

# Chapter 3. Sick Leave, Family and Personal Leave and FMLA

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## Sick Leave, Family and Personal Leave and FMLA

**E**mployees have a number of leave options that allow them to take time off for personal or family illnesses. Under VSDP, sick leave, family and personal leave are paid for by the agency. Leave under the Family and Medical Leave Act (FMLA) is unpaid leave.

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### SICK LEAVE

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All employees are granted 32 to 80 hours of sick leave each year on January 10<sup>th</sup>. The amount of sick leave granted to an employee is based on the number of months of state service earned as of January 10<sup>th</sup>. There is no qualifying period; employees are granted sick leave on the first day of employment.

An employee may use sick leave for absences due to personal illness, injury, preventative care, wellness physician visits, pregnancy or surgery and for doctor visits when disability (short-term and long-term) are not payable.

An employee may also use up to 33 percent of their available sick leave hours for immediate family illness as provided by DHRM. Immediate family includes an employee's parents, either biological or individuals who stood in place of the parents and assumed parental duties and responsibilities. It

also includes an employee's spouse and children, either biological or adopted, foster children, stepchildren or legal wards.

**Note:** Children must be under the age of 18, or if over the age of 18, must be incapable of self-care because of a physical or cognitive disability.

### Documentation of Sick Leave

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An agency may develop internal policies to meet its own needs for verification of an employee's sick leave. An employee who wishes to use sick leave must comply with the agency's request for verification of the appropriateness of using sick leave. An employee's use of paid sick leave may be denied if the employee fails to comply with a reasonable agency request for verification of the need for sick leave, or if the verification provided is inadequate.

### Leave Allotment for New and Rehired Employees

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Use the following chart to determine the amount of sick leave for new and rehired full-time employees:

| <b>Employment Begin Date</b> | <b>Hours of Sick Leave</b> |
|------------------------------|----------------------------|
| January 10 – July 9          | 64                         |
| July 10 – January 9          | 40                         |

Use the following chart to determine the amount of sick leave for new and rehired part-time salaried employees:

| <b>Employment Begin Date</b> | <b>Hours of Sick Leave</b> |
|------------------------------|----------------------------|
| January 10 – July 9          | 32                         |
| July 10 – January 9          | 20                         |

After the first year, sick leave is credited on January 10 and the amount of leave credited depends on the amount of state service an employee has as of that date.

## Leave Allotment for Current Employees

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On January 10 of each calendar year, a current eligible employee will be credited with 32 to 80 hours of sick leave. The hours are based on the employee's total months of full-time and qualified part-time state employment, including leave without pay periods for non-disability reasons for Temporary Work Force Reduction, layoff and military leave. Use the following charts to determine a current employee's sick leave amount.

Current full-time employees:

| Months of State Service | Hours of Sick Leave |
|-------------------------|---------------------|
| Fewer than 60           | 64                  |
| 60 to 119               | 72                  |
| 120 or more             | 80                  |

Current part-time salaried employees:

| Months of State Service | Hours of Sick Leave |
|-------------------------|---------------------|
| Fewer than 120          | 32                  |
| 120 or more             | 40                  |

**Note:** An employee receiving short-term disability benefits on January 10 of any year will be granted the new calendar year's allocation of sick leave on the date the employee is released by the licensed treating professional and returns to *active employment*.

## Employees Moving from Part-time to Full-time Status

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When an employee moves from part-time salaried to full-time status, use the chart for new and rehired employees to increase the sick leave balance to the full-time level, based on the date the employee's status changes.

**Example:** A part-time salaried employee accepts full-time employment on November 25. His current sick leave balance of 32 hours is increased to 40 hours (new and rehired full-time employee allotment for July 10 – January 9).

**Example:** A part-time salaried employee accepts full-time employment on January 19. She has been employed in state service for 43 months. Her current sick leave balance of 32 hours is increased to 64 hours.

The amount of any increase should be offset by the number of hours the employee already used.

If the employee is still in full-time status on January 10 of the new calendar year, he or she will receive sick leave hours based on the full-time status and months of state service.

## Employees Moving from Full-time to Part-time Status

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When an employee moves from full-time to part-time status, the current leave balances stay the same if the employee is still salaried. If there is a status change, use the chart for new and rehired employees to reduce the sick leave balance to part-time level, based on the date of the change.

**Example:** An employee is reduced from full-time to part-time salaried for six months. The sick leave balance will be reduced to 32 hours. If the employee is still in part-time status on January 10 of the new calendar year, he will receive a sick leave allotment based on part-time status and his state service.

If the employee already has a sick leave balance of less than 20 hours, only his or her current balance will be available. The sick leave will not be increased to 20 hours.

If the change from full-time to part-time status is to be for less than 90 consecutive calendar days, the employer should hold the reduced sick leave balance until full-time employment is regained. The reduced sick leave balance cannot be used until the employee returns to full-time employment.

**Example:** An employee moves from full-time to part-time salaried employment status for February and March. Her sick leave balance is reduced to 32 hours. Any sick leave hours above 32 will be held. She may use up to 32 hours of sick leave during February and March. The other hours cannot be used during this time and will be reinstated when she resumes full-time status.

## Unused Sick Leave

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Unused sick leave may not be carried forward from one calendar year to the next (January 10 – January 9). An employee will not be paid for any unused sick leave when he or she terminates employment.

## 9, 10 or 11-month Employees

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An employee on 9-, 10- or 11-month contracts may not use sick leave during periods when he or she is not working, even though the employee may be receiving a regular paycheck during this period.

**Example:** A 9-month contract employee is paid over 12 months. During the time he is out of work, he becomes ill. He cannot use his sick leave to receive additional pay during this time.

## Periods of Short-term and Long-term Disability

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An employee may not use sick leave during periods when short-term or long-term disability benefits are payable. Sick leave is not used for income replacement. However, sick leave may be used for periods of work during disability time.

**Example:** An employee on short-term disability is released to work four hours per day in the morning, but must be off four hours in the afternoon. If she cannot schedule a two-hour doctor's appointment in the afternoon, she may use two hours of sick leave for the appointment during the working period.

## Employees in Long-term Disability Working Status

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An employee in *long-term disability working* status receives the allotment of sick leave on January 10. The employee receives the appropriate sick leave allotment, based on full-time or part-time salaried status.

## Disability Credits

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An employee who elected to participate in VSDP during the 1999 and 2002 enrollments may have converted his or her sick leave to disability credits.

Disability credits are sick leave balances that were converted to credits at the time of enrollment, to be used for income replacement. Disability credits may be used for income replacement when employees are on short-term disability, long-term disability or long-term disability working. Using disability credits allows an employee to receive 100 percent compensation during periods that the program normally pays 60 or 80 percent of income replacement. Any disability credits remaining after short-term disability must be transferred by the agency to Reed Group.

**Note:** VSDP sick leave balances (those not converted to disability credits) cannot be used to bring the employee's income replacement level up to 100 percent.

An employee who has been in the program since January 1, 1999 may use unused disability credits when he or she retires or terminates employment.

The employee may elect to:

- Convert unused disability credits to service credits or
- Receive a payment from the employer for 25 percent of the disability credits, up to a maximum payout of \$5,000.

If the employee elects to receive the payment, advise the employee that the payment is taxable.

If the employee converts unused disability credits to service credits, the employee and employer should complete the VSDP Conversion of Disability Credits (VRS-5D) at retirement or termination. One hundred and seventy-three (173) hours of disability credits equal one month of service credit. Members and employers can use *myVRS* to determine how the conversion of disability credits will affect the service retirement benefit.

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## FAMILY AND PERSONAL LEAVE

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In addition to sick leave, employees are credited with 32 to 40 hours of family and personal leave on January 10 each year. The amount of leave is based on months of state service and whether the employee is full-time or part-time salaried.

Family and personal leave can be used for personal reasons, family reasons or personal illness. This leave cannot be carried over to the next year or paid out upon separation.

The employee must get a supervisor's approval when using this leave. The employee must give reasonable notice of the request and the absence must not impede the ability of the agency to perform essential services.

### Documentation of Family and Personal Leave

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Employers establish procedures for documenting family and personal leave and employees are required to follow those procedures.

### Leave Allotment for New and Rehired Employees

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The amount of family and personal leave credited to an employee during the first year of employment is based on the first date of employment.

Use the following chart to determine the amount of family and personal leave for new and rehired full-time and part-time salaried employees:

| <b>Employment Begin Date</b> | <b>Hours of Family &amp; Personal Leave</b> |
|------------------------------|---|
| January 10 – July 9          | 32  |
| July 10 – January 9          | 16  |

### Leave Allotment for Current Employees

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After the first year of employment, the amount of family and personal leave is based on the total months of full-time and part-time salaried state employment, including leave without pay periods for non-disability reasons. The total months of service includes active service in a state position, leave for military service and/or leave resulting from a layoff or *temporary workforce reduction*. The service also includes periods of short-term and long-term disability during which the employee works with reduced hours or with job restrictions. The amount is credited on January 10 of each calendar year.

Use the following chart to determine the amount of family and personal leave for current full-time and part-time salaried employees:

| Months of State Service | Hours of Family & Personal Leave |
|-------------------------|----------------------------------|
| Fewer than 120          | 32                               |
| 120 or more             | 40                               |

**Note:** An employee receiving short-term or long-term disability benefits on January 10 of any year will be granted the new calendar year's allocation of family and personal leave on the date the employee returns to active employment.

### Employees Moving from/to Part-time to/from Full-time Status

Family and personal leave hours do not change when an employee moves from full-time to part-time status or from part-time to full-time status. There is no reduction or increase in the leave allotment.

### Unused Family and Personal Leave

Unused family and personal leave may not be carried forward from one calendar year to the next. An employee will not be paid for any unused family or personal leave when he or she terminates employment.

### Periods of Short-term and Long-term Disability

An employee on short-term or long-term disability on January 10 is granted family and personal leave on the date he or she returns to active employment.

If January 10 occurs during the employee's seven-day waiting period, the employee receives a new allotment of leave under VSDP. However, an employee who has a disability that is deemed catastrophic will receive leave on the date he or she returns to active employment. This is because there is no waiting period for catastrophic conditions.

An employee in an active long-term disability working status receives the allotment of family and personal leave on January 10. The employee

receives the appropriate sick leave allotment, based on the months of service.

Once an employee is eligible for short-term disability benefits, he or she may use family and personal leave to supplement the compensation to receive 100 percent pay.

Leave continues to accrue for 90 consecutive calendar days while an employee is on short-term disability. An employee on short-term disability is in a leave with pay status.

When an employee returns to work, including periods of working while in short-term disability, accruals begin at the pre-disability rate. A return to work for a complete pay period will interrupt the count of 90 calendar days of leave with pay. A new 90 calendar day period will begin if the employee again returns to a short-term disability non-working (leave with pay) status and the employee will continue or resume leave accrual.<sup>1</sup>

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## FAMILY AND MEDICAL LEAVE ACT

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Employees may also be eligible for leave under the Family and Medical Leave Act (FMLA). An employee may take up to 12 work weeks of authorized unpaid leave during any 12-month calendar periods for certain personal and family situations. FMLA also provides job protection for employees who are on FMLA leave.

Use of FMLA is optional. An employee may choose to take unused annual leave, family and personal leave or other accrued leave instead of taking unpaid leave under FMLA. (Sick leave may not be used during periods when the employee is receiving VSDP benefits.) If the employee is on VSDP and eligible for FMLA, the absence will be counted as FMLA.

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<sup>1</sup> Department of Human Resource Management Annual Leave Policy 4.10

The employee should notify your human resource office to substitute paid time off for any portion of his or her absence.

## Eligibility

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An employee is eligible for leave under FMLA if he or she has:

- Been employed by the Commonwealth of Virginia for at least 12 months;
- Worked at least 1,250 hours during the 12 months immediately preceding the absence; and
- Not previously used the 12-work week allotment of FMLA for a calendar year.

## Absences Covered Under FMLA

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The following absences are covered by FMLA:

- Birth or adoption of a child or to provide foster care.
- The employee is caring for an immediate family member (spouse, child or parent) with a *serious health condition*.
- The employee has a serious health condition.

Personal illnesses that qualify for benefits under VSDP may also qualify and run concurrently under FMLA. A serious health condition, as defined under FMLA, means an injury or physical or cognitive condition that involves:

- Inpatient hospitalization at a hospital, hospice or residential medical care facility.
- Absence of more than three consecutive calendar days while receiving or continuing multiple treatments prescribed by a licensed treating professional.
- Continuing treatment by or under the supervision of a licensed treating professional for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three calendar days.

## Notification of FMLA Absences

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The employee must notify your human resource office and Reed Group as far in advance as possible of any scheduled absence related to a pre-planned disability eligible under FMLA. The employer is responsible for:

- Determining if the employee meets FMLA eligibility requirements,

- Tracking FMLA hours, and
- Notifying the employee of information related to the leave under FMLA.

**Note:** If the employee is on short-term disability working, only the hours not worked are tracked for FMLA purposes.

When an agency is notified of the need for leave, the agency is responsible for notifying employees of:

- Whether the employee is or is not eligible for leave under FMLA;
- Whether the leave will or will not count against the employee's annual FMLA entitlement;
- Any requirements for the employee to furnish medical certification and the consequences for failing to do so;
- The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, and the conditions related to any substitution;
- Any requirement for the employee to make any premium payments to maintain health benefits, the arrangements for making such payments in a timely manner and the possible consequences for failing to make such payments;
- Any requirement for the employee to present a "fitness for duty" note to return to work;
- The employee's status as a key employee<sup>2</sup> and the potential consequence that restoration may be denied following FMLA;
- The employee's right to restoration to the same or equivalent job upon return from leave; and
- The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA if the employee fails to return to work after taking FMLA.

Reed Group will notify your human resource office if the absence is approved for short-term or long-term disability benefits under VSDP. The

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<sup>2</sup> As a key employee, restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to the agency.

employee may not be required to obtain two separate approvals as the approval of the VSDP claim may also apply to the FMLA claim, if your human resource office chooses to accept the short-term or long-term disability approval as an approval for FMLA as well.

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## OTHER LEAVE TYPES

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| Leave Type   | Coverage  |
|--|---|
| <b><i>Educational Leave without Pay</i></b>              | <p>An employee on educational leave without pay, including sabbaticals, may become ill or injured during the leave without pay period. The employee is not entitled to use any annual leave, sick leave or family and personal leave to cover the period of illness or injury.</p> <p>The sick and family and personal leave will be credited to the employee only if returning to pre-leave employment status. The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p>   |
| <b><i>Educational Leave with Partial or Full Pay</i></b> | <p>When an employee on educational leave with partial or full pay, including sabbaticals, incurs an illness or injury that qualifies under VSDP, the employee's educational leave stops. The employee is returned to his or her pre-leave employment status. The employee receives short-term disability and long-term disability based on the full-time salary earned immediately prior to the period of educational leave with partial or full pay.</p> <p>The employee will receive sick leave and family and personal leave allotments after returning to the pre-leave employment status. Leave will not be credited while on educational or sabbatical leave because the employee is not eligible to use sick and family and personal leave while on educational or sabbatical leave.</p> |
| <b><i>Military Leave with Pay</i></b>                    | <p>An employee on military leave with pay, who becomes ill or injured during the leave with pay period, may use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury. If certified, the employee may also be eligible for short-term and long-term disability benefits.</p>  |

| Leave Type                                    | Coverage  |
|---|---|
| <b><i>Military Leave without Pay</i></b>      | <p>An employee on military leave without pay, who becomes ill or injured during the leave without pay period, may not use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury.</p> <p>The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p>   |
| <b><i>Unconditional Leave without Pay</i></b> | <p>An employee on <i>unconditional leave without pay</i>, who becomes ill or injured during the leave without pay period, may not use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury.</p> <p>The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p>   |
| <b><i>Conditional Leave without Pay</i></b>   | <p>An employee on <i>conditional leave without pay</i>, who becomes ill or injured during the leave without pay period, may not use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury.</p> <p>The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p> <p>Conditional leave without pay does not guarantee reinstatement.</p>  |
| <b><i>Layoff</i></b>                          | <p>An employee on leave without pay - layoff who becomes ill or injured is not covered by VSDP and is not entitled to use any of his or her available leave. Only if this employee is recalled or reinstated to employment in a covered position and the disability continues, may he or she use leave and be covered by VSDP.</p> <p>Employees who incur an injury or illness that makes them eligible for VSDP benefits will continue to receive those benefits as long as they are eligible even if subsequently placed on leave without pay-layoff.</p> |

| Leave Type   | Coverage   |
|--|--|
| <b><i>Leave without Pay - Layoff</i></b>                       | <p>An employee on leave without pay-layoff, who becomes ill or injured during the leave without pay period, may not use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury.</p> <p>The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p> <p>Benefits will be paid for an illness or injury that makes the employee eligible for VSDP benefits even if the employee is subsequently placed on leave without pay -layoff. VSDP benefits will cease when the employee is released to return to work (even if there is no position available)<sup>3</sup>, the period of layoff expires, or other normal reasons for termination of benefits (e.g., retirement or death).</p> |
| <b><i>Leave without Pay-Temporary Work Force Reduction</i></b> | <p>An employee on leave without pay-temporary work force reduction, who becomes ill or injured during the leave without pay period, may not use any of the available leave (annual leave, sick leave, family and personal leave) to cover the period of illness or injury.</p> <p>The employee may only use leave and be covered by VSDP if he or she is reinstated to pre-leave employment status.</p> <p>Benefits will be paid for an illness or injury that makes the employee eligible for VSDP benefits even if the employee is subsequently placed on leave without pay-temporary work force reduction.</p>  |
| <b><i>Suspension<sup>4</sup></i></b>                           | <p>An employee placed on suspension pending investigation or outcome of employment related court action or disciplinary suspension is not eligible to receive VSDP benefits during the period of suspension. Depending upon case facts, the employee may not be eligible for Workers' Compensation benefits. If the employee is reinstated to employment in a covered position, he will be covered by VSDP and, if eligible, may receive VSDP benefits.</p>  |

<sup>3</sup> If an employee is on short-term disability, the position may not be used as a placement option. If the employee is on long-term disability, the position may be used as a placement option if it has not been refilled. The employee on long-term disability does not have rights under the layoff policy.

<sup>4</sup> Department of Human Resource Management Policy 1.60