

**R928-1. Purpose:** To outline the Commissioners Office's policy on health-related leaves of absence with or without pay, including sick leave, long-term medical leave and Family Medical Leave Act leave. Any questions regarding this policy should be referred to the Human Resources Office (HR).

## R928-2. References

- 2.1. Policy and Procedures [R929](#), Leaves of Absence (Non Health-Related)
- 2.2. Policy and Procedures [R931](#), Vacations
- 2.3. [29 Code of Federal Regulations 825.100 et seq.](#), (Family and Medical Leave Act of 1993 Regulations)

## R928-3. Definitions

- 3.1. **"Benefits eligible employee"** means an employee holding a permanent position at not less than 75% of full time.
- 3.2. **"Child"** means a biological, adopted or foster child, stepchild, legal ward or a child of a person standing in loco parentis, who is either under the age of eighteen, or over the age of eighteen and incapable of self care on a daily basis because of a mental or physical disability that substantially limits one or more major life activities.
- 3.3. **"Health Care Provider"** means (1) a state authorized doctor of medicine or osteopathy; (2) a state authorized podiatrist, dentist, clinical psychologist, optometrist, or chiropractor performing within the scope of his/her practice; (3) a state authorized nurse practitioner, nurse-midwife or clinical social worker performing within the scope of his/her practice; (4) a Christian Science practitioner who is registered with the First Church of Christ Science in Boston, Massachusetts.
- 3.4. **"Incapacity"** means the inability to work, attend school or perform other regular daily activities due to a serious health condition, treatment therefore or recovery therefrom.
- 3.5. **"Parent"** means a biological parent or an individual who performed all parental duties in lieu of a biological parent.
- 3.6. **"Parent-in-Law"** means the biological parent of the employee's spouse or an individual who performed all parental duties to the employee's spouse in lieu of a biological parent.
- 3.7. **"Responsible Officer"** means the cognizant associate commissioner or OCHE officer with a direct supervisory reporting relationship to the employee.
- 3.8. **"Serious health condition"** means an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (i.e. an overnight stay); (2) a period of incapacity of more than three consecutive calendar days that requires continuing treatment by a health care provider; (3) any period of

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incapacity due to pregnancy or for prenatal care; (4) any period of incapacity or treatment for such incapacity due to a chronic serious health condition (e.g., asthma, diabetes); (5) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective but which requires the continuing supervision of a health care provider (e.g., Alzheimer, severe stroke); or (6) any period of absence to receive multiple treatments by a health care provider (e.g., chemotherapy, dialysis).

3.9. "Spouse" means a husband or wife as defined or recognized under Utah law for purposes of marriage in Utah.

#### R928-4. Sick Leave (Leave with Pay) Policy

4.1. **General:** Sick leave is a benefit which provides payments in lieu of compensation to benefits eligible employees who are unable to perform the functions of their position because of an illness or serious health condition or because they are needed to care for a spouse, child, parent or parent-in-law with an illness or serious health condition.

4.1.1. In general, employees should arrange routine health care appointments during non working hours; however, in cases where these appointments must take place during regular working hours, employees may charge the time used for these appointments to sick leave. Whenever possible, supervisors should be notified of such appointments at least 48 hours in advance.

4.1.2. Eligible employees may use hourly increments of sick leave for an intermittent Family Medical Leave Act (FMLA) leave under section R928-5 below.

4.1.3. In order to minimize disruption of OCHE's operations, an employee shall notify his or her supervisor, in a timely manner, of an unexpected absence due to illness.

4.2. **Eligibility and Accrual:** Benefits eligible employees holding positions at 1.0 FTE accumulate sick leave at the rate of eight hours (one day) for each month of continuous service to a maximum accrual of 1040 hours (130 days). Benefits eligible employees holding positions at .75 FTE or more but less than 1.0 FTE accumulate sick leave on a prorated basis.

#### 4.3. Use of Sick Leave

4.3.1. Sick leave accrual and usage for staff will be recorded through the Payroll/Benefits System.

4.3.2. Sick leave may not be used for vacation purposes, but after all sick leave has been exhausted, additional absences due to an illness or a serious health condition of the employee or the employee's spouse or child may be charged to earned vacation time with approval from the cognizant associate commissioner or designee.

4.3.3. OCHE may require certification of all absences charged to sick leave. If an employee is on sick leave for a period of more than three consecutive days, such leave may be designated as Family Medical Leave Act (FMLA) leave in accordance with the Family Medical Leave Act (FMLA). HR will notify the employee, in writing, that such leave is being designated provisionally as FMLA leave within five business days of becoming aware that such sick leave may qualify as FMLA leave. All of the conditions of FMLA leave, including certification and notice of intent to return to work, may apply to such leave. Under certain circumstances, OCHE may retroactively designate sick leave as FMLA leave.

**4.4. Extended Sick Leave (With Pay):** In exceptional cases after all accrued sick leave and earned vacation time has been exhausted, extended sick leave, with pay, may be authorized by the cognizant associate commissioner upon recommendation of the Human Resources Director subject to the following limitations:

4.4.1. Extended sick leave is not available for the care of a child, spouse, parent or parent-in-law with an illness or serious health condition.

4.4.2. Extended sick leave may not exceed thirty (30) days unless authorized by the Commissioner, upon recommendation of the Human Resources Director and cognizant associate commissioner.

4.4.3. In no event shall extended sick leave be granted for a period extending beyond the earliest day on which benefits under either OCHE's disability insurance program or the Social Security Act are expected to become payable to the employee or, if the employee is not covered thereunder, would become payable if coverage existed.

4.4.4. If the employee returns to work before the expiration of authorized extended sick leave, the unused portion of the leave will be canceled. The employing division is responsible for notifying HR of the date of the employee's actual return to work.

**4.5. Conversion of Sick Leave to Vacation:** Benefits eligible employees may convert up to four days (32 hours) of accrued sick leave to vacation annually provided the following conditions are met:

4.5.1. The employee has accumulated 48 days (384 hours) of sick leave by January 1, and during the following calendar year the employee uses fewer than four days of sick leave (32 hours).

4.5.2. The conversion will be calculated based on the number of sick leave days used during the calendar year:

4.5.2.1. If 0 days of sick leave are used, four days may be converted to vacation with the remaining 8 days accrued as sick leave.

4.5.2.2. If 1 day of sick leave is used, 3 days will be converted to vacation with the remaining 8 days accrued as sick leave.

4.5.2.3. If 2 days of sick leave are used, 2 days will be converted to vacation with the remaining 8 days accrued as sick leave.

4.5.2.4. If 3 days of sick leave are used, 1 day will be converted to vacation with the remaining 8 days accrued as sick leave.

4.5.2.5. If 4 or more days of sick leave are used, the employee is not eligible for the sick leave conversion.

4.5.3. Employees who have reached the maximum sick leave accrual of 130 days at the beginning of the year will be able to convert up to four days of unused sick leave to vacation days annually as long as they use 8 or fewer days of sick leave days throughout the year.

4.5.4. Conversion of eligible sick leave will occur automatically unless HR is directed to do otherwise by the employee.

4.5.5. Conversion of sick leave will not increase the maximum allowable limits on vacation accrual. (See R932, Vacation).

## **R928-5. Family Medical Leave Act Leave**

### **5.1. Eligibility**

5.1.1. An employee is eligible to request Family Medical Leave Act (FMLA) leave if he/she has been an employee of OCHE for at least twelve (12) months and has worked at least 1250 hours during the twelve month period immediately preceding the leave.

5.1.2. Subject to the requirements described in this policy, an eligible employee may request and will be granted up to twelve (12) workweeks of unpaid FMLA during any twelve (12) month period for one or more of the following events:

5.1.2.1. the birth and first year care of a child;

5.1.2.2. the placement of a child for adoption or foster care in the employee's home;

5.1.2.3. the care of the employee's spouse, child, parent or parent-in-law with a serious health condition; or

5.1.2.4. the employee's own serious health condition which renders him/her unable to perform the essential functions of the employee's position.

5.1.3. For purposes of calculating the amount of FMLA leave an eligible employee may request, the term "during any twelve (12) month period" means a rolling twelve (12) month period measured backward from the date the requested leave will begin.

5.1.4. If both spouses are employed by OCHE, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period for purposes described in subparagraphs 5.1.2.1 or 5.1.2.2. However, each employee may use up to twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is for purposes described in subparagraphs 5.1.2.3 and 5.1.2.4.

5.1.5. FMLA leave for the birth/care of a child or for the placement of a child for adoption or foster care must be taken within the twelve (12) month period after the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the twelve (12) month period. Unless specifically permitted by the responsible officer, FMLA leave for these purposes cannot be taken on an intermittent or reduced leave schedule.

### **5.2. Notification and Certification of Need for FMLA Leave**

5.2.1. An eligible employee who foresees the need for a FMLA leave must notify HR and the responsible officer in writing not less than thirty (30) calendar days in advance of the start date of the leave. If not foreseeable, the employee must provide written notice as soon as practicable, ordinarily within two (2) working days of learning of the need for leave.

5.2.2. An eligible employee who foresees the need for a leave due to planned medical treatment for herself/himself or for her/his spouse, child, or parent, must notify HR and the responsible officer in writing not less than thirty (30) calendar days in advance of the start date of the leave so the leave can be scheduled at a time least disruptive to OCHE's operations. If not foreseeable, the employee must provide written notice as soon as practicable, ordinarily within two (2) working days of learning of the need for leave.

5.2.3. If the requested leave is to care for a spouse, child or parent who has a serious health condition, the employee will be required to file with HR, in a timely manner, a health care provider's statement that the employee is needed to care for the child, spouse, or parent and the estimated duration of the leave. For purposes of confirmation of family relationship, the employee may be required to provide reasonable documentation or statement of family relationship.

5.2.4. If the requested leave is because of a serious health condition of the employee which renders her/him unable to perform the essential functions of the employee's position, the employee is required to file with HR a health care provider's statement as allowed by FMLA.

5.2.5. An employee on an approved FMLA leave must inform HR every thirty (30) days regarding her/his status and intent to return to work upon conclusion of the leave. An employee may also be required to submit a fitness for -duty certification before returning to work.

5.2.6. In any case where there is reason to doubt the validity of the health care provider's statement or certification for leave taken under subparagraphs 5.1.2.3 or 5.1.2.4 above, OCHE may, at its own expense, require second and third opinions, as specified by FMLA, to resolve the issue.

5.2.7. Failure to comply with the above notification and certification requirements may result in a delay in the start of FMLA leave or a delay in the restoration of the employee to his/her position.

5.3. **Substitution:** An employee must substitute any accrued paid leave (i.e. sick leave, personal preference, and vacation) for any unpaid FMLA leave except that an employee, by written request, may retain up to ten (10) days of already accrued vacation. Upon exhaustion of any accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for an FMLA purpose exceed twelve (12) workweeks in any twelve (12) month period.

5.4. **Intermittent FMLA Leave:** Leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a serious health condition by or under the supervision of a health care provider, or for recovery from such treatment or for recovery from a serious health condition. The employee may be required to file with HR certification from a health care provider why the intermittent/reduced leave schedule is medically necessary and the expected schedule and duration of such leave. The employee may be required to transfer temporarily to an available alternative position for which the employee is qualified. The alternative position must have equivalent pay and benefits and better accommodate recurring periods of leave than the employee's regular position.

#### 5.5. **Benefits and Return from Leave**

5.5.1. At the election of the eligible employee, his/her insurance plans (health, dental, life, disability) will be maintained for the duration of an FMLA leave at the level and under the conditions coverage would have been provided if the employee had continued in employment for the duration of the leave. The employee will be responsible for paying his/her share of the premiums. These premiums will be deducted from the first paycheck after the employee returns to work.

5.5.2. While on unpaid FMLA leave, OCHE may recover its share of the premiums for maintaining coverage for the employee under such insurance plans during the period of an FMLA leave if the employee fails to return to work (or returns but fails to stay thirty (30) calendar days) for reasons other than the continuation or onset of a serious health condition entitling the employee to leave under subparagraphs 5.1.2.3 or 5.1.2.4, or other circumstances beyond the employee's control. Certification of the employee's inability to return to work as specified by FMLA may be required.

5.5.3. Unless the employee is terminated as a result of a reduction in force, an employee who takes an FMLA leave for the intended purpose of the leave shall be entitled, on timely return from the leave and completion of all required documentation, to be restored to the position of employment held when the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

**R928-6. Long-Term Medical Leave (Leave without Pay):** Under certain circumstances, OCHE may permit an employee who has exhausted all of his/her accrued sick leave and FMLA leave or an employee who is not eligible for sick leave or FMLA leave to take long-term medical leave without pay for the employee's own serious health condition. In general, long-term medical leave is not available to employees holding positions that are temporary in nature (i.e. with a duration of less than four consecutive months), or to employees who are employed on an intermittent, or as-needed basis.

#### 6.1. Request for Long-Term Medical Leave

6.1.1. A request for long-term medical leave without pay shall, whenever possible, be submitted in writing to the employee's responsible officer prior to the date upon which the requested leave is to commence. If unusual circumstances make it impossible in the exercise of reasonable diligence for the employee to submit the request in advance of the date upon which the requested leave is to commence, approval may be given to a retroactive commencement of the leave.

6.1.2. The written request should state (1) the reason why the long-term medical leave is being requested; (2) the proposed date on which the requested long-term medical leave is to commence; (3) the employee's intent to return to work upon conclusion of the leave; and (4) the estimated date on which the employee reasonably expects to return to work.

6.1.3. The employee shall provide a health care provider's statement supporting the need for a long-term medical leave.

6.1.4. The cognizant associate commissioner, upon recommendation of the responsible officer and the Human Resources Director, shall approve or deny the request for a long-term medical leave. If the cognizant associate commissioner concludes that the requested leave should be approved, but has reasonable grounds to believe that in order to assure satisfactory discharge of the duties of the position, consistent with the present or anticipated physical or mental condition of the employee, the leave should commence at a different date than requested by the employee, the approval of the request may be subject to the condition that the leave will begin at a specified date other than the requested date.

6.1.5. Prior to the commencement of an approved long-term medical leave, the employee must arrange for a counseling interview with HR.

#### 6.2. Length of Long-Term Medical Leave

6.2.1. It is recognized that the duration of a serious health condition cannot be precisely known in advance. Accordingly, long-term medical leaves may be granted for an estimated or indefinite period of time, not to exceed one year.

6.2.2. Unless the Commissioner approves an extension of the long-term medical leave beyond one year, applicable procedures for termination of the employment status of the individual at the end of the one year's long-term medical leave shall be initiated by the responsible officer.

6.2.3. All long-term medical leaves are subject to the provision of Section 6.3, below, specifying the obligations of OCHE and related procedures, governing reinstatement.

### 6.3. Reinstatement

6.3.1. **Notice of Intent.** An employee on long-term medical leave must give the responsible officer and HR written notice not less than thirty (30) working days in advance of the date on which the employee wishes to terminate the long-term medical leave and return to work. An employee may be required to submit a fitness-for-duty certification by a health-care provider before returning to work. If appropriate, HR, in consultation with the division, may require a second, independent certification from a health care provider at the division's expense.

6.3.2. **Six-month rule.** An employee who has been on leave because of his/her own serious health condition, including any time credited to sick leave, FMLA leave or accrued vacation, for six months or less during any twelve month period prior to the date of return to work shall be restored to the position of employment held when the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. In order to facilitate discharge of OCHE's obligation of reinstatement under this "six-month" rule, unless otherwise authorized by the cognizant associate commissioner, the responsible officer shall not fill the position with a permanent employee during the six-month period specified in the preceding paragraph.

6.3.3. **One-year rule.** If an employee has been on leave because of his/her own serious health condition, including any time credited to sick leave, FMLA leave or accrued vacation, for more than six months but less than one year during any twelve month period prior to returning to work, OCHE will make a good faith effort, subject to availability of funds and vacant positions, to restore the employee to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment or to another position for which the employee is qualified. The responsible officer is responsible for arranging such reinstatement. OCHE cannot, however, assure that an employee returning to work after a leave of more than six months duration will be reinstated.

6.3.4. OCHE has no obligation to reinstate, or to make any effort to reinstate, an employee who has been on leave, including any sick leave, FMLA leave, or accrued vacation, because of his/her serious health condition for more than one year. An application for reinstatement in such cases shall be treated as an application for initial employment.

6.3.5. If an employee on long-term medical leave accepts other employment during such leave or fails to return to work within three (3) business days after the expiration of the long-term medical leave, OCHE may treat such action as a voluntary termination of employment and a waiver of any right to reinstatement.

## R928-7. Employee Benefits During Health-Related Leaves of Absence

7.1. **Time Related Benefits:** Longevity for purposes of accruing vacation time is not lost during the preceding leaves without pay. However, vacation and sick leave benefits do not accrue during such leaves.

### 7.2. Retirement and Insurance Benefits

7.2.1. **Sick Leave & Extended Sick Leave:** During sick leave and extended sick leave, retirement and insurance benefits continue to be paid by OCHE.

7.2.2. **Family Medical Leave Act Leave:** To the extent FMLA leave is paid, retirement and insurance benefits continue to be paid by OCHE on the same basis as if the employee had continued in employment for the duration of the leave. To the extent FMLA leave is unpaid, retirement benefits will not be paid by OCHE during the leave. Insurance benefits will continue on the same basis as if the employee had continued in employment for the duration of the leave provided the employee pays his/her share of the premium and returns to work at the end of the leave (see 5.5, above).

7.2.3. **Long-Term Medical Leave:** Retirement and insurance benefits are not paid by OCHE during a long-term medical leave. An employee on long-term medical leave, however, may elect to continue his/her health insurance coverage as provided by federal law.

7.3. **Other Benefits:** Other benefits, including tuition reductions, ticket discounts and parking privileges continue during health-related leaves of absence.