Family Medical Leave Act:
The New Way to Track State Classified Eligibility

This presentation is not all inclusive and contains only general information as of Summer 2015. This summary should not be considered as a replacement for the more detailed information set forth in the State of Colorado Personnel Board Rules or U.S. Department of Labor regulations. In the event of any discrepancies between the information in this presentation and in such other documents, the official documents will govern.
Teri Suhr - Chief Total Rewards Officer
(Benefits, Payroll and HR Service Center)

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(Benefits Unit – Team Lead)
Discussion Items

- Family Medical Leave
- HR and Supervisor Responsibilities
- Required Notices and Forms
- Tracking of FMLA
Family Medical Leave
Federal law providing **job protected leave** which was enacted on August 5, 1993

Family Medical Leave Act (FMLA) enhanced to include **military leave** and qualifying exigency leave

FMLA is enforced by the **U.S. Department of Labor**

Poster of FMLA Rights must be **displayed** prominently

**Unlawful to interfere** with request for FMLA
**FMLA Obligations**

- An employee is entitled to:
  - Be returned to the **same position** or an equivalent position
  - Maintain equivalent benefits and pay

- An employer may not:
  - In performance **evaluations** or **disciplinary** documentation, consider time taken for FMLA
  - Asking an employee for updated medical information for each use of intermittent FMLA
  - **Interfere with, restrain, or deny** the attempt to utilize FMLA
  - **Discriminate, discharge or retaliate** against an employee or prospective employee an attempt to utilize FMLA

**Note:** An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA’s job restoration or benefit retention provisions

**Sources:** 29 USC §2614; 29 DFR §825.214; 29 CFR §825.216
FEATURES

- Mandatory leave law for “covered employers” and “eligible employees”
- State of Colorado allows **13 weeks** (520 Hours) of FMLA leave
- Types of FMLA
  - Continuous
  - Intermittent
  - Combination
- Married employees who are both State Classified at CSU
  - 13 weeks **per employee** for birth or adoption of child (State practice)
  - 26 weeks **shared** for covered service member
  - 13 weeks **each** for own serious health condition or serious health condition of child, spouse or parent
Employed by same employer for at least **12 months**; and (12 months are not required to be continuous)

Worked at least **1,250 hours** in the 12 months immediately preceding the need for leave

Employee’s **own serious health condition** that makes them unable to perform the essential functions of their job

**Birth or adoption** of a son or daughter and to care for the newborn child

Care for **child, parent or spouse** with a serious health condition (child under age 18; or if older, “incapable of self-care because of a mental or physical disability” as defined by the Americans with Disabilities Act)

**Covered service members** and for qualifying exigencies

Sources: 29 USC §2612; 29 CFR §825.112
HOW CAN FMLA BE REQUESTED?

Verbally

Fax

Email

By employee's representative, if employee is unable to do so

Employee must provide sufficient information for employer to determine if FMLA applies
DEFINITION OF SPOUSE

• Effective March 27, 2015, the FMLA spouse definition includes same-gender couples who are legally married in states recognizing same-gender marriage (regardless of whether their resident state recognizes same-gender marriage)
  - For example: An employee married in New York, resides in Tennessee (does not recognize same-gender marriages) has rights under FMLA

• May Use FMLA:
  - To care for a same-gender spouse with a serious health condition
  - For qualifying exigency leave due to their same-gender spouse’s covered military service or military caregiver leave
  - Step-child covered regardless of the in loco parentis requirements
  - Step-parent covered regardless of the in loco parentis requirements
HR and Supervisor Responsibilities
Medical certification forms must be maintained as confidential medical records in accordance with American with Disabilities Act (separate from personnel files).

When discussing an employee’s medical condition or status, ensure you are not being overheard.

An employee is not required to disclose specific medical information to HR/Supervisor.

Employee may communicate directly with central HR if they wish to keep medical information confidential.

Physician will provide information for HR liaison/supervisor to determine necessary restrictions on the employees work or duties.
HR LIASON RESPONSIBILITIES

- **Send** initial FMLA paperwork
  (Notice of Rights and Responsibilities, Medical Certification Form)
- Request; then **evaluate** Medical Certification form
  - If clarification or more information is needed, contact the employee to request information from their physician
- Following receipt of **complete** medical certification form; provide FMLA (approval) and Designation Notice
- **Monitor** compliance with FMLA designation and keep track of FMLA hours used
- Send photocopies of Notice, medical certification form and designation notice to central HR
IDENTIFYING NEED FOR FMLA

• Guidelines for when an employee may need FMLA:
  o In-patient hospital stay
  o Absence of more than 3 working days (non-vacation)
  o Under the care of a physician or receiving treatment
  o A regimen of prescription drugs or therapy requiring special equipment (e.g., oxygen)
  o Periodic absence due to a chronic condition
  o Birth of a newborn or adoption

• 30-days advance notice or as soon as practical
HR and Supervisor Responsibilities

ESSENTIAL COMMUNICATION

- HR liaison or supervisor may ask these types of questions:
  - Are you in the hospital?
  - Are you under the care of a health care provider?
  - How long do you anticipate you will be on leave?

It is important that the supervisor communicates with the HR liaison, as they are generally the first point of contact for the employee.

- Supervisor to **timely** notify the HR liaison of employee’s possible need for FMLA
- It is the duty of the supervisor/ HR liaison to **communicate to the employee** their FMLA eligibility
- If an employee is utilizing intermittent FMLA, the employee must follow **normal departmental procedures** for communicating that their absence is due to their FMLA condition
Required Notices and Forms
WHAT FORMS ARE REQUIRED?

- Notice of Rights and Responsibilities - **5 business days**
- State of Colorado Medical Certification Form - **15 calendar days**
  - Employee’s Serious Health Condition
  - Family Member’s Serious Health Condition
- Designation Notice – **5 business days**
  - State to release new FMLA forms soon

**State Personnel Rule 5-37**

*Records: Federal law requires that specific records be kept for all employees taking FMLA. These records must be kept for three years. Any medical information must be maintained in a confidential medical file separate from personnel information in accordance with ADA requirements and Chapter 1 of the Personnel Rules.*
NOTICE OF RIGHTS AND RESPONSIBILITIES

State of Colorado
Notice of Eligibility and Rights and Responsibilities
(Family and Medical Leave Act)

In general, to be eligible for FMLA leave an employee must have worked for the State at least 12 months. Employers must provide notice of eligibility to the employee within 5 business days of being notified of the need for leave.

Part A - Notice of Eligibility

To: John Employee
Employee ID #: 00001

From: HR Liaison
Authorized Signature

Date: 7/14/15

On 7/13/15 you informed us that you needed leave beginning on 7/20/15 for:

- The birth of a child, or placement of a child with you for adoption or foster care;

- Your own serious health condition;

- Because you are needed to care for your ___________ spouse; ___________ child; ___________ parent due to his/her serious health condition;

- Because of a qualifying exigency arising out of the fact that your ___________ spouse; ___________ son or daughter; ___________ parent is on active duty or called to active duty status in support of a contingency operation as a member of the National Guard or Reserves;

- Because you are the ___________ spouse; ___________ son or daughter; ___________ parent next of kin of a covered servicemember with a serious injury or illness;

- Work related injury.

This Notice is to inform you that you:  

- Are eligible for FMLA leave (See Part B below for Rights and Responsibilities);

- Are not eligible for FMLA leave, because you have not met the FMLA’s 12-month length of service requirement. As of the first day of recorded leave you will have worked 12 months.

Colorado State University
MyHR Working Together
Required Notices and Forms

MEDICAL CERTIFICATION

State of Colorado Medical Certification Form
Employee's Health Condition

Instructions to Department/Institution: For the employee’s condition, fill in the following. You may attach the job duties from the official POS. Please complete this portion before giving to the employee. This completed form is to be placed in a separate, confidential medical file with limited access.

Pursuant to the Genetic Information Nondiscrimination Act (GINA)’s “safe harbor” provision in 29 CFR § 1635.8(b)(1)(i), the GINA disclosure language (see instructions for Healthcare provider) must be included with any request for employment-related medical information or examinations (e.g., FMLA for employee, ADA, Fitness-for-Duty exams, Workers Compensation exams, post-offer/pre-employment exam, etc.) for the individual’s own condition.

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<th>Regular work schedule:</th>
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<td>M-F, 8 a.m. - 8 p.m.</td>
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Serious Health Condition

1. The above definitions describe a “serious health condition” under the Family Medical Leave Act. Does the patient’s condition meet one of these categories? Please check the category.
(1) ☐ (2) ☒ (3) ☐ (4) ☐ (5) ☐ (6) ☐ or none.

2. Describe specific medical facts related to the condition for which the employee seeks leave and meets the category (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment).
Specific medical facts to determine the need for FML:

Additional Medical Facts (must be completed)

1. Approximate date the condition began: 7/1/15
2. Probable duration of the condition: 4 to 6 weeks

Mark As Applicable:

1. Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   No ☐ Yes ☒ If so, dates of admission: 7/1/15 - 7/5/15

2. Date(s) you treated the patient for the condition: 7/1/15, 7/6/15, 7/13/15

Will the patient need to have treatment visits at least twice per year due to the condition? Yes ☒ No ☐

Was medication, other than over-the-counter medication, prescribed? No ☐ Yes ☒

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g. physical therapist)? No ☐ Yes ☒ If so, state the nature of such treatments and expected duration of treatment:

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MEDICAL CERTIFICATION (Incomplete)

The employee must provide a complete and sufficient medical certification

• The employer must advise an employee if a certification is incomplete or insufficient and must state in writing what additional information is necessary to make it complete and sufficient
  - A certification is considered insufficient if it is incomplete or if the information provided is vague or ambiguous

• Employer must provide 7 calendar days to cure any deficiency
  - If the deficiencies are not cured in the resubmitted certification, the employer may deny FMLA
  - A certification that is not returned to the employer constitutes a failure to provide certification
State of Colorado Designation Notice
Family and Medical Leave Act

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee’s FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient.

Employee Name: John Employee
Employee ID #: 00001
Date: 7/14/15

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on 7/14/15 and decided:

X Your requested leave is approved as FMLA. All leave taken for this reason will be designated as FMLA leave beginning 7/14/15.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

X Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: 4 weeks.

Because the amount of leave is undetermined at this time, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

X You are required to use applicable paid leave during your FMLA leave, which will count against your FMLA leave entitlement.

X You will be required to present a fitness-to-return certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position □ is □ is not attached. If attached, the fitness-to-return certification must address your ability to perform these functions (not applicable for family member).
DESIGNATION NOTICE

• Leave covered under FMLA must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against their entitlement.

• In order to determine whether leave is covered under FMLA, the employee must provide a medical certification form.

• If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient.
Tracking of FMLA
DOCUMENTING LEAVE

• **Accurate** completion of the timesheet
  o **FMLA runs concurrently** with both paid and unpaid leave, including short term disability and worker’s compensation
  o State requires the use of all paid leave prior to leave without pay; otherwise FMLA is unpaid

• Post FMLA leave in **Oracle**
  o All leave taken must be posted in Oracle as soon as possible, especially leave without pay, to **avoid overpayment**
  o FMLA leave posted in Oracle **must not exceed** the FMLA designation notice
TRACKING METHODS

An employer may use any of the following methods to track FMLA entitlement:

- **Any fixed 12-months** – 12-month period such as a fiscal year (for example, July 1 through June 30)

- **“Rolling” 12-month period measured backward** – 12-month period measured backward from the date an employee uses any FMLA leave; the remaining leave would be the balance which has not been used during the immediately preceding 12 months (for example, August 4, 2014 to August 3, 2015, less any FML used in previous 12 months)
“ROLLING BACKWARD” TRACKING METHOD

- The **rolling back method** does not allow an employee to use more than 13 weeks back-to-back
- **State Personnel Rule 5-21**
  - Full-time employees are granted up to 520 (13 weeks) hours **per rolling 12-month period**
  - The amount of FMLA is determined by the **difference** of 13 weeks and any FMLA leave taken in the previous 12 month period from date of the most recent request
“ROLLING BACKWARD” TRACKING METHOD

• Rolling Period – a “rolling” 12-month period **measured backward** from the date an employee requests to use FMLA.

• Each time an employee takes FMLA, the remaining leave entitlement is any **balance of the 13 weeks** which has not been used during the immediately preceding 12 months (**29 CFR §825.200**).

• The rolling back method is **calculated on a daily basis**.
“ROLLING BACKWARD” EXAMPLE

Rolling 12-month period measured backward for a single FMLA reason the previous year (8/4/14 – 8/29/14; 4 weeks)

- **X** = Dates of FMLA Leave
- **+** = FMLA Leave Entitlement Begins Reinstatement

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- Has 9 weeks of FMLA available from 8/29/14 to 8/4/15
- Eligible to gain full 13 weeks beginning on 8/5/15
- Gains FMLA time on a day-by-day basis, on 8/5/15, 8 hours becomes available (if 8 hours used previously)
**“ROLLING BACKWARD” EXAMPLE**

Rolling 12-month period – intermittent use by employee who has exhausted FMLA

- X = Dates of FMLA Leave
- + = FMLA Leave Entitlement Begins Reinstatement

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### 2015

- Not eligible for FMLA until **8/5/15**
- Regains FMLA time on a day-by-day basis, on 8/5/15 gains 8 FMLA hours
- For each lapsed day from August 2014, 8 FMLA hours are credited toward the entitlement
  - In this example, if 4 weeks is used in August 2015, hours not gained until November 2015 when 4 weeks from 2014 expire
FMLA Tracking Spreadsheet

Employee Name: NAME
Employee CSUID: 123456789
Hours-Per-Week Normally Worked: 40.000

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FML Record and Worksheet
NAME
123456789
40.000 hours-per-week

CONFIDENTIAL

2014

Enter FML HOURS used daily.
FML HOURS available for use.
### FMLA Tracking Spreadsheet

**Colorado State University**

**MyHR Working Together**

**FML Record and Worksheet**

**NAME**

123456789

40.000 hours per week

**CONFIDENTIAL**

#### 2015

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**HOURS (regained) available for use.**

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**Employee Name:** NAME

**Employee CSUID:** 123456789

**Hours Per Week Normally Worked:** 40.000

**Enter employee information here.**
# DESIGNATION - REMAINING FMLA ENTITLEMENT

### State of Colorado Designation Notice  
*Family and Medical Leave Act*

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee’s FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient.

<table>
<thead>
<tr>
<th>Employee Name: John Doe</th>
<th>Employee ID # 00001</th>
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<tr>
<td>Date: 7/14/15</td>
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We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on 7/14/15 and decided:

- [X] Your requested leave is approved as FMLA. All leave taken for this reason will be designated as FMLA leave beginning 7/1/16.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

- [X] Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: 4 weeks - less any amount of FMLA leave.

- Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: **4 weeks - less any amount of FMLA leave taken in the previous 12 months**
TIPS FOR SUCCESSFULLY MANAGING FMLA

- **Timely** notify employees of their rights under FMLA
- **Follow-up** with employees when documentation is due
- Communicate **expectations** for call-in procedures
- Enforce attendance for non-FMLA absences
- Record usage of FMLA and track FMLA entitlement available
- Ensure each person in the department is communicating FMLA consistently
- Be **consistent, fair and equitable** when offering flexibility
- Obtain doctor’s release for return to work from continuous leave
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