

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: LEAVE POLICIES
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LEAVE POLICIES

All full-time employees of the MDE shall be provided, in accordance with the policies established by the State Legislature and the MSPB, and stated here, the following types of leave: personal, major medical, military, administrative, family and medical (FMLA), compensatory, and leave without pay.

In addition to covering the above types of leave, this section also covers furloughs.

LEAVE REQUESTS

Requests for any type of leave, except medical emergencies, shall be made in advance utilizing the “Leave Request form (online at www.mdek12.org/OHR/Forms).

Employees shall report leave involving illness to the immediate supervisor, or his/her designee, no later than the hour they are required to report to work on the day of the illness, unless an emergency prevents such notification. Requests for leave in unforeseen circumstances which do not receive prior approval shall be completed within one (1) hour of returning to work.

PERSONAL LEAVE (See Miss. Code Ann. §§ 25-3-93 through 25-3-97)

Accrual and use of personal leave by employees is administered in accordance with Section 3.2 of the MSPB’s *Mississippi State Employee Handbook*. All requests to use personal leave, except when taken due to an illness or injury, are approved at the discretion of the employee’s immediate supervisor. Employees are to make requests to use personal leave as far in advance as is practicable and in the manner required by the employee’s supervisor. Supervisory personnel have both the authority and responsibility to review and/or question any leave requests. The supervisor’s discretion to approve or not approve personal leave is final. Personal or compensatory leave must be used for an illness or injury of the employee requiring an absence of one day or less. In addition, accrued personal or compensatory leave must be used for the first day of an employee’s illness or injury requiring an absence of more than one day.

PERSONAL LEAVE WILL NOT BE GRANTED PRIOR TO THE TIME IT IS EARNED.

MAJOR MEDICAL LEAVE (See Miss. Code. Ann. §§ 25-3-95 through 25-3-97)

Accrual and use of major medical leave by employees is administered in accordance with Section 3.2 of the MSPB’s *Mississippi State Employee Handbook*. Major medical leave may be used for the illness or injury of an employee or member of the employee’s family as defined in Section 3.2, but only after the employee has used one day of accrued personal or compensatory leave.

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For each absence due to illness or injury that requires the employee be absent from work for thirty-two (32) consecutive working hours (combined personal, compensatory and major medical leave) major medical leave can be authorized only when certified in writing by the attending physician.

Major medical leave may be used, without prior use of personal leave, to cover regularly scheduled visits to a doctor’s office or a hospital for the continuing treatment of a chronic disease, as certified in advance by a physician. (Examples of continuing treatment include, but are not limited to: dialysis, chemotherapy, and prenatal checkups.) Certification by a physician of the chronic disease/condition is required each June.

An employee may use up to three (3) days of earned major medical leave for each occurrence of death in the immediate family requiring the employee’s absence from work.

Leave is not earned and credited until the end of the pay period. NO leave shall be taken until such time as it is earned. There is no maximum limit to the number of hours of major medical leave an employee may accumulate. Personal leave may be used to supplement major medical leave, but major medical leave cannot be used to supplement personal leave.

EXHAUSTION OF MAJOR MEDICAL LEAVE

An employee is entitled to use all accrued major medical leave for recuperation from illness. In cases of illness or disability exhausting available major medical leave, the employee may be allowed to charge the excess days against accumulated personal leave or compensatory leave earned by the employee. If all accumulated major medical leave and personal leave or compensatory leave have been used, employees are subject to a pro-rata deduction from their salaries for the length of time or number of days in excess of accumulated leave.

DONATED LEAVE FOR CATASTROPHIC ILLNESS OR INJURY (See Miss. Code. Ann. §§ 25-3-91, 25-3-3 and 25-3-95)

Employees may be eligible to receive donated leave for a catastrophic (life threatening) injury or illness of the employee or the employee’s spouse, parent, stepparent, sibling, child or step-child, which totally incapacitates the employee from work. The catastrophic injury or illness must be verified by a licensed physician and the employee must first exhaust all earned leave time resulting in the loss of compensation. Section 3.2 of the MSPB’s *Mississippi State Employee Handbook* contains additional information regarding eligibility requirements and procedures for donated leave.

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MISSISSIPPI LIVING ORGAN DONOR LEAVE (See Miss. Code Ann. § 25-3-103)

All permanent full-time or part-time employees who have been employed by any agency of State government for a period of six months or more and who donate an organ, bone marrow, blood or blood platelets may be entitled for organ donor leave.

Employees may use organ donor leave only upon receipt of prior approval from the donor employee’s agency but are not required to use accumulated Major Medical Leave or personal leave before using organ donor leave. Certification by the employee’s attending physician for an employee participating as a bone marrow or organ donor will be required prior to using organ donor leave.

Employees requesting placement on organ donor leave for the purpose of donating blood or blood platelets must provide verification from the blood service organization of the donation of blood and/or blood platelets to their supervisor upon returning to work to be approved for organ donor leave.

An employee may use:

- Up to 30 days (240 hours) of organ donor leave in any 12-month period to serve as a bone marrow donor;
- Up to 30 days (240 hours) of organ donor leave in any 12-month period to serve as an organ donor;
- Up to one hour to donate blood every 56 days; and
- Up to two hours to donate blood platelets no more than 23 times in a 12-month period in accordance with appropriate medical standards established by the ARC or other nationally recognized standards.

MILITARY LEAVE (See Miss. Code Ann. §§ 33-1-19 and 33-1-21)

Employees requesting leave when ordered to military duty in excess of the 15 days allowed by law are entitled to leave of absences from their respective duties without loss of time, annual leave or efficiency rating until relieved from duty. If approved by the appointing authority, it can be charged against personal leave.

Military leave may be granted to an employee for the purpose of reporting for a physical examination at a distant point, provided that such an examination results from an official order

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by military authorities. Each employee shall submit a copy of the military orders along with the request for military leave.

The Uniformed Services Employment and Re-employment Act (USERRA) of 1994, a federal law, requires employers to allow up to five (5) years of leave (whether paid or unpaid) to a soldier who leaves to perform military duty, performs that duty satisfactorily, and requests his/her job back within the statutory time limits. The soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.

USE OF LEAVE DURING PREGNANCY

Federal Law requires that women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. (See 42 U.S. Code § 2000e (k))

- All types of leave shall be granted to pregnant women on the same terms as leave is granted to other employees.
- The appointing authority shall not terminate the employment of any employee in the state service because of pregnancy or require that such employee take a mandatory leave.
- When certified in advance by a medical doctor, pregnant women may use major medical leave for regularly scheduled prenatal care by a medical doctor without the requirement that personal leave be used for the first eight (8) hours of each absence for subsequent visits. Just as with major medical leave, the first day (or the first eight (8) hours) of leave taken for pregnancy must be personal leave or compensatory leave or unpaid leave (if the employee has no accrued personal or compensatory leave).

COMPENSATORY LEAVE (See Miss/ Code Ann. § 25-3-92 (1))

For the purposes of this policy, the workweek shall begin at 12:00 a.m. on Monday and end at 11:59 p.m. the following Sunday. It shall be the responsibility of supervisory staff to ensure adherence to this policy. Each office will be responsible for recording compensatory leave and reporting it to the payroll office for its employees.

MDE does not award monetary compensation for extra hours worked. All approved extra hours worked shall be remunerated through compensatory leave. Because of differing regulations dictated by Fair Labor Standards Act (FLSA) wage and hour laws, this policy shall address two (2) classifications of employees as relating to the administration of compensatory leave, exempt

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COMPENSATORY LEAVE (continued) employees and non-exempt employees. It is mandatory that each supervisor know the classification of each employee. If either the supervisor or the employee is unsure about an employee’s classification, please contact the Office of Human Resources.

Any request to accrue compensatory leave shall receive **prior approval** before it will be allowed. To receive prior approval, the employee shall have a completed leave form (online at www.mdek12.org/OHR/Forms) with the signature of his/her supervisor. Each office may, at their discretion require two levels of approval for earning compensatory leave.

EARNING COMPENSATORY LEAVE (NON-EXEMPT EMPLOYEES)

It is the position of the MDE that non-exempt employees should not work overtime. However, should circumstances require overtime, the FLSA requires that non-exempt employees must receive time and one-half for any approved time worked more than 40 hours per week. If a supervisor has prior knowledge that an employee will be required to work any time outside the normal workweek, causing the employee to work more than 40 hours during any week, the supervisor may request that the employee take time off during the week in lieu of earning compensatory leave.

EARNING COMPENSATORY LEAVE (EXEMPT EMPLOYEES)

The total number of hours that can be worked by exempt employee is not limited by FLSA. Therefore, exempt employees may, at any time, work more than 40 hours during any workweek without prior approval. However, should an exempt employee be **required** by their immediate supervisor to work more than 40 hours during the workweek and expect to earn compensatory leave for extra hours worked, the employee shall complete a form, with the appropriate signatures, prior to working more than 40 hours.

If the exempt employee has received prior approval to earn compensatory leave for extra hours worked, compensatory leave shall be awarded at a rate of straight time (one hour earned for each hour worked).

EARNING COMPENSATORY TIME FOR A STATE HOLIDAY

Compensatory leave shall be awarded at straight time (one hour earned for each hour worked) for any time worked on an official state holiday for exempt and non-exempt employees if the employee has received prior approval to work by completing a form. A holiday is considered part of the 40 hours that make up the normal workweek, and therefore, time and one-half is inapplicable. **(This part of the policy does not apply to School Attendance Officers who work on a school calendar.)**

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EARNING COMPENSATORY TIME FOR ATTENDANCE AT FUNCTIONS

Both exempt and non-exempt employees may receive compensatory leave for attendance at functions (i.e.: training, workshops, conferences, etc.) if the employee’s attendance at the function is mandatory and will cause the employee to work more than 40 hours during the workweek.

If an employee’s immediate supervisor does not allow travel time, compensatory leave will also be allowable for travel to and from any function or worksite outside of normal working hours that is the result of mandatory attendance at a function. Travel arrangements, including estimated departure and arrival times, shall be approved in advance by the immediate supervisor to ensure adherence to this policy. The employee shall notify the immediate supervisor of any changes in travel and/or work schedule as soon as possible. This policy is the same for both in-state and out-of-state situations.

No compensatory leave shall be earned for functions (training, workshops, conference, etc.) attended at the discretion of the employee, and the use of personal leave may be required by for attendance at such functions during normal work hours. However, if attendance at a discretionary function occurs on a state holiday, compensatory leave may be earned in accordance with this policy.

RULES FOR TAKING COMPENSATORY LEAVE

Employees are encouraged to take compensatory leave within 90 days of the date earned. Requests to take compensatory leave will be approved at the discretion of the immediate supervisor. Supervisors and employees are encouraged to work together on requests for use of compensatory leave to avoid any undue disruption of office activities.

DISPOSITION OF COMPENSATORY LEAVE BALANCES UPON TERMINATION

Non-exempt employees, upon termination, will be compensated for any accrued compensatory leave balance; however, since this is not desirable to the MDE, each supervisor shall closely monitor an employee’s workload to ensure that only essential overtime is worked. It is, therefore, imperative that the supervisor shall ensure that all accrued compensatory leave is taken as quickly as possible.

Exempt employees, upon termination, forfeit any unused compensatory leave.

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ADMINISTRATIVE LEAVE (See Miss. Code Ann. § 25-3-92 (2))

Administrative leave with pay may be approved for any state employee in accordance with state law and as prescribed in the MSPB's *Mississippi State Employee Handbook*.

LEAVE WITHOUT PAY

Leave without pay (LWOP) should be requested only in emergency situations and never for routine time off. All LWOP shall receive prior approval from the employee's immediate supervisor. LWOP of more than five (5) consecutive days, except in unusual circumstances, may only be approved by the State Superintendent.

Cases where it may be in the best interest of all parties to grant LWOP in excess of five (5) days include, but are not limited to, employees required to be absent from work due to military obligations in excess of the 15 annually allowable days of military leave, and employees on medical leave who have exhausted all other accrued leave but remain unable to work due to a medical condition as certified by a physician, including pregnancy.

Payment of holidays or administrative leave approved for inclement weather occurring during the LWOP is prohibited. LWOP shall not, under any circumstances, be considered as time for purposes of leave accrued for retirement, or other compensable considerations of employment. An employee may retain insurance benefits while on LWOP provided he/she bears all the costs associated with the insurance coverage.

LEAVE OF ABSENCE (See Miss. Code Ann. § 25-3-93 (2))

An employee may be granted an extended absence from work for a period not to exceed one (1) year. This leave may be granted only for special circumstances such as prolonged illness or, to take advantage of specialized training or educational opportunities. This type of leave is similar to leave without pay; however, since it is for an extended time period, additional criteria have been established for its use.

Employees wishing to apply for a leave of absence shall:

- First secure a recommendation from their immediate supervisor and appropriate member of the Executive Leadership Team;

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LEAVE OF ABSENCE (continued)

- Prepare a formal letter of application to the State Superintendent specifying the reasons for requesting the leave of absence, the beginning and ending dates of such absence, medical documentation, if applicable, and plans following completion of the leave of absence;
- Submit the secured recommendation and letter of application through the appropriate supervisory levels for submission to the Human Resources Manager;
- The Human Resources Manager shall submit the request to the State Superintendent for consideration.

Any leave of absence shall require prior approval from the State Superintendent.

When the granted leave of absence is completed, the employee will be restored to his/her same position, unless that position is no longer available. The employee granted a leave of absence shall not forfeit all previously accumulated continuous service; however, the leave of absence will not be considered as creditable service in the earning of personal and medical leave. For the employee to have continued insurance coverage, all insurance premiums must be paid in full by the employee while on leave of absence. Procedures for making such payments may be secured from the Payroll Office.

If the employee fails to report promptly back to duty at the expiration of the granted leave of absence, except for satisfactory reasons submitted in advance and approved by the State Superintendent, it will be cause for dismissal or loss of status.

A state service employee, with the consent of the State Superintendent and the concurrence of the Mississippi State Personnel Director, may be placed on a leave of absence for purposes of accepting an assignment in the non-state service for a period not to exceed one (1) year.

FURLOUGH

Furlough, involuntary leave without pay, may be implemented when the State Superintendent certifies and has written concurrence from the State Fiscal Officer that such action is necessary to temporarily reduce expenditures to avoid a deficit of funds.

Such leave for the purpose of reducing expenditures shall be based on the State Superintendent's determination that:

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FURLOUGH (continued)

1. Funds on hand or to be received during the current fiscal period will be inadequate to effectively discharge the agency's responsibilities without recourse to reductions-in-force or,
2. It is necessary to accrue funds by reducing current payroll expenses so that a reduction-in-force or more extensive furloughs may be minimized or avoided.

Provisions for Implementation of Involuntary Leave Without Pay (Furlough)

Before instituting such leave, the State Superintendent shall develop an equitable and systematic plan for implementation of an agency-wide furlough, stating the reasons that require this action. Such plan and subsequent furlough action must be submitted to the Mississippi State Personnel Board for review and approval prior to implementing such leave.

Such a plan shall apply uniformly to all employees in the agency, regardless of status. All employees, including those on paid leave, shall be placed on an equivalent number of hours of leave without pay. A proportionate number of hours shall be applied to part-time employees. However, the State Superintendent may, with the approval of the Mississippi State Personnel Director, make such leave subject to early cancellation or periodic callback on a case-by case basis, to protect public health, safety, or property or to ensure operations of critical agency functions. The plan and the employee's notice of leave shall describe the reason for, and conditions of the provision.

Employees who are to be placed on such leave shall be given prior written notice, advising the employee of the particulars regarding the action, including the dates and times leave is to begin and end.

While on furlough leave, an employee shall continue to accrue personal and major medical leave as though the involuntary leave without pay had not occurred, but personal and major medical leave cannot be taken in lieu of furlough leave.

Failure on the part of an employee to return to work from such leave to his/her previous work status as directed in writing shall be cause for dismissal.

Involuntary leave without pay conducted under this policy shall not be grievable.

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LEAVE REPORTING

The minimum amount of leave that may be taken is one-tenth of one hour. Arriving late for work, departing early, and taking a lunch break in excess of the scheduled period must all be reported as leave. Leave taken in periods of less than an hour at different times or dates cannot be accumulated and then reported as a full hour. Each absence is considered independent of other absences. Leave taken is reported from the first day of the month to the last day of the month. Personal and major medical leave balances will be made available to each employee monthly with his/her paycheck. This leave report will show leave earned and taken during the **previous month**. The leave report does not report leave taken in the current month. The employee and his/her supervisor shall be responsible for maintaining a current balance of all unused leave to ensure the employee is not in a position to be on leave without pay.

LEAVE ACCRUAL AND TRANSFER

Leave is accrued and accruals are calculated after the employee has worked a full month, beginning with the date of initial employment. During the first month of employment, no leave may be taken unless it is leave without pay or administrative leave granted as described herein. If a former employee is re-employed after a break in service, he/she shall be considered a new employee with leave accrual calculated accordingly. Individuals employed by the Department directly from another state agency with no break in service shall be allowed to transfer all accrued personal and major medical leave and to continue earning leave at the same rate.

DISPOSITION OF LEAVE AT TERMINATION OR RETIREMENT

It is the policy of the MDE that the termination date of an employee shall not be extended to allow the terminating employee to utilize accumulated leave. Payment of not more than 240 hours of accumulated personal leave shall be made to the employee during the pay period following termination whether by resignation, lay-off, termination for cause, retirement, or other reasons.

The beneficiary of an active employee who dies with unused personal leave shall receive payment for all personal leave accumulated but not used by the employee (See Miss. Code Ann. § 25-3-97).

Payment for unused compensatory time shall be made only as required by FLSA. In no instance will an employee receive compensation for any accumulated major medical leave. Unused personal leave, reduced by the amount for which payment was made as described above, and all unused medical leave shall be counted as creditable service for the purpose of the Public Employees' Retirement System, provided a minimum of 15 days or 120 hours of leave has been accumulated.

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FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Detailed information and instructions regarding the implementation and application of the Family and Medical Leave Act of 1993 can be found at www.dol.gov/WHD/fmla. Additionally, information may be found in the MSPB's *Mississippi State Employee Handbook*

In keeping with the requirements of the FMLA and the State of Mississippi's policies, an employee must have worked for the State for a total of 12 months and the employee must have worked for the State for 1250 hours in the 12-month period immediately preceding the commencement of the leave to be eligible for FMLA leave. An employee meeting these requirements is referred to as an eligible employee for purposes of this policy.

AVAILABILITY OF FAMILY MEDICAL LEAVE

An eligible employee may take up to the 12 workweeks of unpaid, job protected, family and/or medical leave (FMLA leave) during any 12-month period for one or more of the following purposes:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- To care for an employee's spouse, parent (not including in-laws) or son or daughter (under the age of eighteen or over the age of eighteen and incapable of self care because of a physical or mental disability), who has a serious health condition; or
- For qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or called to covered active duty status

An eligible employee who is a covered service member's spouse, child, parent, or next of kin, may also take up to 26 weeks of FMLA in a 12-month period to care for the service member with a serious injury or illness.

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UNLAWFUL ACTS

The FMLA makes it unlawful for any employer to:

Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or

Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under, or relating to, the FMLA.

Please notify the agency’s executive director immediately if any of these actions occur. Employees may also file a complaint with the United States Department of Labor (DOL) or bring a private lawsuit against the agency.

ENFORCEMENT

The U. S. DOL is responsible for the enforcement of the FMLA and may investigate and resolve complaints and violations under the Act in the same manner as under the FLSA. For assistance in complying with the FMLA, State agency employers may contact the area office of the Wage and Hour Division of the DOL at www.dol.gov/WHD/ or call (601) 965-4347 or 1-866-4-USWAGE.