military Leave Entitlements," provides more information on the qualification and certification process for specific military leave entitlements under the FMLA.

ANNUAL NOTICE OF MILITARY LEAVE RIGHTS

The LDSS is required to provide every employee with a notice of the rights afforded under this policy on an annual basis. The LDSS may meet this obligation by providing an employee with a copy of this policy, or by referring the employee to the policy and having it available for distribution.

SECTION VI: BEREAVEMENT LEAVE

GENERAL INFORMATION

Bereavement leave is available to all LDSS employees and is provided so that employees may have time off following the death of a family member. Bereavement leave is permitted if taken within eight (8) weeks of the death of the family member.

USE OF BEREAVEMENT LEAVE

LEAVE FOR DEATH OF FAMILY MEMBER

Annual Leave

An employee may use annual leave for absences 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 providing:

1. The leave time is requested in advance, or as soon as it is reasonable to do so under the circumstances.
2. The time requested is reasonable under the circumstances.
3.

In the event of the death of an employee's child or spouse, the LDSS may grant the use of up to three (3) weeks of accrued sick leave during the period immediately following the death.

Sick Leave

During a calendar year, an employee may use:

1. Three (3) days of either "traditional" or "hybrid" sick leave for the death of a family member.
2. No more than a total of six (6) days when there are multiple family member deaths during the calendar year.

For use of either "traditional" or "hybrid" sick leave, the definition of a "family member" includes:

1. Parents
2. Stepparents
3. Spouse
4. Children
5. Stepchildren
6. Siblings
7. Grandparents
8. Grandchildren
9. Any relative by blood, marriage, or through legal custody/guardianship who resides in the employee's home.

Leave without Pay (LWOP)

LWOP may also be granted for bereavement purposes subject to the rules set forth in Section IV, "Leave Without Pay (LWOP)."

SECTION VII: CIVIL LEAVE

GENERAL INFORMATION

Civil leave is available to all regular LDSS employees and is provided so that employees may have time off for civic and administrative purposes.

USE OF CIVIL LEAVE

Civil leave may be granted for the following:

1. Court Proceedings:
    a. To serve on a jury.
    b. 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.
    c. To accompany the employee's child to court when the child is required to appear in court.
2. To participate in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS.
3. To participate in a workers' compensation, unemployment compensation hearing, or administrative proceeding involving the employee or another employee within the LDSS.
4. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees.

Civil leave may **not** be granted for:

1. Court proceedings where the employee is a defendant in a criminal matter, where criminal matter means either an alleged misdemeanor or felony.
2. The receipt of a summons to appear in traffic court (except as a witness).
3. Instances where the employee is a party to a civil case, either as a plaintiff or defendant, or who has any personal or familial interest in the proceedings.

REASONABLENESS OF REQUEST

The amount of civil leave requested must be reasonable. 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. With director approval, an employee may use annual leave for the remaining hours of the workday if it is not feasible for the employee to return to work due to either distance or inconvenience.

REQUIREMENT OF ADVANCE APPROVAL

The supervisor must be notified as soon as the employee knows of the need for the civil leave. For instances where there is a sincere agency conflict, 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.

JURY DUTY

Employees who are summoned to jury duty must be free to perform this civic duty. No adverse employment action shall occur because of employee use of civil leave for this purpose. Employees serving on a jury must receive their full pay and must not have any leave time charged to either annual leave or compensatory leave.

For those LDSS who have established rotational shifts, as required by the Code of Virginia § 18.2-465.1, employees who appear for jury duty for four or more hours in one day, including travel time, will not be required to start a work shift that begins on or after 5:00 p.m. on the day of that service or that begins before 3:00 a.m. on the day following the jury duty.

PROVISIONS FOR CRIME VICTIMS

An LDSS shall allow an employee who is a victim of a crime to be present at all criminal proceedings relating to a crime against the employee, as long as the employee provides the agency with a copy of the form presented to the employee by the law enforcement agency pursuant to the Code of Virginia § 19.2-11.01 and, if applicable, provides the agency a copy of the notice of each scheduled criminal proceeding that is presented to the employee as victim.

1. Paid civil Leave shall apply when the employee's presence at legal proceedings is compelled by subpoena or summons.
2. Employees may use existing annual, compensatory, special duty, or family and personal leave balances for court proceedings that do not qualify for paid leave; however, the LDSS must provide LWOP, if requested.
3. Annual and "traditional" sick leave will not accrue in any pay period in which an employee takes unpaid civil which places them in a LWOP status.
4. The LDSS may limit the paid or unpaid leave if the employee's absence creates an undue hardship for the agency. The LDSS is encouraged to contact the VDSS HR Employee Relations Team (**hr.employeerelations@dss.virginia.gov)** prior to deciding what situations might qualify as an undue hardship.

COMPENSATION

REIMBURSEMENTS

Per Code of Virginia § 17.1-618, every person summoned as a juror in a civil or criminal case shall be entitled to $50 for each day of attendance upon the court for expenses of travel incident to jury service and other necessary and reasonable costs as the court may direct. Jurors summoned from another political subdivision pursuant to § 8.01-363 may be allowed by the court, in addition to the above allowance, their actual expenses.

Employees are permitted to keep any money received from the court 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).

Per the Code, there are instances where the amount may be higher than $50 if the employee is required to go to another locality for the court appearance, and lodging is required.

COMPENSATION RECEIVED FROM THE COURT

Employees who receive compensation from the court for services rendered while on civil leave (e.g., expert witness fees, etc.) must report such compensation to the LDSS. The hours taken may not be charged to civil leave. However, the employee may use accrued annual leave or LWOP for the hours of compensated service.

SECTION VIII: EDUCATIONAL LEAVE

GENERAL INFORMATION

Educational leave is available to all LDSS employees and is provided to support employees' self-development through the pursuit of formal educational opportunities relating to their career with the LDSS.

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 LDSS director providing the following information:
    a. The name, location, and dates of attendance of the course or program.
    b. How the employee's completion of this course or program will benefit the LDSS.
    c. The suggested means to execute the employee's duties during the absence.
2. An employee may be granted educational leave for a 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 may be granted with or without pay. Educational leave granted with pay shall not be granted for longer than three (3) months.
4. LDSS granting educational leave without pay must follow the policies in Section IV, "Leave without Pay (LWOP)."
5. The LDSS may consider a schedule adjustment in lieu of granting leave.

RETURN FROM EDUCATIONAL LEAVE

1. An employee returning from educational leave with pay will be placed in his/her former position.
2. 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.
3. The employee shall be given credit for the period of educational leave when determining an increase to the annual leave accrual rate.
4. The LDSS is under no obligation to hold a position vacant during the period of educational leave without pay. See Section IV, LWOP, "Reasons where Job Restoration is not Guaranteed," for more information.

EDUCATIONAL PURSUITS REQUIRED BY THE LDSS

Educational leave shall not be used 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/her regular rate of pay.

SECTION IX: ADMINISTRATIVE LEAVE

GENERAL INFORMATION

The administrative leave policy applies to all LDSS employees and relates to the procedures of granting leave for the performance of non-work activities away from the LDSS in specific circumstances.

USE OF ADMINISTRATIVE LEAVE

Administrative leave with or without pay may be granted by the LDSS for employees who are 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. LDSS granting administrative leave without pay must follow the policies in Section IV, "Leave without Pay (LWOP)."

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

1. The LDSS is investigating the employee for misconduct, and the LDSS has not determined whether discipline is warranted.
2. Other legitimate LDSS reasons.

The LDSS is strongly encouraged to contact the VDSS HR Employee Relations Team (**hr.employeerelations@dss.virginia.gov)** prior to placing an employee on administrative leave.

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, including earned annual and sick leave. Administrative leave with pay does not count as hours worked for the purposes of overtime.

SECTION X: LEAVE SHARING PROGRAM

GENERAL INFORMATION

An LDSS may establish a leave sharing program that fits the needs of both the LDSS and its employees. The following are suggested procedures for the implementation of such a program. If created, the leave sharing program applies to all LDSS employees in either regular or restricted positions. Contact the VDSS Local HR Support Team for additional guidance.

PURPOSE

The purpose of establishing a leave sharing program for the LDSS is to assist employees with leave in relation to their own "serious health condition," the "serious health condition" of an employee's immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. Employee leave requests must only be for these reasons. However, employees do not have to be eligible for FMLA to receive leave donations under the leave sharing program. For instance, employees may still request leave for the conditions described above even if they have exhausted the allotted twelve (12) week/480 hours of FMLA leave or if they have not yet met the FMLA eligibility timeframe.

ELIGIBILITY

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).

CERTIFICATION OF HEALTH CARE PROVIDER

FMLA-Eligible Employees

An employee is not eligible for donated leave until the employee has provided the required documentation to establish the qualification for FMLA leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for FMLA leave.

FMLA-Ineligible Employees

In situations where the employee is requesting a leave donation and is ineligible to receive FMLA, the employee is still required to provide adequate documentation from a health care provider to substantiate the need for the request. It is not recommended that the LDSS provide FMLA forms for employees who are not eligible to receive FMLA. The LDSS may develop an agency health care provider certification form for FMLA-ineligible employees. Contact either the locality HR representative or attorney or the VDSS Local HR Team for additional guidance with creating the form.

Disqualifying Absences

Employees in the following categories are ineligible for leave sharing donations:

1. Employees who are on a disciplinary suspension,
2. Employees who are absent for leave for reasons that fall under the Virginia Worker's Compensation Act (whether benefits have been received under the Act).
3. Employees who are absent because of an injury or illness that is deliberately self-inflicted.
4. Employees who are absent because of an injury or illness which occurred while the employee was engaging in an unlawful act.

Waiting Period

While employees are not required to be FMLA-eligible to participate in the leave sharing program, an LDSS may establish its own waiting period for employees to be eligible to participate in the program.

Request/Approval Form

Each LDSS participating in this program must develop a form on which the request for leave and the approval status may be documented. The form should be designed so that when the employee is physically or mentally unable to make the leave request, the request may be made on the employee's behalf.

Status While on Donated Leave

An employee must be on leave without pay (LWOP) status 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.

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 twelve (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 cost of the payments.

LEAVE BANK REQUIREMENTS

Each LDSS providing 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.

ANNUAL LEAVE DONATIONS

Annual leave may be donated in the following ways:

1. Annual leave that will be lost if not used by the end of the year.
2. Annual leave that is within the maximum accrual amount.
3. A fixed amount per donation or per year, per employee.
4. No limitations on amount or timing of donated leave.

ESTABLISHING A LEAVE BANK

There are three (3) types of leave banks that may be established:

1. A non-designated leave bank which permits donating to a pool to be used by any eligible employee.
2. Donation to a designated employee of the LDSS.
3. A combination of the above.

RETURNING A LEAVE DONATION

If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is more than the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in either:

1. Reverse order of the receipt of donations.
2. A prorated amount per donor.

RECLAIMING LEAVE

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

PENALTIES FOR ABUSE

Founded complaints of policy abuse require the employee 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 subject to disciplinary action up to and including termination of employment.

PART II: FAMILY & MEDICAL LEAVE ACT

POLICY STATEMENT

The Virginia State Board of Social Services establishes this policy to ensure LDSS are compliant with the Family and Medical Leave Act (FMLA). Part II of this chapter describes the requirements for obtaining leave under the FMLA.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:
Per § 22VAC40-675-50 of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to the locality policy, provided the deviation is approved by the VDSS HR Policy Team (**hr.employeerelations@dss.virginia.gov**) as being in substantial conformity with this policy.

SECTION I: ELIGIBILITY & QUALIFICATIONS FOR FAMILY & MEDICAL LEAVE

GENERAL INFORMATION

This policy provides the eligibility requirements and procedures for the use of leave in accordance with the Family and Medical Leave Act (FMLA) and applies to all LDSS employees who meet the eligibility requirements set forth by the FMLA.

FMLA leave is **unpaid leave.** The LDSS may require, or employees may request, paid leave to run concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate, under each leave policy for absences covered under the FMLA. The LDSS may designate such leave as FMLA leave if the conditions set forth in this policy are met.

For instances where paid leave is not required or unavailable, please refer to Part I - Section IV, "Leave without Pay (LWOP)." This section provides information on job restoration when returning from FMLA, and the impact of leave without pay (LWOP) on employee benefits.

RESOURCES

The LDSS may need additional support during the FMLA process.

1. For questions about the impact on benefits, it is recommended that the LDSS or the employee contact the locality.
2. For general questions about eligibility or interpretation of the Family and Medical Leave Act, contact the VDSS Local HR Support Team.
3. For more complicated matters (second or third opinions, failure to return to work, intersection with other federal laws, etc.), contact the locality HR representative or attorney.
4. The Department of Labor (DOL) has a Family Medical Leave Act Advisor tool that may also be helpful in addressing questions and issues relating to the determination of eligibility and certification.

ELIGIBILITY

To be eligible to take FMLA 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 twelve (12) consecutive or non-consecutive months in the past seven (7) years.
2. The employee must have worked at least 1,250 hours as hours worked for the twelve (12) months immediately preceding the first day of the requested leave (paid leave is not counted).

3. Employees returning from military service who request FMLA 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 1,250-hour requirement in the determination of their eligibility for FMLA leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). See Part I - Section V, "Military Leave," for additional information.
4. Twelve (12) weeks of FMLA leave must not have been used in the current twelve (12) month period. The LDSS local board and local director may choose from any of the following options to establish how the twelve (12) month period is calculated.
    a. Calendar Year
    b. Fiscal Year
    c. Another Fixed Twelve (12) Month Period
    d. Rolling Twelve (12) Month Period – A 'rolling' period looks back from the date the leave was requested.
5. The LDSS local board and local director reserve the right to change how the FMLA leave is calculated as long as:
    a. Employees are provided with a minimum of sixty (60) days' notice of the change, and
    b. The transition takes place in such a way that the employees retain the full benefit of twelve (12) weeks of leave under whichever method affords the greatest benefit to the employee.

    Under no circumstances may a new calculation method be implemented to avoid the FMLA's leave requirements.

Helpful Hints: FMLA Intersection with Other Federal Laws

There are two additional federal laws, the Americans with Disabilities Act (ADA) as amended, and the Pregnant Workers Fairness Act (PWFA), that may require the employer to grant leave to employees as a reasonable accommodation. A qualifying request to approve leave under the FMLA may also be a qualifying reason under the ADA or PWFA. Please see Section VI; FMLA & Other Federal Laws for more information.

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

QUALIFYING REASONS

Eligible employees may take up to twelve (12) weeks of unpaid FMLA leave per the established twelve (12) month period of the LDSS for the following reasons:

1. A serious health condition that renders the LDSS employee unable to perform any one of the essential functions of his/her position.
2. A serious health condition of an LDSS employee's family member, defined by the FMLA as a spouse, son, daughter, or parent who is unable to care for him/herself.

3. The birth of a child (to be taken within twelve (12) months of the child's birth).
4. The placement of a child with the employee for adoption or foster care (to be taken within twelve (12) months following date of placement).

Qualifying reasons for employees seeking military family leave under the FMLA are addressed in Section III, "FMLA Military Leave Entitlements".

RESTRICTIONS ON USAGE

1. Parental Leave
    a. Leave taken for the birth or placement of a child must be used within the twelve (12) months following the birth or placement.
    b. A combined total of twelve (12) weeks of FMLA Leave will be provided in the event both parents work for the LDSS.
2. FMLA leave is not cumulative. Unused leave cannot be carried over to the next twelve (12) month period.
3. FMLA may not be used for short-term conditions for which treatment and recovery are brief.
4. When possible, employees are expected to schedule routine appointments during non-work hours. When it is not possible to schedule an appointment during non-work hours, employees should attempt to schedule appointments outside of peak times of operation for the agency.

SECTION II: FMLA CERTIFICATION PROCESS

FMLA FORM ACCESS

IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear *in italicized type* to prompt the reader to access the DOL site. A link to the DOL FMLA Forms site will appear in the paragraph where the forms are listed.

REQUEST FOR INITIATION OF FMLA

ADVANCE NOTICE & APPROVAL

Employees are required to notify their supervisor of the need for FMLA-qualifying leave at least thirty (30) calendar days in advance of the absence, or as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, chronic conditions requiring regular or routine medical appointments, pregnancy, and childbirth.

LDSS INITIATION OF FMLA UNDER CERTAIN CIRCUMSTANCES

The LDSS must initiate the FMLA process for an FMLA-eligible employee as soon as there is enough information indicating the employee's need for leave may be for an FMLA-qualifying reason. The LDSS must also accept notice from an employee's family member if the employee is unable to provide the notice.

Please see Section VI, "FMLA & Other Federal Laws," to determine if the employee's request may also qualify under the Americans with Disabilities Act (ADA) as amended, or the Pregnant Workers Fairness Act (PWFA).

NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES

The LDSS is required to provide the employee with the *Notice of Eligibility and Rights & Responsibilities (Form WH-381)* within five (5) business days of the receipt of the request for leave under the FMLA. DOL FMLA Forms.

DESIGNATION NOTICE

Once the *Notice of Eligibility and Rights & Responsibilities (Form WH-381)* is completed and returned, the LDSS must inform the employee within five (5) business days whether the leave will be designated as

FMLA. This determination must be provided to the employee using the *Designation Notice (Form WH-382).* DOL FMLA Forms.

CERTIFICATION PROCESS

This subsection covers a more common, full-time FMLA certification process. Subsection F. addresses intermittent FMLA leave requests and Subsection G. addresses the military certification process.

INITIAL REQUEST

Employee Responsibility: Certification of a Health Care Provider

All requests for FMLA leave must be supported by either of the following forms (DOL FMLA Forms):

- Certification of a Health Care Provider for Employee's Serious Health Condition (Form WH-380-E)
- Certification of Health Care Provider for a Family Member's Serious Health Condition (Form WH-380-F)

Once the LDSS provides the employee with the appropriate form, the LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification.

It is the discretion of the LDSS to extend the timeframe if reasonable circumstances prevent the employee from meeting the fifteen (15) calendar day deadline (i.e., inability to get an appointment with a health care provider within fifteen (15) calendar days, delay by the *health care provider* on the return of the certification form, etc.). All timeframe extensions should be documented.

LDSS Responsibility: Response to Employee Request

1. The LDSS must respond to the employee's request for FMLA leave on the *Designation Notice (Form WH-382).* DOL FMLA Forms.
2. 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 the required documentation from the employee.
3. The LDSS may conditionally approve absences as FMLA leave without a request from the employee.
4. The LDSS may designate up to (5) business days prior to the date of designation as retroactive FMLA leave.

Intention to Return to Work

The LDSS may require an employee to report periodically on his/her status and intent to return to work.

SECOND & THIRD OPINIONS

In cases where the LDSS has reasonable doubt about the validity of the employee's certification, the LDSS may require the employee to obtain the opinion of a second healthcare provider. A third opinion may be required if the first and second opinion differ. The third opinion is final and binding.

The DOL has specific requirements related to the selection of the health care provider in each instance and how expenses are covered. It is strongly recommended that the LDSS work with the locality HR representative or attorney if there is a need to request a second or third opinion. The DOL also has a Family Medical Leave Act Advisor tool that may be helpful in addressing questions relating to requiring a second or third opinion.

INTERMITTENT 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.**

ADVANCED APPROVAL FOR CARE OF A NEWBORN OR RECENTLY PLACED CHILD

An employee may 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. **Advance approval must be granted.** This does not apply if the leave is taken because of the serious health condition of the child.

REASSIGNMENT DURING INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE

When an intermittent leave or a reduced leave schedule is granted, the LDSS may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. The alternative position must have equivalent pay and benefits; however, the position does not have to have equivalent duties.

RETURNING FROM LEAVE

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

SECTION III: FMLA MILITARY LEAVE ENTITLEMENTS

GENERAL INFORMATION

The purpose of this section is to provide the qualification and certification process for specific military leave entitlements for *family members* of either covered service members or veterans under the FMLA:

1. Military caregiver leave
2. Leave for a qualifying exigency

IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear *in italicized type* to prompt the reader to access the DOL site. A link to the DOL FMLA site will appear in the paragraph where the forms are listed.

MILITARY CAREGIVER LEAVE

An eligible employee is entitled to receive up to twenty-six (26) weeks of unpaid leave during a single twelve (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 twelve (12) month period commences the first day leave is taken to care for the covered servicemember and expires twelve (12) months later.

Note: An eligible employee is entitled to a combined total of twenty-six (26) weeks of unpaid leave during a single twelve (12) month period. This includes twelve (12) weeks of FMLA leave for any FMLA qualifying reason. For example, an eligible employee may take sixteen (16) weeks of family and medical leave to care for a covered servicemember and ten (10) weeks of family and medical leave to care for a newborn child.

MILITARY CAREGIVER LEAVE CERTIFICATION PROCESS

An FMLA request for military caregiver leave must be supported by one of the following forms (DOL FMLA Forms.):

- *Military Caregiver Leave of a Current Servicemember (Form WH-385)* – use when requesting leave to care for a family member who is a current servicemember with a serious injury or illness.

- *Military Caregiver Leave of a Veteran (Form WH-385-V)* – use when requesting leave to care for a family member who is a covered veteran with a serious injury or illness.

The LDSS may also require:

1. Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any.
2. Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration.
3. A statement of appropriate facts regarding the servicemember's health condition sufficient to support the need for FMLA leave.
4. Information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed.
5. If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care.
6. The employee's name, the name of the covered servicemember, and the employee's relationship to the servicemember.
7. Information on the servicemember's branch, rank, and unit assignment, or the veteran's date and type of separation.

TIMEFRAMES FOR CERTIFICATION & APPROVAL

The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process."

1. The LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification; and
2. 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.

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

QUALIFYING EXIGENCY

A qualifying exigency occurs when a military member is on, called to, or notified of "covered active duty." Covered active duty occurs when:

- An LDSS employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces and is deployed to a foreign country.
- An LDSS employee whose spouse, son, daughter, or parent is a member of the National Guard or Reserves who has been notified and ordered to active duty in support of a contingency operation.

When an LDSS employee's military family member is on **"covered active duty,"** any of the following categories are qualifying exigencies (examples are not all-inclusive):

1. **Short-notice deployment:** Notification of a deployment in seven (7) or fewer calendar days prior to the deployment.
2. **Military events and related activities:** Official ceremonies, programs, informational events or briefings, military family support or assistance programs, etc.
3. **Childcare and related activities[1]:** Arranging childcare; providing emergency, non-routine childcare; transferring a child to a new school, etc.
4. **Care of the military member's parent**[2]: Arranging alternative care; providing emergency, non-routine care; transferring to a new care facility; meeting with facility staff, etc.
5. **Financial and legal arrangements:** Preparing or executing powers of attorney, enrollment in DEERS, obtaining military ID cards, etc.
6. **Attending counseling:** Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
7. **Rest and recuperation:** Taking up to fifteen (15) calendar days of leave to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on rest and recuperation leave.
8. **Post-deployment activities:** Certain post-deployment activities within ninety (90) days of the end of the military member's covered active duty (e.g., attending arrival ceremonies, reintegration briefings and events, etc.). Post-deployment activities also include addressing issues arising from the death of a military member, including attending the funeral.
9. **Other events:** Any other event that the employee and employer agree is a qualifying exigency.

[1] The child does not have to be related to the LDSS employee but must be the child of the military member. The military member must be the parent, spouse, or child of the LDSS employee.
[2] The parent does not have to be related to the LDSS employee but must be the parent of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

QUALIFYING EXIGENCY CERTIFICATION PROCESS

Qualifying exigency leave allows an employee to take up to a total of twelve (12) workweeks of FMLA leave for qualifying exigencies.

An FMLA request for a qualifying exigency must be supported by the following form (DOL FMLA Forms):

- *Certification of Qualifying Exigency for Military Family Leave (Form WH-384)*

The LDSS may also require:

1. A copy of the military member's active-duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active-duty status.
2. A statement or description of the appropriate facts regarding the qualifying exigency.
3. The approximate date on which the leave began (or will begin).
4. The contact information for any third party the employee is meeting. The LDSS may confirm the nature of the meeting but may NOT request additional information from the contact.

TIMEFRAMES FOR CERTIFICATION & APPROVAL

The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process."

1. The LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification; and
2. 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 the required documentation from the employee.

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

SECTION IV: FMLA RECORDS MANAGEMENT & IMPACT ON EMPLOYEE BENEFITS

FMLA RECORDS MANAGEMENT

LDSSs must make, keep, and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three (3) 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 leave was taken. FMLA leave taken in increments of less than a day must be noted by the hour.
3. Copies of employee's notices of leave furnished to agency.
4. Any documents (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:
    a. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations.
    b. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
    c. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

LDSSs should contact the VDSS HR Policy Team (**hr.employeerelations@dss.virginia.gov**) or the locality HR representative or attorney prior to releasing any records. Refer to **Chapter 8** of the LDSS Administrative/HR Manual for more information on maintaining files on confidential information.

FMLA Impact on Employment Benefits

The locality benefits administrator should be the primary contact for specific questions about the impact of FMLA on employee benefits.

Health Care Coverage

1. 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.
2. 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.
3. The failure to make timely premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed.
4. 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 because of:
    a. The onset, recurrence, or continuation of serious health conditions that would have entitled the employee to FMLA leave; or
    b. Other circumstances beyond the employee's control.

Other Benefits

1. Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay (LWOP).
2. LWOP must 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.

See Part I - Section IV, "Leave Without Pay (LWOP)," for more information.

Workers' Compensation & FMLA

When a workers' compensation-qualified injury causes an absence that would otherwise qualify under the FMLA, both leaves may run concurrently and count towards FMLA leave.

SECTION V: FMLA & OTHER LAWS

GENERAL INFORMATION

Under the FMLA, covered employers may be required to grant leave to an employee in specific circumstances. However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation. If you have any questions or need assistance regarding the interaction of these federal laws, please contact the VDSS Employee Relations Team (**hr.employeerelations@dss.virginia.gov**) or the locality HR representative for guidance.

THE AMERICANS WITH DISABILITIES ACT (ADA) AS AMENDED

Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities. The requirement relates to three (3) aspects of employment:

1. Ensuring equal opportunity in the application process.
2. Enabling a qualified individual with a disability to perform the essential functions of a job.
3. Making it possible for an employee with a disability to enjoy equal benefits and privileges of employment[1].
4. Employers consider possible reasonable accommodations for an employee's request by engaging with the employee during what is referred to as the "interactive process." Like an employer's responsibility to initiate the FMLA process when they become aware of the employee's need, employers have a legal obligation to initiate the interactive process when they become aware of an employee's need for an accommodation due to a disability. See "Helpful Hints - The Job Accommodation Network (JAN)" for more information on providing reasonable accommodation under the ADA.

THE PREGNANT WORKERS FAIRNESS ACT (PWFA)

The PWFA took effect in 2023 and is intended to fill in the gaps between Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA); the ADA; and the FMLA. The PWFA differs from the PDA, which focuses on the protection of pregnant employees from discrimination. The PDA did not impose specific accommodation requirements that can assist pregnant employees with the performance of their job duties. Under the PWFA, employees can request accommodation requirements.

[1] 42 U.S.C. § 12112.

ANALYSIS OF REQUESTS FOR LEAVE

REQUESTS FOR LEAVE UNDER THE ADA & PWFA

1. Requests for leave under either the ADA or PWFA should be made directly to the employee's supervisor. LDSS are encouraged to develop request forms. Sample forms may be found on the Job Accommodation Network (JAN).
2. When engaging in the interactive process, the LDSS may consider and present other options for accommodation outside of a request for leave. These may include, but are not limited to:
    a. Making modifications to an employee's workspace.
    b. Modifying a work schedule to allow shorter hours or a later start time.
    c. Granting additional, longer, or more frequent breaks.
    d. Making exceptions to food and drink policies.
    e. Providing closer parking.
    f. Allowing intermittent leave for medical appointments.
    g. Providing a temporary reassignment.
    h. Allowing telework.
3. Like FMLA, leave approved as a reasonable accommodation under the ADA or PWFA is **unpaid leave.**
4. There is **no waiting period for eligibility or an hours-worked requirement** for leave granted under the provisions of the ADA or the PWFA.
5. Employee requests for these leaves may intersect with employee eligibility under FMLA and vice versa. FMLA may also run concurrently with either the ADA or the PWFA.

Establishing a Maximum Leave Policy

Leave requested as a reasonable accommodation under the ADA or PWFA does not have a specific timeframe like leave granted under the FMLA. The LDSS local board and local director may establish a maximum leave allowance for leave approved as a reasonable accommodation under the ADA or PWFA. However, in cases where a maximum leave policy exists, the ADA requires the employer to consider extending leave beyond the maximum leave allowed by policy when additional leave is needed due to a disability-related reason. The same flexibility is recommended for reasonable requests for additional leave beyond the maximum amount in relation to leave approved under the PWFA.

IMPORTANCE OF ANALYSIS

The FMLA, ADA, and PWFA have distinct differences. When an employee submits a request, and it is unclear to the LDSS if more than one of these laws applies, a separate analysis of the request in relation to each law must be conducted to determine employee eligibility.

The LDSS ***must*** reach out to either the locality HR representative or attorney or the VDSS Employee Relations Team when:

1. There is no formal request from an employee, but there is awareness that an employee may require assistance under either the FMLA, ADA, or PWFA.

2. An employee requires assistance, but there are questions about the potential intersection of the FMLA, ADA, and PWFA in addressing the employee's needs.
3. A determination needs to be made as to whether an employee's request for accommodation qualifies as an "undue hardship." **Note:** The employer must show that the employee's request for accommodation would cause ***significant*** difficulty or expense to deny the request as an undue hardship.



Helpful Hints: The Job Accommodation Network (JAN)

The Job Accommodation Network (JAN) helps employers recognize the valuable contributions that qualified workers with disabilities add to the workforce by providing accommodation solutions, trusted strategies, and practical guidance on the Americans with Disabilities Act (ADA) as amended.

This site offers:

- Assistance specific to state and local government.
- An ADA Library to assist with understanding the ADA's history and most recent amendments.
- An Accommodation Search database with hundreds of recommendations for possible accommodations.
- Links to different publications and articles on a number of disabilities, including the "Accommodation and Compliance Series" where JAN discusses specific disabilities and how they may be accommodated in detail.

While JAN does not specifically address the PWFA, JAN does offer accommodation solutions for pregnancy in relation to the ADA. A thorough analysis of the employee's request may be required to understand which federal law(s) and accommodation options apply. It's always a best practice to reach out to the locality HR or attorney or the VDSS Employee Relations Team (**hr.employeerelations@dss.virginia.gov**) for assistance in these situations.

PART III: WORKERS' COMPENSATION

POLICY STATEMENT

The Virginia State Board of Social Services establishes a worker's compensation policy to ensure LDSS employees are aware of the benefits that may be available to them under the Virginia Workers' Compensation Act (VWCA), and to establish the responsibilities of an LDSS employee who is injured or becomes ill because of carrying out the duties of his/her job. Employees may be eligible for benefits under the VWCA if they sustain a compensable injury by accident, suffer from occupational disease[1], or a compensable ordinary disease of life[2].

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:
The workers' compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to Title 65.2. Workers' Compensation of the Code of Virginia.

[1] § 65.2-400. "Occupational disease" defined
[2] § 65.2-401. "Ordinary disease of life" coverage

SECTION I: WORKERS' COMPENSATION

GENERAL INFORMATION

The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the VWCC home page.

BENEFITS TO WHICH AN EMPLOYEE MAY BE ENTITLED

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

WAGE REPLACEMENT

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

MEDICAL BENEFITS

Under the VWCA, 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 VWCA.

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 VWCA.

ACCESSING BENEFITS UNDER THE VWCA

The workers' compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to Title 65.2. Workers' Compensation of the Code of Virginia.

RESPONSIBILITIES OF AN INJURED EMPLOYEE

1. Once an injury has occurred, the employee must notify the employer (the locality) ***immediately***[1]. The LDSS is required to complete the accident report, not the employee.
2. The employee must choose a treating physician from a panel of at least three (3) 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.

[1] § 65.2-600. Notice of an accident.

GLOSSARY:

PART I: TYPES OF LEAVE

1. Accrual Rate: The amount of leave an employee earns per pay period based on the employee's number of years of service with the LDSS and the agency's workweek schedule (40, 37.5, or 35 hours).
2. Administrative Leave: A type of leave granted by the LDSS for employees who are 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. An LDSS may place an employee on administrative leave with pay when the LDSS is investigating the employee for misconduct, and the LDSS has not determined whether discipline is warranted; or other legitimate LDSS reasons.
3. Annual Leave: A leave entitlement providing employees with a specific number of hours on a per-pay-period basis that the employee may use for any reason to be absent from work still receiving pay; advance approval is required. Annual leave accrues on a per-pay-period basis and is calculated based on an employee's number of years of service and the agency's workweek schedule (40, 37.5, or 35 hours). Maximum carryover amounts apply.
4. Bereavement Leave: Approved paid time away from work for the loss of a family member. LDSS employees may use either annual or sick leave for this purpose.
5. Break in Service: A separation from work for more than thirty (30) days where the employee is not on approved leave.
6. Change in Status: Leaving employment with an LDSS for any reason, including termination or voluntary resignation; or a demotion, promotion, suspension, etc.
7. Civil Leave: Approved paid time away from work granted for court proceedings; participation in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS; participation in a workers' compensation hearing, unemployment compensation hearing, or administrative proceeding involving the employee or another employee within the LDSS; or approved service on governmental councils, boards, commissions, or committees.
8. Educational Leave: Approved time away from work (paid or unpaid) to support employees' self-development through the pursuit of formal educational opportunities relating to their career with the LDSS.
9. Family and Personal Leave Credit: A leave credit entitlement under the LDSS Disability Leave Program providing employees with a specific number of days at the beginning of the leave year[9] that the employee may use for any reason to be absent from work while still receiving pay. Family and personal leave credits do not accrue and are lost if unused within the leave year.

[9] New LDSS employees, depending upon the date of hire (prior to or after July 1), may only receive half of the family and personal leave credit amount. However, they will receive the full amount at the beginning of the following leave year.

10. LDSS Disability Leave Program: A leave program created specifically for the Local Departments of Social Services to fill the need for a leave system to accompany the requirement for localities to offer an employer paid short- and long-term disability program. This program began on January 1, 2014, and it includes both sick leave ("hybrid") and family and personal leave credits that are available to LDSS employees under certain circumstances.
11. Leave Bank: Applies to a leave sharing program; a pooled fund of annual leave donated by LDSS employees.
12. Leave Credit: Applies to the LDSS Disability Leave Program; fixed leave amounts received that do not accrue or carry over from year to year. Employees must use leave credits within the leave year they are received, or they will be lost.
13. Leave Sharing Program: An optional program that may be implemented by the LDSS where employees may pool annual leave for use by their fellow employees who have exhausted all forms of paid leave and need time away from work for a "serious health condition" affecting them or their immediate family members, or for parental care.
14. Leave without Pay (LWOP): Unpaid leave granted to LDSS employees when certain conditions are met.
15. Maximum Carryover: Applies to annual leave; the maximum amount of accrued leave an LDSS employee may carryover from year to year.
16. Military Leave: 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.
17. Prorate: Dividing leave accrual amounts in a proportional way, based on time. Proration is required when determining leave accrual amounts for part-time employees of the LDSS, and when determining leave accrual amounts, maximum carryover, etc., for any agency workweek schedule ***less*** than forty (40) hours per week (37.5 or 35 hours).
18. Sick Leave Credit (Hybrid): A leave credit entitlement under the LDSS Disability Leave Program providing employees with a specific number of days at the beginning of the leave year[10] that the employee may use in specific circumstances to be absent from work while still receiving pay. "Hybrid" sick leave credits may only be used for an employee's own illness, or under certain circumstances, the illness of a family member. "Hybrid" sick leave credits do not accrue and are lost if unused within the leave year.
19. Sick Leave (Traditional): A leave entitlement providing employees with a specific number of hours on a per-pay-period basis that the employee may use in specific circumstances to be absent from work while still receiving pay. "Traditional" sick leave may only be used for an employee's own illness or injury, or under certain circumstances, the illness/injury of a family member. "Traditional" sick leave accrues on a per-pay-period basis and is calculated based on an employee's number of years of service and the agency's workweek schedule (40, 37.5, or 35 hours). Maximum carryover amounts do not apply to "traditional" sick leave accrual.

[10] New LDSS employees, depending upon the date of hire (prior to or after July 1), may only receive half of the "hybrid" sick leave credit amount. However, they will receive the full amount at the beginning of the following leave year.

20. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA): A federal law, passed in 1994, that protects military servicemembers and veterans from employment discrimination based on their service, and allows them to regain their civilian jobs following a period of uniformed service. USERRA applies to members of the Armed Forces, Reserves, National Guard, and other "Uniformed Services" (including the National Disaster Medical System and the Commissioned Corps of the Public Health Service). The law ensures that service members (1) are not disadvantaged in their civilian careers because of their military service; (2) are promptly re-employed in their civilian jobs upon return from duty; and (3) are not discriminated against by employers because of past, present, or future military service. USERRA applies to both public and private employers.

PART II: FAMILY & MEDICAL LEAVE ACT

1. Americans with Disabilities Act (ADA) as Amended: A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination on the basis of disability in all aspects of employment; and regulates medical examinations and inquiries.
2. Child (FMLA): 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 eighteen (18) or be age eighteen (18) or older and incapable of self-care because of a mental or physical disability.
3. Covered Servicemember (FMLA): A current servicemember or a recent veteran.
4. Employment Benefits (FMLA): All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.
5. Equivalent Position (FMLA): 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.
6. Family Member (FMLA): A child, spouse, or parent.
7. Family and Medical Leave Act (FMLA): 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 twenty-six (26) weeks of unpaid leave 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.
8. Health Care Provider (FMLA): The FMLA defines "health care provider" as:

a. 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
b. Any other person determined by the Secretary to be capable of providing health care services.

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:

a. 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).
b. Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants.
c. 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.
d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
e. 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.

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.

9. Incapacity (FMLA): The inability to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition.
10. Interactive Process (ADA/PWFA): The Job Accommodation Network (JAN) defines the interactive process as a collaborative process where employers and employees with disabilities who request accommodations work together to come up with accommodations.
11. Intermittent Leave (FMLA): 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.
12. Key Employees (FMLA): Employees who are among the highest paid 10% of the LDSS workforce.
13. Military Caregiver Leave (FMLA): Allows an eligible employee who is the spouse, child, parent, or "next of kin" of a covered servicemember with a serious injury or illness to use up to a total of twenty-six (26) workweeks of unpaid leave during a "single twelve (12) month period" to provide care for the servicemember.
14. Parent (FMLA): The biological, adoptive, step, or foster parent, or someone who stood in place of the parent to the employee when the employee was a child.
15. Pregnancy Discrimination Act (PDA): A federal statute that amended Title VII of the Civil Rights Act of 1964 to "prohibit sex discrimination on the basis of pregnancy." The Act covers discrimination "on the basis of pregnancy, childbirth, or related medical conditions."

16. Pregnant Workers Fairness Act (PWFA): A federal statute signed into law in 2023 that requires covered employers to provide "reasonable accommodations" to employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
17. Qualifying Exigency (FMLA): Occurs when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. 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 a call to active-duty, provided that the employee and agency agree.
18. Reasonable Accommodation (ADA): A modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.
19. Reasonable Accommodation (PWFA): Changes to the work environment or the way things are usually done at work for pregnant female employees or female employees recovering from childbirth. The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations including the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities, or activities that involve exposure to compounds not safe for pregnancy.
20. Reduced Schedule (FMLA): A work schedule less than the usual number of hours worked per workweek or per workday.
21. Serious Health Condition (FMLA): An illness, injury, impairment, or physical or mental condition that involves inpatient care or either:
    a. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
        i. Treatment two (2) or more times within thirty (30) days by or under the supervision of a health care provider the first of which must occur within seven (7) days of the first day of incapacity; or
        ii. One (1) treatment by a health care provider, within the first seven (7) 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, requires periodic visits 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 (3) days if not treated.

22. Twelve (12) Month Period (FMLA): Timeframe used for the purpose of calculating FMLA leave. An LDSS may use a calendar year, fiscal year, another fixed twelve (12) month period, or a rolling twelve (12) month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating FMLA leave.

PART III: WORKERS' COMPENSATION

The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the VWCC home page. VDSS does not administer the workers' compensation process for the LDSS. Contact the locality benefits administrator or the VWCC directly for assistance.