

FAMILY AND MEDICAL LEAVE

POLICY NUMBER: 200-05	EFFECTIVE DATE: 1/6/2008	APPOINTING AUTHORITY APPROVAL: 
REPLACES POLICY DATED: 3/15/2006	AUTHORITY: Family and Medical Leave Act, 29CRF Part 825, OCSEA Article 31.06, RIN1215-AA85, USERRA	

I. POLICY

The Family and Medical Leave Act (FMLA) permits employees of the Department of Administrative Services to request up to twelve workweeks of leave per rolling twelve-month period for family and/or medical leave of absence. Employees who meet the criteria for a qualifying condition and have a need to be absent from the work place can do so with job protection and no loss of accumulated service provided the employee meets the conditions outlined in this policy and returns to work in accordance with the Family and Medical Leave Act of 1993 (FMLA).

A. QUALIFYING EVENTS

1. Upon the birth of an employee's child;
2. Upon the placement of a child with an employee for adoption or foster care;
3. When an employee is needed to care for a spouse, child or parent who has a serious health condition; or;
4. When an employee is unable to perform the functions of his/her position because of the employee's own serious health condition

B. EMPLOYEE ELIGIBILITY

1. In order to be eligible for Family and Medical Leave (FML), an employee must meet **both** of the following conditions:
 - a. The employee must have been employed by the State of Ohio for at least twelve months. Previous employment with the State of Ohio in which the employee was paid directly by warrant of either the Auditor of State or Director of the Office of Budget and Management shall count toward meeting the twelve-month employment requirement; and
 - b. The employee must have been in "active work status" at least 1,250 hours during the past twelve months.
2. Eligible employees are entitled to a full twelve workweeks of FMLA leave even if their spouse has already exhausted leave for a qualifying event.

C. MILITARY LEAVE

1. An employee having served on active duty and reemployed under provisions of The Uniformed Services Employment and Reemployment Rights Act (USERRA)

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will be given credit for any time he or she would have been employed but for the military service in determining eligibility for FMLA leave. This credit includes time toward the requirements of twelve months of employment and the 1,250 hours in active work status.

2. Each month served performing military service counts as a month actively employed by the Department of Administrative Services.
3. An employee reemployed following military service will have the hours that would have been worked added to any hours actually worked during the previous 12-month period to meet the 1,250 hours in active work status requirement.

II. PROCEDURES

A. PROCEDURES FOR REQUESTING FML

1. If the need for leave is foreseeable, an employee's request must be submitted at least thirty days prior to taking leave or, if this is not possible, as soon as possible. If the employee fails to provide thirty days notice for foreseeable leave with no reasonable explanation for the delay, the leave may be denied until at least thirty days from the date the Department of Administrative Services receives notice.
2. Requests must be submitted on a standard leave form (ADM 4258). The Office of Employee Services will determine whether the leave qualifies as FML in accordance with FML and this policy, designate it as leave that counts against the employee's twelve (12) workweek entitlement, if appropriate, and notify the employee that the leave has been designated as FML.
3. Leave must be taken in increments of no less than 1/10th hour.
4. Requests must include a completed "State of Ohio Physician or Health Care Provider Certification for the Family & Medical Leave Act" form (ADM4260), or equivalent documentation in the case of an adoption/foster care. The Office of Employee Services shall maintain the certification form separately in a confidential manner.
5. Leave taken for the birth or placement of a child must be taken within one year of the date of birth or placement.
6. When a request is made for a foreseeable FML due to a serious health condition of either the employee or a member of the employee's family, which involves planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unreasonably interfere with the operations of the Department of Administrative Services.

B. CALL OFF PROCEDURES

1. Employee's Responsibilities:
 - a. It is the responsibility of the employee to continue to call off work pursuant to the normal call off procedures as required for any other condition.
 - b. The employee and supervisor may mutually agree on an alternate call off procedure while the employee is off.

2. Management Responsibilities:

- a. Supervisors are required to complete the "Employee Call/Report-Off Form" each time an employee calls off from work.
- b. Supervisors shall forward the "Employee Call/Report-Off Form" immediately to the Office of Employee Services if any of the questions are answered "yes" in Part 2.
- c. The Office of Employee Services shall follow-up to determine whether the absence is due to an FML-qualifying event or qualifies for any other applicable benefit.

III. USE OF LEAVE

The provisions of this policy shall apply to all family and medical leaves of absence as follows:

A. GENERAL

1. Whether the leave is paid, unpaid, or a combination of both, an employee is entitled to a total of twelve (12) workweeks of leave within a rolling twelve-month period.
2. Employees will be required to exhaust all accumulated sick, vacation and personal leave as allowed by law prior to being granted leave without pay for FML requests. The order in which leave must be used shall be: sick leave, vacation or personal leave in lieu of sick. Employees who apply and are approved for state-paid benefit programs shall be exempt from the above order in which leave shall be used. State-paid benefit program rules and regulations will supercede the FML policy when applicable. In addition, any time off that may, by law, be counted against an employee's twelve (12) workweek FML entitlement will be counted against such time.
3. Pursuant to 29 CFR Part 825, Section 207 (i) of the FML:
 - a. Employers may not require employees to use compensatory time as a substitute for unpaid FML leave.
 - b. Employees may request to use compensatory time for a FML-qualifying illness. If the employer permits the use of compensatory time (in compliance with 29 CFR Section 553.35), it shall not be counted toward the employees' twelve-workweek leave entitlement.
4. The Department of Administrative Services may designate paid or unpaid leave as FML, whether the employee designates it as such or not if all of the following apply:
 - a. The agency has compelling information based on information provided by the employee that leave was taken for an FML-qualifying event; and
 - b. The employee is properly notified of his or her FML rights.
5. The Office of Employee Services shall at a minimum notify employees of their FML rights:
 - a. Verbally within two days of leave being designated as FML; and
 - b. In writing by the payday following the date leave is designated as FML.

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- c. If the following payday is less than one week from the date leave is designated as FML, the Department of Administrative Services shall provide written notice to the employee by the next payday.
- d. DAS at a minimum shall provide written notice to an employee the first time in each six-month period that the employee gives notice of need for FML leave.

B. FML USE - ADOPTION/CHILDBIRTH LEAVE:

Employees requesting Adoption/Childbirth leave who are also eligible for FML shall have the entire non-working portion of Adoption/Childbirth leave, including the required waiting period, count concurrently as FML. If an employee chooses to extend his or her leave under FML, all available paid leave with the exception of compensatory time shall be exhausted prior to going in to a "leave without pay" status in accordance with this policy. The Office of Employee Services must receive a written request of the employee's intentions of extending leave under FML prior to the end of the adoption/childbirth leave benefit.

C. FML USE – EMPLOYEE'S OWN SERIOUS HEALTH CONDITION or the SERIOUS HEALTH CONDITION of a FAMILY MEMBER:

An employee who is taking leave because of the employee's own serious health condition or the serious health condition of a family member must exhaust all available paid leave with the exception of compensatory time prior to the employee going in to a "leave without pay" status in accordance with this policy.

D. FML USE in CONJUNCTION with DISABILITY LEAVE and WORKERS' COMPENSATION PLANS or PROGRAMS:

Employees requesting Disability Leave or Workers' Compensation who are also eligible for FML shall have up to twelve (12) workweeks of the non-working portion of the approved benefit period, including any required waiting period, count concurrently as FML. The Department of Administrative Services may also grant FML to employees while their request is being reviewed. Leave requests submitted by the employee shall indicate the intention of using FML in the appropriate box on the "Request for Leave" form. The granting of FML shall have no bearing on the approval or disapproval of any state-paid benefit.

E. INTERMITTENT/REDUCED SCHEDULE of LEAVE:

1. When medically necessary, an employee of the Department of Administrative Services may take FML on an intermittent or reduced work schedule basis for a serious health condition of the employee or a serious health condition of an employee's family member. An employee may take leave on an intermittent or reduced schedule basis for either the birth of the employee's child or upon the placement of a child for adoption or foster care with the employee. In all cases, the FML granted to any employee shall not exceed a total of twelve (12) workweeks per rolling year.
2. The employee must, at the time leave is requested, submit additional medical documentation as required by the Department of Administrative Service to

support reasonable medical necessity for such intermittent or reduced schedule leave. This shall be in addition to the original documentation certifying the condition as FML qualifying, if such original documentation exists. The additional medical information shall include the dates and the duration of treatment, if any, the expected duration of the intermittent or reduced schedule leave, and a statement from the health care provider describing the facts which support the medical necessity for taking FML on an intermittent or reduced schedule basis. In addition, an employee requesting a reduced schedule or requesting to be transferred to an alternative position with equivalent class, pay, and benefits to better accommodate the employee's need for FML must meet with his/her supervisor and the Human Resource Administrator or designee for review.

3. An employee who requests intermittent or reduced schedule leave due to foreseeable medical treatment shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the Department of Administrative Services.

IV. EMPLOYEE BENEFITS

- A. The Department of Administrative Services shall continue to pay the employer's portion of the premiums for health, dental, vision and life insurance benefits under the same terms and conditions as if the employee had continued to work throughout the leave.
- B. Employees are required to continue paying the employees' portion of health insurance premiums while on FML whether the leave is paid or unpaid. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave. Procedures on how health insurance premiums are to be paid while on unpaid FML may be obtained from the Office of Employee Services.
- C. The Department of Administrative Services will not continue to pay the employer portion of health insurance premiums while the employee is on FML if the employee fails to pay the employee's portion of the health insurance premium, or if the employee's payment for his/her portion of the premium is late by more than thirty (30) days.
- D. Employees shall be given a thirty-day grace period from the due date of their health insurance premium. An employee, who fails to pay his or her portion of the health insurance premiums within this grace period, may with fifteen days written notice from the Department of Administrative Services be removed from his or her respective health insurance plan.
- E. If an employee chooses not to continue health insurance coverage during FML, the employee will be entitled to reinstatement into the benefit plan upon return to work.
- F. If the employee chooses not to return to work for reasons other than a continued serious health condition, the Department of Administrative Services may seek reimbursement from the employee for any amounts paid for insurance benefits by the Department of Administrative Services on the employee's behalf during any period of unpaid FML.

- G. Employees who are reinstated will not lose any service credit and FML will be treated as continuous service for the purpose of calculating any benefits, which are based on length of service.

V. MEDICAL CERTIFICATION

- A. An employee requesting FML leave due to a serious health condition of the employee or his/her family member must provide a doctor's certification of the serious health condition on a form provided by the Department of Administrative Services.
- B. If an employee or his/her family member has multiple health conditions for which FML is being requested, a separate medical certification must be submitted for each individual condition. It is the employee's responsibility for any charges incurred by the physician for completing a medical certification.
- C. Such certification shall be submitted no later than fifteen (15) days from the time the employee has notified the Department of Administrative Services for the need of FML, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Any additional recertification reports requested by the Office of Employee Services shall also be at the employee's expense.
- D. An employee requesting FML due to the birth or placement of a child must submit appropriate documentation as required by the Department of Administrative Services at the time FML is requested.
- E. An employee who requests FML due to a serious health condition of the employee or his/her family member may be required to submit monthly or periodic written reports to the Department of Administrative Services, in order to assess the employee's continued qualification for FML, as follows:
 - (1) a statement from the attending health care provider documenting the probable duration of the condition, any other appropriate medical facts within the knowledge of the health care provider regarding the condition, and either that the employee is unable to perform the functions of his/her position or that the employee is needed to care for the family member with an estimate of the amount of time that such employee is needed to care for the family member, whichever is appropriate, and
 - (2) a statement from the employee documenting the intent to return to work.
- F. The Department of Administrative Services, in its discretion, may require a second medical opinion prior to granting FML. Such opinion shall be rendered by a health care provider designated or approved by the Department of Administrative Services at the employer's expense.
- G. If the first and second opinions conflict, the Department of Administrative Services may require the employee to submit to a third examination at the employer's expense by a health care provider chosen jointly by the employee and the

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employer. In choosing the third health care provider, both the employee and the employer must be reasonable and act in good faith. The opinion of the third health care provider is final and binding. Failure or refusal of the employee to submit to or cooperate in obtaining either the second or third opinions, if requested, shall result in the denial of the FML request.

- H. The Department of Administrative Services may request additional reports if the circumstances described in the previous certification have changed significantly (duration or frequency of absences, the severity of the condition, complications, etc.) or if the Department of Administrative Services receives information that casts doubt on the employee's stated reason for the absence.
- I. The employee must provide the additional reports to the Department of Administrative Services within (15) days of the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Any additional reports requested by the Department of Administrative Services shall be at the employee's expense.

VI. RECERTIFICATION

- A. For pregnancy, chronic, or permanent long-term conditions under continuing supervision of a health care provider, the Department of Administrative Services may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:
 - 1. Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absence, the severity of the condition, complications); or
 - 2. The employer receives information that casts doubt upon the employee's stated reason for the absence.
- B. If the minimum duration of the period of incapacity specified on a certification furnished by the health provider is no more than 30 days, the employer may not request recertification until that minimum duration has passed unless one of the conditions set forth in paragraph (C)(1), (2) or (3) of this section is met. For FML taken intermittently or on a reduced leave schedule basis, the Department of Administrative Services may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in paragraph (C) (1), (2) or (3) of this section is met.
- C. For circumstances not covered in paragraphs (A) or (B) of this section, the Department of Administrative Services may request recertification at any reasonable interval, but no more than every 30 days, unless:
 - 1. The employee requests an extension of leave;
 - 2. Circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
 - 3. The employer receives information that casts doubt upon the continuing validity of the certification.

- D. The employee must provide the requested certification to the Department of Administrative Services within the time frame requested by the employer.
- E. Any recertification requested by the Department of Administrative Services shall be at the employee's expense unless otherwise specified. No second or third opinion on recertification will be required.

VII. REINSTATEMENT

- A. Employees who take leave under this policy will be reinstated to the same or similar position upon return from leave.
- B. Upon request for reinstatement, if the position that the employee occupied prior to taking FML is not available, the employee will be placed in a position which entails substantially equivalent levels of skill, effort, responsibility and authority and which carries equivalent status, pay, benefits, and other terms and conditions of employment as the position the employee occupied prior to taking FML.
- C. An employee of the Department of Administrative Services will not be laid off as a result of exercising his/her right to FML. However, the Department of Administrative Services will not reinstate an employee who has taken FML if, as a result of a layoff within the office, the employee would not otherwise be employed in the office at the time reinstatement is requested.
- D. An employee on FML has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed.
- E. Prior to reinstatement, employees who take FML based on their own serious health condition shall provide certification from their health care provider that they are able to resume work.
- F. A key employee (the highest paid 10% of all employees in the Department of Administrative Services) may be denied reinstatement if:
 - 1. In the sole opinion of the Department of Administrative Services, denial of reinstatement is necessary to prevent substantial and grievous economic injury to the Department of Administrative Services;
 - 2. The Department of Administrative Services notifies the employee of its intention not to restore the employee to duty before the leave begins; or
 - 3. The Department of Administrative Services notifies the employee of its intention not to restore the employee to duty after the leave begins, and the employee does not elect to return immediately to work and be restored to the same or a similar position.
- G. In order to determine whether the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the Office, the Department of Administrative Services may consider its ability to replace the

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employee on a temporary basis, whether a permanent replacement of the employee is unavoidable, and the cost of then reinstating the employee.

VIII. RECORDS

- A. All records relative to FML will be maintained by the Office of Employee Services of the Department of Administrative Services. Any medical records accompanying FML requests will be kept separate from an employee's regular personnel and benefit/payroll files to insure confidentiality.
- B. To the extent permitted by law, medical records related to FML shall be kept confidential.

IX. REVISION HISTORY

Date	Description of Change
4/18/2005	Original Policy Approved and Distributed
3/15/2006	"active work status", Military Leave and miscellaneous items revised
1/06/2008	"Director of the Office of Budget and Management" rule amendment; New appointing authority

Definitions

Under the FML Policy of the Department of Administrative Services

As used in this policy, the following terms and phrases shall be defined as follows:

Active work status – means conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include, vacation leave, sick leave, bereavement leave, administrative leave, compensatory time, holidays, personal leave and disability leave. Workers compensation leave and adoption/childbirth leave, etc. are also not included.

Continuing treatment – includes the following:

1. A period of incapacity of more than three (3) consecutive calendar days involving (a) treatments two (2) or more times by, or under the orders of, a licensed health care provider, or (b) treatment by a health care provider on at least one occasion that results in a supervised regimen of continuing treatment;
2. A period of incapacity due to pregnancy or time needed for prenatal care;
3. Any period of incapacity and related treatment due to chronic health condition, such as asthma, diabetes or epilepsy;
4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, if the employee is under the supervision of a licensed health care provider (but not necessarily undergoing active treatment), as when the employee has Alzheimer's, a severe stroke, or is in the terminal stages of a disease; or
5. Any period of absence to receive multiple treatments by, or under the orders of, a licensed health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days if left untreated, such as dialysis for kidney disease or chemotherapy for cancer.

A "regimen of continuing treatment" as specified in (1) above does not include taking over-the-counter medications, bed rest, drinking plenty of fluids, or any similar activities that can be initiated without a visit to a licensed health care provider, unless something more serious is involved.

Employer/Appointing Authority – The Department of Administrative Services

Family Member – means spouse, parent, son or daughter

Family and/or medical leave of absence- an approved absence available to eligible employees for up to twelve (12) workweeks of unpaid leave per year under particular circumstances. Such leave may be taken only for the following qualifying events:

1. upon the birth of an employee's child;
2. upon the placement of a child with an employee for adoption or foster care;
3. when an employee is needed to care for a family member who has a serious health condition; or;

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4. when an employee is unable to perform the functions of his/her position because of the employee's own serious health condition.

Incapable of self-care – means that an individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” ADLs or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately to one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining residence, using telephones and directories, using a post office, etc.

Intermittent leave – means leave taken in separate periods of time due to a single illness or injury, rather than one continuous period of time, and may include leave of periods from tenths of an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken in several days at a time spread over a period of six months, such as for chemotherapy.

Key employee – the highest paid 10% of all employees in the Department of Administrative Services. An employee will be notified in writing of his/her status as a key employee, if applicable, after he/she requests leave pursuant to this policy.

Licensed health care provider – a doctor of medicine, a doctor of osteopathy, podiatrists, dentists, optometrists, psychiatrists, clinical psychologists, and other as specified by law.

Needed to Care for – means that the employee can use FML leave to care for a family member, because of a serious health condition, in the following situations:

- if the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc.
- providing psychological comfort and reassurance which would be beneficial to a child, spouse, or parent with a serious health condition who is receiving inpatient or home care.
- if the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

Parent – means the biological parent of an employee or an individual who stands or stood in *loco parentis* to an employee when the employee was a child.

Physical or mental disability – means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630.2(h), (i) and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disability Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

Rolling year: a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Department of Administrative Services will compute the amount of leave the employee has taken under this policy and subtract it from the twelve (12) workweeks of available leave, and the balance remaining is the amount the employee is entitled to take at the time. (For example, if an employee used four weeks of FML leave beginning February 4, 2002 and

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four weeks beginning June 1, 2002, and four weeks beginning December 1, 2002, the employee would not be entitled to any additional leave until February 4, 2003. Beginning on February 4, 2003 the employee would be entitled to four weeks of FML leave.)

Serious health condition –

- (I) an illness, injury, impairment, or physical or mental condition that involves:
 - A. Inpatient care (e.g., an overnight stay), in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care or;
 - B. Continuing treatment by a licensed health care provider. A serious health condition involving continuing treatment by a health care provider includes:
 - (1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - b. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
 - (2) Any period of incapacity due to pregnancy, or for prenatal care.
 - (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
 - (4) A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
 - (5) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

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- (II) Treatment for purposes of paragraph (I) (B) (1) (a) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (I) (B)(1)(b) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FML.
- (III) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FML. Restorative dental, or plastic surgery after an injury, or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness from stress or allergies may be serious health conditions, but only if all the conditions of this section is met.
- (IV) Substance abuse may be a serious health condition if the conditions of this section are met. However, FML may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee’s use of substance, rather than for treatment, does not qualify for FML.
- (V) Absences attributed to incapacity under paragraphs (I) (B) (2) or (3) of this definition qualify for FML even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or Daughter – means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse – a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.