

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

State Personnel Board and State Personnel Director

STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

4 CCR 801-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

The purpose of the State Personnel Board Rules and Director's Administrative Procedures is to establish a comprehensive system of rules and procedures for employees within the state personnel system. In order to distinguish the Board from the Director's Procedures, rules promulgated by the State Personnel Board are noted as "Board Rules". Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act.

Pursuant to § 24-50-101(3)(b), C.R.S., it is the duty of the State Personnel Board to provide fair and timely resolution of the cases before it. Pursuant to § 24-50-101(3)(c), C.R.S., it is the duty of the State Personnel Director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system.

Preamble

Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

[This version reflects emergency changes to Chapter 5, Time Off, that become effective on January 1, 2021 and permanently placed into rule on April 1, 2021.](#)

[These changes are created to align the Director's Procedures with the state personnel system's Paid Family Medical Leave \(PFML\) policies created by the State Personnel Director under the authority of §24-50-104\(1\)\(g\), C.R.S. and become effective as of January 1, 2021. This version reflects changes to Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions, Chapter 3, Compensation, Chapter 4, Employment and Status, and Chapter 5, Time Off. This rulemaking by the State Personnel Director became effective on January 1, 2021 and includes: adding Director's Procedures 3-18.F., 4-10., 5-1.D.1., 5-5.E., 5-7.A.\(Table\), 5-13.A., 5-40.; modifying Director's Procedures 1-38.2., 3-21.A.1.c., 4-8., 4-9., 4-14.C., 4-21., 4-21.A., 4-21.B., 4-21.C., 5-1.C., 5-5., 5-5.A, 5-13.A., 5-13.B.; reorganized layout of Chapter 4, Employment and Status, to align with the order of operations; updated rules for clarification and consistency; and administrative clean-up which included removal of expired emergency rules.](#)

Chapter 5 Time Off

Authority for rules promulgated in Chapter 5, Time Off, is found in State of Colorado Constitution Article XII, Section 13, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), Healthy Families and Workplace Act, the Public Health Emergency Whistleblower Act and 26 U.S.C. 63, State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (01/01/2021)

General Principles

- 5-1. Employees are required to work their established work schedule unless on approved leave. Employees are responsible for requesting leave as far in advance as possible. The leave request shall provide sufficient information to determine the type of leave. (5/1/10)
 - A. The appointing authority shall respect the employee's privacy rights when requesting adequate information to determine the appropriate type of leave. (02/2017)
 - B. Appointing authorities are responsible for approving all leave requests and for determining the type of leave granted, subject to these rules and any additional departmental leave procedures. Departmental procedures shall be provided to employees. (02/2017)
 - C. Except for paid sick leave or public health emergency leave, use of any other leave that is not approved by the appointing authority may result in the denial of paid leave and/or corrective or disciplinary action. (01/01/2021)
 - D. Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted except under a leave sharing program or a corrective or disciplinary action. (02/2017)
 1. Paid sick leave or public health emergency leave cannot be counted as an absence that may lead to corrective or disciplinary action against an employee, unless the employee uses the leave for purposes other than the allowable reason. (01/01/2021)
- 5-2. Paid leave is to be exhausted before an employee is placed on unpaid leave, unless the reason for leave does not qualify for the type of leave available, or during a mandatory or voluntary furlough. (02/2017)
- 5-3. Departments shall keep accurate leave records in compliance with rule and law and be prepared to report the use of any type of leave when requested by the Director. (5/1/10)

Accrued Paid Leave

- 5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not be allowed, or shall be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave that

will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours shall be paid before the end of the fiscal year. (5/1/10)

A. Due to the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, if annual leave was denied, cancelled or the employee was not given reasonable opportunity to use the requested annual leave, resulting in annual leave being subject to forfeiture under rule, up to eighty (80) hours of leave over the maximum accrual allotment may be carried over to the next fiscal year in lieu of payment. The over accrued annual leave amount (up to eighty (80) hours) will roll over to the next fiscal year on July 1 and will be available to the employee to use. This amount will not carry over for a second fiscal year. Any annual leave hours over the maximum accrual amount not carried over in this Rule 5-4.(A) and subject to forfeiture shall be paid out to the employee before the end of the fiscal year. (08/01/2020)

5-5. Sick leave is for health reasons only, including mental or physical illness, injury, a health condition, diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of:

A. The employee or the employee's family members (related by blood, adoption, marriage, or civil union) including a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor, domestic partners, in-laws, step relatives and for a person for whom the employee is responsible for providing or arranging health or safety-related care. Special consideration will also be given to any other person whose association with the employee is similar to a family member. (01/01/2021)

B. An injured military service member as established under Rule 5-20 (F), legal dependent, or a person in the household for whom the employee is the primary caregiver. (04/01/2020)

C. Appointing authorities may use discretion to send employees home for an illness or injury that impacts the employee's ability to perform the job or the safety of others.

1. Sick leave shall be charged first;

2. Annual leave shall be charged if sick leave is exhausted; then

3. Unpaid leave if both annual and sick leave are exhausted. (01/01/2021)

D. Employees shall provide the State's authorized form (or other official document containing the same information) from a health care provider for an absence of more than three (3) consecutive full working days for any health reason or the use of sick leave shall be denied. Appointing authorities have the discretion to require the State's authorized form (or other official document containing the same information) for absences of less than three (3) days when the appointing authority has a reasonable basis for suspecting abuse of sick leave. (02/2017)

1. The completed official form or document shall be returned within fifteen (15) days from the appointing authority's request. (02/2017)

2. Failure to provide the State's authorized form (or other official document containing the

same information) may result in corrective/disciplinary action. Appointing authorities have the discretion to approve other forms of leave if sick leave is denied. (02/2017)

- E. When an employee or employee's family member is a victim of domestic abuse, stalking, sexual assault, or any other crime related to domestic violence and needs to seek medical attention, mental health care or other counseling, or victim services including legal services or relocation.

~~See rule 5-17.(C) for unpaid job protection.~~ (01/01/2021)

Exhaustion of Leave and Administrative Discharge

5-6. If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave. (11/1/2019)

- A. The notice of administrative discharge shall inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.
- B. An employee cannot be administratively discharged if FML, state family medical leave, or short-term disability leave (includes the thirty (30) day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship. (11/1/2019)
- C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-7. Table (08/01/2020)

Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees							
Annual Leave				Sick Leave****			
Years of Service*	Hrs. / Mon.	Max. Accrual**	Payout	Hrs./Mon.	Max. Accrual***	Restoration	Payout
Years 1 - 5 (01 - 60 Months)	8	192 hours	Upon termination or death, unused leave is paid out up to the maximum accrual rate.	6.66	360 hours	Previously accrued sick leave up to three hundred and sixty (360) hours is restored when eligible for reinstatement or reemployment.	Upon death or if eligible to retire, one quarter (¼) of unused leave paid out to the maximum accrual rate. PERA's age and service requirements under the Defined Benefit plan are applied regardless of the plan actually enrolled in.
Years 6 - 10 (61 - 120 Months)	10	240 hours					
Years 11 - 15 (121 - 180 Months)	12	288 hours					
Year 16 or Greater (181 or more Months)	14	336 hours					
* Years of service is computed from the 1st calendar day of the month following the hire date; except if the employee began work on the 1st working day of a month, include that month in the count. Employees with prior permanent state service, in or out of the state personnel system, earn leave based on the total whole months of service, excluding temporary assignments.				*** Over-accrued sick leave up to eighty (80) hours is converted to annual leave each new fiscal year (July 1st) at a five to one (5:1) ratio (five (5) hours of sick converts to one (1) hour annual leave). An employee may have an individual maximum accrual that is greater than three hundred and sixty (360) hours if continuously employed in the state personnel system prior to 7/1/88. Maximum accrual for these employees is calculated by adding three hundred and sixty (360) hours to the leave balance on 6/30/88.			
** Over-accrued amounts are forfeited at the beginning of the new fiscal year (July 1st) except when Rule 5-4. A. is applicable.							
**** During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, sick leave balances may go negative up to forty (40) hours once all accrued sick, annual leave, and compensatory time is exhausted. Subsequent sick leave accruals will be credited to the negative balance. If an employee separates before the negative balance is recovered, it will be deducted from their final paycheck.							

General Provisions
<p>Employees shall be at work or on paid leave to earn monthly leave. Leave is credited on the last day of the month in which it is earned and is available for use on the first day of the next month, subject to any limitations elsewhere in Chapter 5, Time Off. A terminating employee shall be compensated for annual leave earned through the last day of employment.</p> <p>Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest one, one hundredth (1/100) of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours paid by the number of work hours in the monthly pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations.</p> <p>Leave payouts at separation are calculated using the annualized hourly rate of pay (annual salary divided by two thousand eighty (2080) hours for full-time employees), and employees are only eligible for the sick leave payout one (1) time - initial eligibility for retirement.</p> <p>Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.</p> <p>Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed, except during a declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, as indicated above.</p> <p>Use of annual leave cannot be required for an employee being laid off.</p> <p>Make Whole: When an employee is receiving workers' compensation payments, accrued paid leave is used to make the employee's salary whole in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials. Leave earning is not prorated when an employee is being made whole.</p> <p>Short-Term Disability: Employees are required to use accrued paid leave during the thirty (30) day waiting period for short-term disability benefits, including the use of accrued annual leave and/or compensatory time once accrued sick leave has been exhausted. When an employee is receiving short-term disability payments, the employee may choose to use accrued paid leave to make their salary whole in an amount that is closest to the difference between the short-term disability benefit payment and the employee's gross base pay, excluding any pay differentials. Employees who elect to be made whole will use accrued sick leave first, then annual leave or compensatory time as available. Employees shall not use negative sick leave to be made whole. Leave earning is not prorated when an employee is being made whole.</p>

5-7. A. Table (01/01/2021)

Factor Rate Earning, Accrual, Payout, and Restoration for Temporary Employees			
Sick Leave			
Hourly Accrual / Biweekly Pay	Cap*	Restoration	Payout
.033/hour 30 hours x .033 = 1 hour Biweekly Pay Period 80 hours x .033 = 2.64 hours	48 Hours	Previously accrued sick leave up to forty-eight (48) hours is restored when eligible for temporary rehire or hired permanently.	Not applicable.
* Up to a cap of 48 hours of paid leave may be accrued in the fiscal year. Leave is no longer accrued once the cap is reached.			
General Provisions: Temporary employees shall be at work or on paid leave to earn paid sick leave. Leave is credited on the last day of the biweekly pay period in which it is earned and is available for use on the first day of the following biweekly pay period. Sick leave may be requested and used, subject to the general principles, sick leave, Family Medical Leave Act, and public health emergency leave rules of this Chapter 5, Time Off.			

Leave Sharing

- 5-8. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, and is subject to the discretionary approval of a department head. Departments shall develop and communicate their programs prior to use, including criteria for qualifying events. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director. (02/2017)
- 5-9. Employees shall have at least one (1) year of state service to be eligible. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the leave payout upon termination or death. (5/1/10)
- A. Donated leave is allowed for a qualifying event for the employee or the employee's immediate family member as defined under Rule 5-5. In order to use donated leave, the employee shall first exhaust all applicable paid leave and compensatory time and shall not be receiving short-term disability or long-term disability benefit payments. If all leave is exhausted, donated leave may be used to cover the leave necessary during the thirty (30) day waiting period for short-term disability benefit payments. The transfer of donated leave between departments is allowed only with the approval of both department heads. (02/2017)

Holiday Leave

- 5-10. Permanent full-time employees employed by the state when the holiday is observed are granted eight (8) hours of paid holiday leave (prorated for permanent part-time employees) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. If a holiday occurs when an employee is on short or long-term disability and is being paid for the disability benefit, the employee will be paid through those benefits and not be granted eight (8) hours of holiday leave. (04/01/2020)
- A. Department heads have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. The department shall be open and at least minimally operational for both days and the employee shall have work to perform.
- B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are granted their full complement of holidays. (02/2017)

Other Employer-Provided Leaves

- 5-11. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)
- 5-12. Bereavement leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may provide up to forty (40) hours (prorated for part-time work or unpaid leave in the month) of paid leave to permanent employees for the death of a family member or other person. Employees are responsible for requesting the amount of leave needed. Documentation may be required when deemed necessary by the appointing authority. (02/2017)

- 5-13. Military leave provides up to one hundred twenty (120) hours in a fiscal year to permanent employees who are members of the National Guard, military reserves, or National Disaster Medical Service to attend the annual encampment or equivalent training or who are called to active service, including declared emergencies. Unpaid leave is granted in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) after exhaustion of the one hundred twenty (120) hours. The employee may request the use of annual leave before being placed on unpaid leave. (04/01/2020)
- A. Notice may be written or verbal and should be in advance of the leave unless unreasonable or precluded by military necessity. Required documentation shall be submitted in advance of the leave or upon the return to work in the form of military orders, estimates of military entitlements, military leave earning statements, correspondence from a commanding officer, or other forms that may be verified. (01/01/2021)
 - B. In the case of a state emergency, the employee shall return upon release from active duty. In the case of federal service, the employee shall notify the appointing authority of the intent to return to work, return to work, or may need to apply to return, and is entitled to the same position or an equivalent position, including the same pay, benefits, location, work schedule, and other working conditions. This leave is not a break in service. (02/2017)
- 5-14. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three (3) days of jury leave. Jury pay is not turned over to the department. Proof may be required. (02/2017)
- 5-15. Administrative leave may be used to grant paid time when the appointing authority wishes to release employees from their official duties for the good of the state. In determining what is for the good of the state, an appointing authority shall consider prudent use of taxpayer and personal services dollars and the business needs of the department. (02/2017)
- A. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (02/2017)
 - B. Administrative leave may be granted for the following: (02/2017)
 - 1. Up to five (5) days for local or fifteen (15) days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. (02/2017)
 - 2. One (1) period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed ninety (90) days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee shall furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. (02/2017)

3. Volunteering in community or school activities. A department shall adopt and communicate a policy regarding the amount of leave available, employee eligibility, and process for requesting and approving leave. (04/01/2020)
 4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan. (02/2017)
- C. Administrative leave shall be granted for the following: (02/2017)
1. Two (2) hours to participate in general elections if the employee does not have three (3) hours of unscheduled work time during the hours the polls are open. (02/2017)
 2. Up to two (2) days per fiscal year for organ, tissue, or bone donation for transplants. (02/2017)
 3. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee shall provide evidence of service. (02/2017)
 4. Up to fifteen (15) days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service. (02/2017)
- D. Administrative leave that exceeds twenty (20) consecutive working days shall be reported to the department head and the Director. (01/01/2021)

5-16. Administrative leave that exceeds twenty (20) consecutive working days shall be reported to the department head and the Director. The exception is the qualifying reasons for victim protection leave as prescribed in D. of this rule. (01/01/2021)(02/2017)

- A. PFML shall be used before accrued paid leave.
- B. Employees who work in the same department or division as his or her spouse, partners in a civil union or domestic partnership are each entitled to PFML when they are eligible and qualify for FML.
- C. Injury leave, leave under the make whole policy for workers compensation, and emergency public health leave are excluded from PFML.
- D. PFML may be used when an employee or an employee's family member is a victim of domestic abuse, stalking, sexual assault, or any other crime related to domestic violence and needs to seek medical attention, mental health care or other counseling, or victim services including legal services or relocation.
 1. An employee must meet the eligibility requirements for FML to qualify for PFML for domestic violence related reasons. However, the use of PFML for domestic violence related reasons does not automatically qualify an employee for FML.

2. All information related to the leave shall be confidential and maintained in separate confidential files with limited access.

A.E. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used.

5-17. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on unpaid leave for unauthorized absences and may consider corrective and/or disciplinary action. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. The amount of unpaid leave for employees paid on a monthly pay cycle is calculated based on the monthly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. The amount of unpaid leave for nonexempt employees paid on a biweekly pay cycle is calculated based on the hourly pay rate multiplied by the number of unpaid leave hours. The amount of unpaid leave for exempt employees paid on a biweekly pay cycle is calculated based on the biweekly salary multiplied by the number of unpaid leave hours divided by the number of hours in the pay period. (11/1/2019)

A. Short-term disability (STD) leave is a type of unpaid leave of up to six (6) months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees shall have one (1) year of service and an application for the STD benefit shall be submitted within thirty (30) days of the beginning of the absence. The employee shall also notify the department at the same time that a benefit application is submitted to the insurance provider. (08/01/2020)

B. Voluntary furlough is unpaid job protection granted for up to seventy two (72) workdays per fiscal year when a department head declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred.

~~C. Victim protection leave is unpaid job protection granted for up to twenty four (24) hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee shall have one (1) year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used. Repealed. (01/01/2021)~~

D. State family medical leave is unpaid job protection granted for up to forty (40) hours subsequent to FML. To be eligible for this leave, the employee shall be eligible for FML, see Rule 5-20. Employees do not need to apply for state family medical leave separately.

5-18. Parental Academic leave. Departments may provide up to eighteen (18) hours (prorated for part-time) in an academic year for parents or legal guardians to participate in academic-related activities. A department shall adopt and communicate a policy on whether the leave will be unpaid or paid, the amount and type of paid leave, and specifically the substitution of annual

leave or use of administrative leave. (02/2017)

Family/Medical Leave (FML)

- 5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act (FCA), and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (02/2017)
- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a serious health condition and is administered consistent with FML. (02/2017)
- 5-20. FML is granted to eligible employees for the following conditions: (02/2017)
- A. Birth and care of a child and shall be completed within one (1) year of the birth; (02/2017)
 - B. Placement and care of an adopted or foster child and shall be completed within one (1) year of the placement; (02/2017)
 - C. Serious health condition of an employee's parent, child under the age of eighteen (18), an adult child who is disabled at the time of leave, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; see Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions, for the definition of serious health condition and ADA definition for disability; (02/2017)
 - D. Employee's own serious health condition; (02/2017)
 - E. Active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or (02/2017)
 - F. 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 five (5) years of the beginning of that treatment. (02/2017)
- 5-21. To be eligible for FML, an employee shall have twelve (12) months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee shall also have worked one thousand two hundred fifty (1250) hours within the twelve (12) months prior to the date leave will begin. Time worked includes overtime hours. (11/1/2019)
- A. Full-time employees will be granted up to four hundred eighty (480) hours of FML per rolling twelve (12) month period. Once eligible for FML, the employee is also eligible for up to an additional forty (40) hours of state family medical leave. The amount of leave is determined by the difference of five hundred twenty (520) hours and any FML or state family medical leave taken in the previous twelve (12) month period and is calculated from the date of the most recent leave. 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, or state family medical leave, see Rule 5-1 B. (11/1/2019)

- 5-22. Military caregiver leave is a one (1) time entitlement of up to one thousand forty (1040) hours (prorated for part-time) in a single twelve (12) month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the twelve (12) month period. In addition, the combined total for military caregiver, state family medical leave, and all other types of FML shall not exceed one thousand forty (1040) hours. (11/1/2019)
- 5-23. All other types of leave, compensatory time, and make whole payments under short-term disability and workers' compensation run concurrently with FML and state family medical leave and do not extend the time to which the employee is entitled. The employee shall use all accrued paid leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML and state family medical leave. An employee on FML or state family medical leave cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (08/01/2020)
- 5-24. Unpaid leave rules apply to any unpaid FML and state family medical leave except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits shall comply with the requirements of that plan. (11/1/2019)
- 5-25. Employer Requirements. The appointing authority, human resources director, or FMLA coordinator shall designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Departments shall follow all written directives and guidance on designation and notice requirements. (02/2017)
- 5-26. Employee Requirements. Written notice of the need for leave shall be provided by the employee thirty (30) days in advance. If an employee becomes aware of the need for leave in less than thirty (30) days in advance, the employee shall provide notice either the same day or the next business day. Failure to provide timely notice when the need for leave is foreseeable, and when there is no reasonable excuse, may delay the start of FML for up to thirty (30) days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, an adult family member or other responsible party may give notice, by any means, if the employee is unable to do so personally. (5/1/10)
- 5-27. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc. (5/1/10)
- 5-28. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in Rules 5-29 through 5-32. If the employee does not provide the required initial and additional medical certificates, the leave will not qualify as FML and shall be denied. (02/2017)

Medical Certificates

- 5-29. Employees shall provide the State's authorized medical certification form (or other official document containing the same information) when initiating an FML leave request. Appointing authorities have the discretion to require periodic medical certification to determine if FML continues to apply or when the appointing authority has a reasonable basis for suspecting leave abuse. Medical certification for FML may be required for the first leave request in an employee's

rolling twelve (12) month period. Additional medical certification may be required every thirty (30) days or the time period established in the initial certification, whichever is longer, unless circumstances change or new information is received. (02/2017)

- A. The medical certification shall be completed by a health care provider as defined in federal law. The completed medical certification shall be returned within fifteen (15) days from the appointing authority's request. If it is not practical under the particular circumstances to provide the requested medical certification within fifteen (15) days despite the employee's diligent, good faith efforts, the employee shall provide the medical certification within a reasonable period of time involved, but no later than thirty (30) calendar days after the initial date the appointing authority requested such medical certification. (02/2017)
 - B. Failure to provide the medical certification shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)
- 5-30. When incomplete medical certification is submitted, the employee shall be allowed seven (7) days to obtain complete information, absent reasonable extenuating circumstances. (7/1/13)
- A. Following receipt of the information or the seven (7) days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the medical certification. (02/2017)
- 5-31. When medical certification is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the initial certification. If the first and second opinion conflict, the department may require a binding third opinion by a mutually agreed upon health care provider. Under both circumstances the cost is paid by the department. Second and third opinions are not permitted on additional certification for recertification purposes. (02/2017)
- 5-32. If an absence is more than thirty (30) days for the employee's own condition, the employee shall provide a fitness-to-return certificate. The fitness-to-return certificate may be required for absences of thirty (30) days or less based on the nature of the condition in relation to the employee's job. The department may also require a fitness-to-return certificate from employees taking intermittent FML every thirty (30) days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (02/2017)
- A. When requested, employees shall present a completed fitness-to-return certificate before they will be allowed to return to work. Failure to provide a fitness-to-return certificate as instructed could result in delay of return, a requirement for new medical certification, or administrative discharge as defined in Rule 5-6. (7/1/13)
 - B. When an incomplete fitness-to-return certification is submitted, the employee shall be allowed seven (7) days to obtain complete information, absent reasonable extenuating circumstances. Following receipt of the information or the seven (7) days from which it was requested, the department's human resources director or FMLA coordinator may, with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the fitness-to-return certification. (02/2017)

- 5-33. Benefits coverage continues during FML and state family medical leave. If the employee is on paid FML or state family medical leave, premiums will be paid through normal payroll deduction. If the FML or state family medical leave is unpaid, the employee shall pay the employee share of premiums as prescribed by benefits and payroll procedures. (11/1/2019)
- 5-34. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee shall be given an opportunity to fulfill the requirement. (11/1/2019)
- A. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML or state family medical leave, and the appointing authority may separate the employee pursuant to Rule 5-6 subject to any applicable ADA provisions. (11/1/2019)
- B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML or state family medical leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment. (11/1/2019)
- 5-35. FML and state family medical leave do not prohibit adverse action that would have otherwise occurred had the leave not been taken. (11/1/2019)
- 5-36. The use of FML or state family medical leave cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML or state family medical leave cannot be considered. (11/1/19)
- 5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records shall be kept for three (3) years. Any medical information shall be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions. (02/2017)

Injury Leave

- 5-38. Injury Leave. A permanent employee who suffers an injury or illness that is compensable under the Workers' Compensation Act shall be granted injury leave up to ninety (90) occurrences (whole day increments regardless of the actual hours absent during a day) with full pay if the temporary compensation is assigned or endorsed to the employing department. (5/1/10)
- A. If after ninety (90) occurrences of injury leave an employee still is unable to work, the employee is placed on leave under the "make whole" policy. The employee will receive temporary disability benefits pursuant to the Colorado Workers' Compensation Act. The employing department will make up the difference between the temporary disability benefits and the employee's full pay using accrued sick leave first, then annual leave or compensatory time as available. Once all paid leave is exhausted, employees may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee as required by law. (02/2017)
- B. The appointing authority may invoke Rule 5-6 if the employee is unable to return to work after exhausting all accrued paid leave and applicable job protection. Termination of service under

that rule will not affect continuation of payments under the Workers' Compensation Act.

- C. If the employee's temporary compensation payment is reduced because the injury or occupational disease was caused by willful misconduct or violation of rules or regulations, the employee shall not be entitled to or granted injury leave. Any absence shall be charged using sick leave first, then annual leave or compensatory time on a "make whole basis" or, at the appointing authority's discretion, unpaid leave may be granted and the temporary compensation payments shall be made to the employee. (02/2017)
- D. The first three (3) regular working days missed as a result of a compensable work injury will be charged to the employee's sick leave, then annual leave or compensatory time, as available. Injury leave will only be granted once an eligible employee misses more than three (3) regular working days. Sick or annual leave for the first three (3) regular working days will be restored if the employee is off work for more than two (2) weeks. (02/2017)
- E. If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.

Disaster and Public Health Emergency

5-39. Public health emergency leave, as defined in the Healthy Families Workplaces Act, shall be granted to a temporary or permanent employee for the cause of a disaster or public emergency declared by the Governor or a federal, state, or local public health agency. (01/01/2021)

- A. Employees are eligible for up to eighty (80) hours of paid leave (prorated for part-time) during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged. Public health emergency leave may be used for the following reasons:
 - 1. Needing to self-isolate because the employee is diagnosed or experiencing symptoms of the communicable illness;
 - 2. Seeking or obtaining medical diagnosis, care or treatment, preventative care, or care of such illness;
 - 3. Being exposed to, or experiencing symptoms of, such illness;
 - 4. Being unable to work due to a health condition that may increase susceptibility or risk of such illness;
 - 5. Caring for a child or other family member for reasons 1, 2, or 3 above, or whose school, child care provider, or other care provider is either unavailable, closed, or providing remote instruction due to the public health emergency; or
 - 6. Closure of the temporary employee's work location, and work cannot be performed remotely. (01/01/2021)
- B. Permanent employees may receive administrative leave due to closure of work location caused by the disaster or public emergency of work location, and work cannot be performed

remotely. (01/01/2021)

C. Public health emergency leave may be used up to four (4) weeks after the suspension of the public health emergency. (01/01/2021)

5-40. During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, in the event that daycares, schools or other care services are closed, impacted employees shall first work with their supervisor to determine if working from home or a schedule adjustment will allow them to continue working. If these measures do not allow for the employee to continue to work, then employees may use any accrued leave to care for their family members, including but not limited to domestic partners, in-laws and step relatives. Special consideration will be given to any other person whose association with the employee is similar to that of a family member. (08/01/2020)