HAWAII HEALTH SYSTEMS CORPORATION "Touching Lives Everyday"	Department: Human Resources	Policy No.: HR 0012
		Revision No.: –
POLICY AND PROCEDURES	Issued by: VP & Dir. of Human Resources	Effective Date: April 17, 2008
Subject: FAMILY LEAVE	Approved by: HHSC Board of Directors By: Raymond Ono Its: Secretary/Treasurer	Supersedes Policy: NA
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I. PURPOSE: This policy has been developed to implement Chapter 398, HRS, Family Leave and the Federal Family and Medical Leave Act of 1993, Public Law 103-3.

II. COVERAGE: This policy applies to all employees as outlined in the chart, below.

EMPLOYEE HANDOUT FOR LEAVES UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 and THE HAWAII FAMILY LEAVE LAW

DETAILS OF LEAVE	HAWAII STATE FAMILY LEAVE	FEDERAL FAMILY AND MEDICAL LEAVE
Eligibility	An employee must have performed actual work for at least six consecutive months without a break due to resignation, termination or layoff.	An employee must be employed for at least 12 months (does not have to be consecutive) and have at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.
Total Leave Entitlement	An employee is entitled to a total of four weeks during a twelve-month period.	An eligible employee is limited to a total of 12 workweeks of leave during any 12-month period.
Eligible Absences	1. Upon the birth or adoption and care of the child. 2. To care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition. Parent means a biological, foster or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, a grandparent-in-law. Note: An employee's entitlement to four week of family leave upon the birth of a child expires twelve months after the child's birth.	1. The birth and care of the employee's child*; 2. The placement and care for adoption or foster care*; 3. To care for the employee's spouse, child or parent with a serious health condition; and, 4. The employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's job. 5. "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. *expires at the end of the 12-month period beginning on the date of the birth or placement. New leave entitlement of up to 26 weeks in a single 12month period to care for a service member.
Intermittent Leave	Family leave may be taken intermittently.	FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances and may require that the employer agree.

29 CFR 825.208
FMLA LEAVE DESIGNATION

In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid as FMLA-qualifying and to give notice of the designation to the employee. Therefore, any period of incapacity of more than three consecutive calendar days that falls under the definition of a serious health condition will be designated as FMLA leave.

Definition of serious health condition (29 CFR 825.114):

1. Inpatient care in a hospital, hospice, or residential medical care facility; or
2. Continuing treatment (two or more times) for a period of incapacity of more than three consecutive calendar days or treatment on at least one occasion that results in a regimen of continuing treatment.
3. Any period of incapacity due to pregnancy or pre-natal care.
4. Any period of incapacity due to a chronic serious health condition.
5. A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective.
6. Any period of absence to receive multiple treatments for restorative surgery 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.

In addition to leaves because of a serious health condition, employees are eligible for leaves under the State Family Leave law and the Federal Medical Leave Act as stated in the above chart, under "Eligible Absences."

When appropriate, Federal and State leaves will apply concurrently.

Employees requesting a FMLA leave must explain the reasons for the leave to allow the Facility to determine if the leave qualifies under the law. If not, the Facility will use available information to determine if the leave is covered under FMLA or Hawaii Family Leave.

A written notice will be provided to the employee informing the employee if the leave has been designated as FMLA leave or State family leave and if so, that the leave will be counted against the employee's annual FMLA/State family leave entitlement.

29 CFR 825.302
Administrative Rule 12-27-10
NOTICE REQUIREMENT

An employee must provide the employer at least 30 days advanced notice before leave is to begin if the need for a leave is foreseeable. Examples of foreseeable are an expected birth, placement for adoption or foster care or planned medical treatment for a serious health condition of the employee or a family member.

If 30 days notice is not possible or practicable, a verbal notification within one or two business days of when the need for leave becomes known to the employee must be made.

29 CFR 825.305
Administrative Rule 12-27-11
MEDICAL CERTIFICATION

When leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification within 15 calendar days after the Employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

In most cases, the certification must be provided at the time the employee gives notice of the need for leave or within two business days thereafter.

In the case of unforeseen leave, the employee must furnish certification within 2 business days after the leave commences. Failure to provide medical certification and other required paperwork (including a G-1, Application For Leave of Absence) will result in an unauthorized leave, unless it is not practicable under the particular circumstances to provide the medical certification despite the employee's diligent, good faith efforts.

NOTE: If employee substitutes sick or vacation credits during this absence, procedural requirements contained in the collective bargaining agreement for the respective leave will apply. E.g., Medical certification will only be required for illnesses exceeding five (5) or more consecutive working days.

However, since it is the employer's responsibility to designate leave as FMLA-qualifying, in any circumstance where the employer does not have sufficient information about the reason for the employee's use of paid leave, the employer should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying (29 CFR 825.208.)

29 CFR 825.207
Administrative Rule 12-27-8
SUBSTITUTION OF PAID LEAVE

For approved FMLA leave periods, the Employer may require the employee to use appropriate accumulated leave credits for eligible leave periods after which the remaining period will be considered a leave of absence without pay. Under State Family Leave, an employee may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the four-week period. However if sick leave credits are used, its usage must be followed as detailed in Administrative Rules 12-27-9 and the employee's applicable collective bargaining agreement. Employees can elect to use compensatory time off and if so, the absence that is being paid from the employee's accrued compensatory time off will not be counted against the employee's FMLA leave entitlement.

29 CFR 825.210
GROUP HEALTH BENEFIT PREMIUMS

Health plan benefits will continue during the FMLA leave, however, the employee will be required to pay its portion of the premiums. If the leave is paid, the premiums will be deducted through payroll deduction. If the leave is unpaid, the employee will be informed that premium payments must be made directly to the health care provider for continued coverage. Failure to pay premiums in a timely manner may result in a discontinuation of the employee's health benefits coverage.

29 CFR 825.310
FITNESS FOR DUTY CERTIFICATE

Upon returning to work from the serious health condition for which the leave was granted, the employee must obtain and present certification from the employee's health care provider that the employee is able to resume work.

29 CFR 825.214, 29 CFR 825.604, 29 CFR 825.218
Administrative Rule 12-27-12
EMPLOYEE'S RIGHTS ON RETURNING FROM FMLA LEAVE

On return from FMLA leave or State family leave, an employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. However, a key employee may be denied restoration rights.

29 CFR 825.213
RECOVERING COSTS IF EMPLOYEE FAILS TO RETURN TO WORK AFTER TAKING FMLA LEAVE

If an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or

expires, the Facility may recover its share of the health plan premiums during the period of unpaid FMLA leave.

BARGAINING UNIT CONTRACTS
ADMINISTRATION AND ENFORCEMENT

Administration and enforcement of the State and Federal family leave provisions shall be in accordance with applicable laws and regulations. Appeals with regard to State and Federal family leave shall be filed with the appropriate State and/or Federal agencies that are responsible for administering and enforcing the provisions of the respective laws.

Appeals shall not be filed through the grievance procedure found in the collective bargaining agreement, unless a representative of the applicable State of Federal agency first determines that the agency does not have jurisdiction over the administrative appeal.

Copies of this policy are posted in each facility and may be obtained from the Corporate Human Resources Office or Regional/Facility Human Resources offices. Contact the Corporate Human Resources office or Regional Human Resources offices on any questions you may have about this policy.