

Memo

To: Commission Members
From: Darlene Staffeldt, State Librarian
Date: July 23, 2007
Re: Policy Reviews

I have attached six of the Montana State Library Commission policies for your review this month.

Four of the policies: *Alternate Work Schedule*, *Telecommunication Meetings*, *Per Diem*, and *Reduction in Force* require no action at this time on your part, but I would like you to review them. They are still valid policies.

Two of the policies: *Family and Medical Leave Act* and *Leave of Absence without Pay*, have minor revisions reflecting the new State Policy to which they are a supplement. The changes are highlighted. I recommend adoption of these Commission policies as revised and presented.

Montana State Library Commission Policy

Alternate Work Schedule

It is the policy of the Montana State Library Commission to provide the opportunity for employees to work schedules which are mutually beneficial to them and to the agency. All new employees of the State Library will be given the opportunity to negotiate a work schedule. The established schedule will be based upon consideration of the employee's personal needs, the need to regularly interact with co-workers, the need to provide user services and federal and state labor laws.

The employee's immediate supervisor may approve an employee's request for a short-term change in a work schedule of no longer than one week. Division managers and the State Librarian must approve requests to change a work schedule that exceeds one week.

Agency management reserves the right to renegotiate an employee's work schedule at any time.

Montana State Library Commission Policy

Telecommunication Meetings

The State Library will pay telecommunication costs to participate in meetings held through electronic means for Commission members, State Library staff, and any others specifically invited to participate by the Commission or State Library staff. The State Library will provide access to the meetings to others at the origination site and, when feasible, at other sites throughout the state.

Montana State Library Commission Policy

Per Diem

Commission per diem will be paid for all days that Governor-appointed Commission members are engaged in official Commission business. This will include Commission meetings, retreats and travel days. If Commission members attend other functions, which the Commission has approved, the member will be paid per diem. Per diem will be paid on a prorated basis. Any time spent on Commission business less than four hours will be paid at one-half of the maximum per diem for that day.

Montana law stipulates the per diem amount. Commissioners who represent the University System, the Office of Public Instruction, or who receive their normal salary while attending Commission meetings, normally do not receive per diem. However, if they are engaged in official Commission business on a day other than a workday for which they would be paid, they are eligible for per diem.

Montana State Library Commission Policy

Reduction in Force

To supplement Policy 3-0155 This policy of the Montana State Library Commission is to supplement those established by Montana State government to provide for "Reduction in Work Force" as defined in Policy 3-0155.

It is the intent of the Montana State Library Commission that reductions in force be based on mandated programs as defined by Montana statutes and Administrative Rules and by agency priorities as determined by the Commission.

The State Librarian shall prepare a reduction in force plan for presentation to the Commission whenever:

1. Legislative or Executive Action requires a reduction in force or personnel reassignment; or
2. there is reduction or elimination of funds received from the federal government; or
3. there is reduction or elimination of funds received from state government; or
4. the Commission takes action to establish new priorities, objectives, or programs which affect levels and assignments of personnel; or
5. there is a need to eliminate or consolidate positions or a need to reorganize the State Library; or
6. there is any other reason that the Commission requests the State Librarian to do so.

Criteria to be used by the State Librarian in the preparation of a reduction in force plan:

1. Language and intent of Legislative or Executive actions requiring a reduction in force or personnel reassignment.
2. Statutory charges to the Montana State Library Commission as given in Montana Code Annotated and accompanying Administrative Rules.
3. Statements of priorities, goals and objectives, motions in force, planning documents, or other records of or actions by the Montana State Library Commission that could reasonably be interpreted as affecting reduction in force.
4. Program evaluations documents and statistical data.

Upon approval of the plan by the Montana State Library Commission, the State Librarian shall implement the plan as specified by the Department of Administration Policy 3-0155.

These rules supersede the previously published policy on Reduction in Workforce dated 6/2/97.

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2.21.5001 INTRODUCTION (IS HEREBY REPEALED) (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1978 MAR p. 189, Eff. 2/25/78; REP, 1982 MAR p. 478, Eff. 3/12/82.)

2.21.5002 POLICY (IS HEREBY REPEALED) (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1978 MAR p. 189, Eff. 2/25/78; REP, 1982 MAR p. 478, Eff. 3/12/82.)

2.21.5003 PROCEDURES (IS HEREBY REPEALED) (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1978 MAR p. 189, Eff. 2/25/78; REP, 1982 MAR p. 478, Eff. 3/12/82.)

2.21.5004 CLOSING (IS HEREBY REPEALED) (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1978 MAR p. 189, Eff. 2/25/78; REP, 1982 MAR p. 478, Eff. 3/12/82.)

2.21.5005 SHORT TITLE (1) This sub-chapter may be cited as the reduction in work force policy. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 478, Eff. 3/12/82.)

2.21.5006 DEFINITIONS In addition to the definitions found in 2-18-1202, MCA, as used in this sub-chapter, the following definitions apply:

(1) "Reduction in work force" means a management action taken for non-disciplinary reasons in which an employee is laid off from employment. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in FTEs by the legislature; lack of work; lack of funds; expiration of grants; reorganization of a state agency; or privatization of a service normally or traditionally provided

by an employee of a department.

(2) "Effective date of lay-off" means the date determined by the agency to be the end of employment for an employee, allowing adequate time for appropriate notice of lay-off.

(3) "Termination date" means the date the employee is actually removed from the payroll.

(4) "Notice of anticipated lay-off" means a written notice informing an employee that the agency anticipates the employee will be laid off. The notice shall provide a tentative effective date of lay-off. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1978 MAR p. 189, Eff. 2/25/78; AMD, 1982 MAR p. 478, Eff. 3/12/82; AMD, 1994 MAR p. 1419, Eff. 5/27/94; AMD, 1996 MAR p. 407, Eff. 2/9/96; AMD, 1997 MAR p. 1447, Eff. 8/19/97.)

2.21.5007 POLICY (1) If it is necessary to achieve a reduction in the work force, consideration must be given to the programs to be carried out by the agency and the staff structure which, after the reduction, will most expeditiously achieve program objectives. Accordingly, employees will be retained giving consideration to the importance of the following qualities possessed by the work force: skill and length of continuous service with state government.

(2) Skill means an assessment of qualifications and experience and consideration should be given to any or all of the following:

(a) Qualifications and experience to perform the duties of a specific position which will be retained.

(b) General qualifications and experience beneficial to future achievement of agency goals and objectives.

(c) The performance on specific, related tasks to those required by the position which will be retained.

(d) General performance history.

(3) Skill shall be applied first and only if skill does not differentiate between employees will length of service with state government then be considered.

(4) An employee should be counseled as much in advance of the anticipated action as possible regarding available options and reasons for lay-off. An employee shall be given a written notice of anticipated lay-off at the time of counseling, which provides a tentative effective date of lay-off. An employee becomes eligible for benefits provided by the State Employee Protection Act, 2-18-1201 et seq., MCA, at the time the employee receives written notice of anticipated lay-off.

(5) As provided in 2-18-1206, MCA, written notice must be provided to an employee and the employee's collective bargaining agent, if any, at least 60 days prior to a reduction in force when 25 or more employees are affected by the RIF and 14 days notice when fewer than 25 employees are affected. If a lay-off is anticipated to last longer than 15 working days, the employee shall be terminated.

(6) Lay-off may not be used as an alternative to discharging an employee for cause or disciplinary purposes. Unsatisfactory employees should be terminated subsequent to complete and appropriate evaluation, review and documentation. If an unsatisfactory employee is laid off without appropriate evaluation, review and documentation, the employee must be treated the same as any other laid-off employee.

(7) An employee shall be reinstated to the same position or a position in the same class, as the terms "position" and "class" are defined in 2-18-101, MCA, when such a position becomes vacant in the agency from which the employee was laid off, if the vacancy occurs within one year of the employee's effective date of lay-off. Employees who have been laid off from the agency shall be offered reinstatement on a "last-out/first-in" basis by skill match within a job classification. Specific reinstatement offers must be made to the employee in writing. The employee shall accept or reject the reinstatement offer in writing within five working days following receipt of the offer. If an employee rejects a reinstatement offer, the employee loses all rights to the employment offered, to participate in future internal recruitment, and to benefits provided by the State Employee Protection Act, 2-18-1201, et seq., MCA. An agency is not required to make subsequent reinstatement offers to the employee.

(8) Acceptance of permanent, seasonal or temporary employment with a state agency does not end the reinstatement right for one year from the effective date of lay-off.

(9) An employee is eligible to be considered as an internal applicant for job vacancies in the agency from which the employee was laid off for one year from the effective date of lay-off.

(10) As provided in 2-18-1201, et seq., MCA, an employee who is terminated due to reduction in force within an agency and who has not chosen the additional retirement service purchase option described in 19-2-706, MCA, is entitled to:

(a) access to any job retraining and career development programs provided by the state, such as those provided through the service delivery areas dislocated worker programs under the Workforce Investment Act of 1998, provided that the employee begins participating in a program within one year after the elimination of the employee's position;

(b) inclusion in a special job registry from which all agencies may attempt to hire employees prior to seeking applications from the general public. The employee will be listed in the job registry according to the occupational categories. Participation in the job registry is voluntary. The department of administration shall administer the job registry provided for in 2-18-1203, MCA;

(c) retain all accrued sick leave credits;

(d) retain, cash out or use accrued vacation leave

credits to extend the employee's effective date of lay-off. Employees who have been laid off may choose to "bank" their credits with the agency that laid them off until they accept permanent employment in a state agency. However, the employee shall be cashed out when the employee's rights under the State Employee Protection Act end. The credits are not transferred if an employee accepts seasonal, temporary or short-term employment in a state agency;

(e) relocation expenses as provided in agency policy. An agency should consult with the service delivery areas dislocated worker programs under the Workforce Investment Act of 1998 prior to approving relocation expenses.

(11) An employee who elects to retain sick leave, vacation leave or both at the time of lay-off may subsequently request the cash out of the leave in writing from the former employing agency.

(12) Implementation of the job registry components of the State Employee Protection Act, 2-18-1201, et seq., MCA, and other rights and benefits of employees who are reemployed following layoff are found in the recruitment and selection rules, ARM 2.21.3701, et seq. and specifically in ARM 2.21.3704, job registry and reemployment following lay-off. (History: Sec. 2-18-102, MCA; IMP, 2-18-102 and 2-18-1201, MCA; NEW, 1982 MAR p. 478, Eff. 3/12/82; AMD, 1991 MAR p. 433, Eff. 4/12/91; AMD, 1992 MAR p. 2047, Eff. 9/11/92; AMD, 1994 MAR p. 1419, Eff. 5/27/94; AMD, 1996 MAR p. 407, Eff. 2/9/96; AMD, 1997 MAR p. 1447, Eff. 8/19/97; AMD, 2003 MAR p. 1531, Eff. 7/18/03.)

2.21.5007A BENEFITS FOR EMPLOYEES LAID OFF BEFORE APRIL 22, 1993 (IS HEREBY REPEALED) (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1994 MAR p.478, Eff. 5/27/94; REP, 1996 MAR p.407, Eff. 2/9/96.)

2.21.5007B BENEFITS FOR EMPLOYEES LAID OFF BETWEEN APRIL 22, 1993 AND JUNE 30, 1995 (IS HEREBY REPEALED) (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1994 MAR p.478, Eff. 5/27/94; REP, 1996 MAR p.407, Eff. 2/9/96.)

2.21.5008 VETERAN'S PREFERENCE IN RETENTION (1) During a reduction in force, an agency shall retain in employment a veteran, disabled veteran, or an eligible relative, as provided in 39-29-111, MCA, and under conditions established in ARM 2.21.3623. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1990 MAR p.478, Eff. 10/26/90; AMD, 1996 MAR p.407, Eff. 2/9/96.)

2.21.5009 REDUCTION IN FORCE REGISTRY (IS HEREBY REPEALED) (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1991 MAR p.478, Eff. 4/12/91; AMD, 1994 MAR p.1419, Eff. 5/27/94; REP, 1996 MAR p.407, Eff. 2/9/96.)

Rule 10 reserved

2.21.5011 CLOSING (1) An employee may file a grievance under the grievance policy, ARM 2.21.8010 et seq., based on receipt of a written notice of layoff due to reduction in force.

(2) This policy must be followed unless it conflicts with negotiated labor contracts which take precedence to the extent applicable. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1982 MAR p.478, Eff. 3/12/82; AMD, 1994 MAR p.1419, Eff. 5/27/94.)

For additional information see:

Policy 3-0165, Recruitment and Selection
The State Employee Protection Act, 2-18-1201 et seq., MCA
The Reduction in Work Force Guide
Applicable Collective Bargaining Agreements

Contact your agency personnel office with questions about this policy.

Montana State Library Commission Policy

Family and Medical Leave Act to Supplement State Policy 3-0309 (10/08/04)

This Montana State Library Commission Policy to Supplement State Policy 3-0309 (10/08/04). The intent is to clarify and expand those areas that are left to agency responsibility in the state policy.

The federal Family and Medical Leave Act (FMLA) became effective in August 1993. FMLA "entitles qualified employees to up to 12 weeks of unpaid leave per year for the birth or adoption of a child, to care for a spouse or an immediate family member with a serious health condition, or when unable to work because of a serious health condition." "Serious health condition" is defined as one which requires either inpatient care, or "continuing treatment by a health care provider."

Employers covered by the law are required to maintain any pre-existing health coverage (the state share for employee only) during the leave period and, once the leave period is concluded, to reinstate the employee to the same or an equivalent job."

To be eligible for FMLA coverage, an employee must have worked for the state of Montana for a total of 12 months, and for 1,040 hours during the previous 12 months.

It is the policy of the State Library Commission to begin documenting FMLA when a qualifying condition is determined. Written notice must be provided to the employee when designation of leave has been determined. The notice will detail the rights, specific expectations and obligations of the employee and explain any consequences of a failure to meet these obligations. When FMLA becomes effective, it will be documented on an hourly basis as FMLA leave, and it may run concurrently with paid sick leave or exempt compensatory time, at the discretion of the agency. An absence due to an illness will not be charged against unused vacation leave or nonexempt compensatory time unless approved by the employee.

The provision of medical certification by an employee shall be dependent upon the type of FMLA leave requested. Normally medical certification will be requested after six weeks of the onset of a qualifying condition. An employee will be allowed fifteen calendar days to provide the requested medical certification.

These rules are the first published policy on family and medical leave adopted on 10/08/04.

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001 POLICY AND OBJECTIVES

(1) It is the policy of the state of Montana to provide the benefits required under the Federal Family and Medical Leave Act of 1993 (FMLA), and as expanded by these policies, to all eligible employees. Employees who are eligible may receive up to twelve weeks of leave for certain family and medical reasons. FMLA leave will be designated by an agency from the first day leave is taken for an FMLA-qualifying reason and will be concurrent with any leave approved by the agency.

(2) The state understands the importance of family issues to its employees. The FMLA allows employees to balance their work and family life by taking reasonable leave for certain family and medical reasons. The FMLA provides certain employees with up to 12 weeks of job-protected leave per year and requires group health benefits to be maintained during the leave. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal opportunity for men and women.

(3) The purpose of this policy is to inform eligible employees of FMLA provisions and their rights under the Act, and to provide guidance to both employees and their supervisors for standardized application of the provisions of the act.

(4) FMLA does not supersede any state law or collective bargaining agreement which provides greater family or medical leave rights.

(5) Nothing in this policy guarantees approval of the granting of such leave in any instance. Each absence will be judged by the agency in accordance with this policy and the relevant federal and state laws.

002 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

(1) "Agency" means, as provided in 2-18-101, MCA, a department, board, commission office, bureau, institution, or unit of state government recognized in the state budget, unless excepted in 2-18-103, MCA.

(2) "Child" means a son or daughter who is a 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."

(3) "Employee" means, as provided in 2-18-101, MCA, any state employee other than an employee excepted in 2-18-103 or 2-18-104.

(4) "Health Care Provider " means:

(a) Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices;

(b) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors authorized to practice in the state and performing within the scope of their practice under state law;

(c) Advanced practice registered nurses, nurse-midwives, and clinical social workers authorized to practice under state law and performing within the scope of their practice as defined under state law;

(d) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;

(e) Any health care provider recognized by the employer or the employer's group health plan's benefits manager; and,

(f) A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

(5) "In a pay status" means the hours an employee is paid. This includes hours an employee is paid for annual leave, sick leave, and the use of compensatory time. It also includes paid time off on a holiday and time worked on a holiday. For the purposes of this policy, the term does include hours worked that exceed 40 hours in a work week which are paid as overtime hours or recorded as compensatory time.

(6) "Incapable of self-care" means the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (caring appropriate for one's grooming and hygiene, bathing, dressing and eating) or instrumental activities of daily living (cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.)

(7) "Parent" means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined in law. The term does not include parents "in law."

(8) "Period of incapacity" means the time when an employee is unable to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

(9) A "regimen of continuing treatment" includes a course of prescription medication, such as antibiotics, or therapy requiring special equipment to resolve or alleviate a health condition, such as oxygen therapy. A regimen of continuing treatment that includes the taking of over-the-counter medications, bed rest, drinking fluids, exercise or other similar activities, is not, by itself, sufficient to qualify an employee for FMLA leave.

(10) A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment following inpatient care in a hospital, hospice or residential medical care facility; a period of incapacity requiring more than three days absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated, would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider for a chronic or long-term condition or disability that is incurable; or certain prenatal care.

(11) "Spouse" means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage.

(12) "Continuing treatment by a health care provider" includes any time when requested leave is:

(a) Associated with the same condition that involves treatment two or more times by a health care provider.

(b) Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under supervision of a health care provider.

(c) Required due to pregnancy or for prenatal care.

(d) Needed for any period of incapacity or for treatment due to a chronic serious health condition.

(e) For periodic visits for treatment by a health care provider.

(f) Continuing over an extended period of time (including recurrences).

(g) Intermittent periods of incapacity that are due to a serious health condition.

(h) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as Alzheimer's Disease or stroke.

(i) Any period of absence to receive multiple treatments (including a recovery period) by a health care provider, such as chemotherapy or dialysis.

003 PURPOSE OF LEAVE

(1) An eligible employee will be granted up to twelve weeks of FMLA leave in a 12 month period if the procedures in this policy are followed and leave is for any of the following reasons:

(a) the birth of a child and to care for the newborn child.

(b) the placement of a child with the employee for adoption or foster care.

(c) the care for a spouse, child or parent with a serious health condition.

(d) a serious health condition that renders the employee unable to perform the functions of his or her job.

(2) Employees are limited to a maximum of 12 weeks of FMLA leave for any of these purposes.

004 ELIGIBILITY

(1) All employee requests for leave due to an FMLA-qualifying reason are contingent upon a determination by the agency that the employee is eligible for FMLA leave. This includes a determination of eligibility and may include a requirement for medical certification. An agency may also require and pay for a second or third medical opinion, as allowed by federal regulations, before approving the leave.

(2) To be eligible for FMLA leave, the employee must have:

(a) worked for Montana state government a minimum of twelve months, which need not be continuous or served just prior to taking leave, and

(b) been in a pay status for at least 1,040 hours during the twelve month period immediately preceding the leave.

(3) Eligible part time employees will receive pro-rated leave based on the average weekly hours in a pay status.

(4) Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.

(5) Employees who are unable to return to work and have exhausted their 12 weeks of FMLA leave no longer have FMLA protections.

(6) An employee who fails to meet the requirement of being in a pay status for at least 1,040 hours in the prior 12-month period because he or she is a military reservist called to duty is still eligible for FMLA leave. The hours that the reservists spent in service will be counted toward FMLA eligibility.

005 DESIGNATION OF LEAVE

(1) In all circumstances, it is the agency's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee.

(2) The designation decision must be based on information received from the employee or a person contacting the agency on behalf of the employee.

(3) The agency's initial notice to the employee may be made orally or in writing. If the notice is oral, it must be confirmed in writing.

(4) Employees will not be denied benefits of FMLA because they are "key employees," as that term is defined in federal regulations.

(5) Employees will not be denied benefits of FMLA because an employee is not employed at a worksite where 50 or more employees are employed by the state within 75 miles of that worksite.

(6) A husband and wife who are both employed by the State of Montana will not be limited to a combined total of 12 weeks FMLA leave for the birth, adoption or placement of a foster child. Each employee will be entitled to receive the entire 12 weeks.

006 USE OF SICK LEAVE

(1) Employees taking FMLA leave for purposes that qualify for use of sick leave will be required to take at least 20 hours of accrued sick leave each week before leave without pay will be approved, except as provided below.

(a) Employees with fewer than 20 hours of accrued sick leave must take all accrued sick leave each week before leave without pay will be approved.

(b) When an employee requires leave due to a job-related injury or illness covered by the state's workers' compensation insurance, use of sick leave will not be required. As provided in 39-71-736, MCA, an injured worker may not receive wage loss benefits if the worker is receiving sick leave benefits after the 32-hour or 4-day waiting period (whichever is less) unless covered by a collective bargaining agreement that allows the augmentation of the wage loss benefits (see Sick Leave Policy, MOM 3-0310, Rule 144).

007 USE OF ANNUAL LEAVE

(1) Employees may request to take their accrued annual vacation leave during an approved FMLA leave.

(2) Agencies may not require employees to take accrued annual leave during FMLA leave if the reason for absence is illness. State law states, as provided in 2-18-615, MCA, "absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee."

008 USE OF COMPENSATORY TIME

(1) Agencies may require employees to use accrued exempt compensatory time when approving any type of FMLA leave.

(2) Agencies may allow employees to use accrued nonexempt compensatory time, but as provided in the FMLA regulations, the hours will not count toward the employee's entitlement to 12 weeks of FMLA leave each year.

009 FMLA LEAVE ON HOLIDAYS

(1) Agencies will not count the time off taken as a holiday benefit toward the FMLA leave entitlement, unless the holiday leave is "banked" to take at a later date and used for FMLA-qualifying leave.

(2) If an employee is scheduled to work on a holiday for more hours than the holiday benefit, those additional hours of leave will count toward the FMLA entitlement.

010 DURATION OF LEAVE

(1) Eligible employees may take up to a maximum of twelve (12) weeks of FMLA leave within a twelve month period.

(2) At the time an employee requests leave, the agency will determine whether the employee is eligible for the leave and whether the leave will be designated FMLA leave.

(3) The State of Montana has chosen the 12-month period measured forward from the date an employee's first FMLA leave begins as the method for determining the period of FMLA protection.

(4) FMLA taken for the birth or placement of a child must be taken within one year (12 months) of the birth or placement.

011 INTERMITTENT LEAVE

(1) An employee taking leave for his or her own serious health condition or to care for a spouse, parent, or child need not take such leave continuously and may take it on an intermittent basis or by reducing their scheduled work hours if the employee provides certification from the health care provider that leave must be taken in that manner.

(2) When the leave is taken for childbirth or placement of a child for adoption or foster care, intermittent or reduced leave schedules are subject to supervisor approval. Employees requiring intermittent leave or a reduced leave schedule will notify their supervisors as soon as the need for the leave is known and schedule necessary absences from work to minimize disruption of work.

(3) In all cases of intermittent and reduced schedule leaves, the agency reserves the right to transfer an employee to another position that better accommodates the employee's need for leave and the agency's operations. This decision is at the discretion of the employee's supervisor.

012 AGENCY NOTICE REQUIREMENTS

(1) State agencies must provide information about FMLA through the following actions:

(a) Posting an FMLA notice in a conspicuous place that explains the rights and responsibilities of employees under the Family and Medical Leave Act.

(b) Providing information about employee rights and obligations under FMLA in employee handbooks or other written materials;

(c) Providing a written notice designating leave as qualifying for FMLA leave and detailing specific expectations and obligations of the employee.

013 EMPLOYEE NOTICE OF LEAVE REQUIREMENTS

(1) Eligible employees seeking to use FMLA leave shall be required to provide:

(a) A 30-day advance notice of the need to take FMLA leave when the need is foreseeable;

(b) Notice as soon as feasible, usually within one or two business days of learning of the need to take FMLA leave when it is not foreseeable;

(c) Sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons; and

(d) Timely notice, generally within two business days of returning to work, that leave was taken for an FMLA-qualifying reason.

(2) Employees requiring intermittent leave or a reduced leave schedule shall notify their supervisors as soon as the need for the leave is known and schedule necessary absences from work to minimize disruption of work. The employee and supervisor shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

014 MEDICAL CERTIFICATION

(1) Agencies may require the employee to provide medical certification to verify the employee's need to take FMLA leave from work due to a serious health condition of the employee or the employee's spouse, parent or child. The initial request for certification must be written, but a verbal request for subsequent certification is sufficient. At the time the agency requests certification, the agency must also advise the employee of the anticipated consequences of an employee's failure to provide adequate certification.

(2) The agency must allow the employee at least 15 working days to obtain the medical certification.

(3) If the certification is not returned, unless there is a credible reason for the delay communicated by the employee or employee's spokesperson, the leave may be designated unapproved leave. Further action may be taken by the agency to return the employee to work or to administer discipline, if warranted.

(4) If the leave is foreseeable, the employee must notify the employer at least 30 days in advance and may be asked to provide medical certification before approval is granted.

(5) Follow-up medical certification may only be requested at a minimum of every 30 days. Federal regulations list the requirements for requesting medical certification under varying circumstances, and should be reviewed as needed (see the State of Montana FMLA Guide for more information on the regulations.)

(6) An agency may require the employee to provide periodic reports during the period of leave of the employee's status and intent to return to work, as well as "fitness-for-duty" certification upon return to work. If the agency requests the reports verbally from the employee, the agency will follow up with a written statement of the requirement(s).

(7) If an agency has reason to doubt the validity of a medical certification, it may, at its own expense, require the employee to obtain a second opinion from a health care provider.

(8) If the opinions of the employee's and the employer's designated health care providers differ, the agency may require the employee to obtain certification from a third health care provider, again at the agency's expense. This third opinion shall be final and binding. The third health care provider must be approved jointly by the agency and the employee.

(9) The agency must provide the employee with a copy of the second and third medical opinions upon request by the employee within two business days, unless extenuating circumstances prevent such action.

015 TRANSFERS

(1) If an employee transfers between agencies, the record of any FMLA leave taken will transfer with the employee. The employee will only be entitled to a total of 12 weeks of FMLA leave during any 12-month period.

016 ABUSE OF FMLA

(1) FMLA leave abuse occurs when an employee uses leave for unauthorized purposes or misrepresents the actual reason for charging an absence to FMLA leave. Abuse is cause for discipline, up to and including dismissal.

017 EMPLOYEE INSURANCE BENEFITS

(1) While the employee is on approved FMLA leave, the agency will continue to pay the state contribution towards the cost of the employee's insurance, even when the employee is on leave without pay.

(2) The employee is required to continue to pay his or her portion of any insurance premiums normally deducted from the employee's paycheck and shall pay such amounts on or before the first day of each month when the employee is no longer in a pay status. A check payable to the State of Montana should be sent to the Employee Benefits Bureau, State Personnel Division, Department of Administration.

(3) The agency may recover the cost of any insurance benefits provided during the leave if the employee fails to return to work for at least 30 calendar days after the leave entitlement has been exhausted. No such amount shall be owed if there is a recurrence or onset of a serious health condition, or, in the opinion of the agency, there is a change of circumstances beyond the employee's control.

018 REINSTATEMENT

(1) An employee taking leave under this policy will be returned to the employee's same position or to an equivalent position, at the election of the agency, unless the employee would have been terminated in the absence of any leave.

(2) Taking leave under this policy will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period, unless the benefit or condition of employment has been discontinued for other agency employees during the FMLA leave.

019 CLOSING

(1) Provisions of this policy not required by federal law shall be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable.

Montana State Library Commission Policy

Leave of Absence Without Pay Policy to Supplement State Policy 3-0330 ~~(5/27/94)~~ (3/18/05)

This Montana State Library Commission policy is to supplement State Policy 3-0330, effective ~~5/27/94~~ 3/18/05. The intent is to clarify and expand those areas that are left to agency discretion in the state policy.

All requests for leave of absence without pay shall be submitted to an employee's division manager with an explanation for the request. The division manager will then submit the request, with a recommendation to approve or disapprove, to the State Librarian (or designee). Final approval on any request for leave of absence without pay is made by the State Librarian or designee.

A new employee who has not served the respective qualifying periods for use of annual leave and sick leave will be in a leave without pay status when absent due to illness or emergency. Use of leave without pay during this period for absences other than sick leave or emergencies is discouraged, but will be considered by the State Librarian on a case-by-case basis.

Any employee who has served the qualifying periods for use of annual leave and sick leave should use accrued hours for annual leave, sick leave, or compensatory time before a request is approved for leave of absence without pay. The use of leave without pay for any period of less than one week is discouraged, but will be considered by the State Librarian on a case-by-case basis.

Any long-term requests for leave of absence without pay shall be discussed and documented with the division manager and the State Librarian (or designee). Reinstatement rights, date of the employee's return to work, and method of employee-payment of insurance premiums shall be established. If the employee does not return to work on the agreed date, or notify the agency and receive the State Librarian's advance approval of an alternative date, the employee may be terminated.

This policy supersedes the previously published policy on leave of absence without pay effective 05/27/94.

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701 POLICY AND OBJECTIVES

- (1) It is the policy of the Montana state government that:
- (a) employees of the state are eligible to apply for a leave of absence without pay;
- (b) the granting and extent of a leave of absence without pay is at the agency's discretion, unless the purpose of leave is to serve in a public office, active duty or another extended military service, or leave taken under the Family and Medical Leave Act. Leave for these purposes is described below in Rules 707, 708, and 709;
- (2) It is the objective of this policy to:
- (a) provide agencies with criteria to use when assessing requests for leave of absence without pay;
- (b) comply with Montana law relating to accrual of annual and sick leave while in a leave of absence without pay status, as provided in sections 2-18-611 and 2-18-618, MCA,
- (c) comply with Montana law, relating to leave of absence without pay for service in a public office, section 2-18-620, MCA;
- (d) comply with Montana law relating to active duty and other extended military service, sections 2-18-614, 10-2-211, 10-2-221 and 222, 10-2-225 and 226, MCA.
- (d) comply with the requirements of the Americans with Disabilities Act of 1990, relating to the granting of leave without pay as a reasonable accommodation to employees with a disability, when it does not create an undue hardship for the agency.

702 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

- (1) "Agency" means any legally constituted department, board, or commission or political subdivision of state government, except the state compensation insurance fund, as provided in 2-18-601, MCA,.
- (2) "Employee" means any person employed by an agency except elected state officials and persons contracted as independent contractors or hired under personal services contracts, as provided in 2-18-601, MCA.
- (3) "Leave of absence without pay" means a period of unpaid absence from work approved by the agency which does not result in a break in service. The leave must be requested by an employee or employee's spokesperson.

703 APPROVAL OF LEAVE

(1) At the agency's discretion, an employee may be allowed to request and take a leave of absence without pay, unless the purpose of leave is to serve in a public office, active duty or another extended military service, or leave taken under the Family and Medical Leave Act.

(2) The agency shall determine the supervisory level at which a leave of absence without pay may be approved.

(3) An agency may require an employee to use all appropriate accrued leave or compensatory time before approving a leave of absence without pay request, unless the employee is requesting leave to serve in a public office or for active duty or extended military service.

(4) An agency shall establish procedures for considering requests by an employee for leave of absence without pay. The procedures may be based on a cost/benefit analysis outlined in (5) of this rule.

(5) An agency may assess a request for a leave of absence without pay based on a cost/benefit analysis which weighs both direct and indirect costs against benefits to the agency.

(a) Costs to the agency that management may consider when assessing requests for leave of absence without pay include, but are not limited to, loss of productivity by the employee; overtime or compensatory time for other current employees; hiring and training a temporary replacement; and the impact on the agency budget and customers.

(b) Benefits to the agency management may consider when assessing requests for leave of absence without pay include, but are not limited to, long-term retention of an employee and improved job performance as a result of the leave.

704 REINSTATEMENT

(1) An agency may establish a schedule of reinstatement rights for employees on leave of absence without pay based on the duration of the leave, or an agency may determine reinstatement rights on a case-by-case basis.

(2) An agency shall inform an employee of reinstatement rights at the time a leave of absence is approved.

(3) An agency is responsible for providing reinstatement as determined when leave is approved, when the employee gives notice of availability to be reinstated as required in section 4 of this rule.

(4) A deadline for notice of availability for reinstatement from a leave of absence without pay must be established by the agency in the original leave approval. An employee must give notice of availability for reinstatement by agency-set deadline. Failure to notify the agency by the deadline may result in the loss of all reinstatement rights and the individual's employment may be terminated.

705 PAY AND BENEFITS

(1) Service with the state shall not be considered interrupted by authorized leaves of absence, as provided in the pay plan rules, Policy 3-0505, MOM.

(2) An employee on leave of absence without pay does not accrue sick leave and annual vacation leave, as provided in 2-18-611 and 2-18-618, MCA.

(3) An employee who returns to a pay status from a leave of absence without pay the day after a holiday is observed is not eligible to receive holiday benefits, as provided in the holidays policy, 3-0325, MOM

(4) An employee may self-pay the insurance premiums to the state employee group benefits plan for one calendar year from the effective date of a leave of absence without pay. After the year, an employee is eligible to continue to self-pay insurance premiums under COBRA (see State Employee Group Insurance Benefits Policy, 3-0560, MOM.

706 LEAVE TO SERVE IN A PUBLIC OFFICE

(1) Leave for purposes of serving in an elected or appointed public office must be approved for use to a maximum of 180 days annually, as provided in section 2-18-620, MCA.

707 LEAVE FOR EXTENDED MILITARY SERVICE

(1) Leave for purposes of active duty or for extended service in the armed forces must be approved, as provided in sections 2-18-604, 10-2-211, 221, 222, 225-226, MCA.

708 LEAVE FOR FAMILY AND MEDICAL REASONS

(1) An eligible employee will be granted up to twelve weeks of Family and Medical (FMLA) leave in a 12 month period for family and medical reasons described in the Family and Medical Leave Policy, 3-0309, MOM. Employees with accrued sick leave are required to use at least 20 hours of accrued sick leave each week before leave without pay will be granted. If the employee has used all available accrued leave, leave without pay must be approved up to the balance of the 12 weeks.

(2) While an employee is on leave without pay for FMLA-qualifying reasons, the state contribution for employee health benefits must continue to be paid by the agency.

709 LEAVE FOR REASONABLE ACCOMMODATION

(1) It is the policy of Montana state government to provide reasonable accommodation for qualified employees with disabilities. Leave without pay may be considered as an option among possible reasonable accommodations.

(2) Agencies are not required to provide leave without pay if it imposes an undue hardship on the agency.

Rules 10 and 11 reserved

712 CLOSING

(1) This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions regarding implementation of this policy should be referred to your agency human resource office. Your human resource office will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.