

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b>		<input type="checkbox"/> <b>POLICY DIRECTIVE</b> <input checked="" type="checkbox"/> <b>PROCEDURAL DIRECTIVE</b>
<b>Subject</b> <b>Family Medical Leave Program</b>		<b>Number</b> <b>1206.1</b>
<b>Effective</b> 7.24.15	<b>Supersedes</b> 11.21.11	<b>Originating Office</b> <b>Division of Administrative Services / Human Resources</b>

## I. PURPOSE

It is the purpose of this Procedural Directive to facilitate Employee rights under the Family and Medical Leave Act by providing Department-wide guidelines and direction for the consistent administration of the program.

## II. AUTHORITY

Colorado Department of Transportation Executive Director pursuant to § 43-1-105, C.R.S.

Colorado Family Care Act, § 8-13.3-201, et seq., C.R.S.

The Family and Medical Leave Act of 1993 as amended (“FMLA”) 29 U.S.C. 2601, *et seq.*

The Americans with Disabilities Act of 1990 and Amendments 2008 (“ADAAA” or “ADA”), 42 U.S.C. 12101

State Personnel Board Rules and Personnel Director’s Administrative Procedures, 4 CCR 801-1 (“State Rules and Procedures”)

U.S. Department of Labor Regulations Regarding Coverage under the Family Medical Leave Act, 29 C.F.R. 825

CDOT’s Manual for Family Medical Leave Process and Procedures (the “FML Manual”)

## III. APPLICABILITY

This Procedural Directive applies to all Employees of the Colorado Department of Transportation.

## IV. DEFINITIONS

“Americans with Disabilities Act (ADA)” shall refer to Title I of the Americans with Disabilities Acts of 1990 and the ADAAA of 2008 which require the Department to provide equal employment opportunities for individuals with disabilities.

“Appointing Authority” for purposes of this Procedural Directive shall mean the person or persons designated to handle personnel matters or make hiring decisions.

“Employee” for purposes of this Directive shall mean an employee who meets the FML eligibility criteria.

“FML Liaison” shall mean the person or persons designated and trained in the FML Requirements to take a lead role in facilitating the FML rights and responsibilities for Employees.

“FMLA” shall mean the Family and Medical Leave Act which requires the Department to provide eligible Employees job-protected unpaid leave (FML) due to: (1) birth and care of a child which must be completed within one year of the birth; (2) placement and care of an adopted or foster child which must be completed within one year of the placement; (3) the serious health condition of an Employee’s parent, child under the age of 18 or an adult child who is disabled, spouse, for physical care or psychological comfort; (4) an Employee’s own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within 5 years of the beginning of that treatment. For purposes of this Directive, this also includes the Employee’s partner in a civil union pursuant to § 14-15-103(5), C.R.S., or domestic partner registered with the municipality in which the person resides or with the state, if applicable, pursuant to § 8-13.3-201, et seq., C.R.S. (the Family Care Act”).

“Serious Health Condition” for purposes of family/medical leave, an illness, injury, impairment, physical or mental condition that requires inpatient care or continuing treatment by a health care provider

“Short Term Disability (STD) Leave” shall mean a type of unpaid job protection that may run concurrently with FML.

## **V. PROCEDURE**

### **A. General Requirements**

1. The Department shall comply with all FML requirements. The Department’s Manual for Family Medical Leave Process and Procedures (the “FML Manual”) shall provide guidance on all program compliance. The Manual shall be updated as needed to comply with new or modified requirements.
2. Human resources is responsible for the administration of the Family Medical Leave Program. The Human Resources Director is responsible for designating the FML Program Manager.
3. The FML Program Manager is responsible for overall management of the Program, including:

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- a) Providing on-going training and direction on the FML program;
  - b) Functioning as the Department's final authority on FML applicability, designation and/or disputes; and
  - c) Performing audits of the FML Program for quality assurance and quality control.
4. Appointing Authorities will designate the FML Liaison(s) for their respective Region, Division, or Office.
5. Managers and supervisors are responsible for working with the FML Liaison to ensure that Employees are notified of their rights under the FML.
6. FML Liaisons act as the Employee contact point to initiate and manage the FML process. They ensure confidentiality of the FML process, including maintaining strict confidentiality of the Employee's health-related records pursuant to the FML. The FML liaison will provide information to the Appointing Authority and supervisors including:
- a) Anticipated duration of absence and/or need for intermittent leave usage, reduced work schedule and/or work restrictions to accommodate the approved FML usage;
  - b) Work restrictions to accommodate the approved FML usage; and
  - c) Anticipated return to work.
7. Employees are responsible for seeking information from the FML Liaison regarding FML, and for completing the requirements of the FML, including timely notifying the supervisor and/or FML Liaison of a possible FML-qualifying event or condition.

#### **B. FML Requirements and Eligibility**

1. Family/ medical leave rights cannot be waived, regardless of the Employee's wishes.
2. FML, when granted, runs concurrently with all other types of paid leave, unpaid short term disability leave, military leave, make whole under the Workers' Compensation Act, and compensatory time. An Employee may take intermittent leave under the FML.
3. An Employee shall be required to exhaust all accrued paid leave subject to the conditions for use of such leave before being placed on leave without pay for the remainder of FML, except:

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- a. For the purpose of Active Duty Military Leave, sick leave is not applicable. Therefore, only annual leave shall be required to be exhausted prior to being placed on leave without pay.
  - b. Employees on Short Term Disability (“STD”), including those under FML protection, are not required to use annual leave beyond the thirty-day STD waiting period because doing so will impact STD benefits.
4. The Employee must have one year (12 months) of total state service (including temporary time) as of the date leave will begin. The twelve months of service need not be consecutive.
  5. In addition, temporary Employees must also have worked 1,250 hours within the 12 months prior to the date leave will begin.
  6. Time worked by the Employee includes overtime hours.
  7. Full-time Employees will be granted 520 hours per rolling 12 month period. The amount of FML is determined by the difference of 13 weeks and any FML leave taken in the previous 12 month period from date of the most recent request. The amount of leave is prorated for part-time Employees based on the regular appointment or schedule. Any extension of leave beyond the amount to which the Employee is entitled is not FML, and is subject to other State Personnel Board Rules and Director’s Procedures.

### C. Qualifying Events

1. Addition of a child through birth, adoption, or foster care within one year of the event.
2. A Serious Health Condition of the Employee, Employee’s spouse, Employee’s parent, Employee’s child (or a child with whom the Employee has an “in loco parentis” relationship) under the age of 18, or an adult child who is disabled at the time leave will begin.
3. Non-medical Active Duty Military Leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country.
4. Military Family Caregiver Leave Entitlements.
  - a) Military caregiver leave is a one-time entitlement of up to 1040 hours (prorated for part-time) in a single 12-month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the 12-month period. In addition, the combined total for military caregiver and all other types of FML shall not exceed 1040 hours.

#### D. FML Process for Employees

1. The basic FML Process is outlined below; however, the FML Manual provides more comprehensive guidance on all specific requirements.
2. When an Employee has a potential FML qualifying event, they must provide advance notice to their supervisor when informing the supervisor of the need for time off.
3. The Employee and FML Liaison work together on the FML required paperwork. Each type of FML requires documentation specific to the event.
4. When leave is taken, time is tracked and monitored in accordance with timekeeping requirements and the FML Manual. As part of the FML process, the Appointing Authority is responsible for time management and timely approvals.
5. The Employee and FML Liaison should communicate regarding FML status on the agreed-upon schedule.
6. When the FML is approved for an Employee's own condition, the Employee is required to provide the Fitness to Return to Work Form as instructed by the FML Manual.
7. The FML Liaison will keep the Employee, supervisor, and Appointing Authority apprised regarding the Employee's FML status.
8. Prior to contemplation of an administrative discharge of an Employee in accordance with State Personnel Board Rules and Personnel Director's Administrative Procedures, the Appointing Authority is required to:
  - a) Consult with the ADA Coordinator to determine whether the ADA applies, and if so, whether the Employee can be reasonably accommodated.
  - b) Make a good faith effort to communicate in advance with the Employee who is unable to return to work after exhausting all job protections and to determine their status.

#### E. Record Keeping and Confidentiality

1. Appointing Authorities, supervisors, managers and FML Liaisons shall protect the confidentiality of an Employee's reason for using FML.
2. The FML Liaison, when initially trained, shall sign a confidentiality agreement which is acknowledged by the FML program manager's signature. The FML program

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manager ensures it is provided to human resources for inclusion in the FML Liaison's official personnel file.

3. The FML Liaison shall provide the Employee's FML files to the ADA Coordinator in the event of a potential evaluation under the ADA.
4. FML Liaisons will maintain records to demonstrate compliance with the FML requirements in accordance with state and federal requirements. Any information regarding the Employee's FML status, including medical information, required documentation, and letters issued as part of the FML process are protected and confidential. Information regarding diagnosis, treatment, medical history, and other details found on the Medical Certification Form may be disclosed when needed to meet legal requirements with the approval of the attorney general's office. All documents shall be kept in a separate, confidential FML file with limited access in accordance with law.
5. The separate, confidential file shall be retained by the FML Liaison for 3 years after completion of leave for the condition or event.
6. When an Employee transfers or reinstates to a different region or office within CDOT or to another department, the designated FML Liaison will be notified in order to securely forward the confidential FML file to the appropriate FML administrator. This must be done within 10 business days.
7. For tracking and reporting requirements, the FML program manager will administer the FML program and prepare reports as necessary.
8. When the Department is notified of pending litigation relating to the FML process, the FML records must be maintained for two years after the litigation has been resolved.

### VIII. IMPLEMENTATION PLAN

This Procedural Directive shall be implemented immediately upon approval.

Human Resources shall oversee its implementation.

### IX. REVIEW DATE

This Procedural Directive shall be reviewed no later than August 2020.

  
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EXECUTIVE DIRECTOR

7/24/15  
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Date of Approval