

# **Family and Medical Leave Act and Hawaii Family Leave Law**

## Reference Materials and Forms

Effective July 1, 2020

Hawaii State Department of Education  
Office of Talent Management  
Employee Records and Transactions Section

**HAWAII STATE DEPARTMENT OF EDUCATION  
FAMILY AND MEDICAL LEAVE ACT AND HAWAII FAMILY LEAVE LAW  
REFERENCE MATERIAL**

Effective July 1, 2020

The following information for family leave is for all Department of Education (DOE) employees:

- With 12 months of cumulative employment and a minimum of 1,250 hours of service (employee must be at least 62.5% FTE) in the previous 12 months to qualify for Family and Medical Leave Act (**FMLA**).
- With at least 6 months of consecutive employment (in-service) to qualify for Hawaii Family Leave Law (**HFL**).

**Family Medical Leave Program**

Family medical leave for DOE employees is authorized by the FMLA, HFL, School Code 5400 (for certificated employees), and respective Collective Bargaining Agreements (CBA).

- For **FMLA**, an employee can take up to 12 weeks (equivalent to 60 workdays) of leave without pay (LWOP) per 12-month period measured forward from first date of leave.
- For **FMLA Military Caregiver Leave**, an employee can take up to 26 weeks (equivalent to 130 workdays) of LWOP per 12-month period measured forward from the first date of leave.
- For **HFL**, an employee can take up to 4 weeks (equivalent to 20 workdays) of leave with pay, if available, and/or LWOP per 12-month period measured forward from the first date of leave. When taking leave with pay under HFL, the paid leave shall be applied first, then leave without pay (LWOP) for the remainder of the leave.

**FMLA leave will run concurrently with HFL leave** for up to 12 weeks (equivalent to 60 workdays) for these situations: Serious health condition of spouse, child, or parent; birth and to bond with a newborn child; and placement of a child for adoption. When taking leave with pay under HFL, the paid leave, up to 4 weeks (equivalent to 20 workdays) shall be applied first, then leave without pay (LWOP) for the remainder of the leave.

Note: Leave provisions through School Code 5400 and respective CBAs may provide other leave of absence options available to DOE employees.

**Serious Health Condition**

A serious health condition must be certified by the attending health care provider if:

1. An employee is “unable to perform the functions of the position” where the health care provider finds the employee is unable to work at all, or is unable to perform any of the essential functions of the employee’s position; or
2. An employee is needed to provide care for a family member because of the family member’s serious health condition during the period of treatment of supervision by a health care provider.

**FAMILY MEDICAL LEAVE CAN BE USED FOR ...**

FMLA	HFLL	FMLA and HFLL (Concurrent)
<p>Serious health condition of:</p> <ul style="list-style-type: none"> <li>• Employee (self)</li> <li>• Spouse</li> <li>• Child - Biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence</li> <li>• Parent - Biological, adoptive, step, or foster parent; or any other individual who stood in loco parentis to the employee when the employee was a child (does not include parents “in-law”)</li> </ul> <p>Birth and to bond with a newborn child (expires 12 months after the birth)</p> <p>Placement of child for adoption or foster care (expires 12 months after the placement of child)</p> <p>Military qualifying exigency leave</p> <p>Military caregiver leave*</p>	<p>Serious health condition of:</p> <ul style="list-style-type: none"> <li>• Spouse</li> <li>• Civil union partner</li> <li>• Reciprocal beneficiary (as registered with the Department of Health)</li> <li>• Child (any age) - Biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee</li> <li>• Parent - Biological, adoptive, step, or foster parent; parent-in-law; legal guardian</li> <li>• Sibling - Biological, adopted, foster brother or sister; or stepbrother or stepsister of an employee</li> <li>• Grandparent, grandparent-in-law</li> <li>• Grandchild</li> </ul> <p>Birth and to bond with a newborn child (expires 12 months after the birth)</p> <p>Placement of child for adoption (expires 12 months after the placement of the child)</p>	<p>Serious health condition of:</p> <ul style="list-style-type: none"> <li>• Spouse</li> <li>• Child (under 18) – Biological, adopted, foster, stepchild, legal ward of an employee</li> <li>• Child (18 and over) – same as above and incapable of self-care because of a mental or physical disability</li> <li>• Parent – Biological, adoptive, step, or foster parent</li> </ul> <p>Birth and to bond with a newborn child (expires 12 months after the birth)</p> <p>Placement of child for adoption (expires 12 months after the placement of the child)</p>

\*For military caregiver leave, up to 26 weeks (equivalent to 130 workdays) of LWOP per 12-month period measured forward from the first date of leave

**Authorized Leave Requests**

Family medical leave shall consist of leave with pay, leave without pay, or a combination of paid and unpaid leave.

Family medical leave can be taken continuously, on a reduced schedule (reducing the same amount of time worked each day or week; follow normal leave use provisions), or intermittently.

Please use the following leave codes on DOE leave forms (see “Required Documentation” below) and in Time and Attendance:

Type of Leave & Codes	Leave Form	Time & Attendance
Family Leave Charged to Sick Leave (HFLL)	13	a
Family Leave Charged to Vacation Leave (HFLL)	23	b
Family Leave of Absence Without Pay (HFLL)	93	(
Family Leave of Absence Without Pay (FMLA)	94	)
Family Leave of Absence Without Pay (FMLA-Military Caregiver)	98	i
Family Leave of Absence Without Pay (FMLA-Military Exigency)	99	k

**Required Documentation**

An employee requesting family medical leave must submit applicable leave forms to his or her supervisor for approval. These forms are for both FMLA and HFLL.

1. One of the following DOE Leave Forms:
  - *Application for Leave of Absence Certificated School-Level Employees, DOE OTM 300-001*
  - *Application for Leave of Absence, DOE G-1*
  
2. AND one of the following U.S. Department of Labor Forms:
  - *Certification of Health Care Provider for Employee’s Serious Health Condition, WH-380-E*
  - *Certification of Health Care Provider for Family Member’s Serious Health Condition, WH-380-F*
  - *Certification of Qualifying Exigency for Military Family Leave, WH-384*
  - *Certification for Serious Injury of Illness of a Current Servicemember for Military Family Leave, WH-385*
  - *Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave, WH-385-V*

OR one of the following if none of the forms above apply:

- Health care provider documentation certifying date of childbirth
- Legal documentation of the date of placement for adoption or foster care of a child

Note: Employee may be required to present a fitness-for-duty certification to his or her supervisor to be able to return to work. This requirement can be noted in Part III of the *Family Medical Leave Designation Notice, DOE OTM 300-020*.

## Checklists for Requesting Family Medical Leave

<b>Employee Checklist</b>	<b>Reference/Resources</b>	<b>Timeline</b>
Reviews all leave options available to employee	<ul style="list-style-type: none"> <li>Employee’s CBA</li> <li>School Code 5400</li> <li>Supervisor</li> </ul>	When thinking about taking leave.
Reviews rights and responsibilities for FMLA and HFLL	<ul style="list-style-type: none"> <li><i>Family Medical Leave Notice of Eligibility Rights and Responsibilities</i>, DOE OTM 300-019</li> </ul>	Prior to requesting for leave.
Informs supervisor of family medical leave (verbal or written)		As soon as possible; when the dates of leave are known.
Completes applicable leave forms with appropriate leave codes	<ul style="list-style-type: none"> <li>See “Required Documentation”</li> <li>See “Authorized Leave Requests”</li> </ul>	When completing leave forms.
Submits applicable leave forms and verifying documentation to supervisor	<ul style="list-style-type: none"> <li>See “Required Documentation”</li> </ul>	<p>Prior to going on leave; or, with the consent of the supervisor, upon return from leave.</p> <p>Employee has <b><u>up to 15 calendar days</u></b> to submit leave forms to the supervisor from the time the original request was made (verbal or written).</p>

<b>Supervisor Checklist</b>	<b>Reference/Resources</b>	<b>Timeline</b>
<p>Complete DOE OTM 300-019 and give to employee</p> <p>Provide employee with the Overview Chart</p>	<ul style="list-style-type: none"> <li><i>Family Medical Leave Notice of Eligibility Rights and Responsibilities</i>, DOE OTM 300-019</li> <li><i>Overview of Family and Medical Leave Act (FMLA) and Hawaii Family Leave Law (HFLL) Chart</i></li> </ul>	<p><b><u>Upon receipt</u></b> of verbal or written notification of taking leave</p> <p>Provide these documents to the employee <b><u>within 5 business days</u></b> upon receipt of verbal or written notification of taking family medical leave</p>
<p>Request from employee all required documentation and leave forms for your review and approval</p> <p><b><u>Note: Until documentation and leave forms have been submitted and approved, designate leave as paid leave (sick, vacation, personal) and/or leave without pay (e.g., LWOP – Sick, LWOP – Personal) as appropriate</u></b></p>	<ul style="list-style-type: none"> <li>See “Required Documentation”</li> </ul>	<p>You must allow the employee <b><u>at least 15 calendar days</u></b> to submit the requested documentation and the required leave forms</p> <p>Additional time may be granted for some circumstances at the supervisor’s discretion</p> <p>If sufficient information is not provided in a timely manner, the request can be denied</p>

Review the required documentation and leave forms for conformance with provisions of applicable leave	<ul style="list-style-type: none"> <li>• <i>Overview of Family and Medical Leave Act (FMLA) and Hawaii Family Leave Law (HFLL) Chart</i></li> </ul>	<b><u>Within 5 business days</u></b> upon receipt of application and documentation from employee
Complete DOE OTM 300-020 and give to employee	<ul style="list-style-type: none"> <li>• <i>Family Medical Leave Designation Notice (DOE OTM 300-020) form and instructions</i></li> </ul>	<b><u>Within 5 business days</u></b> upon receipt of application and documentation from employee, absent extenuating circumstances.
Advise employee of the most appropriate course of action and mutually arrive at joint agreement (e.g., when leave is taken, when employee plans to return, what to do if plans change)		As soon as practical.
<p><u>For Certificated, all leaves without pay (LWOP), forwards all required documentation to the Complex Area/Assistant Superintendent or Designee; notifies DOE Payroll of LWOP</u></p> <p><u>For Classified, all LWOP, forwards all required documentation directly to Office of Talent Management (OTM) – Employee Records and Transaction Section (ERTS)</u></p>	<ul style="list-style-type: none"> <li>• Follow same procedures for all LWOP requests</li> </ul>	As soon as practical.
<u>For all leaves with pay, maintain these forms at the school/office</u>	<ul style="list-style-type: none"> <li>• Follow same procedures for all paid leave requests</li> </ul>	As soon as practical.
Notes the anticipated return date and maintains the leave records for the employee to keep track of the number of days used under FMLA/HFLL	<ul style="list-style-type: none"> <li>• See “Authorized Leave Requests” for leave codes to use in Time and Attendance to track leaves</li> </ul>	As soon as practical.

<b>CAS/AS/Designee Checklist (For Certificated Only)</b>	<b>Reference/Resources</b>	<b>Timeline</b>
Reviews recommendation by principal/supervisor.  ✓ Check that the right leave code is used  Forwards the original applicable forms/attachments to the OTM, ERTS while maintaining a copy at the school, district, or state office		Upon receipt

<b>OTM ERTS Checklist</b>	<b>Reference/Resources</b>	<b>Timeline</b>
Reviews and verifies all documents		Upon receipt
Prepares and sends Form 5, <i>Notification of Personnel Action</i> , to employee, DOE Payroll, and OTM Employee Benefits Unit		Upon receipt

**Additional References and Resources**

The following resources provide access to statutory, policy, and contractual authorities.

- Overview of Family and Medical Leave Act (FMLA) and Hawaii Family Leave Law (HFLL) Chart
- Family and Medical Leave Act (FMLA)
  - Statute: 29 U.S.C. 2601 et seq., Family and Medical Leave
  - Regulation: 29 C.F.R. Part 825, The Family and Medical Leave Act
  - The Family and Medical Leave Poster (Revised 2016)
- Hawaii Family Leave Law (HFLL)
  - Statute: Chapter 398, Family Leave
  - Regulation: 12 Hawaii Administrative Rules (HAR) Chapter 27, The Administration and Enforcement of the Family Leave Law
  - Wage and Hour Laws Poster
- Hawaii Board of Education Policy 201-4, Leaves of Absence
- School Code Regulation 5401, Leaves of Absence, Leaves of Absence Without Pay
- School Code Regulation 5411, Leaves of Absence, Special Short-Term Leaves with Pay
- Unit 01 Bargaining Agreement, Section 38A, Family Leave
- Unit 02, Unit 03, and Unit 04 Bargaining Agreements, Article 36A, Family Leave
- Unit 09 Bargaining Agreement, Article 42A, Family Leave
- Unit 13 Bargaining Agreement, Article 37A, Family Leave