



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

S. Duke Storen
Commissioner

August 3, 2026

MEMORANDUM

TO: Members, State Board of Social Services

FROM: Duke Storen *S. Duke Storen*

POLICY: Administrative/Human Resources Manual for Local Departments of Social Services

ACTION: Approve Manual Updates to Chapter 1 and 4

The Administrative/Human Resources Manual for Local Departments of Social Services sets forth policies and procedures for local departments of social services that follow the Department of Social Services' (DSS) policies. The State Board of Social Services (Board) authority to approve such policies is established in §§ [63.2-217](#) and [63.2-219](#) of the Code of Virginia.

Chapters 1 and 4 will be presented for Board consideration at the August 17, 2026, meeting as follows:

- Chapter 1, *Equal Employment Opportunity & Accessibility*. The Board initially approved updates to Chapter 1 at the **December 2025** meeting. Subsequently during executive review, the need for an additional change was identified.
- Chapter 4, *Leave & Related Areas*. Updates pertain to the Family and Medical Leave Act and other leave topics.

I request that you approve the updates to Chapters 1 and 4 for publication in the *Virginia Register*. If you have questions concerning this action, please

contact Jennifer Wright, Compliance Program Manager, Division of Human Resources, at 804-726-7033, Jennifer.wright@dss.virginia.gov.

DS:kc

Attachments

Chapter 1: Equal Employment Opportunity & Accessibility

Administrative/HR Manual for Virginia Local Departments of Social Services (LDSS)

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EQUAL EMPLOYMENT OPPORTUNITY & ACCESSIBILITY

POLICY STATEMENT

The Virginia State Board of Social Services establishes policies that promote fair hearing practices, fostering workplace environments that recognize human dignity and mutual respect among employees, while also ensuring equal employment opportunity and compliance with all applicable federal, state, and local nondiscrimination laws. The following sections cover Equal Employment Opportunity (EEO), accommodating individuals with disabilities, and Affirmative Action.

~~The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing of anyone based on these factors, the use of quotas for any group, or any effort to favor one group over another.~~

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS as well as applicants for employment.

Additional Information:

State and local governments are now exempt from the requirement to complete an Affirmative Action Plan (AAP). However, LDSSs may voluntarily elect to complete an AAP. More information on how to construct an AAP is covered in [Section III](#) of this chapter.

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SECTION I: EQUAL EMPLOYMENT OPPORTUNITY

GENERAL INFORMATION

This chapter is designed to assist LDSSs in understanding and implementing principles of nondiscrimination and providing reasonable accommodation in every aspect of employment, promoting accessibility and inclusivity. This includes following the guidelines for protected classes specified in Title VII of the Civil Rights Act of 1964, along with associated federal laws like the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA) as amended, and the Genetic Information Nondiscrimination Act (GINA), as well as relevant state and local laws and regulations¹. Reasonable accommodation is covered in greater detail in [Section II, "Accommodations for Individuals with Disabilities."](#)

For comprehensive information on workplace behavior standards, expectations of workplace civility, and the disciplinary measures applicable in case of confirmed violations of prohibited acts covered in this chapter, please refer to **Chapter 7** of the [LDSS Administrative/HR Manual](#). Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions about the contents of this chapter.

PROHIBITED ACTS

The following acts are strictly prohibited:

1. Discriminatory employment action defined as any adverse treatment or decision made against an employee based on characteristics protected by federal, state, and local laws.
2. Harassment of any employee based on any characteristic protected by federal, state, and local laws. Employees encountering harassment from co-workers, supervisors, visitors, contractors, or customers should promptly communicate to them that their behavior is unwelcome and report it to their supervisor or through the complaint procedure defined in this chapter.
3. Retaliating against an employee for reporting discrimination, harassment, or retaliation, or for opposing discriminatory or harassing practices.

¹ [22VAC40-675-180](#)

DISCRIMINATION

Adverse actions based on protected characteristics relating to **all** aspects of the employment relationship are strictly prohibited. Such actions may include the following:

1. Hiring and Promotion: Discrimination in any activity related to hiring, promotion, job assignment, or transfer decisions.
2. Compensation and Benefits: Discrimination in compensation-related activities based on protected characteristics (unequal pay, benefits, etc.).
3. Terms and Conditions of Employment: Discrimination relating to work assignments, employee development, schedules, opportunities for advancement.
4. Work environment: Creating a hostile work environment through harassment, intimidation, or other discriminatory behavior.
5. Retaliation: Reprisal against employees who assert their rights under anti-discrimination laws, including reporting discrimination or participating in discrimination investigations.

HARASSMENT & SEXUAL HARASSMENT

Harassment and sexual harassment are related but distinct concepts, and both are strictly prohibited in the LDSS workplace.

HARASSMENT

Harassment of any employee based on any characteristic protected by federal, state, and local laws will not be tolerated. This includes verbal or non-verbal expressions, gestures, or physical acts, such as jokes, innuendos, inclusions/exclusions from activities, or comments, that create a hostile workplace environment. These behaviors undermine the creation of a positive work environment where all employees feel valued and respected.

SEXUAL HARASSMENT

Sexual harassment is a specific type of harassment that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual harassment can occur between individuals of the same or different genders and can include behaviors such as unwanted touching, sexual comments or jokes, or displaying sexually explicit materials in the workplace.

RETALIATION

Workplace retaliation occurs when an employer or colleague takes adverse actions against an employee in response to the employee engaging in protected activities, such as filing a complaint about workplace discrimination or reporting illegal activities. Adverse actions can be either overt or covert and include termination, demotion, harassment, or other forms of mistreatment. Retaliation is strictly prohibited.

HOSTILE WORK ENVIRONMENT

A hostile work environment can arise when unwelcome or offensive behavior, whether verbal, physical, or visual, interferes with an individual's ability to perform his/her job duties or creates an intimidating, offensive, or oppressive atmosphere. This type of environment can develop regardless of a connection to protected classes. For more information, see **Chapter 7** of the [LDSS Administrative/HR Manual](#).

Examples of behavior that may contribute to a hostile work environment include, but are not limited to:

1. Verbal abuse, derogatory remarks, or insults directed at an individual or group.
2. Displaying offensive materials, such as posters, images, or written messages.
3. Unwanted physical contact, gestures, or invasion of personal space.
4. Bullying, intimidation, or threats of violence.
5. Discrimination based on protected characteristics.

COMPLAINTS REGARDING VIOLATIONS

LDSS INTERNAL COMPLAINT PROCESS

A. Complaint Recipients

Complaints of discrimination, harassment, or retaliation should be brought to the attention of:

1. The LDSS local director.
2. The locality human resource (HR) representative or EEO officer.

If the complaint involves an LDSS local director or locality HR representative, or EEO Officer, the employee may bring the complaint to the Chair of the local Board of Social Services.

Upon receipt of the complaint, the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) may be contacted. Depending upon the nature and severity of the complaint, LDSSs may also want to consult with the locality HR representative or attorney.

B. Reporting Process

The following outlines the reporting process:

1. Submission of the report in person is preferred; however, alternative formats will also be accepted.
2. Upon receipt of the complaint, LDSSs will take the necessary steps to prevent further adverse action to the complainant, and charges will be promptly and thoroughly investigated.
3. A high level of confidentiality must be maintained during the investigation of EEO claims. Share information related to the investigation strictly on a need-to-know basis to protect the privacy of

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all parties involved. LDSSs should contact the VDSS HR Employee Relations Team or the locality HR representative or attorney for assistance with preparing for and conducting a proper investigation.

4. An employee accused of violating this policy will be fully informed of the allegations and will be able to offer an explanation or defense to the charges.
5. All steps of the investigation, including interviews, evidence gathering, and decisions, should be documented as thoroughly as possible.
6. In the event of a founded complaint, the complainant will receive appropriate resolution, and disciplinary measures, including termination, may be taken against the accused party.
7. Non-employees engaging in workplace harassment will be notified of LDSS policy and appropriate actions will be pursued.
8. In all cases, LDSSs will make follow-up inquiries to ensure that the prohibited conduct has not resumed.

EXTERNAL COMPLAINT PROCESS

If it is believed that the nature and severity of the complaint requires a higher degree of support:

1. LDSSs may contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) for direct assistance with the investigation; or
2. LDSSs may reach out directly to the nearest local office of the Equal Employment Opportunity Commission (EEOC) for direct assistance.

Employees who believe that they have been discriminated against may also file a complaint directly with the nearest local office of the Equal Employment Opportunity Commission.²

REQUIREMENT TO COOPERATE

All local departments are required to cooperate fully with the EEOC or any other official investigation of charges of discrimination. Cooperation includes providing papers, notes, documents, and any other written material and responding to questions deemed necessary to investigate the charge.³

TRAINING

LDSS are strongly encouraged to implement a training program to proactively educate employees on EEO policies, procedures, and expectations.

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² [22VAC40-675-180](#)

³ Ibid.

SECTION II: ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

GENERAL INFORMATION

LDSSs are committed to providing equal employment opportunities to qualified individuals with disabilities who are otherwise able to perform the essential functions of a job with or without accommodation. This policy section outlines the need for LDSSs to develop a process for the request and provision of reasonable accommodations to qualified individuals with disabilities, accessibility standards, confidentiality, and training and awareness. LDSSs are required to comply with the Americans with Disabilities Act (ADA) as amended, as well as any other relevant state and local laws.

Position descriptions will set forth which functions are essential so as not to deny employment opportunities to individuals with disabilities. An individual is considered to have a disability if that individual either:

1. Has a physical or mental impairment which substantially limits one or more major life activities.
2. Has a record of such an impairment.
3. Is regarded as having such an impairment.

Reasonable accommodations will be provided to a qualified employee or applicant with a disability when a request for an accommodation is made. A qualified employee or applicant is one who is able to perform essential functions of the job with or without accommodation.

A request for an accommodation can be denied if the accommodation is not shown to be effective or if it places an undue burden on the LDSS, or if the employee poses a direct threat to the health and safety of himself or herself or others.

REASONABLE ACCOMMODATION

It is the responsibility of LDSSs to develop a process for receiving requests for reasonable accommodations from employees.

LDSSs are strongly encouraged to designate an individual who will be responsible for managing the accommodation process. The designated individual overseeing the process should be LDSSs 504 Coordinator (see [“Section 504 of the Rehabilitation Act of 1973”](#)), the local director, or an LDSS employee who possess a “need-to-know” regarding the information associated with reasonable accommodations.

The established process should:

1. Be interactive and allow a dialogue where employees are able to identify potential accommodations that will enable them to perform essential job functions.

2. Outline a clear and consistent process for the review and approval of requests (e.g., timelines for return of documentation and LDSS response, involvement of relevant stakeholders, etc.).
3. Ensure timely implementation of approved accommodations.
4. Have steps for monitoring the effectiveness of the implemented accommodations. This includes seeking regular feedback from the employee to determine if the employee's needs are being met, or if additional assistance required.
5. A procedure for the review of accommodation requests that are denied or disputed, including an appeal process to address questions, concerns, or disagreements.

The [Job Accommodation Network \(JAN\)](#) is an excellent resource for state and local employers for establishing a process, creating supporting documentation, and providing a multitude of accommodation suggestions. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney with questions about reasonable accommodation or how to establish a process. See "Helpful Hints – Job Accommodation Network (JAN)" (*sidebar*) for more information.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Prior to the ADA, Section 504 of the Rehabilitation Act of 1973 was the first comprehensive federal law to prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance. As a result, many agencies may have a '504 Coordinator.' Due to some of the similarities between the ADA and Section 504, it is highly encouraged that the 504 Coordinator also act as LDSSs' ADA liaison.

Both the ADA and Section 504:

1. Prohibit discrimination based on disability in programs, activities, and services provided by covered entities.
2. Apply to a wide range of entities, including state and local governments.
3. Require covered entities to provide reasonable accommodations to individuals with disabilities, such as modifications to policies, practices, or procedures, and the provision of auxiliary aids and services, to ensure equal access and participation.



Helpful Hints: Job Accommodation Network (JAN)

The [Job Accommodation Network \(JAN\)](#) supports employers by providing accommodation solutions, strategies, and guidance on the Americans with Disabilities Act (ADA). The site offers:

- ◆ Assistance specific to state and local government.
- ◆ An ADA Library with information on the ADA's history and amendments.
- ◆ An Accommodation Search database with recommendations.
- ◆ Publications and articles on various disabilities, including the "Accommodation and Compliance Series."

A thorough analysis may be needed to determine applicable laws and accommodations. It is best to consult the locality HR representative or attorney or the [VDSS HR Employee Relations Team](#) for assistance in these situations.

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4. Require covered entities to make their programs, activities, and facilities accessible to individuals with disabilities to the greatest extent possible. This may involve physical modifications to buildings and infrastructure, as well as the provision of alternative formats or communication supports.

Contact the [VDSS HR Policy Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney for more information on how the ADA and Section 504 interact or where they may differ.

RETALIATION

Workplace retaliation occurs when an employer or colleague takes adverse actions against an employee in response to the employee engaging in protected activities, such as requesting a reasonable accommodation or exercising his or her rights under the ADA. Adverse actions can be either overt or covert and include termination, demotion, harassment, or other forms of mistreatment. Retaliation is strictly prohibited.

CONFIDENTIALITY

Individuals responsible for administering processes associated with the ADA must ensure confidentiality regarding the disclosure of employee disability information and all accommodation requests. Maintaining confidentiality is not only ethical but also a legal requirement of under the ADA. Disclosure of disability information should be limited to individuals directly involved in the accommodation process and those with a legitimate “need-to-know” (e.g., supervisors; HR personnel). Documents and records collected during the reasonable accommodation process must be stored securely, regardless of whether they are in physical or electronic format, to prevent unauthorized access.

TRAINING

LDSS are strongly encouraged to implement a training program to proactively educate managers, supervisors, and employees to increase awareness of ADA rights and responsibilities. Employees who are responsible for handling disability-related information should be trained on confidentiality procedures to ensure consistency in handling sensitive information across LDSSs.

INTERACTION WITH OTHER FEDERAL LAWS

Under the ADA, covered employers may be required to grant leave to employees as a form of reasonable accommodation. However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation.

For more detailed information on how the ADA, FMLA, and PWFA may interact with one another regarding leave accommodations, please refer to **Chapter 4** of the [LDSS Administrative/HR Manual](#). If you have any

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questions or need assistance regarding the interaction of these federal laws, please contact the VDSS HR Employee Relations Team or your locality HR representative or attorney for guidance.

SECTION III: AFFIRMATIVE ACTION

GENERAL INFORMATION

Local jurisdictions are now exempt from the requirement to develop and maintain a written Affirmative Action Plan (AAP). However, LDSSs may still ***voluntarily*** complete an AAP. This section provides basic information on the completion of an AAP. VDSS HR no longer requires the submission of a locality's AAP. Contact the locality HR representative or attorney for more guidance on the completion of an AAP.

AFFIRMATIVE ACTION PLANNING

WORKFORCE ANALYSIS

1. LDSSs may choose to conduct an analysis of the current workforce to identify any representation disparities in the organization and should work with their locality HR representative to gather demographic data or other relevant characteristics.
2. Calculate representation rates by comparing the total number of individuals in each demographic group to the total workforce population.
3. Identify any disparities or underrepresentation of certain demographic groups compared to their availability in the relevant labor market or population.
4. Evaluate whether these disparities are statistically significant. If so, identify areas for improvement (e.g., recruitment efforts, training programs, etc.).
5. Develop goals aimed at increasing representation of underrepresented groups within an LDSS workforce. Goals should be S.M.A.R.T. – specific, measurable, achievable, relevant, and time-bound.
6. Develop an action plan around the goals; assign responsibilities and establish a way to track and evaluate success.
7. Routinely monitor workforce demographics and other data related to the action plan. Adjust the plan and goals as needed.
8. Document all efforts and results.

RECRUITMENT EFFORTS

A process should be established for developing and maintaining a list of recruitment sources, including contacts with organizations that support minorities, women, and people with disabilities, to attract qualified candidates for positions. Additionally, recruitment procedures should be monitored to ensure they provide equal employment opportunities, and all recruitment materials should clearly communicate an LDSS' commitment to Equal Employment Opportunity (EEO).

SELECTION

LDSSs may consider developing processes for documenting and maintaining selection procedures used for each vacancy and for ensuring that all employees who conduct employment interviews (including those who serve on an interview panel) possess knowledge of proper interviewing techniques. Additionally, LDSSs may want to consider appointing employees who are responsible for:

1. Reviewing all selection procedures to ensure that such procedures are job-related.
2. Maintaining data on selection criteria, including interview questions, applicant rankings, reasons for rejection, and correspondence with applicants.
3. Analyzing the flow of applicant information through the selection and appointment process, including analyzing the written reasons why applicants are rejected.

JOB STRUCTURING & UPWARD MOBILITY

LDSSs should outline the agency's promotion, reclassification, and lateral transfer processes, highlighting steps where discrimination could potentially occur and describing actions to be taken if discrimination is identified. They may also consider appointing employees responsible for providing career counseling and guidance, as well as publicizing promotional opportunities within each department and the entire LDSS.

TRAINING

LDSSs may consider including the following:

1. A statement that LDSSs will establish training programs in a nondiscriminatory manner, specifying the training and educational resources that will be utilized.
2. Appointing an LDSS employee to be responsible for annually reviewing training profiles to ensure that training opportunities are offered to all eligible employees on an equal basis.
3. A statement that each new employee will receive information on LDSS policies, grievance procedures, federal and state EEO complaint procedures, and standards of conduct during orientation.

REASONABLE ACCOMMODATION

LDSSs may consider including the following:

1. Appointing an LDSS employee as the ADA/504 coordinator, tasked with organizing LDSS efforts to fulfill the mandates of the Rehabilitation Act of 1973. This coordinator acts as a point of contact with entities like the Virginia Department of Rehabilitative Services and other relevant agencies, facilitating the acquisition of reasonable accommodation information, as well as researching applicable information from the [Job Accommodation Network \(JAN\)](#).
2. A statement that facilities or programs are accessible to applicants and employees with disabilities.
3. A statement that all employees are afforded the opportunity to voluntarily declare any disabilities they may have.
4. Plans addressing the removal of physical barriers that have been or should be undertaken by an LDSS.

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EMPLOYEE RECOURSE

LDSSs may want to consider attaching or adding the policy Information from [Section I](#) of this chapter to ensure that all employees are aware of both the internal and external EEO complaint procedures. Employees should also be readily supplied with information on the grievance procedure.

RECORD KEEPING

LDSSs may want to consider maintaining demographic data and records on the following:

- | | |
|---|------------------------------------|
| 1. The current workforce. | 7. Separations. |
| 2. Demotions. | 8. Training. |
| 3. Applicants interviewed. | 9. Promotions. |
| 4. Title changes. | 10. Complaints of discrimination. |
| 5. New hires (original appointment, transfer-in, and reemployment). | 11. Lateral transfers. |
| 6. Redefinitions. | 12. Standards of conduct offenses. |

ASSESSMENT OF EFFECTIVENESS

Consider employing the following steps to determine if the AAP is effective:

1. Regularly review workforce demographics, hiring practices, promotion rates, and other key indicators.
2. Conduct exit interviews for any employee separating from the agency and designate an LDSS employee who is responsible for collecting and maintaining exit interview information.
3. Review the AAP annually and make any revisions, additions, or updates as necessary. Update and revise action plans as necessary, and make sure goals and objectives are as clearly defined as possible.
4. Review outreach methods and contacts and update as necessary.
5. Provide training to employees on the AAP and the goals and objectives of the LDSS.

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GLOSSARY:

SECTION I: EQUAL EMPLOYMENT OPPORTUNITY

1. Discrimination: The unfair or unequal treatment of individuals based on characteristics that are irrelevant to their qualifications or performance, resulting in disadvantages or adverse effects in employment, education, housing, or other areas of life.
2. Equal Employment Opportunity: Refers to the principle and practice of ensuring that all individuals have the same rights and opportunities in employment, regardless characteristics that are irrelevant to their qualifications or performance or characteristics that are protected by EEO laws and regulations, such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Equal Pay Act (EPA).
3. Harassment: Unwelcome conduct that is based on a person's identification with any characteristic or status protected by federal, state, or local laws. Harassment violates agency policy but also becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
4. Retaliation: An overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment toward an employee bringing forth a workplace complaint in good faith.
5. Sexual Harassment: A form of harassment characterized by unwelcome sexual advances, requests for sexual favors, or other verbal, physical, or visual conduct of a sexual nature that creates a hostile, intimidating, or offensive work environment. It can include behaviors such as unwanted touching, sexual jokes or comments, suggestive gestures, or displaying sexually explicit materials, and it can occur between individuals of the same or different genders.

SECTION II: ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

1. Americans with Disabilities Act (ADA) as Amended: A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination based on disability in all aspects of employment; and regulates medical examinations and inquiries.
2. Disability: Under the Americans with Disabilities Act (ADA) as amended, a disability is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. Major life activities include functions such as walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Disabilities covered by the ADA can include physical disabilities, sensory

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impairments, mental health conditions, intellectual disabilities, learning disabilities, chronic health conditions, and others that substantially limit a person's ability to perform major life activities.

3. Job Accommodation Network (JAN): A free consulting service funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). JAN provides expert guidance and resources to employers, individuals with disabilities, and other stakeholders on workplace accommodations and disability employment issues.
4. Reasonable Accommodation: Refers to modifications or adjustments to the job application process, the work environment, or the way job duties are performed that enable individuals with disabilities to have equal employment opportunities. Reasonable accommodations are determined on a case-by-case basis and may include modifications to work schedules, job duties, equipment, policies, or facilities, as long as they do not impose undue hardship on the employer.
5. Section 504 of the Rehabilitation Act of 1973: A federal civil rights law, preceding the ADA, that prohibits discrimination based on disability in programs and activities receiving federal financial assistance. It requires covered entities, including state and local governments, educational institutions, healthcare providers, and other recipients of federal funds, to provide equal access and opportunities to individuals with disabilities. Section 504 prohibits discrimination in areas such as employment, education, transportation, housing, and public services, and it requires covered entities to make reasonable accommodations to ensure equal participation for individuals with disabilities. Additionally, Section 504 requires covered entities to provide auxiliary aids and services to individuals with disabilities, such as interpreters or assistive technology, to ensure effective communication.

SECTION III: AFFIRMATIVE ACTION

1. Affirmative Action Plan (AAP): A proactive strategy implemented by organizations to promote equal opportunity in employment. It involves setting goals, establishing policies, and implementing practices aimed at increasing the representation of underrepresented groups in the workforce. State and local governments are exempt from the requirement to complete an AAP but may do so voluntarily.

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VDSS HR Guidance Documents – Recommended Changes

Guidance Document Title: *Equal Employment Opportunity & Accessibility*

Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Policy Statement (pg. 3)	The Virginia State Board of Social Services establishes policies that promote fair hearing practices, fostering workplace environments that recognize human dignity and mutual respect among employees, while also ensuring equal employment opportunity and compliance with all applicable federal, state, and local nondiscrimination laws. The following sections cover Equal Employment Opportunity (EEO), accommodating individuals with disabilities, and Affirmative Action. The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing of anyone based on these factors, the use of quotas for any group, or any effort to favor one group over another.	The Virginia State Board of Social Services establishes policies that promote fair hearing practices, fostering workplace environments that recognize human dignity and mutual respect among employees, while also ensuring equal employment opportunity and compliance with all applicable federal, state, and local nondiscrimination laws. The following sections cover Equal Employment Opportunity (EEO), accommodating individuals with disabilities, and Affirmative Action. The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing of anyone based on these factors, the use of quotas for any group, or any effort to favor one group over another.	Text removed was flagged in conversations with executive leadership as potentially problematic. It should be noted that the lines in question were originally removed by VDSS-HR, but were added back in at the request of the previous Commissioner. As such, VDSS-HR does not have any concerns with removing this paragraph as originally planned.

Chapter 4: Leave & Related Areas

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PART I: TYPES OF LEAVE

POLICY STATEMENT

The Virginia State Board of Social Services establishes policies to afford employees of Local Departments of Social Services (LDSS) paid time away from work for several purposes. Part I of this policy describes most of the types of leave available to LDSS employees and their appropriate use.

Compensatory Leave and Special Duty Leave are not addressed in this chapter. These leave types may be substituted in lieu of compensation in specific situations and are discussed in detail in **Chapter 2** of the [LDSS Administrative/HR Manual](#).

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:

Per [§ 22VAC40-675-50](#) of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to locality policy, provided the deviation is approved by the [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov) as being in substantial conformity with this policy.

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SECTION I: ANNUAL LEAVE

GENERAL INFORMATION

QUALIFICATION TO RECEIVE ANNUAL LEAVE

1. Annual leave is available to all LDSS employees **except**:
 - a. Employees in temporary or emergency positions; or
 - b. Employees in restricted positions where benefits are not provided by the funding source.

Part-time employees must work at least ***one half*** of the agency's workweek hours or greater to qualify to earn annual leave. Please note the following:

Agency Workweek Schedule	Part-Time Minimum Weekly Hours
40 Hours Per Week	20 Hours Per Week
37.5 Hours Per Week	18.75 Hours Per Week
35 Hours Per Week	17.5 Hours Per Week

ACCRUAL OF ANNUAL LEAVE

RATE

Employees earn paid annual leave on a pay period. For alternate agency workweek schedules (37.5 hours, 35 hours), annual leave accrual **must be prorated based on the number of hours in the workweek.**

1. A full-time employee earns annual leave based upon years of service. One (1) day equates to eight (8) hours if the agency workweek schedule is forty (40) hours per week.
2. A part-time employee earns annual leave at a proportionate rate based on the number of hours worked ***per week***. See "[Helpful Hints – Calculating Annual Leave for Part-Time Employees](#)" for more information.
3. For LDSS that have bi-monthly or bi-weekly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned monthly.
4. When hiring an employee from another LDSS or the Virginia Department of Social Services (VDSS) without a break in service, the LDSS has the authority to provide the employee with the same *accrual rate* of the previous position.

The following chart provides the amounts of annual leave that may be accrued during each month based on years of service:

Years of Service	Monthly Accrual Rate (40-Hour Week)	Monthly Accrual Rate (37.5-Hour Week)	Monthly Accrual Rate (35-Hour Week)
Up to 5 Years	8 Hours	7.5 Hours	7 Hours
5 Years	10 Hours	9.375 Hours	8.75 Hours
10 Years	12 Hours	11.25 Hours	10.5 Hours
15 Years	14 Hours	13.125 Hours	12.25 Hours
20 Years	16 Hours	15 Hours	14 Hours
25 Years	18 Hours	16.875 Hours	15.75 Hours

RECEIPT & USE OF ACCRUED LEAVE

1. Annual leave does not accrue until the end of the pay period in which it is earned.
2. Annual leave must not be used before it is earned and borrowing against future leave accruals is not permitted.
3. Newly accrued annual leave hours are available for use the first day of the following pay period or workweek.
4. Annual leave may be used for any reason provided the employee receives advance approval.

NOTICE & APPROVAL

Advance approval of annual leave is always required. When unforeseeable absences or emergency situations occur, employees must provide notice of the need to use leave as soon as it is reasonably possible for them to contact their supervisor. Until approval is provided, the absence will count as unauthorized leave without pay.

No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when the employee's accrual amount is not sufficient to cover the request.

RESPONSIBILITY

Agency Responsibility

The agency is responsible for:

1. Ensuring annual leave accrual calculations are correct based on the weekly schedule of the LDSS (40 hours, 37.5 hours, or 35 hours per week).
2. Setting expectations for annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.).
3. Ensuring that leave accrual calculations are updated if the weekly schedule of the LDSS should change. See **Chapter 5** of the [LDSS Administrative/HR Manual](#) for more information on changing the weekly schedule of the LDSS.

The LDSS is responsible for reimbursement due to errors resulting from miscalculation of accrual amounts by the LDSS. Contact the [VDSS Division of Finance Local Reimbursement Unit \(LRU\)](#) for more information on reimbursement.

Supervisor Responsibility

The supervisor is responsible for:

1. Providing timely responses to employee leave requests.
2. Setting expectations with direct reports for submission of regular annual leave requests (not holidays, peak times).
3. Adhering to agency expectations for approving annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.).

Employee Responsibility

The employee is responsible for:

1. Knowing the amount of annual leave balances that have accrued or will have accrued before requesting leave.
2. Requesting leave in a timely manner per supervisor or agency expectations.
3. Reporting to work, as required, if an annual leave request is denied.

EMPLOYEE REQUIREMENT TO REIMBURSE

Employees are required to reimburse the LDSS from their salary for leave taken when:

1. There is not sufficient accrued leave to cover the time requested.
2. The error occurs because of miscalculation by the employee.

Reimbursement due to employee error may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals. LDSS employees are ***not*** responsible for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).

CARRYOVER

An LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period as the annual carryover period for the agency. The following limits apply to the amount of annual leave permitted to be carried over to the next year, as well as the amount that will be paid at termination.

For alternate agency workweek schedules (37.5 hours, 35 hours), the maximum 'days' in the chart below **must be prorated based on the number of hours in the workweek.**

Years of Service	Maximum Annual Carryover Amount	Max. Carryover Hours 40-Hour Week	Max. Carryover Hours 37.5-Hour Week	Max. Carryover Hours 35-Hour Week
Up to 5 Years	24 Days	192 Hours	180 Hours	168 Hours
5 Years	30 Days	240 Hours	225 Hours	210 Hours
10 Years	36 Days	288 Hours	270 Hours	252 Hours
15 Years	42 Days	336 Hours	315 Hours	294 Hours
20 Years	48 Days	384 Hours	360 Hours	336 Hours
25 Years	54 Days	432 Hours	405 Hours	378 Hours

CARRYOVER EXCEPTIONS

An exception to annual leave carryover amounts may only be granted when employees have not been allowed to use their leave because of agency work demands over a substantial period. Such exceptions must be approved by the local board in writing and will expire in twelve (12) months.



Helpful Hints: Calculating Annual Leave for Part-Time Employees

Annual leave accruals for part-time employees are prorated based on the number of hours they work *on a weekly basis*. Look at this example:

Jane has been with her agency for one year and works a set schedule of 22.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jane's hours equate to 60% of the full-time schedule. The full-time accrual rate for a one-year employee is 7.5 hours per month (based on a 37.5- workweek). Jane's accrual rate would be 4.5 hours per month, or 60% of the full-time accrual rate.

Here are some recommendations to make leave calculation for part-time employees easier:

- ◆ Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for *all* employees, and it can also aid in preventing miscalculation of pay and overtime hours.
- ◆ Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week).

Need help with calculating leave accrual amounts? Contact the [VDSS Local HR Support Team](#) with questions.

No Payment of Carryover Exception Amounts Upon Separation

Carryover exception amounts do not apply to the amount of annual leave that will be paid upon separation of employment. Employees will only receive payout for the maximum yearly carryover limits listed in the Maximum Annual Carryover chart.

EFFECT OF LEAVE WITHOUT PAY ON ACCRUALS

Employees on leave without pay for any part of the pay period or workweek do not earn annual leave for that pay period or workweek. Please see [Section IV, "Leave without Pay \(LWOP\)"](#) for more information.

TREATMENT OF ANNUAL LEAVE UPON CHANGE IN STATUS

PAYMENT UPON SEPARATION

When an employee separates from the LDSS, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, and other forms of extended leave are not considered separations for the purposes of receiving payment for accrued annual leave. Under certain circumstances, employees on military leave may qualify for receipt of payment.

For unemployment compensation benefits, the lump sum payment will be allocated as wages for the equivalent daily/weekly periods.

PAYMENT AT DEATH

Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §§ 64.2-601 and 64.2-602, which govern the process by which those payments are made. The guidelines and legal requirements governing wages earned by an employee prior to death can be complicated. Individual circumstances can vary and may require additional guidance from the locality payroll office and attorney.

RIGHT TO REPURCHASE

An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the annual leave balances restored by paying the amount of any annual leave payment received at termination.

CHANGE IN EMPLOYMENT STATUS

Provisions of [Section III, "Disability Leave Program,"](#) may apply if the status of an employee is changed from temporary to probationary, regular, or restricted. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

SECTION II: SICK LEAVE

GENERAL INFORMATION

Sick leave, also referred to as “traditional” sick leave, exists to provide employees with paid leave for time away from work for:

1. Personal illness or injury.
2. Medical appointments that cannot be scheduled outside of work hours.
3. For the illness or injury of a family member.

QUALIFICATION TO RECEIVE SICK LEAVE

1. Sick leave is available to all LDSS employees **except**:
 - a. Employees in temporary or emergency positions.
 - b. Employees in restricted positions where benefits are not provided by the funding source.
 - c. Employees who were hired after January 1, 2014, **AND** whose locality has chosen to adopt the [LDSS Disability Leave Program](#) (“hybrid” leave) or a comparable locality leave policy.
2. Part-time employees must work at least **one half** of the agency’s workweek hours or greater to qualify to earn “traditional” sick leave. Please note the following:

Agency Workweek Schedule	Part-Time Minimum Weekly Hours
40 Hours Per Week	20 Hours Per Week
37.5 Hours Per Week	18.75 Hours Per Week
35 Hours Per Week	17.5 Hours Per Week

ASSOCIATED FEDERAL LAWS

Employee disclosure of a serious medical condition, personal injury, or disability may trigger applicable federal laws. Please refer to [Part II – "The Family & Medical Leave Act,"](#) and [Part II - Section V, "FMLA & Other Federal Laws,"](#) for more information on these laws, employer/employee responsibilities, and associated resources and training.

ACCRUAL OF SICK LEAVE

Sick leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period.

RATE

Employees earn paid sick leave on a per-pay-period basis. **If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave accrual must be prorated based on the number of hours in the workweek.**

Based on a forty (40) hour-per-week schedule:

1. A full-time employee earns sick leave at the rate of 1.25 days (10 hours) per month.
2. A part-time employee earns sick leave at a proportionate rate. See [“Helpful Hints – Calculating “Traditional” Sick Leave for Part-Time Employees”](#) for additional information.
3. For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned monthly. For instance, for an LDSS with a semi-monthly pay period, the rate would be ½ day (5 hours) for each pay period for full-time employees.

Workweek Hours	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
40 Hours (8 hours per Day)	1.25	10	5
37.5 Hours (7.5 Hours per Day)	1.25	9.375	4.6875
35 Hours (7 Hours per Day)	1.25	8.75	4.375

RECEIPT & USE OF ACCRUED LEAVE

RECEIPT

Sick leave does not accrue until the end of the pay period in which it is earned. Newly accrued sick leave hours are available for use the first day of the following pay period or workweek. Borrowing against future leave accruals is not permitted.

PERSONAL USE OF SICK LEAVE

Employees are permitted to use the full amount of their accrued sick leave for their own care. The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use.

Personal reasons for use include:

1. When leave from work is medically necessary, and the employee is unable to perform the essential functions of the position.
2. Pregnancy and childbirth related medical conditions.
3. Medically documented chronic conditions.
4. Use in conjunction with the Family and Medical Leave Act (see [Part II – “The Family & Medical Leave Act”](#)).

5. Medical appointments that cannot be scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours.



Helpful Hints: Calculating “Traditional” Sick Leave for Part-Time Employees

Sick leave accruals for part-time employees are prorated based on the number of hours they work *on a weekly basis*. For instance, an employee working one-half of the agency’s workweek hours would earn $\frac{1}{2}$ of a day (5 hours) of sick leave per month and an employee working three-quarters of the agency’s workweek hours would earn $\frac{3}{4}$ of a day (7.5 hours) per month. However, it can get tricky when an employee’s hours vary from those amounts.

Look at this example:

Jake has been with his agency for one year and works a set schedule of 19.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jake’s hours equate to 52% of the full-time schedule. The full-time accrual rate for a one-year employee is 9.375 hours per month (based on a 37.5- workweek). Jake’s accrual rate would be 4.875 hours per month, or 52% of the full-time accrual rate.

Here are some recommendations to make leave calculation for part-time employees easier:

- ◆ Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for *all* employees, and it can also aid in preventing miscalculation of pay and overtime hours.
- ◆ Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week).

Need help with calculating leave accrual amounts? Contact the [VDSS Local HR Support Team](#) with questions.

USE OF SICK LEAVE FOR FAMILY PURPOSES

Reasons for Use

1. Use in conjunction with the Family and Medical Leave Act (see [Part II – “The Family & Medical Leave Act”](#)).
2. When an employee’s family member has a medical condition that requires the employee to directly assist in the family member’s care or provide transportation for care-related activities.

Chapter 4: Leave & Related Areas

3. The death of a family member.

Definition of a Family Member

1. For use of “traditional” sick leave in conjunction with the Family and Medical Leave Act (FMLA), the agency must follow the definition of a “family member” as specified by the FMLA, which is a child, parent, or spouse.
2. For use of “traditional” sick leave for reasons that **do not** qualify for FMLA, the definition of a “family member” includes:
 - a. Parents
 - b. Stepparents
 - c. Spouse
 - d. Children
 - e. Stepchildren
 - f. Siblings
 - g. Grandparents
 - h. Grandchildren
 - i. Any relative by blood, marriage, or through legal custody or guardianship who resides in the employee’s home.

This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship.

Amounts Available for Use for Family Purposes

During a calendar year:

1. Employees may use **up to 33%** of their accrued sick leave balance in conjunction with FMLA.
2. Employees may use **up to eight (8) days** of their accrued sick leave balance for the care of family members for reasons that **do not** qualify for FMLA.

The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use for family purposes.

NOTICE & APPROVAL OF SICK LEAVE

ADVANCE NOTICE & APPROVAL

Employees are required to notify their supervisor of sick leave requests for [approved reasons](#) as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

NOTICE & APPROVAL FOR UNFORESEEABLE OR EMERGENCY SITUATIONS

Notice and approval are required in all circumstances. However, the employee must provide notice as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. **The time will count as leave without pay until notice is provided and the request is approved.** See [Section](#)

[IV, "Leave without Pay \(LWOP\),"](#) for more information on the appropriate use of LWOP and potential impacts of the use of LWOP on employee benefits.

VERIFICATION OF NEED FOR SICK LEAVE

VERIFICATION OF NEED MAY BE REQUIRED

Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave. The use of sick leave will not be approved until requested verification is provided.

TYPES OF VERIFICATION

The following types of verification will be deemed sufficient:

1. FMLA health care provider certification.
2. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period that the employee will be absent from work.
3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

RE-VERIFICATION

If an employee is absent for an extended period or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave can be conditioned on providing the requested verification.

TREATMENT OF SICK LEAVE UPON CHANGE IN STATUS

PAYMENT AT TERMINATION

1. An employee must have worked continuously for the same LDSS for five (5) years or longer to be entitled to a payment for accrued sick leave at termination or death.
2. When employment is terminated, the employee may be paid for accrued sick leave in a lump sum up to the maximum allowable amount. The amount of payment is the lesser of 25% of the accrued leave or the maximum payout amount as determined by the local Board and approved by VDSS.
3. For unemployment compensation, such leave payment will be allocated as wages for the equivalent daily/weekly periods as the employee would have received had employment continued.

PAYMENT AT DEATH

Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia [§§ 64.2-601](#) and [64.2-602](#), which govern the process by which those payments are made. The guidelines

and legal requirements governing wages earned by an employee prior to death can be complicated. Individual circumstances can vary and may require additional guidance from the locality payroll office and attorney.

RIGHT TO REPURCHASE

An employee, who is rehired by the same LDSS within twelve (12) months from the date of a layoff, or an employee who is reinstated by a grievance panel, may have the sick leave balances restored by paying the amount of any payout received at termination for accrued sick leave.

LEAVES OF ABSENCE ARE NOT TERMINATIONS

Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued sick leave.

TRANSFER OF LEAVE

As an inducement to accept an offer of employment, an LDSS may offer to credit an employee with some or all the sick leave balances that would be uncompensated when the employee resigns from employment with another LDSS or the Virginia Department of Social Services (VDSS). An employee may only be credited with sick leave if there is no break in service.

CHANGE IN EMPLOYMENT STATUS

Provisions of [Section III, "Disability Leave Program,"](#) may apply if the status of an employee is changed from temporary to probationary, regular, or restricted. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for sick leave shall accrue in the new status.

EMPLOYEE ACCOUNTABILITY

1. The employee is responsible for knowing the amount of sick leave balances that should have been accrued.
2. An employee will be required to reimburse the LDSS for leave taken if there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement or charging the time to other accrued paid leave. The LDSS may work out a repayment plan with the employee. LDSS employees are **not responsible** for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).

Chapter 4: Leave & Related Areas

3. If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.
4. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.
5. Reimbursement due to employee error may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals.

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SECTION III: LDSS DISABILITY LEAVE PROGRAM

GENERAL INFORMATION

BACKGROUND

On January 1, 2014, the Virginia Retirement System (VRS) implemented the Hybrid Retirement Plan. With the implementation came the requirement that all Commonwealth of Virginia localities covered under the VRS Hybrid Retirement Plan automatically enroll in the VRS Virginia Local Disability Program (VLDP) or a comparable program provided by the local jurisdiction¹. As a result of this change, full-time employees enrolled in the VRS Hybrid Retirement Plan would have access to short- and long-term disability benefits that may not have been previously available. A leave system was not a part of the implementation of the Hybrid Retirement Plan or the VLDP, thus the creation of a leave system was necessary.

The LDSS Disability Leave Program was created to fill the need for a leave system by allowing local boards to address the leave needs of employees covered under employer paid short- and long-term disability programs. High employee sick leave balances result from pairing the "traditional" sick leave accrual system ([Section II](#) of this chapter) with an employer paid short- and long-term disability program. The LDSS Disability Leave Program was created to prevent high "traditional" sick leave balances by offering a leave system where employees receive a finite amount of leave credits each year that do not accrue and are lost if unused within the agency's leave year.

The leave associated with the LDSS Disability Leave Program is often referred to as "hybrid" leave because the VRS Hybrid Retirement Plan was introduced during the same timeframe; however, the two are indirectly related. Employees who have questions about the VRS Hybrid Retirement Plan or the VLDP should [contact VRS](#).

OPTIONS FOR LOCAL BOARDS

Local boards may choose one of the following leave systems for employees covered under short- and long-term disability programs:

1. The LDSS Disability Leave Program.
2. The local jurisdiction's leave policy.
3. The State Board sick leave accrual policy (also referred to as "traditional" sick leave).

It is recommended that LDSSs work with their local boards and their locality to determine the best approach for local department employees under a disability plan. The LDSS must have an approved deviation to follow the local jurisdiction's leave policy.

¹ [§ 51.1-1153](#)

Chapter 4: Leave & Related Areas

Check the [LDSS Profile Summary](#) to verify deviation status or contact the [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov) to inquire about the policy deviation process. If the local jurisdiction's leave policy is chosen, it must apply to all local jurisdiction employees, including employees of the local department of social services.

SCOPE

This policy applies to full-time or part-time employees who are not in temporary or emergency positions, and whose local boards have chosen to limit their sick leave as part of a short- and long-term disability plan. This group of employees includes:

1. Full-time employees hired or rehired on or after January 1st 2014, and who are enrolled in the Virginia Retirement System (VRS) Hybrid Retirement Plan.
2. Full-time employees who choose to opt into the VRS Hybrid Retirement Plan.
3. Other employees as determined by the local board.

Employees eligible for sick leave accrual and who were hired before January 1, 2014, are covered under the State Board sick leave accrual policy ("traditional" sick leave). This policy is covered in [Section II](#) of this chapter. Employees who continue to participate in VRS Plan 1 or VRS Plan 2 will continue to accrue "traditional" sick leave. Employees should [contact VRS](#) with questions about their retirement plans.

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Helpful Hints: Key Differences Between the LDSS Disability Leave Plan & “Traditional” Sick Leave

There are some important differences between the sick leave credit offered under the LDSS Disability Leave Plan and what is commonly referred to as “traditional” sick leave.

Let’s look:

LDSS Disability Leave Plan

- ◆ Accompanies a short- and long-term disability program.
- ◆ The Disability Leave Plan provides both a sick leave (‘hybrid’) and family and personal leave credit.
- ◆ Leave types do not accrue. Employees receive either partial* or full leave credit amounts at a specific time during the year.
- ◆ Neither sick leave nor family and personal leave credits roll over. Leave credits not used in the previous year will be lost when leave credit amounts renew for the following year.
- ◆ There is no payout upon separation.

“Traditional” Sick Leave

- ◆ Stand-alone leave; no short- and long-term disability plan.
- ◆ Employees only receive sick leave (‘traditional’); family and personal leave are not included.
- ◆ Accrues on a pay period basis.
- ◆ Sick leave accrual amount rolls over from year to year.
- ◆ May be paid out upon separation from the LDSS.

Questions? Contact the [VDSS Local HR Support Team](#) for assistance.

***New employees starting on or after July 1 only receive partial leave amounts until the beginning of the following year.**

APPLICABLE FEDERAL LAWS

Employee disclosure of a serious medical condition, personal injury, or disability may trigger applicable federal laws. Please refer to [Part II – “The Family & Medical Leave Act,”](#) for more information on the FMLA, employer/employee responsibilities, other federal laws that may intersect with the FMLA, and associated resources and training.

RECEIPT OF SICK LEAVE CREDIT

1. Full-time employees participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive the full sick leave credit amount on the first day of their first full payroll period.
2. Full-time employees participating in the VRS Hybrid Retirement Plan and hired July 1 or later will receive 50% of the full sick leave credit amount. Receipt occurs on the first day of their first full pay period.
 - a. In subsequent years, employee hired after July 1 or later will receive the full sick leave credit amount on the first day of the first full payroll period in January.
3. Part-time employees hired on or after January 1, 2014, may receive a proportionate sick leave credit amount, as determined by their local boards.

If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave credit amounts must be prorated based on the number of hours in the workweek.

SICK LEAVE CREDIT CHARTS

Eligible full-time employees hired from January 1 to June 30:

40-Hour Workweek – 8 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	64
5-9	9	72
10+	10	80

37.5-Hour Workweek – 7.5 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	60
5-9	9	67.5
10+	10	75

35-Hour Workweek – 7 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	56
5-9	9	63
10+	10	70

Eligible full-time employees hired from July 1 to December 31:

40-Hour Workweek – 8 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	4	32
5-9	4.5	36
10+	5	40

37.5 Hour Workweek – 7.5 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	30
5-9	9	33.75
10+	10	37.5

35-Hour Workweek – 7 Hours Per Day

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0-4	8	28
5-9	9	31.5
10+	10	35

USE OF SICK LEAVE CREDIT

Sick leave credit cannot be used until it is credited. Employees are not permitted to borrow against future credit. Sick leave credit may only be used for either personal or family illness, injury, or medically documented condition.

PERSONAL USE OF SICK LEAVE

Employees are permitted to use the full amount of sick leave credit available for the calendar year for their own care. The LDSS local board and local director may choose to establish different limits on the amount of sick leave credits available for use.

Reasons for use include:

1. When leave from work is medically necessary, and the employee is unable to perform the essential functions of the position.
2. Pregnancy and childbirth related medical conditions.
3. Medically documented chronic conditions.
4. Use in conjunction with the Family and Medical Leave Act (see [Part II – "The Family & Medical Leave Act"](#)).
5. Medical appointments that cannot be scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours.

USE OF SICK LEAVE FOR FAMILY PURPOSES

During a calendar year, employees may **use up to 33%** of their unused sick leave credit balance for family sick leave. The LDSS local board and local director may choose to establish different limits on the amount of family sick leave credits available for use for family purposes.

Sick leave credits may be used for family purposes in the following situations:

1. Use in conjunction with the Family and Medical Leave Act (see [Part II – "The Family & Medical Leave Act"](#)).
2. When an employee's family member has a medical condition that requires the employee to directly assist in the family member's care or provide transportation for care-related activities.
3. The death of a family member.

Definition of a Family Member

1. For use of sick leave credits in conjunction with the Family and Medical Leave Act (FMLA), the agency must follow the definition of a "family member" as specified by the FMLA, which is a child, parent, or spouse.
2. For use of sick leave credits for reasons that **do not** qualify for FMLA, the definition of a "family member" includes:
 - a. Parents
 - b. Stepparents
 - c. Spouse
 - d. Children
 - e. Stepchildren
 - f. Siblings
 - g. Grandparents
 - h. Grandchildren
 - i. Any relative by blood, marriage, or through legal custody/guardianship who resides in the employee's home.

This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody/guardianship.

NOTICE & APPROVAL OF SICK LEAVE CREDITS

ADVANCE NOTICE & APPROVAL

Employees are required to notify their supervisor of sick leave credit requests for [approved reasons](#) as soon as the absence is foreseeable. Medical conditions that have foreseeable absences, include but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

NOTICE & APPROVAL FOR UNFORESEEABLE OR EMERGENCY SITUATIONS

Notice and approval are required in all circumstances. However, the employee must provide notice as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. **The**

time will count as leave without pay until notice is provided and the request is approved. See [Section IV, "Leave without Pay \(LWOP\),"](#) for more information on the appropriate use of LWOP and potential impacts of the use of LWOP on employee benefits.

VERIFICATION OF NEED FOR SICK LEAVE

VERIFICATION OF NEED MAY BE REQUIRED

Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave credits. The use of sick leave credits will not be approved until requested verification is provided.

TYPES OF VERIFICATION

The following types of verification will be deemed sufficient:

1. FMLA health care provider certification.
2. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period that the employee will be absent from work.
3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

RE-VERIFICATION

If an employee is absent for an extended period or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave credits can be conditioned on providing the requested verification.

EFFECT OF LEAVE WITHOUT PAY ON SICK LEAVE CREDIT

Employees who are on approved leave without pay when sick leave credit balances are granted will not receive their sick leave credit balance until they return to paid status.

NO SICK LEAVE CARRYOVER OR PAYMENT UPON SEPARATION

Sick leave credit does not accrue. Remaining sick leave credit balances do not carry over from year to year, nor are they paid out upon separation.

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ELECTING TO MOVE FROM THE STATE BOARD-APPROVED LEAVE SYSTEM (“TRADITIONAL” SICK LEAVE) AT A LATER DATE

The requirements of [§ 51.1-1153](#) dictate that all localities must participate in a short- and long-term disability program. LDSS local boards were initially given [three options](#) to choose from for a leave system to accompany the short- and long-term disability plan for employees enrolled in the VRS Hybrid Retirement Plan. One option was to continue to follow the State Board-Approved Leave System (“traditional” sick leave).

Any LDSS that initially elected to keep the “traditional” sick leave policy may elect to move to either the LDSS Disability Leave Program, or a comparable locality leave policy¹ at a future date. However, when making this choice, the LDSS must determine how to address employees’ remaining “traditional” sick leave balances.

ADDRESSING REMAINING “TRADITIONAL” SICK LEAVE BALANCES

Once the decision is made to move to another leave program option, the eligible employees’ “traditional” sick leave balances must be frozen. The local board may choose from the following options to address the frozen balances. The option(s) chosen and approved by the local board must be documented on the [Local Department of Social Services Compensation Plan](#).

Available options are:

1. To allow employees to use the frozen balance, which may also include conversion of a portion of the frozen leave balance to annual leave; or
2. Make a payout of the frozen balance.

Allowing Use or Conversion of a Frozen Balance

An employee may use the remaining leave balance:

1. For any allowable use of “traditional” sick leave as noted in [Section II](#) of this chapter; or
2. To supplement income during periods when the employee is receiving short- or long-term disability benefits. Total income replacement from the disability benefit and leave cannot exceed 100% of an employee’s pre-disability income per pay period.

The local board may also choose to allow the conversion of a portion of the frozen balance to annual leave. However, conversion amounts must not exceed the maximum carryover amount for annual leave.

Payout of a Frozen Balance

Payout may occur with a change in status or prior to separation.

¹ Per [§22VAC40-675-50](#), LDSS seeking to follow a comparable locality leave policy are required to complete the policy deviation process and receive approval from the Virginia State Board of Social Services.

1. **Change in Status:** Treatment of accrued “traditional” sick leave balances should be consistent with [Section II](#) of this chapter.
2. **Separation:** Prior to separation, payout of the remaining frozen sick leave balance may be made as follows:
 - a. A one-time lump sum payout, up to the maximum allowable amount. The amount of the payment is lesser of 25% of the remaining frozen sick leave balance, or the maximum payout amount as determined by the local board and approved by VDSS; or
 - b. A lump sum payout up to the maximum allowable payout, whereby payment is split over two (2) or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance, or the maximum payout amount as determined by the local board and approved by VDSS.

RECEIPT OF FAMILY & PERSONAL LEAVE

1. Full-time employees participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive the full family and personal leave credit amount on the first day of their first full payroll period.
2. Full-time employees participating in the VRS Hybrid Retirement Plan and hired July 1 or later will receive 50% of the full family and personal leave credit amount. Receipt occurs on the first day of their first full pay period.
 - a. In subsequent years, employees hired July 1 or later will receive the full family and personal leave credit amount on the first day of the first full payroll period in January.
3. Part-time employees hired on or after January 1, 2014, may receive a proportionate family and personal leave credit amount, as determined by their local boards.

If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), family and personal leave credit amounts must be prorated based on the number of hours in the workweek.

FAMILY & PERSONAL LEAVE CREDIT CHARTS

Eligible full-time with LESS than 120 Months of Employment:

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40-Hour Workweek – 8 Hours Per day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	32	4
July 1 – December 31	16	2

37.5 Hour Workweek – 7.5 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	30	4
July 1 – December 31	15	2

35 Hour Workweek – 7 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	28	4
July 1 – December 31	14	2

Eligible full-time employees with **MORE** than 120 Months of Employment:

40-Hour Workweek – 8 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	40	5
July 1 – December 31	20	2.5

37.5-Hour Workweek – 7.5 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	37.5	5
July 1 – December 31	18.75	2.5

35-Hour Workweek – 7 Hours Per Day

Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days
January 1 – June 30	35	5
July 1 – December 31	17.5	2.5

USE OF FAMILY & PERSONAL LEAVE CREDIT

Family and personal leave credit may be used for any reason but cannot be used until it is credited. Employees are not permitted to borrow against future credit.

EFFECT OF LEAVE WITHOUT PAY ON FAMILY & PERSONAL LEAVE CREDIT

Employees who are on approved leave without pay when family and personal leave credit balances are granted will not receive their family and personal leave credit balance until they return to paid status.

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NO FAMILY & PERSONAL LEAVE CARRYOVER OR PAYMENT UPON SEPARATION

Family and personal leave credit does not accrue. Remaining family and personal leave credit balances do not carry over from year to year, nor are they paid out upon separation.



Helpful Hints: Understanding the Benefits of a Short- or Long-Term Disability Plan

A short- and long-term disability (STD/LTD) plan is designed to provide income protection in the event a serious non-work or work-related illness or injury prevents an employee from working. All Virginia localities are required to adopt STD/LTD plans ([§51.1-1153](#)), giving the LDSS local boards the option to move away from the use of “traditional” sick leave, where employees accumulate sick leave over time. STD/LTD plans offer more consistency for coverage of illness/injury for the LDSS’s entire employee group, while also providing financial relief for the LDSS.

Let’s take a closer look at STD/LTD benefits:

Employees with less tenure in the organization will have had less time to earn sick leave, creating gaps in coverage should serious illness, injury, or another covered condition (i.e., pregnancy, etc.) occur. The STD/LTD plan allows more protection by reducing gaps in coverage for employees in these types of situations.

Sick leave balances are eligible for payout in certain circumstances (see [Section II – Sick Leave: Treatment of Sick Leave Upon Change in Status](#)). Depending upon how many employees are eligible in any given year, sick leave payouts can be financially burdensome for an agency.

- a. While LDSS local board have three (3) leave program options to select from to accompany the locality STD/LTD plan, selecting the LDSS Disability Leave Plan can eliminate the financial burden of payouts.
- b. The locality STD/LTD plan provides eligible employees with income protection and the LDSS Disability Leave Plan provides employees a set amount of sick leave and family and personal leave credits each year. The credits are lost if not used within the year and are not eligible for payout.

Questions? Contact the locality HR or human resources department for specific questions about the STD/LTD program available to the LDSS. Contact the [VDSS Local HR Support Team](#) with questions about the LDSS Disability Leave Program.

SECTION IV: LEAVE WITHOUT PAY

GENERAL INFORMATION

Leave without pay (LWOP), or unpaid leave, is available to all LDSS employees in specific situations. The procedures and information outlined in this section must be followed when requesting and approving LWOP. Extended periods of LWOP may impact accrued leave, benefits, and the employee's ability to receive bonuses and performance raises.

REASONS FOR REQUESTING LEAVE WITHOUT PAY

REASONS INCLUDING JOB RESTORATION

There are two (2) reasons that LWOP may be requested where employees are entitled to job restoration:

1. Personal or family illness covered under the Family and Medical Leave Act (see Part II – The Family & Medical Leave Act).
2. Military Leave (see Section V; Military Leave).

REASONS WHERE JOB RESTORATION IS NOT GUARANTEED

Outside of FMLA or military leave, LWOP may be requested for educational purposes (see [Section VIII; "Educational Leave"](#)) or for any reason deemed appropriate by the LDSS local board and local director. The director and local board should carefully consider the business needs of the LDSS and whether the request will be burdensome. Please review "[Abuse of Leave without Pay](#)" for examples of requests for LWOP that are not appropriate.

Job restoration is **not** guaranteed for the duration of the period of LWOP. If possible, the LDSS will hold the position open until the employee returns from the approved period of LWOP. However, the LDSS is responsible for notifying the employee immediately once there is awareness that the position needs to be filled and is unable to be restored.

Written notification must be sent to employees by United States Postal Service (USPS) Certified Mail, alerting the employee of the need to fill the position, and set the expectation that the employee:

1. Must return to work in full capacity; and
2. Must return by a specific date to avoid forfeiture of the position.

The return date should offer a reasonable amount of time for the employee to receive and respond to the notification (e.g., one calendar week). USPS tracking documentation should be retained for recordkeeping purposes.

An employee will be deemed to have resigned his/her position if the employee does not return to work at the end of LWOP, or if the position cannot be held and the employee fails to respond to the notification to return to work.

NOTICE & APPROVAL OF LEAVE WITHOUT PAY

ADVANCE NOTICE

Employees are required to notify their supervisor of the need for LWOP as soon as the absence is foreseeable. If the LWOP request is for a medical condition, foreseeable absences include, but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

NOTICE OF UNFORESEEABLE OR EMERGENCY SITUATIONS

Notice and approval are required in all circumstances. However, the employee must provide notice of the need for LWOP as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency.

APPROVAL

1. LWOP must be approved and granted to eligible employees for FMLA and military leave, **regardless of whether or not the employees have other accrued or credited leave types available.**
2. For all other requests, approval of LWOP is dependent upon the current needs/priorities of the LDSS and the amount of leave requested by the employee.
3. Except for LWOP requests for FMLA and military leave, an employee cannot be on LWOP until all available accrued or credited leave types are exhausted. In extenuating circumstances, an LDSS may permit prorated or proportional use of paid leave and unpaid leave to prevent the employee from losing benefits (e.g., health insurance, retirement, etc.).
4. LWOP shall not be granted for more than three (3) months, except in instances where employees are on intermittent FMLA or military leave.

EFFECT OF LEAVE WITHOUT PAY ON BENEFITS

ACCRUED LEAVE & LEAVE ANNIVERSARY DATES

An employee who is on LWOP does not accrue annual or “traditional” sick leave for that pay period. “Hybrid” leaves do not accrue. However, employees who are on approved LWOP when “hybrid” leave credit balances (sick, family and personal) are granted, will not receive their leave credit balances until they return to paid status.

After fourteen (14) consecutive days of LWOP, the LDSS must adjust the employee’s **annual** leave anniversary date as follows:

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Calendar Days on Leave without Pay	Extension of Anniversary Date (Pay Periods)
1-14 Days	No Extension of Anniversary Date
15-31 Days	1 Pay Period
32-46 Days	2 Pay Periods
47-61 Days	3 Pay Periods
62-76 Days	4 Pay Periods
77-91 Days	5 Pay Periods

EFFECT ON RAISES & BONUSES

An employee on LWOP may have performance raises and bonuses affected by the absence from work.

RETIREMENT

LWOP must be reported to the Virginia Retirement System (VRS), which may result in impacts to an employee's years of service. [VRS](#) is the resource for policies and procedures for maintaining retirement contributions.

LIFE INSURANCE

LDSS have the following options:

1. The LDSS may elect to make its contribution for life insurance for all or part of the employee's LWOP period; or
2. The LDSS may permit the employee to continue coverage at the employee's expense for the duration of the LWOP period. The employee must receive notice and be provided with the election form at the beginning of the LWOP period.

Employees should contact the locality with any questions concerning life insurance coverage.

HEALTH INSURANCE

Except as provided below, upon the commencement of LWOP, the employee will be provided with a Consolidated Omnibus Budget Reconciliation Act (COBRA) Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for eighteen (18) months or longer, if disabled or with the occurrence of a second qualifying event. The full cost of the continued coverage is the full responsibility of the employee.

1. **Under FMLA:** The employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs.
2. **Short/intermittent periods of LWOP unrelated to FMLA:** The LDSS should follow the practices set by the locality, the plan administrator, for all employees under the healthcare plan. If the locality permits continued coverage during a short/intermittent period of LWOP, COBRA procedures do not apply.

Employees should contact the locality with any questions concerning health insurance coverage.

OTHER BENEFITS

Benefits may vary from locality to locality. It is recommended that the LDSS establish an internal policy indicating how other benefits specific to the locality will continue during periods of LWOP.

ABUSE OF LEAVE WITHOUT PAY

LWOP is not intended for casual use based on an employee's failure to manage available leave balances to cover future planned events or for unexpected, noncritical events (i.e., minor illness or injury, car trouble, etc.). Employees must adhere to the request and approval process outlined in this section.

Abuse of LWOP occurs when an employee *continually* exhausts all available leave balances and makes *repeated* requests to use LWOP due to the failure to maintain a leave balance throughout the year. Abuse of LWOP may be met with disciplinary action, up to and including termination of employment.

The LDSS local board and local director may establish a limit to the amount of LWOP an employee may request within a calendar year for purposes incidental to this policy.

Contact the [VDSS Local HR Support Team](#) with general questions about LWOP and the [VDSS Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions about the abuse of LWOP.

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SECTION V: MILITARY LEAVE

GENERAL INFORMATION

PURPOSE

The purpose of this policy is to provide the procedures governing leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees' job restoration rights under the federal [Uniformed Services Employment and Reemployment Rights Act of 1994 \(USERRA\)](#) and [§§ 44-93](#) and [44-93.1](#) of the Code of Virginia.

SCOPE

This policy applies to all employees who are in non-temporary positions and who are called to covered service in the United States Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services.

Covered service includes:

1. Voluntary and involuntary duty
2. Active or inactive duty
3. Training
4. Full-time duty with the National Guard, Naval Militia, or Public Health Service

REQUIREMENTS FOR THE USE OF MILITARY LEAVE WITH JOB RESTORATION COVERAGE

1. The employee's absence request must be on account of service in the uniformed services.
2. The employee must give advance notice (written or oral) to the LDSS that he/she is requesting leave for service (including training) in the uniformed services, unless such notice was precluded by military necessity or otherwise impossible or unreasonable.
3. The employee must provide a copy of his/her military orders either at the time of the advance notice, or if the orders are not yet available, after the leave is granted.
4. The cumulative period of military leave granted by the LDSS must not have exceeded five (5) years (see ["Helpful Hints – Additional Information on Calculating the Five-Year Period"](#) for more information).
5. The employee must not have been released from military service under dishonorable or other punitive conditions.
6. Unless impossible or unreasonable, the employee must have reported back to work at the LDSS in a timely manner or have submitted a timely application for reemployment.



Helpful Hints: Additional Information on Calculating the Five-Year Cumulative Period

An employee is eligible for military leave if he/she has not used five (5) cumulative years of military leave during employment with the LDSS. Per the Department of Labor, most types of service will be covered within the five (5) year cumulative period limit. However, there are eight (8) exceptions to this rule where military leave must be granted regardless of the five-year cumulative cap.

These exceptions are:

1. Service required beyond five (5) years to complete an initial period of obligated service.
2. An obligation to service that, through no fault of his/her own, the employee is unable to obtain release.
3. The required two-week annual training for Reservists/National Guard members.
4. Involuntary calls to service for a domestic emergency.
5. Being ordered to service during a time of war or national emergency declared by the President or Congress.
6. Selected Reservists who are ordered active duty for “operational missions.”
7. Service members who are ordered to active duty by the Secretary involved to support a “critical mission requirement.”
8. A member(s) of the National Guard who are called by the President to execute the laws of the United States.

Contact the [VDSS Local HR Support Team](#) with questions about this calculation.

MILITARY LEAVE WITH PAY

1. Per federal fiscal year, a public employee must be granted up to fifteen (15) workdays of military leave with pay per federally funded tour of duty. **The total number of hours in the workday must be consistent with the weekly schedule of the LDSS (40-hour week = 8-hour day, 37.5-hour week = 7.5-hour day, or 35-hour week = 7-hour day).** The federal fiscal year runs from October 1 of one calendar year through September 30 of the next.
2. The minimum charge to leave is one hour. An employee may be charged military leave only for the hours that the employee would otherwise have worked and received pay.
3. Inactive Duty Training is authorized training performed by members of a Reserve or National Guard component not on Active Duty. It is performed in connection with the prescribed activities of the Reserve or National Guard. It consists of regularly scheduled unit training periods, additional training

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periods, and equivalent training. Employees who request military leave for Inactive Duty Training (generally two, four, or six hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel.

4. For employees who do not normally work approximately equal workdays of five (5) or more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not considering any holidays, paid or unpaid leaves of absence, or other absences.
5. Benefits received while on military leave with pay are the same as if the employee were employed.

MILITARY LEAVE WITHOUT PAY

Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five (5) years, and they have not been dishonorably discharged.

LEAVE BENEFITS

Annual Leave

1. Employees will not accrue annual leave when they are on leave without pay status.
2. Employees may:
 - a. Retain all or a portion of their accrued annual leave.
 - b. Use all or part of the accrued leave to supplement military pay.
 - c. Be paid for the accrued annual leave at the commencement of military leave without pay.
3. Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining seniority for layoff purposes.

COMPENSATORY & SPECIAL DUTY LEAVE

Employees may:

1. Retain all or a portion of their compensatory and special duty leave.
2. Use all or part of the leave to supplement military pay.
3. Be paid for the leave at the commencement of military leave without pay.

“Traditional” Sick Leave

1. Employees will not accrue sick leave while on leave without pay status.
2. Employees with less than five (5) years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances. Sick leave balances will be reactivated upon reinstatement to local service.
3. Employees with five (5) or more years of continuous employment with the LDSS at the time military leave begins may:

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- a. Retain their entire sick leave balance.
 - b. Receive payment for the accrued sick leave under the provisions of [Section II, "Sick Leave \("Traditional"\)."](#)
4. If the balance is retained, it must be reactivated upon reinstatement to local service. If payment is processed, all remaining balances are lost and cannot be reinstated upon reemployment.
5. Employees who received payment for their sick leave balances and return to work must serve another five (5) years of continuous local service before being eligible for sick leave payment upon termination.
6. Employees may not repurchase any sick leave for which they have been paid.

"Hybrid" Leave

"Hybrid" leaves do not accrue. However, employees who are on approved leave without pay when "hybrid" leave credit balances (sick, family, and personal) are granted, will not receive their leave credit balances until they return to paid status.

HEALTH PLAN PARTICIPATION

Health insurance plans and other benefit options are facilitated by the locality and may differ from locality to locality. Questions specific to the benefit plans, coverage options, etc., should be addressed to the locality.

1. Employees called for active duty have the right to continue participating in the LDSS's health care plan for twenty-four (24) months beginning one (1) month after the date leave without pay commences, if they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents.
2. Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. **NOTE:** Under USERRA, an employee who is on military leave for less than thirty-one (31) days is entitled to participate in the health plan on the same terms as if employment was not interrupted.
3. Election rights are for the employee as well as other qualified beneficiaries.
4. Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan cannot impose a waiting period or other exclusion provisions.

RETIREMENT PLAN

Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.

REINSTATEMENT FROM MILITARY SERVICE

Employees who have been on military leave for a period of thirty-one (31) days or longer should notify the LDSS of their intention to be reemployed and the expected date of return. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee:

1. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service.

Chapter 4: Leave & Related Areas

2. Returns to work within the period specified in the “Reinstatement Reporting Timeline” chart below.
3. Is qualified, or can reasonably be retrained, for the position that the employee would have held if employment had not been interrupted due to the military leave; held at the time military leave commenced; or is of like seniority, pay, and status.

Military Leave Amount	Reinstatement Reporting Timeline
In addition to the time periods set forth below, reasonable time for <u>safe travel and rest</u> MUST be allowed.	
Military leave of less than 30 days	After eight (8) hours of rest, the employee must report to work on the first regularly scheduled workday following return home from military service.
Military leave of 31 to 180 days	Must either send an application to return to work or report to work within fourteen (14) days of completing military service.
Military leave of 181 days or longer	Must either send an application to return to work or report to work within ninety (90) days of completing military service.
Service-related incapacities	the reporting deadlines for employees who are hospitalized/recovering because of a service-related injury/illness are extended to up to two (2) years .

REINSTATEMENT POSITION DETERMINATION PROCESS

Escalator Principle

In determining the position to which the employee may be entitled, the “escalator principle” is to be used, meaning that the employee must be reemployed in a position that reflects “with reasonable certainty” the pay, benefits, seniority, and any other position benefits that he/she would have attained if not for the period of absence due to military service. Also, the position may not necessarily be the same job the employee previously held.

Position Determination where Disability is a Factor

When an employee becomes disabled during military service and cannot perform duties of the previous position, the LDSS must attempt to provide reasonable accommodations. If reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies.

Position Determination when the Employee no Longer Meets Minimum Requirements

Cases may occur where the employee no longer meets the minimum qualifications of the former position because of changes in job duties. In the event the employee no longer meets the minimum qualifications of the position:

1. The employee must be offered an opportunity to meet the new requirements within a reasonable time after reinstatement.

2. The employee must be offered a position requiring skills comparable to those required in the former position regarding seniority, status, pay, and location.

Circumstances where Reinstatement is not Required

Reinstatement is not required if the LDSS's circumstances have changed thereby making it impossible or unreasonable to reinstate the employee. However, the LDSS remains responsible for:

1. Placing the employee in a position comparable in status in pay to the position the employee previously held if the employee's former has been abolished.
2. Considering the employee to be affected by lay-off and following lay-off policies if a comparable position is not available. See **Chapter 7** of the [LDSS Administrative/HR Manual](#) for more information on layoffs.

FAMILY & MEDICAL LEAVE ACT (FMLA)

USERRA requires that the reinstated employee be given credit for any months and hours of service he or she would have been employed but for the USERRA-covered service in determining eligibility for FMLA leave. [Part II - Section III, "FMLA Military Leave Entitlements,"](#) provides more information on the qualification and certification process for specific military leave entitlements under the FMLA.

ANNUAL NOTICE OF MILITARY LEAVE RIGHTS

The LDSS is required to provide every employee with a notice of the rights afforded under this policy on an annual basis. The LDSS may meet this obligation by providing an employee a copy of this policy, or by referring the employee to the policy and having it available for distribution.

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SECTION VI: BEREAVEMENT LEAVE

GENERAL INFORMATION

Bereavement leave is available to all LDSS employees and is provided so that employees may have time off following the death of a family member. Bereavement leave is permitted if taken within eight (8) weeks of the death of the family member.

USE OF BEREAVEMENT LEAVE

LEAVE FOR DEATH OF FAMILY MEMBER

Annual Leave

An employee may use annual leave for absences due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes providing:

1. The leave time is requested in advance, or as soon as it is reasonable to do so under the circumstances.
2. The time requested is reasonable under the circumstances.

In the event of the death of an employee's child or spouse, the LDSS may grant the use of up to three (3) weeks of accrued sick leave during the period immediately following the death.

Sick Leave

During a calendar year, an employee may use:

1. Three (3) days of either "traditional" or "hybrid" sick leave for the death of a family member.
2. No more than a total of six (6) days when there are multiple family member deaths during the calendar year.

For use of either "traditional" or "hybrid" sick leave, the definition of a "family member" includes:

- | | |
|-----------------|---|
| 1. Parents | 7. Grandparents |
| 2. Stepparents | 8. Grandchildren |
| 3. Spouse | 9. Any relative by blood, marriage, or through legal custody/guardianship who resides in the employee's home. |
| 4. Children | |
| 5. Stepchildren | |
| 6. Siblings | |

Leave without Pay (LWOP)

LWOP may also be granted for bereavement purposes subject to the rules set forth in [Section IV, "Leave Without Pay \(LWOP\)."](#)

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SECTION VII: CIVIL LEAVE

GENERAL INFORMATION

Civil leave is available to all regular LDSS employees and is provided so that employees may have time off for civic and administrative purposes.

USE OF CIVIL LEAVE

Civil leave may be granted for the following:

1. Court Proceedings:
 - a. To serve on a jury.
 - b. To appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant.
 - c. To accompany the employee's child to court when the child is required to appear in court.
2. To participate in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS.
3. To participate in a workers' compensation, unemployment compensation hearing, or administrative proceeding involving the employee or another employee within the LDSS.
4. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees.

Civil leave may **not** be granted for:

1. Court proceedings where the employee is a defendant in a criminal matter, where criminal matter means either an alleged misdemeanor or felony.
2. The receipt of a summons to appear in traffic court (except as a witness).
3. Instances where the employee is a party to a civil case, either as a plaintiff or defendant, or who has any personal or familial interest in the proceedings.

REASONABLENESS OF REQUEST

The amount of civil leave requested must be reasonable. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day. With director approval, an employee may use annual leave for the remaining hours of the workday if it is not feasible for the employee to return to work due to either distance or inconvenience.

REQUIREMENT OF ADVANCE APPROVAL

The supervisor must be notified as soon as the employee knows of the need for the civil leave. For instances where there is a sincere agency conflict, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action.

JURY DUTY

Employees who are summoned to jury duty must be free to perform this civic duty. No adverse employment action shall occur because of employee use of civil leave for this purpose. Employees serving on a jury must receive their full pay and must not have any leave time charged to either annual leave or compensatory leave.

For those LDSS who have established rotational shifts, as required by the Code of Virginia [§ 18.2-465.1](#), employees who appear for jury duty for four or more hours in one day, including travel time, will not be required to start a work shift that begins on or after 5:00 p.m. on the day of that service or that begins before 3:00 a.m. on the day following the jury duty.

PROVISIONS FOR CRIME VICTIMS

An LDSS shall allow an employee who is a victim of a crime to be present at all criminal proceedings relating to a crime against the employee, as long as the employee provides the agency with a copy of the form presented to the employee by the law enforcement agency pursuant to the Code of Virginia [§ 19.2-11.01](#) and, if applicable, provides the agency a copy of the notice of each scheduled criminal proceeding that is presented to the employee as victim.

1. Paid civil Leave shall apply when the employee's presence at legal proceedings is compelled by subpoena or summons.
2. Employees may use existing annual, compensatory, special duty, or family and personal leave balances for court proceedings that do not qualify for paid leave; however, the LDSS must provide LWOP, if requested.
3. Annual and "traditional" sick leave will not accrue in any pay period in which an employee takes unpaid civil which places them in a LWOP status.
4. The LDSS may limit the paid or unpaid leave if the employee's absence creates an undue hardship for the agency. The LDSS is encouraged to contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) prior to deciding what situations might qualify as an undue hardship.

COMPENSATION

REIMBURSEMENTS

Per Code of Virginia [§ 17.1-618](#), every person summoned as a juror in a civil or criminal case shall be entitled to \$50 for each day of attendance upon the court for expenses of travel incident to jury service and other necessary and reasonable costs as the court may direct. Jurors summoned from another political subdivision pursuant to [§ 8.01-363](#) may be allowed by the court, in addition to the above allowance, their actual expenses.

Employees are permitted to keep any money received from the court while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the mileage reimbursement equivalent).

Per the Code, there are instances where the amount may be higher than \$50 if the employee is required to go to another locality for the court appearance, and lodging is required.

COMPENSATION RECEIVED FROM THE COURT

Employees who receive compensation from the court for services rendered while on civil leave (e.g., expert witness fees, etc.) must report such compensation to the LDSS. The hours taken may not be charged to civil leave. However, the employee may use accrued annual leave or LWOP for the hours of compensated service.

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SECTION VIII: EDUCATIONAL LEAVE

GENERAL INFORMATION

Educational leave is available to all LDSS employees and is provided to support employees' self-development through the pursuit of formal educational opportunities relating to their career with the LDSS.

USE OF EDUCATIONAL LEAVE

1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the LDSS director providing the following information:
 - a. The name, location, and dates of attendance of the course or program.
 - b. How the employee's completion of this course or program will benefit the LDSS.
 - c. The suggested means to execute the employee's duties during the absence.
2. An employee may be granted educational leave for a specific course(s) of study related to the work of the LDSS, provided reasonably adequate provisions can be made for the performance of the employee's assigned duties.
3. Educational leave may be granted with or without pay. Educational leave granted with pay shall not be granted for longer than three (3) months.
4. LDSS granting educational leave without pay must follow the policies in [Section IV, "Leave without Pay \(LWOP\)"](#).
5. The LDSS may consider a schedule adjustment in lieu of granting leave.

RETURN FROM EDUCATIONAL LEAVE

1. An employee returning from educational leave with pay will be placed in his/her former position.
2. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position.
3. The employee shall be given credit for the period of educational leave when determining an increase to the annual leave accrual rate.
4. The LDSS is under no obligation to hold a position vacant during the period of educational leave without pay. See Section IV, LWOP, ["Reasons Where Job Restoration is not Guaranteed,"](#) for more information.

EDUCATIONAL PURSUITS REQUIRED BY THE LDSS

Educational leave shall not be used if attendance in a course of study, a seminar, or conference is required by the LDSS. The hours in attendance count as hours worked and the employee is to receive his/her regular rate of pay.

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SECTION IX: ADMINISTRATIVE LEAVE

GENERAL INFORMATION

The administrative leave policy applies to all LDSS employees and relates to the procedures of granting leave for the performance of non-work activities away from the LDSS in specific circumstances.

USE OF ADMINISTRATIVE LEAVE

Administrative leave with or without pay may be granted by the LDSS for employees who are away from the worksite performing non-work activities. Administrative leave is not an entitlement, and its use is purely discretionary on the part of the LDSS. LDSS granting administrative leave without pay must follow the policies in [Section IV, "Leave without Pay \(LWOP\)"](#).

A LDSS may place an employee on administrative leave with pay when:

1. The LDSS is investigating the employee for misconduct, and the LDSS has not determined whether discipline is warranted.
2. Other legitimate LDSS reasons.

The LDSS is strongly encouraged to contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) prior to placing an employee on administrative leave.

BENEFITS WHILE ON ADMINISTRATIVE LEAVE WITH PAY

An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled, including earned annual and sick leave. Administrative leave with pay does not count as hours worked for the purposes of overtime.

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SECTION X: LEAVE SHARING PROGRAM

GENERAL INFORMATION

An LDSS may establish a leave sharing program that fits the needs of both the LDSS and its employees. The following are suggested procedures for the implementation of such a program. If created, the leave sharing program applies to all LDSS employees in either regular or restricted positions. Contact the [VDSS Local HR Support Team](#) for additional guidance.

PURPOSE

The purpose of establishing a leave sharing program for the LDSS is to assist employees with leave in relation to their own “serious health condition,” the “serious health condition” of an employee’s immediate family member, or parental care, as defined in the [Family and Medical Leave Act Policy](#). Employee leave requests must only be for these reasons. However, employees do not have to be eligible for FMLA to receive leave donations under the leave sharing program. For instance, employees may still request leave for the conditions described above even if they have exhausted the allotted twelve (12) week/480 hours of FMLA leave or if they have not yet met the [FMLA eligibility timeframe](#).

ELIGIBILITY

EXHAUSTION OF PAID LEAVE BALANCES

An employee who desires to receive donated leave must have used **all** paid leave that is available for such absences (e.g., annual, sick, compensatory, special duty).

CERTIFICATION OF HEALTH CARE PROVIDER

FMLA-Eligible Employees

An employee is not eligible for donated leave until the employee has provided the [required documentation](#) to establish the qualification for FMLA leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for FMLA leave.

FMLA-Ineligible Employees

In situations where the employee is requesting a leave donation and is ineligible to receive FMLA, the employee is still required to provide adequate documentation from a health care provider to substantiate the need for the request. It is not recommended that the LDSS provide FMLA forms for employees who are not eligible to receive FMLA. The LDSS may develop an agency health care provider certification form for FMLA-ineligible employees. Contact either the locality HR representative or attorney or the [VDSS Local HR Team](#) for additional guidance with creating the form.

DISQUALIFYING ABSENCES

Employees in the following categories are ineligible for leave sharing donations:

1. Employees who are on a disciplinary suspension,
2. Employees who are absent for leave for reasons that fall under the [Virginia Worker's Compensation Act](#) (regardless of whether benefits have been received under the Act),
3. Employees who are absent because of an injury or illness that is deliberately self-inflicted.
4. Employees who are absent because of an injury or illness which occurred while the employee was engaging in an unlawful act.

WAITING PERIOD

While employees are not required to be FMLA-eligible to participate in the leave sharing program, an LDSS may establish its own waiting period for employees to be eligible to participate in the program.

REQUEST/APPROVAL FORM

Each LDSS participating in this program must develop a form on which the request for leave and the approval status may be documented. The form should be designed so that when the employee is physically or mentally unable to make the leave request, the request may be made on the employee's behalf.

STATUS WHILE ON DONATED LEAVE

An employee must be on leave without pay (LWOP) status to receive donated leave. Donated leave is intended to provide supplemental compensation only, and does not place the employee on the equivalent of paid leave status. Accordingly, the [LWOP policy benefit provisions](#) apply to this leave period.

DISCRETIONARY BENEFITS

In developing a policy on leave sharing, an LDSS may provide greater benefits than those allowed under the LWOP policy.

These augmented benefits may include:

1. **Health Benefits:** The LDSS may pay out of local funds its portion of the health care premium for up to twelve (12) months, inclusive of the health care premium payments required under FMLA.
2. **Payroll Deductions:** Federal and state withholding payments will be deducted from the compensation that the employee receives due to leave sharing. Voluntary payroll deductions may continue while an employee is receiving leave share donations provided that the compensation that the employee receives is sufficient to cover the cost of the payments.

LEAVE BANK REQUIREMENTS

Each LDSS providing a leave sharing program has discretion to structure the program based on its needs. However, **annual leave** is the only leave that may be donated to the leave bank.

ANNUAL LEAVE DONATIONS

Annual leave may be donated in the following ways:

1. Annual leave that will be lost if not used by the end of the year.
2. Annual leave that is within the maximum accrual amount.
3. A fixed amount per donation or per year, per employee.
4. No limitations on amount or timing of donated leave.

ESTABLISHING A LEAVE BANK

There are three (3) types of leave banks that may be established:

1. A non-designated leave bank which permits donating to a pool to be used by any eligible employee.
2. Donation to a designated employee of the LDSS.
3. A combination of the above.

RETURNING A LEAVE DONATION

If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is more than the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in either:

1. Reverse order of the receipt of donations.
2. A prorated amount per donor.

RECLAIMING LEAVE

Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.

PENALTIES FOR ABUSE

Founded complaints of policy abuse require the employee to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay. Additionally, the employee may be subject to disciplinary action up to and including termination of employment.

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PART II: FAMILY & MEDICAL LEAVE ACT

POLICY STATEMENT

The Virginia State Board of Social Services establishes this policy to ensure LDSS are compliant with the Family and Medical Leave Act (FMLA). Part II of this chapter describes the requirements for obtaining leave under the FMLA.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:

Per [§ 22VAC40-675-50](#) of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to the locality policy, provided the deviation is approved by the [VDSS HR Policy Team](#) (hr.employeerelations@dss.virginia.gov) as being in substantial conformity with this policy.

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SECTION I: ELIGIBILITY & QUALIFICATIONS FOR FAMILY & MEDICAL LEAVE

GENERAL INFORMATION

This policy provides the eligibility requirements and procedures for the use of leave in accordance with the Family and Medical Leave Act (FMLA) and applies to all LDSS employees who meet the eligibility requirements set forth by the FMLA.

FMLA leave is **unpaid leave**. The LDSS may require, or employees may request, paid leave to run concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate, under each leave policy for absences covered under the FMLA. The LDSS may designate such leave as FMLA leave if the conditions set forth in this policy are met.

For instances where paid leave is not required or unavailable, please refer to [Part I - Section IV, "Leave without Pay \(LWOP\)."](#) This section provides information on job restoration when returning from FMLA, and the impact of leave without pay (LWOP) on employee benefits.

RESOURCES

The LDSS may need additional support during the FMLA process.

1. For questions about the impact to benefits, it is recommended that the LDSS or the employee contact the locality.
2. For general questions about eligibility or interpretation of the Family and Medical Leave Act, contact the [VDSS Local HR Support Team](#).
3. For more complicated matters (second or third opinions, failure to return to work, intersection with other federal laws, etc.), contact the locality HR representative or attorney.
4. The Department of Labor (DOL) has a [Family Medical Leave Act Advisor tool](#) that may also be helpful in addressing questions and issues relating to the determination of eligibility and certification.

ELIGIBILITY

To be eligible to take FMLA leave, the following criteria must be met by full-time and part-time employees:

1. The employee must have been employed by the LDSS for a total of at least twelve (12) consecutive or non-consecutive months in the past seven (7) years.
2. The employee must have worked at least 1,250 hours as hours worked for the twelve (12) months immediately preceding the first day of the requested leave (paid leave is not counted).

3. Employees returning from military service who request FMLA leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for the employer during the year to determine if they meet the 1,250-hour requirement in the determination of their eligibility for FMLA leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). See [Part I - Section V, "Military Leave,"](#) for additional information.
4. Twelve (12) weeks of FMLA leave must not have been used in the current twelve (12) month period. The LDSS local board and local director may choose from any of the following options to establish how the twelve (12) month period is calculated.
 - a. Calendar Year
 - b. Fiscal Year
 - c. Another Fixed Twelve (12) Month Period
 - d. Rolling Twelve (12) Month Period – A ‘rolling’ period looks back from the date the leave was requested.
5. The LDSS local board and local director reserve the right to change how the FMLA leave is calculated as long as:
 - a. Employees are provided with a minimum of sixty (60) days’ notice of the change, and
 - b. The transition takes place in such a way that the employees retain the full benefit of twelve (12) weeks of leave under whichever method affords the greatest benefit to the employee.

Under no circumstances may a new calculation method be implemented to avoid the FMLA's leave requirements.

For part-time employees, the amount of FMLA leave will be equivalent to twelve (12) times their normal workweek, not to exceed twelve (12) weeks.

QUALIFYING REASONS

Eligible employees may take up to twelve (12) weeks of unpaid FMLA leave per the established twelve (12) month period of the LDSS for the following reasons:

1. A serious health condition that renders the LDSS employee unable to perform any one of the essential functions of his/her position.
2. A serious health condition of an LDSS employee’s family member, defined by the FMLA as a spouse, son, daughter, or parent who is unable to care for him/herself.



Helpful Hints: FMLA Intersection with Other Federal Laws

There are two additional federal laws, the Americans with Disabilities Act (ADA) as amended, and the Pregnant Workers Fairness Act (PWFA), that may require the employer to grant leave to employees as a reasonable accommodation. A qualifying request to approve leave under the FMLA may also be a qualifying reason under the ADA or PWFA. Please see [Section VI; FMLA & Other Federal Laws](#) for more information.

3. The birth of a child (to be taken within twelve (12) months of the child's birth).
4. The placement of a child with the employee for adoption or foster care (to be taken within twelve (12) months following date of placement).

Qualifying reasons for employees seeking military family leave under the FMLA are addressed in [Section III, "FMLA Military Leave Entitlements"](#).

RESTRICTIONS ON USAGE

1. Parental Leave
 - a. Leave taken for the birth or placement of a child must be used within the twelve (12) months following the birth or placement.
 - b. A combined total of twelve (12) weeks of FMLA Leave will be provided in the event both parents work for the LDSS.
2. FMLA leave is not cumulative. Unused leave cannot be carried over to the next twelve (12) month period.
3. FMLA may not be used for short-term conditions for which treatment and recovery are brief.
4. When possible, employees are expected to schedule routine appointments during non-work hours. When it is not possible to schedule an appointment during non-work hours, employees should attempt to schedule appointments outside of peak times of operation for the agency.

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SECTION II: FMLA CERTIFICATION PROCESS

FMLA FORM ACCESS

IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the [DOL FMLA Forms](#) website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear *in italicized type* to prompt the reader to access the DOL site. A link to the DOL FMLA Forms site will appear in the paragraph where the forms are listed.

REQUEST FOR INITIATION OF FMLA

ADVANCE NOTICE & APPROVAL

Employees are required to notify their supervisor of the need for [FMLA-qualifying leave](#) at least thirty (30) calendar days in advance of the absence, or as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, chronic conditions requiring regular or routine medical appointments, pregnancy, and childbirth.

LDSS INITIATION OF FMLA UNDER CERTAIN CIRCUMSTANCES

The LDSS must initiate the FMLA process for an [FMLA-eligible employee](#) as soon as there is enough information indicating the employee's need for leave may be for an FMLA-qualifying reason. The LDSS must also accept notice from an employee's family member if the employee is unable to provide the notice.

Please see [Section VI, "FMLA & Other Federal Laws,"](#) to determine if the employee's request may also qualify under the Americans with Disabilities Act (ADA) as amended, or the Pregnant Workers Fairness Act (PWFA).

NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES

The LDSS is required to provide the employee with the *Notice of Eligibility and Rights & Responsibilities (Form WH-381)* within five (5) business days of the receipt of the request for leave under the FMLA. [DOL FMLA Forms](#).

DESIGNATION NOTICE

Once the *Notice of Eligibility and Rights & Responsibilities (Form WH-381)* is completed and returned, the LDSS must inform the employee within five (5) business days whether the leave will be designated as

FMLA. This determination must be provided to the employee using the *Designation Notice (Form WH-382)*. [DOL FMLA Forms](#).

CERTIFICATION PROCESS

This subsection covers a more common, full-time FMLA certification process. Subsection F. addresses intermittent FMLA leave requests and Subsection G. addresses the military certification process.

INITIAL REQUEST

Employee Responsibility: Certification of a Health Care Provider

All requests for FMLA leave must be supported by either of the following forms ([DOL FMLA Forms](#)):

- Certification of a Health Care Provider for Employee's Serious Health Condition (Form WH-380-E)
- Certification of Health Care Provider for a Family Member's Serious Health Condition (Form WH-380-F)

Once the LDSS provides the employee with the appropriate form, the LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification.

It is the discretion of the LDSS to extend the timeframe if reasonable circumstances prevent the employee from meeting the fifteen (15) calendar day deadline (i.e., inability to get an appointment with a health care provider within fifteen (15) calendar days, delay by the *health care provider* on the return of the certification form, etc.). All timeframe extensions should be documented.

LDSS Responsibility: Response to Employee Request

1. The LDSS must respond to the employee's request for FMLA leave on the *Designation Notice (Form WH-382)*. [DOL FMLA Forms](#).
2. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request, or within five (5) business days of receiving all the required documentation from the employee.
3. The LDSS may conditionally approve absences as FMLA leave without a request from the employee.
4. The LDSS may designate up to (5) business days prior to the date of designation as retroactive FMLA leave.

Intention to Return to Work

The LDSS may require an employee to report periodically on his/her status and intent to return to work.

SECOND & THIRD OPINIONS

In cases where the LDSS has reasonable doubt about the validity of the employee's certification, the LDSS may require the employee to obtain the opinion of a second healthcare provider. A third opinion may be required if the first and second opinion differ. The third opinion is final and binding.

The DOL has specific requirements related to the selection of the health care provider in each instance and how expenses are covered. It is strongly recommended that the LDSS work with the locality HR representative or attorney if there is a need to request a second or third opinion. The DOL also has a [Family Medical Leave Act Advisor](#) tool that may be helpful in addressing questions relating to requiring a second or third opinion.

INTERMITTENT LEAVE

When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full-time employees. **The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave.**

ADVANCED APPROVAL FOR CARE OF A NEWBORN OR RECENTLY PLACED CHILD

An employee may take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. **Advance approval must be granted.** This does not apply if the leave is taken because of the serious health condition of the child.

REASSIGNMENT DURING INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE

When an intermittent leave or a reduced leave schedule is granted, the LDSS may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. The alternative position must have equivalent pay and benefits; however, the position does not have to have equivalent duties.

RETURNING FROM LEAVE

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the [VDSS Local HR Support Team](#) or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

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SECTION III: FMLA MILITARY LEAVE ENTITLEMENTS

GENERAL INFORMATION

The purpose of this section is to provide the qualification and certification process for specific military leave entitlements for *family members* of either covered service members or veterans under the FMLA:

1. Military caregiver leave
2. Leave for a qualifying exigency

IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the [DOL FMLA Forms](#) website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear *in italicized type* to prompt the reader to access the DOL site. A link to the DOL FMLA site will appear in the paragraph where the forms are listed.

MILITARY CAREGIVER LEAVE

An eligible employee is entitled to receive up to twenty-six (26) weeks of unpaid leave during a single twelve (12) month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member. The single twelve (12) month period commences the first day leave is taken to care for the covered service member and expires twelve (12) months later.

Note: An eligible employee is entitled to a combined total of twenty-six (26) weeks of unpaid leave during a single twelve (12) month period. This includes twelve (12) weeks of FMLA leave for any FMLA qualifying reason. For example, an eligible employee may take sixteen (16) weeks of family and medical leave to care for a covered service member and ten (10) weeks of family and medical leave to care for a newborn child.

MILITARY CAREGIVER LEAVE CERTIFICATION PROCESS

An FMLA request for military caregiver leave must be supported by one of the following forms ([DOL FMLA Forms](#)):

- *Military Caregiver Leave of a Current Servicemember (Form WH-385)* – use when requesting leave to care for a family member who is a current servicemember with a serious injury or illness.

Chapter 4: Leave & Related Areas

- *Military Caregiver Leave of a Veteran (Form WH-385-V)* – use when requesting leave to care for a family member who is a covered veteran with a serious injury or illness.

The LDSS may also require:

1. Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any.
2. Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration.
3. A statement of appropriate facts regarding the servicemember's health condition sufficient to support the need for FMLA leave.
4. Information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed.
5. If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care.
6. The employee's name, the name of the covered servicemember, and the employee's relationship to the servicemember.
7. Information on the servicemember's branch, rank, and unit assignment, or the veteran's date and type of separation.

TIMEFRAMES FOR CERTIFICATION & APPROVAL

The timeframes are the same as the full-time FMLA leave certification process discussed in [Section II, "FMLA Certification Process."](#)

1. The LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification; and
2. Approval or denial of FMLA leave requests must be given within five (5) **business** days of receiving the request, or within five (5) **business** days of receiving all of the required documentation from the employee.

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the [VDSS Local HR Support Team](#) or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

QUALIFYING EXIGENCY

A qualifying exigency occurs when a military member is on, called to, or notified of “covered active duty.” Covered active duty occurs when:

- An LDSS employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces and is deployed to a foreign country.
- An LDSS employee whose spouse, son, daughter, or parent is a member of the National Guard or Reserves who has been notified and ordered to active duty in support of a contingency operation.

When an LDSS employee’s military family member is on “**covered active duty**,” any of the following categories are qualifying exigencies (examples are not all-inclusive):

1. **Short-notice deployment:** Notification of a deployment in seven (7) or fewer calendar days prior to the deployment.
2. **Military events and related activities:** Official ceremonies, programs, informational events or briefings, military family support or assistance programs, etc.
3. **Childcare and related activities**¹: Arranging childcare; providing emergency, non-routine childcare; transferring a child to a new school, etc.
4. **Care of the military member’s parent**²: Arranging alternative care; providing emergency, non-routine care; transfer to a new care facility; meeting with facility staff, etc.
5. **Financial and legal arrangements:** Preparing or executing powers of attorney, enrollment in DEERS, obtaining military ID cards, etc.
6. **Attending counseling:** Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
7. **Rest and recuperation:** Taking up to fifteen (15) calendar days of leave to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment. The employee’s leave for this reason must be taken while the military member is on rest and recuperation leave.
8. **Post-deployment activities:** Certain post-deployment activities within ninety (90) days of the end of the military member’s covered active duty (e.g., attending arrival ceremonies, reintegration briefings and events, etc.). Post-deployment activities also include addressing issues arising from the death of a military member, including attending the funeral.
9. **Other events:** Any other event that the employee and employer agree is a qualifying exigency.

¹ The child does not have to be related to the LDSS employee but must be the child of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

² The parent does not have to be related to the LDSS employee but must be the parent of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

QUALIFYING EXIGENCY CERTIFICATION PROCESS

Qualifying exigency leave allows an employee to take up to a total of twelve (12) workweeks of FMLA leave for qualifying exigencies.

An FMLA request for a qualifying exigency must be supported by the following form ([DOL FMLA Forms](#)):

- *Certification of Qualifying Exigency for Military Family Leave (Form WH-384)*

The LDSS may also require:

1. A copy of the military member's active-duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active-duty status.
2. A statement or description of the appropriate facts regarding the qualifying exigency.
3. The approximate date on which the leave began (or will begin).
4. The contact information for any third party the employee is meeting. The LDSS may confirm the nature of the meeting but may NOT request additional information from the contact.

TIMEFRAMES FOR CERTIFICATION & APPROVAL

The timeframes are the same as the full-time FMLA leave certification process discussed in [Section II, "FMLA Certification Process."](#)

1. The LDSS must give the employee at least fifteen (15) **calendar** days to provide the certification; and
2. Approval or denial of FMLA leave requests must be given within five (5) **business** days of receiving the request, or within five (5) **business** days of receiving all the required documentation from the employee.

JOB RESTORATION

An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the [VDSS Local HR Support Team](#) or the locality HR representative or attorney with questions regarding job restoration.

Key Employees

Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.

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SECTION IV: FMLA RECORDS MANAGEMENT & IMPACT ON EMPLOYEE BENEFITS

FMLA RECORDS MANAGEMENT

LDSSs must make, keep, and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three (3) years and must include the information listed below:

1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
2. Leave designated as FMLA, both paid and unpaid, and the dates leave was taken. FMLA leave taken in increments of less than a day must be noted by the hour.
3. Copies of employee's notices of leave furnished to agency.
4. Any documents (written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves.
5. Records of premium payments.
6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement.
7. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employee's family members are to be maintained in separate files/records and treated as confidential medical records except:
 - a. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations.
 - b. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
 - c. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

LDSSs should contact the [VDSS HR Policy Team \(hr.employeerelations@dss.virginia.gov\)](mailto:hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney prior to releasing any records. Refer to **Chapter 8** of the [LDSS Administrative/HR Manual](#) for more information on maintaining files on confidential information.

FMLA IMPACT ON EMPLOYMENT BENEFITS

The locality benefits administrator should be the primary contact for specific questions about the impact of FMLA on employee benefits.

HEALTH CARE COVERAGE

1. During any FMLA leave, the employee's participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period.
2. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave.
3. The failure to make timely premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed.
4. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work because of:
 - a. The onset, recurrence, or continuation of serious health conditions that would have entitled the employee to FMLA leave; or
 - b. Other circumstances beyond the employee's control.

OTHER BENEFITS

1. Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay (LWOP).
2. LWOP must be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee's years of service may be affected by such absence.

See [Part I - Section IV, "Leave Without Pay \(LWOP\),"](#) for more information.

Workers' Compensation & FMLA

When a workers' compensation-qualified injury causes an absence that would otherwise qualify under the FMLA, both leaves may run concurrently and count towards FMLA leave.

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SECTION V: FMLA & OTHER LAWS

GENERAL INFORMATION

Under the FMLA, covered employers may be required to grant leave to an employee in [specific circumstances](#). However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation. If you have any questions or need assistance regarding the interaction of these federal laws, please contact the [VDSS Employee Relations Team \(hr.employeerelations@dss.virginia.gov\)](mailto:hr.employeerelations@dss.virginia.gov) or the locality HR representative for guidance.

THE AMERICANS WITH DISABILITIES ACT (ADA) AS AMENDED

Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities. The requirement relates to three (3) aspects of employment:

1. Ensuring equal opportunity in the application process.
2. Enabling a qualified individual with a disability to perform the essential functions of a job.
3. Making it possible for an employee with a disability to enjoy equal benefits and privileges of employment¹.
4. Employers consider possible reasonable accommodations for an employee's request by engaging with the employee during what is referred to as the "interactive process." Like an employer's responsibility to initiate the FMLA process when they become aware of the employee's need, employers have a legal obligation to initiate the interactive process when they become aware of an employee's need for an accommodation due to a disability. See "[Helpful Hints - The Job Accommodation Network \(JAN\)](#)" for more information on providing reasonable accommodation under the ADA.

THE PREGNANT WORKERS FAIRNESS ACT (PWFA)

The PWFA took effect in 2023 and is intended to fill in the gaps between Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA); the ADA; and the FMLA. The PWFA differs from the PDA, which focuses on the protection of pregnant employees from discrimination. The PDA did not impose specific accommodation requirements that can assist pregnant employees with the performance of their job duties. Under the PWFA, employees can request accommodation requirements.

¹ [42 U.S.C. § 12112](#).

ANALYSIS OF REQUESTS FOR LEAVE

REQUESTS FOR LEAVE UNDER THE ADA & PWFA

1. Requests for leave under either the ADA or PWFA should be made directly to the employee's supervisor. LDSS are encouraged to develop request forms. Sample forms may be found on the [Job Accommodation Network \(JAN\)](#).
2. When engaging in the interactive process, the LDSS may consider and present other options for accommodation outside of a request for leave. These may include, but are not limited to:
 - a. Making modifications to an employee's workspace.
 - b. Modifying a work schedule to allow shorter hours or a later start time.
 - c. Granting additional, longer, or more frequent breaks.
 - d. Making exceptions to food and drink policies.
 - e. Providing closer parking.
 - f. Allowing intermittent leave for medical appointments.
 - g. Providing a temporary reassignment.
 - h. Allowing telework.
3. Like FMLA, leave approved as a reasonable accommodation under the ADA or PWFA is **unpaid leave**.
4. There is **no waiting period for eligibility or an hours-worked requirement** for leave granted under the provisions of the ADA or the PWFA.
5. Employee requests for these leaves may intersect with employee eligibility under FMLA and vice versa. FMLA may also run concurrently with either the ADA or the PWFA.

Establishing a Maximum Leave Policy

Leave requested as a reasonable accommodation under the ADA or PWFA does not have a specific timeframe like leave granted under the FMLA. The LDSS local board and local director may establish a maximum leave allowance for leave approved as a reasonable accommodation under the ADA or PWFA. However, in cases where a maximum leave policy exists, the ADA requires the employer to consider extending leave beyond the maximum leave allowed by policy when additional leave is needed due to a disability-related reason. The same flexibility is recommended for reasonable requests for additional leave beyond the maximum amount in relation to leave approved under the PWFA.

IMPORTANCE OF ANALYSIS

The FMLA, ADA, and PWFA have distinct differences. When an employee submits a request, and it is unclear to the LDSS if more than one of these laws applies, a separate analysis of the request in relation to each law must be conducted to determine employee eligibility.

The LDSS ***must*** reach out to either the locality HR representative or attorney or the [VDSS Employee Relations Team](#) when:

1. There is no formal request from an employee, but there is awareness that an employee may require assistance under either the FMLA, ADA, or PWFA.

2. An employee requires assistance, but there are questions about the potential intersection of the FMLA, ADA, and PWFA in addressing the employee's needs.
3. A determination needs to be made as to whether an employee's request for accommodation qualifies as an "undue hardship". **Note:** The employer must show that the employee's request for accommodation would cause *significant* difficulty or expense to deny the request as an undue hardship.



Helpful Hints: The Job Accommodation Network (JAN)

The [Job Accommodation Network \(JAN\)](#) helps employers recognize the valuable contributions that qualified workers with disabilities add to the workforce by providing accommodation solutions, trusted strategies, and practical guidance on the Americans with Disabilities Act (ADA) as amended.

This site offers:

- ◆ Assistance specific to state and local government.
- ◆ An ADA Library to assist with understanding the ADA's history and most recent amendments.
- ◆ An Accommodation Search database with hundreds of recommendations for possible accommodations.
- ◆ Links to different publications and articles on a number of disabilities, including the "Accommodation and Compliance Series" where JAN discusses specific disabilities and how they may be accommodated in detail.

While JAN does not specifically address the PWFA, JAN does offer accommodation solutions for pregnancy in relation to the ADA. A thorough analysis of the employee's request may be required to understand which federal law(s) and accommodation options apply. It's always a best practice to reach out to the locality HR or attorney or the [VDSS Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) for assistance in these situations.

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PART III: WORKERS' COMPENSATION

POLICY STATEMENT

The Virginia State Board of Social Services establishes a worker's compensation policy to ensure LDSS employees are aware of the benefits that may be available to them under the Virginia Workers' Compensation Act (VWCA), and to establish the responsibilities of an LDSS employee who is injured or becomes ill because of carrying out the duties of his/her job. Employees may be eligible for benefits under the VWCA if they sustain a compensable injury by accident, suffer from occupational disease¹, or a compensable ordinary disease of life².

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.

Additional Information:

The workers' compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to [Title 65.2. Workers' Compensation](#) of the Code of Virginia.

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¹ [§ 65.2-400](#). "Occupational disease" defined

² [§ 65.2-401](#). "Ordinary disease of life" coverage

SECTION I: WORKERS' COMPENSATION

GENERAL INFORMATION

The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the [VWCC home page](#).

BENEFITS TO WHICH AN EMPLOYEE MAY BE ENTITLED

Once an employee has a compensable injury or illness, the following benefits may be available:

WAGE REPLACEMENT

An employee who suffers an injury or occupational disease may be entitled to wage loss benefits, as set forth under the VWCA, if the employee is temporarily unable to return to regular employment and suffers a wage loss because of that disability.

MEDICAL BENEFITS

Under the VWCA, an employee may be entitled to lifetime medical benefits for treatment that is reasonable, necessary, and causally related to the work-related injury or disease as set forth and authorized under the VWCA.

PERMANENT PARTIAL DISABILITY BENEFITS

An employee may be entitled to compensation for permanent loss of use of a "scheduled" body part as set forth under the VWCA.

ACCESSING BENEFITS UNDER THE VWCA

The workers' compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to [Title 65.2. Workers' Compensation](#) of the Code of Virginia.

RESPONSIBILITIES OF AN INJURED EMPLOYEE

Chapter 4: Leave & Related Areas

1. Once an injury has occurred, the employee must notify the employer (the locality) ***immediately***¹. The LDSS is required to complete the accident report, not the employee.
2. The employee must choose a treating physician from a panel of at least three (3) physicians which will be provided by the LDSS.
3. If the employee is released to “light duty work,” he or she must accept “light duty work,” if offered, by the LDSS.
4. If “light duty” employment is not offered by the LDSS, the employee must seek his own employment within his light duty restrictions.

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¹ [§ 65.2-600](#). Notice of an accident.

GLOSSARY:

PART I: TYPES OF LEAVE

1. Accrual Rate: The amount of leave an employee earns per pay period based on the employee's number of years of service with the LDSS and the agency's workweek schedule (40, 37.5, or 35 hours).
2. Administrative Leave: A type of leave granted by the LDSS for employees who are away from the worksite performing non-work activities. Administrative leave is not an entitlement, and its use is purely discretionary on the part of the LDSS. An LDSS may place an employee on administrative leave with pay when the LDSS is investigating the employee for misconduct, and the LDSS has not determined whether discipline is warranted; or other legitimate LDSS reasons.
3. Annual Leave: A leave entitlement providing employees with a specific number of hours on a per-pay-period basis that the employee may use for any reason to be absent from work still receiving pay; advance approval is required. Annual leave accrues on a per-pay-period basis and is calculated based on an employee's number of years of service and the agency's workweek schedule (40, 37.5, or 35 hours). Maximum carryover amounts apply.
4. Bereavement Leave: Approved paid time away from work for the loss of a family member. LDSS employees may use either annual or sick leave for this purpose.
5. Break in Service: A separation from work for more than thirty (30) days where the employee is not on approved leave.
6. Change in Status: Leaving employment with an LDSS for any reason, including termination or voluntary resignation; or a demotion, promotion, suspension, etc.
7. Civil Leave: Approved paid time away from work granted for court proceedings; participation in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS; participation in a workers' compensation hearing, unemployment compensation hearing, or administrative proceeding involving the employee or another employee within the LDSS; or approved service on governmental councils, boards, commissions, or committees.
8. Educational Leave: Approved time away from work (paid or unpaid) to support employees' self-development through the pursuit of formal educational opportunities relating to their career with the LDSS.
9. Family and Personal Leave Credit: A leave credit entitlement under the LDSS Disability Leave Program providing employees with a specific number of days at the beginning of the leave year⁹ that the employee may use for any reason to be absent from work while still receiving pay. Family and personal leave credits do not accrue and are lost if unused within the leave year.

⁹ New LDSS employees, depending upon the date of hire (prior to or after July 1), may only receive half of the family and personal leave credit amount. However, they will receive the full amount at the beginning of the following leave year.

10. LDSS Disability Leave Program: A leave program created specifically for the Local Departments of Social Services to fill the need for a leave system to accompany the requirement for localities to offer an employer paid short- and long-term disability program. This program began on January 1, 2014, and it includes both sick leave (“hybrid”) and family and personal leave credits that are available to LDSS employees under certain circumstances.
11. Leave Bank: Applies to a leave sharing program; a pooled fund of annual leave donated by LDSS employees.
12. Leave Credit: Applies to the LDSS Disability Leave Program; fixed leave amounts received that do not accrue or carry over from year to year. Employees must use leave credits within the leave year they are received, or they will be lost.
13. Leave Sharing Program: An optional program that may be implemented by the LDSS where employees may pool annual leave for use by their fellow employees who have exhausted all forms of paid leave and need time away from work for a “serious health condition” affecting them or their immediate family members, or for parental care.
14. Leave without Pay (LWOP): Unpaid leave granted to LDSS employees when certain conditions are met.
15. Maximum Carryover: Applies to annual leave; the maximum amount of accrued leave an LDSS employee may carryover from year to year.
16. Military Leave: Leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees’ job restoration rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and [§§ 44-93](#) and [44-93.1](#) of the Code of Virginia.
17. Prorate: Dividing leave accrual amounts in a proportional way, based on time. Proration is required when determining leave accrual amounts for part-time employees of the LDSS, and when determining leave accrual amounts, maximum carryover, etc., for any agency workweek schedule **less** than forty (40) hours per week (37.5 or 35 hours).
18. Sick Leave Credit (Hybrid): A leave credit entitlement under the LDSS Disability Leave Program providing employees with a specific number of days at the beginning of the leave year¹⁰ that the employee may use in specific circumstances to be absent from work while still receiving pay. “Hybrid” sick leave credits may only be used for an employee’s own illness, or under certain circumstances, the illness of a family member. “Hybrid” sick leave credits do not accrue and are lost if unused within the leave year.
19. Sick Leave (Traditional): A leave entitlement providing employees with a specific number of hours on a per-pay-period basis that the employee may use in specific circumstances to be absent from work while still receiving pay. “Traditional” sick leave may only be used for an employee’s own illness or injury, or under certain circumstances, the illness/injury of a family member. “Traditional” sick leave accrues on a per-pay-period basis and is calculated based on an employee’s number of years of service and the agency’s workweek schedule (40, 37.5, or 35 hours). Maximum carryover amounts do not apply to “traditional” sick leave accrual.

¹⁰ New LDSS employees, depending upon the date of hire (prior to or after July 1), may only receive half of the “hybrid” sick leave credit amount. However, they will receive the full amount at the beginning of the following leave year.

20. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA): A federal law, passed in 1994, that protects military servicemembers and veterans from employment discrimination based on their service, and allows them to regain their civilian jobs following a period of uniformed service. USERRA applies to members of the Armed Forces, Reserves, National Guard, and other “Uniformed Services” (including the National Disaster Medical System and the Commissioned Corps of the Public Health Service). The law ensures that service members (1) are not disadvantaged in their civilian careers because of their military service; (2) are promptly re-employed in their civilian jobs upon return from duty; and (3) are not discriminated against by employers because of past, present, or future military service. USERRA applies to both public and private employers.

PART II: FAMILY & MEDICAL LEAVE ACT

1. Americans with Disabilities Act (ADA) as Amended: A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination on the basis of disability in all aspects of employment; and regulates medical examinations and inquiries.
2. Child (FMLA): A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age eighteen (18) or be age eighteen (18) or older and incapable of self-care because of a mental or physical disability.
3. Covered Servicemember (FMLA): A current servicemember or a recent veteran.
4. Employment Benefits (FMLA): All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.
5. Equivalent Position (FMLA): One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility, and authority.
6. Family Member (FMLA): A child, spouse, or parent.
7. Family and Medical Leave Act (FMLA): A federally mandated program that was signed into law on February 5, 1993; and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee’s family member or for adoption, placement, or the birth of a child; or up to twenty-six (26) weeks of unpaid leave to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.
8. Health Care Provider (FMLA): The FMLA defines “health care provider” as:

Chapter 4: Leave & Related Areas

- a. A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or
- b. Any other person determined by the Secretary to be capable of providing health care services. Others “capable of providing health care services” include only the following categories of medical professionals as they perform services within the scope of their practice as defined under state law:
 - a. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist).
 - b. Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants.
 - c. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.
 - d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
 - e. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

The phrase “authorized to practice in the state” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

- 9. Incapacity (FMLA): The inability to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition.
- 10. Interactive Process (ADA/PWFA): The Job Accommodation Network (JAN) defines the interactive process as a collaborative process where employers and employees with disabilities who request accommodations work together to come up with accommodations.
- 11. Intermittent Leave (FMLA): A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments.
- 12. Key Employees (FMLA): Employees who are among the highest paid 10% of the LDSS workforce.
- 13. Military Caregiver Leave (FMLA): Allows an eligible employee who is the spouse, child, parent, or “next of kin” of a covered servicemember with a serious injury or illness to use up to a total of twenty-six (26) workweeks of unpaid leave during a “single twelve (12) month period” to provide care for the servicemember.
- 14. Parent (FMLA): The biological, adoptive, step, or foster parent, or someone who stood in place of the parent to the employee when the employee was a child.
- 15. Pregnancy Discrimination Act (PDA): A federal statute that amended Title VII of the Civil Rights Act of 1964 to “prohibit sex discrimination on the basis of pregnancy.” The Act covers discrimination “on the basis of pregnancy, childbirth, or related medical conditions.”

16. Pregnant Workers Fairness Act (PWFA): A federal statute signed into law in 2023 that requires covered employers to provide “reasonable accommodations” to employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
17. Qualifying Exigency (FMLA): Occurs when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school related activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or a call to active-duty, provided that the employee and agency agree.
18. Reasonable Accommodation (ADA): A modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.
19. Reasonable Accommodation (PWFA): Changes to the work environment or the way things are usually done at work for pregnant female employees or female employees recovering from childbirth. The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations including the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities, or activities that involve exposure to compounds not safe for pregnancy.
20. Reduced Schedule (FMLA): A work schedule less than the usual number of hours worked per workweek or per workday.
21. Serious Health Condition (FMLA): An illness, injury, impairment, or physical or mental condition that involves inpatient care or either:
 - a. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - i. Treatment two (2) or more times within thirty (30) days by or under the supervision of a health care provider the first of which must occur within seven (7) days of the first day of incapacity; or
 - ii. One (1) treatment by a health care provider, within the first seven (7) days of incapacity, with a continuing regimen of treatment; or
 - b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
 - c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period, requires periodic visits to a health care provider at least twice a year,

and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

- d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

22. Twelve (12) Month Period (FMLA): Timeframe used for the purpose of calculating FMLA leave. An LDSS may use a calendar year, fiscal year, another fixed twelve (12) month period, or a rolling twelve (12) month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating FMLA leave.

PART III: WORKERS' COMPENSATION

The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the [VWCC home page](#). VDSS does not administer the workers' compensation process for the LDSS. Contact the locality benefits administrator or the VWCC directly for assistance.

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Part II: Family & Medical Leave Act (Policy Statement)	---	The Virginia State Board of Social Services establishes this policy to ensure LDSS are compliant with the Family and Medical Leave Act (FMLA). Part II of this chapter describes the requirements for obtaining leave under the FMLA.	New Section
Family and Medical Leave Act [FMLA] (Purpose)	This policy sets forth the requirements for obtaining leave under the Family and Medical Leave Act. More detailed information regarding the Family and Medical Leave Act (FMLA) can be found at the Department of Labor (DOL) FMLA website http://www.dol.gov/whd/fmla/index.htm .	---	Section Removed
Family and Medical Leave Act [FMLA] (Scope)	This policy applies to all employees who meet the eligibility criteria.	This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS. <u>Additional Information:</u> Per § 22VAC40-675-50 of the Administrative Code of Virginia, in local jurisdictions where there is a leave policy that applies uniformly to all local government employees, the local department of social services may deviate to the locality policy, provided the deviation is approved by the <u>VDSS HR Policy Team</u> (hr.employeerelations@dss.virginia.gov) as being in substantial conformity with this policy.	Section Rewritten
Family and Medical Leave Act [FMLA] (Definitions)	1. <u>Child (Son or Daughter)</u> A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or	1. <u>Americans with Disabilities Act (ADA) as Amended:</u> A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA	Definitions have been rewritten and relocated to the end of the updated draft version (Glossary).

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	older and incapable of self-care because of a mental or physical disability. 2. <u>Employment Benefits</u> All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions. 3. <u>Equivalent Position</u> One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility and authority 4. <u>Covered Servicemember</u> A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. 5. <u>Family and Medical Leave Act</u>	Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination on the basis of disability in all aspects of employment; and regulates medical examinations and inquiries. 2. <u>Child (FMLA)</u>: A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age eighteen (18) or be age eighteen (18) or older and incapable of self-care because of a mental or physical disability. 3. <u>Covered Servicemember (FMLA)</u>: A current servicemember or a recent veteran. 4. <u>Employment Benefits (FMLA)</u>: All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions. 5. <u>Equivalent Position (FMLA)</u>: One with the same pay, benefits and working conditions (shift and schedule) and the same or	

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	The Family and Medical Leave Act (FMLA) is a federally mandated program that was signed into law on February 5, 1993 and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee's family member or for adoption, placement, or the birth of a child, or up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member. 6. <u>Family Member</u> Child, spouse or parent. 7. <u>Health Care Provider</u> a. The Act defines "health care provider" as: (1) A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or (2) Any other person determined by the Secretary to be capable of providing health care services. b. Others "capable of providing health care services" include only the following categories of medical professionals as they perform services within the scope of their	substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility, and authority. 6. <u>Family Member (FMLA)</u>: A child, spouse, or parent. 7. <u>Family and Medical Leave Act (FMLA)</u>: A federally mandated program that was signed into law on February 5, 1993; and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee's family member or for adoption, placement, or the birth of a child; or up to twenty-six (26) weeks of unpaid leave to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. 8. <u>Health Care Provider (FMLA)</u>: The FMLA defines "health care provider" as: a. A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate)	

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	practice as defined under state law: (1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist); (2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants; Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement; (3) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and (4) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.	by the state in which the doctor practices; or b. Any other person determined by the Secretary to be capable of providing health care services. Others “capable of providing health care services” include only the following categories of medical professionals as they perform services within the scope of their practice as defined under state law: a. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist). b. Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants. c. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment)	

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	c. The phrase “authorized to practice in the State” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions. 8. <u>Incapacity</u> Inability to work, attend school, perform other regular daily activities due to a serious health condition. 9. <u>Intermittent Leave</u> A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments. 10. <u>Key Employees</u> Employees who are among the highest paid 10% of the LDSS workforce. 11. <u>Parent</u> Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent. 12. <u>Qualifying Exigency</u> A reason for taking FMLA leave, arising out of the fact that the employee’s spouse, son, daughter or parent is on active duty in the Armed Forces, or has been notified of an impending call or order to active duty in the National Guard or Reserves. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school	to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement. d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits. e. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country. The phrase “authorized to practice in the state” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions. 9. <u>Incapacity (FMLA)</u>: The inability to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition. 10. <u>Interactive Process (ADA/PWFA)</u>: The Job Accommodation Network (JAN) defines the	

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	related activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or call to active duty, provided that the employee and agency agree. 13. <u>Reduced Schedule</u> A work schedule less than the usual number of hours worked per workweek or per workday. 14. <u>Serious Health Condition</u> An illness, injury, impairment or physical or mental condition that involves inpatient care or either: a. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes: (1) Treatment two or more times within 30 days by or under the supervision of a health care provider the first of which must occur within seven days of the first day of incapacity; or (2) One treatment by a health care provider, within the first seven days of incapacity, with a continuing regimen of treatment; or b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or c. Any period of incapacity or treatment for a	interactive process as a collaborative process where employers and employees with disabilities who request accommodations work together to come up with accommodations. 11. <u>Intermittent Leave (FMLA)</u>: A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments. 12. <u>Key Employees (FMLA)</u>: Employees who are among the highest paid 10% of the LDSS workforce. 13. <u>Military Caregiver Leave (FMLA)</u>: Allows an eligible employee who is the spouse, child, parent, or “next of kin” of a covered servicemember with a serious injury or illness to use up to a total of twenty-six (26) workweeks of unpaid leave during a “single twelve (12) month period” to provide care for the servicemember. 14. <u>Parent (FMLA)</u>: The biological, adoptive, step, or foster parent, or someone who stood in place of the parent to the employee when the employee was a child. 15. <u>Pregnancy Discrimination Act (PDA)</u>: A federal statute that amended Title VII of the Civil Rights Act of 1964 to "prohibit sex discrimination on the basis of pregnancy."	

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	chronic serious health condition which continues over an extended period of time, requires periodic visit to a health care provider at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated. 15. <u>Spouse</u> The person with whom an individual has entered into marriage as defined and recognized under the laws of the Commonwealth. 16. <u>Twelve Month Period</u> For the purpose of calculating FMLA leave, an LDSS may use a calendar, fiscal year, another fixed 12-month period, or a rolling 12-month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating Family Medical Leave Act leave.	The Act covers discrimination "on the basis of pregnancy, childbirth, or related medical conditions." 16. <u>Pregnant Workers Fairness Act (PWFA)</u>: A federal statute signed into law in 2023 that requires covered employers to provide "reasonable accommodations" to employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." 17. <u>Qualifying Exigency (FMLA)</u>: Occurs when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school related activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or a call to active-duty, provided that the employee and agency agree. 18. <u>Reasonable Accommodation (ADA)</u>: A modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with	

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		a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment. 19. <u>Reasonable Accommodation (PWFA)</u>: Changes to the work environment or the way things are usually done at work for pregnant female employees or female employees recovering from childbirth. The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations including the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities, or	

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		activities that involve exposure to compounds not safe for pregnancy. 20. <u>Reduced Schedule (FMLA)</u>: A work schedule less than the usual number of hours worked per workweek or per workday. 21. <u>Serious Health Condition (FMLA)</u>: An illness, injury, impairment, or physical or mental condition that involves inpatient care or either: a. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes: i. Treatment two (2) or more times within thirty (30) days by or under the supervision of a health care provider the first of which must occur within seven (7) days of the first day of incapacity; or ii. One (1) treatment by a health care provider, within the first seven (7) days of incapacity, with a continuing regimen of treatment; or	

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		b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period, requires periodic visits to a health care provider at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated. 22. <u>Twelve (12) Month Period (FMLA):</u> Timeframe used for the purpose of calculating FMLA leave. An LDSS may use a calendar year, fiscal year, another fixed	

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		twelve (12) month period, or a rolling twelve (12) month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating FMLA leave.	
Section I: Eligibility & Qualifications for Family & Medical Leave (General Information)	---	This policy provides the eligibility requirements and procedures for the use of leave in accordance with the Family and Medical Leave Act (FMLA) and applies to all LDSS employees who meet the eligibility requirements set forth by the FMLA. FMLA leave is unpaid leave. The LDSS may require, or employees may request, paid leave to run concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate, under each leave policy for absences covered under the FMLA. The LDSS may designate such leave as FMLA leave if the conditions set forth in this policy are met. For instances where paid leave is not required or unavailable, please refer to Part I - Section IV, "Leave without Pay (LWOP)." This section provides information on job restoration when returning from FMLA, and the impact of leave without pay (LWOP) on employee benefits. <u>Resources</u> The LDSS may need additional support during the FMLA process. 1. For questions about the impact to benefits, it is recommended that the LDSS or the employee contact the locality. 2. For general questions about eligibility or interpretation of the Family and Medical	New Section created using information incorporated from other sections of the current version.

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		Leave Act, contact the VDSS Local HR Support Team. 3. For more complicated matters (second or third opinions, failure to return to work, intersection with other federal laws, etc.), contact the locality HR representative or attorney. 4. The Department of Labor (DOL) has a Family Medical Leave Act Advisor tool that may also be helpful in addressing questions and issues relating to the determination of eligibility and certification.	
Family and Medical Leave Act [FMLA] (Eligibility Requirements)	To be eligible to take Family Medical Leave Act leave, the following criteria must be met by full time and part time employees: 1. The employee must have been employed by the LDSS for a total of at least 12 consecutive or non-consecutive months in the past seven years. 2. For the 12 months immediately proceeding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked (paid leave is not counted). a. Employees returning from military service who request Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for the employer during the year to determine if they meet the 1250 hour requirement in the	To be eligible to take FMLA Family Medical Leave Act leave, the following criteria must be met by <u>full</u>-time and <u>part</u>-time employees: 1. The employee must have been employed by the LDSS for a total of at least <u>twelve (12)</u> consecutive or non-consecutive months in the past seven <u>(7)</u> years. 2. The For the 12 months immediately proceeding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked <u>for the twelve (12) months immediately preceding the first day of the requested leave</u> (paid leave is not counted). 3. Employees returning from military service who request <u>FMLA leave</u> Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for	

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	determination of their eligibility for Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 3. Twelve weeks of FMLA leave must not have been used in the current 12 month period. 4. For part time employees, the amount of FMLA leave will be equivalent to twelve times their normal workweek, not to exceed 12 weeks.	the employer during the year to determine if they meet the 1250 hour requirement in the determination of their eligibility for <u>FMLA leave</u> Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). <u>See Part I – Section V, “Military Leave,” for additional information.</u> 4. Twelve <u>(12)</u> weeks of FMLA leave must not have been used in the current <u>twelve (12)</u> month period. <u>The LDSS local board and local director may choose from any of the following options to establish how the twelve (12) month period is calculated.</u> <u>a. Calendar Year</u> <u>b. Fiscal Year</u> <u>c. Another Fixed Twelve (12) Month Period</u> <u>d. Rolling Twelve (12) Month Period – A ‘rolling’ period looks back from the date the leave was requested.</u> 5. <u>The LDSS local board and local director reserve the right to change how the FMLA leave is calculated as long as:</u> <u>a. Employees are provided with a minimum of sixty (60) days’ notice of the change, and</u> <u>b. The transition takes place in such a way that the employees retain the full benefit of twelve (12) weeks of leave under</u>	

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		<u>whichever method affords the greatest benefit to the employee.</u> <u>Under no circumstances may a new calculation method be implemented to avoid the FMLA's leave requirements.</u> For part time employees, the amount of FMLA leave will be equivalent to twelve <u>(12)</u> times their normal workweek, not to exceed <u>twelve (12)</u> weeks.	
Helpful Hints: FMLA Intersection with Other Federal Laws	---	There are two additional federal laws, the Americans with Disabilities Act (ADA) as amended, and the Pregnant Workers Fairness Act (PWFA), that may require the employer to grant leave to employees as a reasonable accommodation. A qualifying request to approve leave under the FMLA may also be a qualifying reason under the ADA or PWFA. Please see Section VI; FMLA & Other Federal Laws for more information.	This “Helpful Hint” appears as part of Section I: Eligibility & Qualifications for Family & Medical Leave (see above).
Family and Medical Leave Act [FMLA] (Qualifying Reasons)	Eligible employees may take up to 12 weeks of unpaid Family Medical Leave Act leave per leave year for the following reasons: 1. <u>For Family Member’s Care</u> a. The birth of a child (to be taken within 12 months of the child’s birth) ; b. The placement of a child with the employee for adoption or foster care (to be taken within 12 months following date of placement); c. Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.	Eligible employees may take up to <u>twelve (12)</u> weeks of unpaid FMLA Family Medical Leave Act leave per <u>the established twelve (12) month period of the LDSS leave year</u> for the following reasons: <u>For Family Member’s Care</u> 1. <u>A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.</u> 2. <u>Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.</u> 1-3. 3. The birth of a child (to be taken within	

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	2. <u>For Employee's Care</u> A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position. 3. <u>Qualifying Exigency</u> A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is an active-duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.	<u>twelve (12)</u> months of the child's birth) ; 4. The placement of a child with the employee for adoption or foster care (to be taken within <u>twelve (12)</u> months following date of placement); <u>Qualifying reasons for employers seeking military family leave under the FMLA are addressed in Section III, "FMLA Military Leave Entitlements".</u> Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself. <u>For Employee's Care</u> A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position. <u>Qualifying Exigency</u> A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is an active-duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.	
Family and Medical Leave Act [FMLA] (Restrictions on Usage)	<u>Parental Leave</u> Leave taken for the birth or placement of a child must be used within the 12 months following the birth/placement. If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave. <u>FMLA leave is Not Cumulative</u>	1. Parental Leave a. Leave taken for the birth or placement of a child must be used within the <u>twelve (12)</u> months following the birth <u>or</u> placement. b. <u>A combined total of twelve (12) weeks of FMLA leave will be provided in the event</u> If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave.	

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	Any unused leave cannot be carried over to the next 12-month period. Short-Term Conditions FMLA leave may not be used for short-term conditions for which treatment and recovery are brief. <u>Appointments with Health Care Provider</u> Routine appointments with a health care provider should be scheduled whenever possible during non-work hours.	2. FMLA leave is Not Cumulative. <u>Any unused leave cannot be carried over to the next twelve (12) -month period.</u> Short-Term Conditions <u>3. FMLA leave may not be used for short-term conditions for which treatment and recovery are brief.</u> <u>3.4. When possible, employees are expected to schedule routine appointments during non-work hours. When it is not possible to schedule an appointment during non-work hours, employees should attempt to schedule appointments outside of peak times of operation for the agency.</u> Appointments with Health Care Provider Routine appointments with a health care provider should be scheduled whenever possible during non-work hours.	
Family and Medical Leave Act [FMLA] (FMLA Leave is Unpaid)	FMLA leave is unpaid. The LDSS may require, or the employee may request, the use of paid leave concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under the Family and Medical Leave Act. An agency may designate such leave as Family and Medical Leave Act leave, if it meets the conditions set forth in this policy. See Form WH-382 entitled <i>Designation Notice (Family and Medical Leave Act)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf.	---	Section removed & relevant information relocated to other sections of updated draft.
Family and Medical Leave Act [FMLA]	1. <u>Request from Employee</u> The Employee should submit a written request to his/her supervisor at least 30	FMLA Form Access IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms	This section has been rewritten in the updated draft version as multiple subsections within

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(Procedures Regarding Usage)	calendar days in advance or as soon as practicable. (Notice may be given by a family member if employee is unable to provide notice.) 2. <u>Notice of Eligibility and Rights & Responsibilities</u> The form <i>Notice of Eligibility and Rights & Responsibilities (WH-381)</i> found at http://www.dol.gov/whd/forms/WH-381.pdf must be given to the employee five (5) business days from the request for leave under FMLA. Once all of the required information requested on the form is completed, the Local Department of Social Services (LDSS) must inform the employee within five (5) business days whether or not the leave will be designated as FMLA leave and count towards the employee's leave entitlement. This determination must be provided using the <i>Designation Notice (WH-382)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf. 3. <u>Certification from Health Care Provider</u> A request for FML must be supported by either a <i>Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E)</i> or a <i>Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)</i>. These forms can be located at http://www.dol.gov/whd/forms/WH-380-E.pdf and http://www.dol.gov/whd/forms/WH-380-F.pdf. Medical certification shall be	may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear <i>in italicized type</i> to prompt the reader to access the DOL site. A link to the DOL FMLA Forms site will appear in the paragraph where the forms are listed. Request for Initiation of FMLA Advance Notice & Approval Employees are required to notify their supervisor of the need for FMLA-qualifying leave at least thirty (30) calendar days in advance of the absence, or as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, chronic conditions requiring regular or routine medical appointments, pregnancy, and childbirth. LDSS Initiation of FMLA Under Certain Circumstances The LDSS must initiate the FMLA process for an FMLA-eligible employee as soon as there is enough information indicating the employee's need for leave may be for an FMLA-qualifying reason. The LDSS must also accept notice from an employee's family member if the employee is unable to provide the notice. Please see Section VI, "FMLA & Other Federal Laws," to determine if the employee's request may also qualify under the Americans with Disabilities Act (ADA) as amended, or the Pregnant Workers Fairness Act (PWFA).	"Section II: FMLA Certification Process".

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	obtained by the employee and returned to his/her agency within 15 calendar days of the request or when feasible or upon return to work from an absence that may qualify under the FMLA (absent extenuating circumstances). If an employee fails to provide certification, recertification, or clarification in a timely manner then the agency may deny FMLA leave until the required certification is provided. 4. <u>Second and Third Health Care Provider Opinions</u> a. <u>Second Opinion</u> In general, in any case in which the employer has reason to doubt the validity of the certification provided, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified on the <i>Certification of Health Care Provider for Employee's Serious Health Condition</i> (WH-380-E) or a <i>Certification of Health Care Provider for Family Member's Serious Health Condition</i> (WH-380-F). The health care provider designated or approved shall not be employed on a regular basis by the employer. b. <u>Resolution of Conflicting Opinions – Third Opinion</u> In general, in any case in which the second opinion differs from the opinion in the	Notice of Eligibility and Rights & Responsibilities The LDSS is required to provide the employee with the <i>Notice of Eligibility and Rights & Responsibilities (Form WH-381)</i> within five (5) business days of the receipt of the request for leave under the FMLA. DOL FMLA Forms. Designation Notice Once the <i>Notice of Eligibility and Rights & Responsibilities (Form WH-381)</i> is completed and returned, the LDSS must inform the employee within five (5) business days whether the leave will be designated as FMLA. This determination must be provided to the employee using the <i>Designation Notice (Form WH-382)</i>. DOL FMLA Forms. Certification Process This subsection covers a more common, full-time FMLA certification process. Subsection F. addresses intermittent FMLA leave requests and Subsection G. addresses the military certification process. Initial Request Employee Responsibility: Certification of a Health Care Provider All requests for FMLA leave must be supported by either of the following forms (DOL FMLA Forms): • Certification of a Health Care Provider for Employee's Serious Health Condition (Form WH-380-E)	

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	original certification provided, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified. The opinion of the third health care provider concerning the information certified shall be considered to be final and shall be binding on the employer and the employee. 4.5. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to FMLA benefits, including maintenance of group health benefits. 2.6. If the health care providers' certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave. a. A copy of the second (and third) medical opinions must be provided to the employee if requested. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action. b. When an employee is required to obtain a second (or third) opinion the LDSS must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain these opinions. c. The LDSS may not require the employee or family member to travel outside normal commuting distance for purposes of	• Certification of Health Care Provider for a Family Member's Serious Health Condition (Form WH-380-F) Once the LDSS provides the employee with the appropriate form, the LDSS must give the employee at least fifteen (15) calendar days to provide the certification. It is the discretion of the LDSS to extend the timeframe if reasonable circumstances prevent the employee from meeting the fifteen (15) calendar day deadline (i.e., inability to get an appointment with a health care provider within fifteen (15) calendar days, delay by the <i>health care provider</i> on the return of the certification form, etc.). All timeframe extensions should be documented. LDSS Responsibility: Response to Employee Request - The LDSS must respond to the employee's request for FMLA leave on the <i>Designation Notice (Form WH-382)</i>. DOL FMLA Forms. - Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request, or within five (5) business days of receiving all the required documentation from the employee. - The LDSS may conditionally approve absences as FMLA leave without a request from the employee.	

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	obtaining the second or third medical opinion except in very unusual circumstances. d. Without the written consent of the employee, the LDSS should not discuss with the health care provider the serious health condition of the employee or family member nor should the LDSS require more information than is requested on the certification form. c. <u>Approval of Leave</u> The LDSS must respond to an employee's request for FMLA leave on the form entitled <i>Designation Notice (WH-382)</i>. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request or within five (5) business days of receiving all of the required documentation from the employee. This form can be found at http://www.dol.gov/whd/forms/WH-382.pdf. 5. <u>Provisional Designation of Leave</u> Without a request from an employee, the LDSS may designate provisional absences as FMLA leave if the LDSS has a reasonable basis that such leave qualifies. The LDSS may also designate provisional leave at the request of the employee pending submission of the health care provider's certification. Such designation may be done even if the employee has been granted permission to use paid leave. Upon receipt of the medical certification, the LDSS must	d. The LDSS may designate up to (5) business days prior to the date of designation as retroactive FMLA leave. Intention to Return to Work The LDSS may require an employee to report periodically on his/her status and intent to return to work. Second & Third Opinions In cases where the LDSS has reasonable doubt about the validity of the employee's certification, the LDSS may require the employee to obtain the opinion of a second healthcare provider. A third opinion may be required if the first and second opinion differ. The third opinion is final and binding. The DOL has specific requirements related to the selection of the health care provider in each instance and how expenses are covered. It is strongly recommended that the LDSS work with the locality HR representative or attorney if there is a need to request a second or third opinion. The DOL also has a Family Medical Leave Act Advisor tool that may be helpful in addressing questions relating to requiring a second or third opinion.	

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	notify the employee of approval or denial on the form entitled <i>Designation Notice (WH-382)</i> found at http://www.dol.gov/whd/forms/WH-382.pdf. 6. <u>Designating FMLA Leave Retroactively</u> The agency may go back 5 business days from the date of designation, to include those 5 business days under FMLA.		
Family and Medical Leave Act [FMLA] (Intention to Return to Work)	The LDSS may require an employee to report periodically during the leave period on intention to return to work. This includes both Intermittent and full-time FMLA leave.	---	This information has been incorporated into “Section II: FMLA Certification Process” (above).
Family and Medical Leave Act [FMLA] (Intermittent Leave or Leave on a Reduced Schedule)	1. <u>Intermittent/Reduced Schedule Leave</u> When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave. 2. <u>Advanced Approval for Care of a Newborn or Recently Placed Child</u> Only if approval is granted in advance, may an employee take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. (This does not apply if the leave is taken because of the serious health condition of the child.) 3. <u>Reassignment During Intermittent Leave or</u>	<u>Intermittent/Reduced Schedule Leave</u> When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full-time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave. <u>Advanced Approval for Care of a Newborn or Recently Placed Child</u> An Only if approval is granted in advance, may an employee <u>may</u> take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. <u>Advance approval must be granted.</u> (This does not apply if the leave is taken because of the serious health condition of the child.) <u>Reassignment During Intermittent Leave or Reduced Schedule Leave</u>	

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	<u>Reduced Schedule Leave</u> An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.	<u>When an intermittent leave or a reduced leave schedule is granted, the LDSS may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. The alternative position must have equivalent pay and benefits; however, the position does not have to have equivalent duties.</u> An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.	
Section III: FMLA Military Leave Entitlements (General Information)	---	The purpose of this section is to provide the qualification and certification process for specific military leave entitlements for <i>family members</i> of either covered service members or veterans under the FMLA: 1. Military caregiver leave 2. Leave for a qualifying exigency IMPORTANT: The DOL requires several forms for the administration of FMLA leave. The forms may be accessed by visiting the DOL FMLA Forms website. In the following section, the forms will not be individually hyperlinked. Individual hyperlinks may not work in the future if the DOL documentation is revised. However, the names of each form will appear <i>in italicized type</i> to prompt the reader to access the DOL site. A link to the DOL FMLA site will appear in the paragraph where the forms are listed.	New Section

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Family and Medical Leave Act [FMLA] (FMLA Military Entitlements)	Under the FMLA, there are military leave entitlements in the form of qualifying exigency leave and military caregiver leave for a covered service member. 1. <u>Qualifying Exigency Leave</u> An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation. Employees should submit a complete and sufficient “<i>Certification of Qualifying Exigency for Military Family Leave</i>” (Form WH-384) form to their supervisor. The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member’s active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. This form entitled: <i>Certification for Qualifying Exigency for Military Family Leave</i> can be found at	---	This section has been split into multiple subsections in the updated draft version (see “General Information”, above <u>as well as</u> “Military Caregiver Leave” and “Qualifying Exigency”, below).

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	http://www.dol.gov/whd/forms/WH-384.pdf . 2. <u>Military Caregiver Leave</u> An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later. Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason. Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child. The employee should submit a completed “<i>Certification for Serious Injury or Illness of Covered Service member</i>” form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.		
Section III: FMLA Military Leave Entitlements (Military Caregiver Leave)	<u>Military Caregiver Leave</u> An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered	<u>Military Caregiver Leave</u> An eligible employee is entitled to receive up to <u>twenty-six (26)</u> weeks of unpaid leave during a single <u>twelve (12)</u> month period to care for a	New Section

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	servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later. Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason. Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child. The employee should submit a completed “<i>Certification for Serious Injury or Illness of Covered Service member</i>” form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.	covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member. The single <u>twelve (12)</u> month period commences the first day leave is taken to care for the covered service member and expires <u>twelve (12)</u> months later. Note: An eligible employee is entitled to a combined total of <u>twenty-six (26)</u> weeks of unpaid leave during a single <u>twelve (12)</u> month period. This includes <u>twelve (12)</u> weeks of FMLA leave for any FMLA qualifying reason. <u>For example, An eligible employee may take sixteen (16) weeks of family and medical leave to care for a covered service member and ten (10) weeks of family and medical leave to care for a newborn child.</u> <u>Military Caregiver Leave Certification Process</u> <u>An FMLA request for military caregiver leave must be supported by one of the following forms (DOL FMLA Forms.):</u> <u><i>Military Caregiver Leave of a Current Servicemember (Form WH-385) – use when requesting leave to care for a family member who is a current servicemember with a serious injury or illness.</i></u> <u><i>Military Caregiver Leave of a Veteran (Form WH-385-V) – use when requesting leave to care for a family member who is a</i></u>	

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		<u>covered veteran with a serious injury or illness.</u> <u>The LDSS may also require:</u> <u>1. Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any.</u> <u>2. Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration.</u> <u>3. A statement of appropriate facts regarding the servicemember's health condition sufficient to support the need for FMLA leave.</u> <u>4. Information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed.</u> <u>5. If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care.</u> <u>6. The employee's name, the name of the covered servicemember, and the employee's relationship to the servicemember.</u> <u>7. Information on the servicemember's branch, rank, and unit assignment, or the veteran's date and type of separation.</u> <u>Timeframes for Certification & Approval</u>	

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		The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process." 1. The LDSS must give the employee at least <u>fifteen (15) calendar days</u> to provide the certification; and 2. Approval or denial of FMLA leave requests must be given within five (5) <u>business days</u> of receiving the request, or within five (5) <u>business days</u> of receiving all of the required documentation from the employee. <u>Job Restoration</u> <u>An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration.</u> <u>Key Employees</u> <u>Key employees are those who are within the highest paid 10% of the salaried workforce in the LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.</u> The employee should submit a completed "Certification for Serious Injury or Illness of Covered Service member" form (U.S. Department of Labor Form WH 385) to his/her	

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		supervisor. This form can be found at http://www.dol.gov/whd/forms/WH-385.pdf.	
Section III: FMLA Military Leave Entitlements (Qualifying Exigency)	<u>Qualifying Exigency Leave</u> An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation. Employees should submit a complete and sufficient “<i>Certification of Qualifying Exigency for Military Family Leave</i>” (Form WH-384) form to their supervisor. The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member’s active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member. This form entitled: <i>Certification for Qualifying Exigency for Military Family Leave</i> can be found at http://www.dol.gov/whd/forms/WH-384.pdf.	A qualifying exigency occurs when a military member is on, called to, or notified of “covered active duty.” Covered active duty occurs when: • An LDSS employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces and is deployed to a foreign country. • An LDSS employee whose spouse, son, daughter, or parent is a member of the National Guard or Reserves who has been notified and ordered to active duty in support of a contingency operation. When an LDSS employee’s military family member is on “covered active duty,” any of the following categories are qualifying exigencies (examples are not all-inclusive): 1. Short-notice deployment: Notification of a deployment in seven (7) or fewer calendar days prior to the deployment. 2. Military events and related activities: Official ceremonies, programs, informational events or briefings, military family support or assistance programs, etc. 3. Childcare and related activities¹: Arranging childcare; providing emergency,	New Section

¹ The child does not have to be related to the LDSS employee but must be the child of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

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		non-routine childcare; transferring a child to a new school, etc. 4. Care of the military member's parent²: Arranging alternative care; providing emergency, non-routine care; transfer to a new care facility; meeting with facility staff, etc. 5. Financial and legal arrangements: Preparing or executing powers of attorney, enrollment in DEERS, obtaining military ID cards, etc. 6. Attending counseling: Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider. 7. Rest and recuperation: Taking up to fifteen (15) calendar days of leave to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on rest and recuperation leave.	

² The parent does not have to be related to the LDSS employee but must be the parent of the military member. The military member must be the parent, spouse, or child of the LDSS employee.

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		8. Post-deployment activities: Certain post-deployment activities within ninety (90) days of the end of the military member's covered active duty (e.g., attending arrival ceremonies, reintegration briefings and events, etc.). Post-deployment activities also include addressing issues arising from the death of a military member, including attending the funeral. 9. Other events: Any other event that the employee and employer agree is a qualifying exigency. <u>Qualifying Exigency Certification Process</u> Qualifying exigency leave allows an employee to take up to a total of twelve (12) workweeks of FMLA leave for qualifying exigencies. An FMLA request for a qualifying exigency must be supported by the following form (DOL FMLA Forms): • <i>Certification of Qualifying Exigency for Military Family Leave (Form WH-384)</i> The LDSS may also require: 1. A copy of the military member's active-duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active-duty status. 2. A statement or description of the appropriate facts regarding the qualifying exigency.	

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		3. The approximate date on which the leave began (or will begin). 4. The contact information for any third party the employee is meeting. The LDSS may confirm the nature of the meeting but may NOT request additional information from the contact. Timeframes for Certification & Approval The timeframes are the same as the full-time FMLA leave certification process discussed in Section II, "FMLA Certification Process." 1. The LDSS must give the employee at least fifteen (15) <u>calendar</u> days to provide the certification; and 2. Approval or denial of FMLA leave requests must be given within five (5) <u>business</u> days of receiving the request, or within five (5) <u>business</u> days of receiving all the required documentation from the employee. Job Restoration An employee is entitled to be reinstated to his/her original position, or an "equivalent position," meaning that the position must have comparable duties, terms, conditions, compensation, and the privileges of the employee's previous position. Contact the VDSS Local HR Support Team or the locality HR representative or attorney with questions regarding job restoration. Key Employees Key employees are those who are within the highest paid 10% of the salaried workforce in the	

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		LDSS. In certain circumstances job restoration may be denied. The LDSS must contact either the VDSS Local HR Support Team or the locality HR representative or attorney prior to the denial of job restoration.	
Family and Medical Leave Act [FMLA] (Effect on Employment Benefits)	1. Health Care Coverage a. During any FMLA leave, the employee's participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period. b. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave. ii. The failure to timely make premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed. ii. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work as a result of: 1. the onset, recurrence, or continuation of serious health conditions that would have entitled the employee to the FMLA leave; or 2. other circumstances beyond the employee's control.	---	Information from this section has been incorporated into "Section IV: FMLA Records Management & Impact on Employee Benefits", below.

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	2. <u>Other Benefits</u> Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay. LWOP is to be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee's years of service may be affected by such absence.		
Family and Medical Leave Act [FMLA] (Workers' Compensation and FMLA)	When a Workers' Compensation injury causes an absence that would otherwise qualify under the FMLA, the two leaves may run concurrently and count towards FMLA leave.	---	Information from this section has been incorporated into "Section IV: FMLA Records Management & Impact on Employee Benefits", below.
Family and Medical Leave Act [FMLA] (Returning From Leave)	1. <u>Job Restoration</u> Upon returning from Family and Medical Leave Act leave, an employee is entitled to be reinstated to their original position, or an "equivalent position," one with comparable duties, terms, conditions, compensation, and privileges of the employee's previous position. 2. <u>Key Employee</u> If an employee's position is determined to be key (within the highest paid 10% of the salaried workforce in the LDSS), job restoration may be denied if the following procedures have been taken: a. The LDSS gives written notice to the key	---	Section removed, however information has been updated and incorporated into "Qualifying Exigency", above.

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	employee at the time the employee requests FMLA leave or as soon as practicable thereafter that the employee qualifies as a Key Employee. The notice must also state the potential consequences with respect to reinstatement and maintenance of health benefits if the employee is denied job restoration. b. If a determination is made that a substantial and grievous economic injury to the LDSS's operations will result if the Key Employee is reinstated at the end of the leave, the LDSS shall notify the employee in writing of its determination and that it intends to deny job restoration. (1) This notice must be given either in person or by certified mail. (2) This notice must explain the basis for the finding that substantial and grievous economic injury will result. (3) If leave has commenced, the Key Employee must be allowed a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return. (4) If a Key Employee does not return to work in response to the notice, the employee continues to be entitled to maintenance of health benefits during the remaining period of FMLA leave and the LDSS must continue payment of its share of health benefit premiums. (5) A Key Employee's rights under FMLA		

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	continue unless and until the employee either gives notice that he or she no longer wishes to return to the position or the LDSS denies the reinstatement at the conclusion of the leave period. c. A Key Employee is entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the notice. At the time of the request, the LDSS must again determine whether there will be substantial and grievous economic injury if the employee is reinstated. If it is determined that substantial and grievous economic injury will result, the employee must be notified in writing, delivered in person or by certified mail of the denial of restoration. d. Although the employee may be denied job restoration, the employee remains on FMLA leave status for the requested period of leave and all benefits of FMLA continue until the end of the leave.		
Family and Medical Leave Act [FMLA] (FMLA Records Management)	Agencies must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years and must include the information listed below: 1. Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. 2. Leave designated as FMLA, both paid and	---	Information from this section has been incorporated into “Section IV: FMLA Records Management & Impact on Employee Benefits”, below.

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	unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.) 3. Copies of employee's notices of leave furnished to agency. 4. Any documents (including written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves. 5. Records of premium payments. 6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement. 7. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employee's family members are to be maintained in separate files/records and treated as confidential medical records except: 8. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations. 9. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment 10. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information		

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	upon request.		
Section IV: FMLA Records Management & Impact on Employee Benefits	---	<u>FMLA Records Management</u> LDSSs must make, keep, and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three (3) years and must include the information listed below: 1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. 2. Leave designated as FMLA, both paid and unpaid, and the dates leave was taken. FMLA leave taken in increments of less than a day must be noted by the hour. 3. Copies of employee's notices of leave furnished to agency. 4. Any documents (written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves. 5. Records of premium payments. 6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement.	

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		7. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employee's family members are to be maintained in separate files/records and treated as confidential medical records except: a. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations. b. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment. c. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request. LDSSs should contact the <u>VDSS HR Policy Team</u> (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney prior to releasing any records. Refer to Chapter 8 of the LDSS Administrative/HR Manual for more information on maintaining files on confidential information. <u>FMLA Impact on Employment Benefits</u> The locality benefits administrator should be the primary contact for specific questions about the impact of FMLA on employee benefits.	

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		Health Care Coverage 1. During any FMLA leave, the employee's participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period. 2. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave. 3. The failure to make timely premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed. 4. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work because of: b. The onset, recurrence, or continuation of serious health conditions that would have entitled the employee to FMLA leave; or c. Other circumstances beyond the employee's control. Other Benefits 1. Employees on unpaid FMLA leave are	

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		entitled to the same benefits as employees on leave without pay (LWOP). 2. LWOP must be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee's years of service may be affected by such absence. See Part I - Section IV, "Leave Without Pay (LWOP)," for more information. Workers' Compensation & FMLA When a workers' compensation-qualified injury causes an absence that would otherwise qualify under the FMLA, both leaves may run concurrently and count towards FMLA leave.	
Family and Medical Leave Act [FMLA] (Violations)	An employee who believes that FMLA benefits have not been applied consistently with the provisions of this policy or the law may make a complaint to the Director and if not resolved may file a complaint with the U.S. Department of Labor, Wage and Hour Division. A non-probationary employee may also initiate a grievance.	---	Section Removed
Family and Medical Leave Act [FMLA] (The Family Medical Leave Act [FMLA], the Americans with Disabilities Act [ADA] as amended, and the	The FMLA, ADA and PDA all require a covered employer grant leave to an employee in certain circumstances. Unlike the FMLA, there is no eligibility period for leave granted under the provisions of the ADA or the PDA. Requests for leave under these provisions should be made to	<u>General Information</u> Under the FMLA, covered employers may be required to grant leave to an employee in specific circumstances. However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant	Section has been rewritten and expanded upon as "Section V: FMLA & Other Laws"

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Pregnancy Discrimination Act [PDA])	the employee's supervisor. The ADA requires employers to consider reasonable accommodation requests for qualified employees in order to perform essential job functions. The accommodation can include a modified work schedule and may include leave requests. There is no set leave period mandated. The leave could be granted as requested by the employee unless doing so would result in "undue hardship" to the employer (see Chapter 1 for more information about ADA). The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. The PDA requires that leave be administered in a way that does not discriminate based on gender.	Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation. If you have any questions or need assistance regarding the interaction of these federal laws, please contact the VDSS Employee Relations Team (hr.employeerelations@dss.virginia.gov) or the locality HR representative for guidance. <u>The Americans with Disabilities Act (ADA) as Amended</u> Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities. The requirement relates to three (3) aspects of employment: 3. Ensuring equal opportunity in the application process. 4. Enabling a qualified individual with a disability to perform the essential functions of a job. 5. Making it possible for an employee with a disability to enjoy equal benefits and privileges of employment³. 6. Employers consider possible reasonable accommodations for an employee's request by engaging with the employee during what is referred to as the "interactive process." Like an employer's responsibility to initiate the FMLA process when they become aware of the employee's need, employers have a	

³ [42 U.S.C. § 12112.](#)

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		legal obligation to initiate the interactive process when they become aware of an employee's need for an accommodation due to a disability. See “Helpful Hints - The Job Accommodation Network (JAN)” for more information on providing reasonable accommodation under the ADA. <u>The Pregnant Workers Fairness Act (PWFA)</u> The PWFA took effect in 2023 and is intended to fill in the gaps between Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA); the ADA; and the FMLA. The PWFA differs from the PDA, which focuses on the protection of pregnant employees from discrimination. The PDA did not impose specific accommodation requirements that can assist pregnant employees with the performance of their job duties. Under the PWFA, employees can request accommodation requirements. <u>Analysis of Requests for Leave</u> Requests for Leave Under the ADA & PWFA 1. Requests for leave under either the ADA or PWFA should be made directly to the employee’s supervisor. LDSS are encouraged to develop request forms. Sample forms may be found on the Job Accommodation Network (JAN). 2. When engaging in the interactive process, the LDSS may consider and present other options for accommodation outside of a request for leave. These may include, but are not limited to:	

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		d. Making modifications to an employee's workspace. e. Modifying a work schedule to allow shorter hours or a later start time. f. Granting additional, longer, or more frequent breaks. g. Making exceptions to food and drink policies. h. Providing closer parking i. Allowing intermittent leave for medical appointments. j. Providing a temporary reassignment. k. Allowing telework. 3. Like FMLA, leave approved as a reasonable accommodation under the ADA or PWFA is unpaid leave. 4. There is no waiting period for eligibility or an hours-worked requirement for leave granted under the provisions of the ADA or the PWFA. 5. Employee requests for these leaves may intersect with employee eligibility under FMLA and vice versa. FMLA may also run concurrently with either the ADA or the PWFA. Establishing a Maximum Leave Policy Leave requested as a reasonable accommodation under the ADA or PWFA does not have a specific	

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		timeframe like leave granted under the FMLA. The LDSS local board and local director may establish a maximum leave allowance for leave approved as a reasonable accommodation under the ADA or PWFA. However, in cases where a maximum leave policy exists, the ADA requires the employer to consider extending leave beyond the maximum leave allowed by policy when additional leave is needed due to a disability-related reason. The same flexibility is recommended for reasonable requests for additional leave beyond the maximum amount in relation to leave approved under the PWFA. Importance of Analysis The FMLA, ADA, and PWFA have distinct differences. When an employee submits a request, and it is unclear to the LDSS if more than one of these laws applies, a separate analysis of the request in relation to each law must be conducted to determine employee eligibility. The LDSS <i>must</i> reach out to either the locality HR representative or attorney or the VDSS Employee Relations Team when: 1. There is no formal request from an employee, but there is awareness that an employee may require assistance under either the FMLA, ADA, or PWFA. 2. An Employee requires assistance, but there are questions about the potential intersection of the FMLA, ADA, and PWFA in addressing the employee's needs. 3. A determination needs to be made as to whether an employee's request for	

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		accommodation qualifies as an “undue hardship”. Note: The employer must show that the employee’s request for accommodation would cause <i>significant</i> difficulty or expense to deny the request as an undue hardship.	
Helpful Hints: The Job Accommodation Network (JAN)	---	The Job Accommodation Network (JAN) helps employers recognize the valuable contributions that qualified workers with disabilities add to the workforce by providing accommodation solutions, trusted strategies, and practical guidance on the Americans with Disabilities Act (ADA) as amended. This site offers: ◆ Assistance specific to state and local government. ◆ An ADA Library to assist with understanding the ADA’s history and most recent amendments. ◆ An Accommodation Search database with hundreds of recommendations for possible accommodations. ◆ Links to different publications and articles on a number of disabilities, including the “Accommodation and Compliance Series” where JAN discusses specific disabilities and how they may be accommodated in detail. While JAN does not specifically address the PWFA, JAN does offer accommodation solutions for pregnancy in relation to the ADA. A thorough analysis of the employee’s request may be required to understand which federal	This “Helpful Hint” appears at the end of “Section V: FMLA & Other Laws”, above.

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		law(s) and accommodation options apply. It's always a best practice to reach out to the locality HR or attorney or the VDSS Employee Relations Team (hr.employeerelations@dss.virginia.gov) for assistance in these situations.	

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Part I: Types of Leave (Policy Statement)	---	The Virginia State Board of Social Services establishes policies to afford employees of Local Departments of Social Services (LDSS) paid time away from work for several purposes. Part I of this policy describes most of the types of leave available to LDSS employees and their appropriate use. Compensatory Leave and Special Duty Leave are not addressed in this chapter. These leave types may be substituted in lieu of compensation in specific situations and are discussed in detail in Chapter 2 of the LDSS Administrative/HR Manual.	New Section
Part I: Types of Leave (Scope)	---	The Virginia State Board of Social Services establishes policies to afford employees of Local Departments of Social Services (LDSS) paid time away from work for several purposes. Part I of this policy describes most of the types of leave available to LDSS employees and their appropriate use. Compensatory Leave and Special Duty Leave are not addressed in this chapter. These leave types may be substituted in lieu of compensation in specific situations and are discussed in detail in Chapter 2 of the LDSS Administrative/HR Manual.	New Section
Annual Leave (Purpose)	The purpose of this policy is to provide the procedures for earning paid leave for time away from work for personal reasons including vacation time.	---	Section Removed
Annual Leave (Scope)	This policy applies to all employees who are not in temporary or emergency positions or in restricted positions for which the funding sources	---	Section Removed

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	do not provide benefits. A part-time employee is one who works at least one half the normal work week hours or greater.										
Section I: Annual Leave (General Information)	---	Qualification to Receive Annual Leave 1. Annual leave is available to all LDSS employees except: a. Employees in temporary or emergency positions; or b. Employees in restricted positions where benefits are not provided by the funding source. Part-time employees must work at least <u>one half</u> of the agency's workweek hours or greater to qualify to earn annual leave. Please note the following: <table><tr><th>Agency Workweek Schedule</th><th>Part-Time Minimum Weekly Hours</th></tr><tr><td>40 Hours Per Week</td><td>20 Hours Per Week</td></tr><tr><td>37.5 Hours Per Week</td><td>18.75 Hours Per Week</td></tr><tr><td>35 Hours Per Week</td><td>17.5 Hours Per Week</td></tr></table>	Agency Workweek Schedule	Part-Time Minimum Weekly Hours	40 Hours Per Week	20 Hours Per Week	37.5 Hours Per Week	18.75 Hours Per Week	35 Hours Per Week	17.5 Hours Per Week	New Section
Agency Workweek Schedule	Part-Time Minimum Weekly Hours										
40 Hours Per Week	20 Hours Per Week										
37.5 Hours Per Week	18.75 Hours Per Week										
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Annual Leave (Annual Leave Accrual)	1. <u>Rate</u> Employees earn paid annual leave on a pay period basis as follows: a. A full-time employee earns annual leave based upon years of service. b. A part-time employee earns annual leave at a proportionate rate. c. If the LDSS does not have monthly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned on a monthly basis. d. The following chart sets forth the amounts of annual leave that may be accrued during	<u>Rate</u> Employees earn paid annual leave on a pay period basis as follows. <u>For alternate agency workweek schedules (37.5 hours, 35 hours), annual leave accrual must be prorated based on the number of hours in the workweek.</u> 1. A full-time employee earns annual leave based upon years of service. <u>One (1) day equates to eight (8) hours if the agency workweek schedule is forty (40) hours per week.</u> 2. A part-time employee earns annual leave at a proportionate rate <u>based on the number of hours worked per week. See</u>	Referred to as "Accrual of Annual Leave" in the updated draft. Section begins on Page 10. Information Re: "Carrying Over" revised and moved to Section I: Annual Leave (Carryover), below. Information Re: "Effect of Leave Without Pay on Accrual" revised and moved to Section I: Annual Leave (Effect of Leave Without Pay on Accruals) <u>and</u> portions of								

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	each month based on years of service. A day equates to eight hours if the normal work schedule is forty hours. If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours), annual leave accrual must be prorated based on the number of hours in the work week. For LDSS that have bi-monthly or bi-weekly pay periods, the accrual rate can be adjusted accordingly. <table border="1"> <thead> <tr> <th>Years of Service</th><th>Monthly Accrual Rate (40-Hour Week)</th><th>Monthly Accrual Rate (37.5-Hour Week)</th><th>Monthly Accrual Rate (35-Hour Week)</th></tr> </thead> <tbody> <tr> <td>Up to 5 years</td><td>8 hours</td><td>7.5 hours</td><td>7 hours</td></tr> <tr> <td>5 years</td><td>10 hours</td><td>9.375 hours</td><td>8.75 hours</td></tr> <tr> <td>10 years</td><td>12 hours</td><td>11.25 hours</td><td>10.5 hours</td></tr> <tr> <td>15 years</td><td>14 hours</td><td>13.125 hours</td><td>12.25 hours</td></tr> <tr> <td>20 years</td><td>16 hours</td><td>15 hours</td><td>14 hours</td></tr> <tr> <td>25 years</td><td>18 hours</td><td>16.875 hours</td><td>15.75 hours</td></tr> </tbody> </table> e. When hiring an employee who left a position without a break in service with another LDSS or the Virginia Department of Social Services, the LDSS has the authority to provide the employee with the same accrual rate of the previous position. 2. <u>Accrual of Leave</u> Annual leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period or work week. 3. <u>Effect of Leave without Pay on Accrual</u> An employee on leave without pay for any part of the pay period or work week does not earn annual leave for that pay period or work week and may have the accrual rate	Years of Service	Monthly Accrual Rate (40-Hour Week)	Monthly Accrual Rate (37.5-Hour Week)	Monthly Accrual Rate (35-Hour Week)	Up to 5 years	8 hours	7.5 hours	7 hours	5 years	10 hours	9.375 hours	8.75 hours	10 years	12 hours	11.25 hours	10.5 hours	15 years	14 hours	13.125 hours	12.25 hours	20 years	16 hours	15 hours	14 hours	25 years	18 hours	16.875 hours	15.75 hours	<u>«Helpful Hints – Calculating Annual Leave for Part-Time Employees» for more information.</u> 3. <u>For LDSS that have bi-monthly or bi-weekly pay periods,</u>If the LDSS does not have monthly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned on a <u>monthly basis.</u> The following chart sets forth the amounts of annual leave that may be accrued during each month based on years of service. A day equates to eight hours if the normal work schedule is forty hours. If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours), annual leave accrual must be prorated based on the number of hours in the work week. For LDSS that have bi-monthly or bi-weekly pay periods, the accrual rate can be adjusted accordingly. <table border="1"> <thead> <tr> <th>Years of Service</th><th>Monthly Accrual Rate (40-Hour Week)</th><th>Monthly Accrual Rate (37.5-Hour Week)</th><th>Monthly Accrual Rate (35-Hour Week)</th></tr> </thead> <tbody> <tr> <td>Up to 5 years</td><td>8 hours</td><td>7.5 hours</td><td>7 hours</td></tr> <tr> <td>5 years</td><td>10 hours</td><td>9.375 hours</td><td>8.75 hours</td></tr> <tr> <td>10 years</td><td>12 hours</td><td>11.25 hours</td><td>10.5 hours</td></tr> <tr> <td>15 years</td><td>14 hours</td><td>13.125 hours</td><td>12.25 hours</td></tr> <tr> <td>20 years</td><td>16 hours</td><td>15 hours</td><td>14 hours</td></tr> <tr> <td>25 years</td><td>18 hours</td><td>16.875 hours</td><td>15.75 hours</td></tr> </tbody> </table> 4. When hiring an employee <u>from who left a position without a break in service with another LDSS or the Virginia Department of Social Services (VDSS) without a break in service,</u> the LDSS has the authority to provide the employee with the same <i>accrual rate</i> of the	Years of Service	Monthly Accrual Rate (40-Hour Week)	Monthly Accrual Rate (37.5-Hour Week)	Monthly Accrual Rate (35-Hour Week)	Up to 5 years	8 hours	7.5 hours	7 hours	5 years	10 hours	9.375 hours	8.75 hours	10 years	12 hours	11.25 hours	10.5 hours	15 years	14 hours	13.125 hours	12.25 hours	20 years	16 hours	15 hours	14 hours	25 years	18 hours	16.875 hours	15.75 hours	Section IV: Leave Without Pay, below.
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15 years	14 hours	13.125 hours	12.25 hours																																																								
20 years	16 hours	15 hours	14 hours																																																								
25 years	18 hours	16.875 hours	15.75 hours																																																								
Years of Service	Monthly Accrual Rate (40-Hour Week)	Monthly Accrual Rate (37.5-Hour Week)	Monthly Accrual Rate (35-Hour Week)																																																								
Up to 5 years	8 hours	7.5 hours	7 hours																																																								
5 years	10 hours	9.375 hours	8.75 hours																																																								
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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes														
	affected (see Leave without Pay policy). 4. <u>Carrying Over</u> a. The following limits apply to the amount of annual leave that is permitted to be carried over to the next year as well as the amount that will be paid at termination. b. For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period. <table><tr><th><u>Years of Service</u></th><th><u>Maximum Yearly Carryover</u></th></tr><tr><td>Up to 5 years</td><td>24 <u>day</u></td></tr><tr><td>5 years</td><td>30 days</td></tr><tr><td>10 years</td><td>36 days</td></tr><tr><td>15 years</td><td>42 days</td></tr><tr><td>20 years</td><td>48 days</td></tr><tr><td>25 years</td><td>54 days</td></tr></table> c. A local board may grant exceptions to the limits of annual leave that may be carried over to be available only for use in the next year when employees have not been allowed to use their leave because of agency work demands over a substantial period of time. Such exceptions must be granted by the local board in writing. Exceptional annual leave carryover balances will expire in 12 months. Exceptions granted do not apply to the amount of annual leave that will be paid at termination of employment. The amount paid at termination will be up to the	<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>	Up to 5 years	24 <u>day</u>	5 years	30 days	10 years	36 days	15 years	42 days	20 years	48 days	25 years	54 days	previous position. <u>Receipt & Use of Accrued</u>Accrual of <u>Leave</u> 1. <u>Annual leave does not accrue until the end of the pay period in which it is earned.</u> 2. <u>Annual leave must not be used before it is earned and borrowing against future leave accruals is not permitted.</u> 3. <u>Newly accrued annual leave hours are available for use</u>and may not be used until the first day of the following pay period or work week. 4.4. <u>Annual leave may be used for any reason provided the employee receives advance approval.</u> Effect of Leave without Pay on Accrual An employee on leave without pay for any part of the pay period or work week does not earn annual leave for that pay period or work week and may have the accrual rate affected (see Leave without Pay policy). <u>Carrying Over</u> The following limits apply to the amount of annual leave that is permitted to be carried over to the next year as well as the amount that will be paid at termination. For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period.	
<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>																
Up to 5 years	24 <u>day</u>																
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	maximum yearly carryover limits listed in the Years of Service and Maximum Yearly Carryover chart.	<table><tr><th><u>Years of Service</u></th><th><u>Maximum Yearly Carryover</u></th></tr><tr><td>Up to 5 years</td><td>24 <u>day</u></td></tr><tr><td>5 years</td><td>30 days</td></tr><tr><td>10 years</td><td>36 days</td></tr><tr><td>15 years</td><td>42 days</td></tr><tr><td>20 years</td><td>48 days</td></tr><tr><td>25 years</td><td>54 days</td></tr></table> A local board may grant exceptions to the limits of annual leave that may be carried over to be available only for use in the next year when employees have not been allowed to use their leave because of agency work demands over a substantial period of time. Such exceptions must be granted by the local board in writing. Exceptional annual leave carryover balances will expire in 12 months. Exceptions granted do not apply to the amount of annual leave that will be paid at termination of employment. The amount paid at termination will be up to the maximum yearly carryover limits listed in the Years of Service and Maximum Yearly Carryover chart.	<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>	Up to 5 years	24 <u>day</u>	5 years	30 days	10 years	36 days	15 years	42 days	20 years	48 days	25 years	54 days	
<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>																
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5 years	30 days																
10 years	36 days																
15 years	42 days																
20 years	48 days																
25 years	54 days																
Annual Leave (Use of Annual Leave)	1. <u>Use</u> Annual leave may be used for any reason provided advanced approval is given. 2. <u>Leave Must Be Accrued</u> Annual leave cannot be used until it is accrued. There is no borrowing against future accruals.	---	Section information revised & combined into “Receipt & Use of Accrued Leave” (above).														

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Annual Leave (Notice and Approval)	<u>Advanced Approval</u> Annual leave may be not used without prior approval. Although every effort will be made to accommodate a request for annual leave, not all requests can be granted during high peak times. Therefore, requests for annual leave should be submitted as soon as the need is known. For annual leave to be taken around a holiday, a request should be made as early as possible. <u>Approval Required at All Times</u> For absences that are not foreseeable, or for emergency situations, the employee must provide notice of the need to use the leave as soon as practicable. Until approval is provided, the absence will count as unauthorized leave without pay.	Advance approval of annual leave is always required. When unforeseeable absences or emergency situations occur, employees must provide notice of the need to use leave as soon as it is reasonably possible for them to contact their supervisor. Until approval is provided, the absence will count as unauthorized leave without pay. No matter how urgent the need for the leave may be, the LDSS has <u>no authority</u> to grant paid leave when the employee's accrual amount is not sufficient to cover the request. <u>Responsibility</u> Agency Responsibility The agency is responsible for: - Ensuring annual leave accrual calculations are correct based on the weekly schedule of the LDSS (40 hours, 37.5 hours, or 35 hours per week). - Setting expectations for annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.). - Ensuring that leave accrual calculations are updated if the weekly schedule of the LDSS should change. See Chapter 5 of the LDSS Administrative/HR Manual for more information on changing the weekly schedule of the LDSS.	Section Expanded & Rewritten

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		The LDSS is responsible for reimbursement due to errors resulting from miscalculation of accrual amounts by the LDSS. Contact the VDSS Division of Finance Local Reimbursement Unit (LRU) for more information on reimbursement. Supervisor Responsibility The supervisor is responsible for: 1. Providing timely responses to employee leave requests. 2. Setting expectations with direct reports for submission of regular annual leave requests (not holidays, peak times). 3. Adhering to agency expectations for approving annual leave submission during holidays or peak times of operation (i.e., timeframes for submission, number of employees off simultaneously, etc.). Employee Responsibility The employee is responsible for: 1. Knowing the amount of annual leave balances that have accrued or will have accrued before requesting leave. 2. Requesting leave in a timely manner per supervisor or agency expectations. 3. Reporting to work, as required, if an annual leave request is denied. <u>Employee Requirement to Reimburse</u> Employees are required to reimburse the LDSS from their salary for leave taken when:	

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		- There is not sufficient accrued leave to cover the time requested. - The error occurs because of miscalculation by the employee. Reimbursement due to employee error may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals. LDSS employees are <i>not</i> responsible for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).	
Section I: Annual Leave (Carryover)	---	Carryovering Over <u>An LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period as the annual carryover period for the agency.</u> The following limits apply to the amount of annual leave that is permitted to be carried over to the next year, as well as the amount that will be paid at termination. <u>For alternate agency workweek schedules (37.5 hours, 35 hours), the maximum “days” in the chart below must be prorated based on the number of hours in the workweek.</u> For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period.	New section incorporating revised information from other sections.

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes																																			
		<table><tr><th>Years of Service</th><th>Maximum Annual Carryover Amount</th><th>Max. Carryover Hours 40-Hour Week</th><th>Max. Carryover Hours 37.5-Hour Week</th><th>Max. Carryover Hours 35-Hour Week</th></tr><tr><td>Up to 5 Years</td><td>24 Days</td><td>192 Hours</td><td>180 Hours</td><td>168 Hours</td></tr><tr><td>5 Years</td><td>30 Days</td><td>240 Hours</td><td>225 Hours</td><td>210 Hours</td></tr><tr><td>10 Years</td><td>36 Days</td><td>288 Hours</td><td>270 Hours</td><td>252 Hours</td></tr><tr><td>15 Years</td><td>42 Days</td><td>336 Hours</td><td>315 Hours</td><td>294 Hours</td></tr><tr><td>20 Years</td><td>48 Days</td><td>384 Hours</td><td>360 Hours</td><td>336 Hours</td></tr><tr><td>25 Years</td><td>54 Days</td><td>432 Hours</td><td>405 Hours</td><td>378 Hours</td></tr></table> <u>Carryover Exceptions</u> <u>An exception to annual leave carryover amounts may only be granted</u> A local board may grant exceptions to the limits of annual leave that may be carried over to be available only for use in the next year when employees have not been allowed to use their leave because of agency work demands over a substantial period of time. Such exceptions must be <u>approved</u>granted by the local board in writing <u>and</u> Exceptional annual leave carryover balances will expire in 12 months. <u>No Payment of Carryover Exception Amounts Upon Separation</u> <u>Carryover exception amounts</u>Exceptions granted do not apply to the amount of annual leave that will be paid <u>upon separation</u>at termination of employment. <u>Employees will only receive payout for the</u> The amount paid at termination will be up to the maximum yearly carryover limits listed in the Years of Service and Maximum <u>Annual</u>Yearly Carryover chart.	Years of Service	Maximum Annual Carryover Amount	Max. Carryover Hours 40-Hour Week	Max. Carryover Hours 37.5-Hour Week	Max. Carryover Hours 35-Hour Week	Up to 5 Years	24 Days	192 Hours	180 Hours	168 Hours	5 Years	30 Days	240 Hours	225 Hours	210 Hours	10 Years	36 Days	288 Hours	270 Hours	252 Hours	15 Years	42 Days	336 Hours	315 Hours	294 Hours	20 Years	48 Days	384 Hours	360 Hours	336 Hours	25 Years	54 Days	432 Hours	405 Hours	378 Hours	
Years of Service	Maximum Annual Carryover Amount	Max. Carryover Hours 40-Hour Week	Max. Carryover Hours 37.5-Hour Week	Max. Carryover Hours 35-Hour Week																																		
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Helpful Hints: Calculating Annual Leave for Part-Time Employees	---	Annual leave accruals for part-time employees are prorated based on the number of hours they work <i>on a weekly basis</i>. Look at this example: Jane has been with her agency for one year and works a set schedule of 22.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jane’s hours equate to 60% of the full-time schedule. The full-time accrual rate for a	This “Helpful Hint” appears as an insert in Section I: Annual Leave (Carryover), above.																																			

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		one-year employee is 7.5 hours per month (based on a 37.5- workweek). Jane’s accrual rate would be 4.5 hours per month, or 60% of the full-time accrual rate. Here are some recommendations to make leave calculation for part-time employees easier: ◆ Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for <i>all</i> employees, and it can also aid in preventing miscalculation of pay and overtime hours. ◆ Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week). Need help with calculating leave accrual amounts? Contact the VDSS Local HR Support Team with questions.	
Section I: Annual Leave (Effect of Leave Without Pay on Accruals)	---	Effect of Leave without Pay on Accrual Employees <u>An employee</u> on leave without pay for any part of the pay period or work week do<u>does</u> not earn annual leave for that pay period or work week. <u>Please see Section IV, “Leave Without Pay (LWOP)” for more information</u> and may have the accrual rate affected (see Leave without Pay policy).	New section incorporating revised information from other sections.
Annual Leave (Treatment of Annual Leave Upon Change in Status)	<u>Payment at Termination</u> a. When employment is terminated, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, military leave, and other	<u>Payment Upon Separation</u>at Termination When <u>an employee separates from the LDSS employment</u> is terminated, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave,	

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	forms of extended leave are not considered terminations for the purposes of receiving payment for accrued annual leave. b. For the purpose of unemployment compensation benefits the lump sum payment will be allocated as wages for the equivalent daily/weekly periods. 2. <u>Payment at Death</u> Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §64.2-601 and §64.2-602 which govern the process by which those payments are made. The guidelines and legal requirements governing deceased pay can be complicated. Individual circumstances can vary and may require additional guidance from the city/county payroll office and attorney. 3. <u>Right to Repurchase</u> An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the annual leave balances restored by paying the amount of any annual leave payment received at termination.	military leave, and other forms of extended leave are not considered separations<u>terminations</u> for the purposes of receiving payment for accrued annual leave. <u>Under certain circumstances, employees on military leave may qualify for receipt of payment.</u> For the purpose of unemployment compensation benefits, the lump sum payment will be allocated as wages for the equivalent daily/weekly periods. <u>Payment at Death</u> Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §64.2-601 and §64.2-602 which govern the process by which those payments are made. The guidelines and legal requirements governing <u>wages earned by an employee prior to death</u> deceased pay can be complicated. Individual circumstances can vary and may require additional guidance from the <u>locality</u>city/county payroll office and attorney. <u>Right to Repurchase</u> An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the annual leave balances restored by paying the amount of any annual leave payment received at termination.	
Annual Leave (Change in Employment Status)	If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.	<u>Provisions of Section III “Disability Leave Program” may apply if</u> the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service	

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		in determining the rate at which the allowance for annual leave shall accrue in the new status.	
Annual Leave (Employee Accountability)	1. The employee is responsible for knowing the amount of annual leave balances that should have been accrued. 2. An employee will be required to reimburse the LDSS from his/her salary for leave taken when there was a recordkeeping error and there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals. 3. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.	---	Section Removed Information Revised & Incorporated into "Notice & Approval" (see above)
Section VII: Civil Leave (General Information)	---	Civil leave is available to all regular LDSS employees and is provided so that employees may have time off for civic and administrative purposes.	New Section Additionally, please note that information related to civil leave has been relocated to Section VII: Civil Leave.
Civil Leave (Purpose)	The purpose of this policy is to provide employees with paid leave for time away from work for civic and administrative purposes.	---	Section Removed
Civil Leave (Scope)	This policy applies to all regular employees.	---	Section Removed
Civil Leave (Use)	1. <u>Purposes</u> Civil leave may be granted for the following purposes:	<u>Purposes</u> Civil leave may be granted for the following purposes :	Information related to civil leave has been relocated to Section VII: Civil Leave.

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	a. To serve on a jury, to appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant, or to accompany the employee's child to court when the child is required to appear in court. b. To participate in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS. c. To participate in a workers' compensation or unemployment compensation hearing or administrative proceeding involving the employee or another employee within the LDSS. d. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees. 2. <u>Reasonable Use of Civil Leave</u> a. The amount of civil leave requested must be reasonable. b. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day. c. If because of distance and/or inconvenience, reporting to work before or after civil leave is not feasible, the employee with permission of the Director may use annual leave for the remaining hours of that	1. <u>Court Proceedings</u> <u>a.</u> To serve on a jury. <u>b.</u> To appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant, or to. <u>a.c.</u> To accompany the employee's child to court when the child is required to appear in court. 2. To participate in the resolution of work-related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS. 3. To participate in a workers' compensation, or unemployment compensation hearing, or administrative proceeding involving the employee or another employee within the LDSS. <u>4.</u> With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees. <u>Civil leave may not be granted for:</u> <u>1. Court proceedings where the employee is a defendant in a criminal matter, where criminal matter means either an alleged misdemeanor or felony.</u> <u>2. The receipt of a summons to appear in traffic court (except as a witness).</u> <u>3. Instances where the employee is a party to a civil case, either as a plaintiff or defendant, or who has any personal or</u>	

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	workday. 3. <u>Advance Approval Required</u> As soon as the employee knows of the need for the civil leave, the supervisor must be notified. If there should be a problem with the leave, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action. 4. For service on a jury, the employee is to receive his full salary and not have the leave time charged to annual or compensatory leave.	<u>familial interest in the proceedings.</u> <u>Reasonableness of Request</u>Use of Civil Leave The amount of civil leave requested must be reasonable. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day. <u>With director approval, an employee may use annual leave for the remaining hours of the workday if it is not feasible for the employee to return to work due to either distance or inconvenience.</u>If because of distance and/or inconvenience, reporting to work before or after civil leave is not feasible, the employee with permission of the Director may use annual leave for the remaining hours of that workday. <u>Requirement of Advance Approval</u>Required <u>The supervisor must be notified as</u>As soon as the employee knows of the need for the civil leave;the supervisor must be notified. <u>For instances where there is a sincere agency conflict</u>If there should be a problem with the leave, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action. <u>Jury Duty</u> <u>Employees who are summoned to jury duty must be free to perform this civic duty. No adverse employment action shall occur because of employee use of civil leave for this purpose. Employees serving on a jury must receive their</u>	

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		<u>full pay and must not have any leave time charged to either annual leave or compensatory leave.</u> <u>For those LDSS who have established rotational shifts, as required by the Code of Virginia § 18.2-465.1, employees who appear for jury duty for four or more hours in one day, including travel time, will not be required to start a work shift that begins on or after 5:00 p.m. on the day of that service or that begins before 3:00 a.m. on the day following the jury duty.</u> For service on a jury, the employee is to receive his full salary and not have the leave time charged to annual or compensatory leave.	
Section VII: Civil Leave (Provisions for Crime Victims)	---	<u>An LDSS shall allow an employee who is a victim of a crime to be present at all criminal proceedings relating to a crime against the employee, as long as the employee provides the agency with a copy of the form presented to the employee by the law enforcement agency pursuant to the Code of Virginia § 19.2-11.01 and, if applicable, provides the agency a copy of the notice of each scheduled criminal proceeding that is presented to the employee as victim.</u> <u>1. Paid civil Leave shall apply when the employee's presence at legal proceedings is compelled by subpoena or summons.</u> <u>2. Employees may use existing annual, compensatory, special duty, or family and personal leave balances for court proceedings that do not qualify for paid leave; however, the LDSS must provide LWOP, if requested.</u>	New Section

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		3. Annual and “traditional” sick leave will not accrue in any pay period in which an employee takes unpaid civil which places them in a LWOP status. 4. 4. The LDSS may limit the paid or unpaid leave if the employee's absence creates an undue hardship for the agency. The LDSS is encouraged to contact the VDSS HR Employee Relations Team (hr.employeerelations@dss.virginia.gov) prior to deciding what situations might qualify as an undue hardship.	
Civil Leave (Compensation Received)	1. <u>Reimbursements</u> An employee may keep any money received from the administrative or judicial tribunal while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the mileage reimbursement equivalent). 2. <u>Compensation</u> If an employee receives compensation for the services provided while on civil leave (e.g., expert witness fees or for service as a juror), the employee must report such compensation to the LDSS and have the hours taken not recorded as civil leave. The employee may use accrued annual leave, or	<u>Reimbursements</u> <u>Per Code of Virginia § 17.1-618, every person summoned as a juror in a civil or criminal case shall be entitled to \$50 for each day of attendance upon the court for expenses of travel incident to jury service and other necessary and reasonable costs as the court may direct. Jurors summoned from another political subdivision pursuant to § 8.01-363 may be allowed by the court, in addition to the above allowance, their actual expenses.</u> <u>Employees are permitted to</u> An employee may keep any money received from the courtadministrative or judicial tribunal while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the	Information related to civil leave has been relocated to Section VII: Civil Leave.

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	take leave without pay, for the hours of compensated service.	mileage reimbursement equivalent). <u>Per the Code, there are instances where the amount may be higher than \$50 if the employee is required to go to another locality for the court appearance, and lodging is required.</u> <u>Compensation Received from the Court</u> <u>Employees who receive</u>If an employee receives compensation for the services rendered provided while on civil leave (e.g., expert witness fees, <u>etc.</u> or for service as a juror), the employee must report such compensation to the LDSS. <u>The hours taken may not be charged to and have the hours taken not recorded as</u> civil leave. <u>However,</u> the<u>The</u> employee may use accrued annual leave, or <u>LWOP</u> take leave without pay, for the hours of compensated service.	
Section IV: Leave Without Pay (General Information)	---	Leave without pay (LWOP), or unpaid leave, is available to all LDSS employees in specific situations. The procedures and information outlined in this section must be followed when requesting and approving LWOP. Extended periods of LWOP may impact accrued leave, benefits, and the employee's ability to receive bonuses and performance raises.	New Section Additionally, please note that while some information related to leave without pay appears throughout the various subsections of the updated draft, most information on this topic has been relocated to Section IV: Leave Without Pay.
Leave Without Pay (Purpose)	The purpose of this policy is to provide procedures for LDSS to allow employees to be placed on leave without pay (LWOP).	---	Section Removed
Leave Without Pay (Scope)	This policy applies to all employees.	---	Section Removed
Leave Without Pay (Use of Unpaid Leave)	1. <u>Use</u> If the needs of the LDSS permit, and if the	---	Section Removed (but see information below)

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	grant of such time away from work is not burdensome to the LDSS, an employee may request the use of unpaid leave for a specified period of time. LWOP must be granted to eligible employees for FMLA and military leave purposes. 2. <u>LWOP Not Granted if Paid Leave Available</u> Except for FMLA and military leaves of absence, an employee cannot be on LWOP until all accrued paid leave available for such purposes has been exhausted. In extenuating circumstances, a LDSS may permit the <i>pro rata</i> use of paid leave and unpaid leave so that the employee would not lose benefits such as health plan and retirement participation. 3. <u>Duration</u> LWOP will not be granted for more than three (3) months except for an employee on intermittent FMLA or military leave. 4. <u>Job Restoration</u> a. Except as noted below, if the LDSS cannot hold the position open during the period of LWOP, the LDSS should notify the employee at the commencement of the leave or as soon as such a determination is made that the LDSS will fill the position. The employee should be informed of the need to fill the position and that employee must report back to work on full-time status within a specified period of time. Such notice should be provided in writing and delivered to or sent by certified mail to the employee.		While some information related to leave without pay appears throughout the various subsections of the updated draft, most information on this topic has been extensively rewritten, reorganized, and relocated to Section IV: Leave Without Pay.

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	b. Employees on FMLA or military leave status are entitled to job restoration under the conditions set forth in each respective policy. 5. If an employee does not report back to work at the end of the LWOP period, the employee will be deemed to have resigned.																
Leave Without Pay (Effect of Unpaid Leave Status on Benefits)	1. <u>Accrued Leave</u> An employee who is on LWOP does not accrue annual or sick leave for that pay period. 2. <u>Leave Anniversary Dates</u> After fourteen (14) consecutive calendar days of LWOP, the employee’s next leave anniversary date for the purposes of accruing annual leave will be adjusted according to the following chart: <table><thead><tr><th><u>Calendar Days on Leave without Pay</u></th><th><u>Extension of Anniversary Date (Pay Periods)</u></th></tr></thead><tbody><tr><td>1-14</td><td>0</td></tr><tr><td>15-31</td><td>1</td></tr><tr><td>32-46</td><td>2</td></tr><tr><td>47-61</td><td>3</td></tr><tr><td>62-76</td><td>4</td></tr><tr><td>77-91</td><td>5</td></tr></tbody></table> 3. <u>Effect on Raises and Bonuses</u> An employee on LWOP may have performance raises and bonuses affected by the absence from work. 4. <u>Retirement</u> LWOP is to be reported to the Virginia	<u>Calendar Days on Leave without Pay</u>	<u>Extension of Anniversary Date (Pay Periods)</u>	1-14	0	15-31	1	32-46	2	47-61	3	62-76	4	77-91	5	---	Section Removed (but see information below) While some information related to leave without pay appears throughout the various subsections of the updated draft, most information on this topic has been extensively rewritten, reorganized, and relocated to Section IV: Leave Without Pay.
<u>Calendar Days on Leave without Pay</u>	<u>Extension of Anniversary Date (Pay Periods)</u>																
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	Retirement System. An employee's years of service may be affected by such absence. 6. <u>Life Insurance</u> The LDSS may elect to make its contribution for life insurance for all or part of the LWOP or permit an employee on LWOP to continue coverage at the employee's expense. If such election is permitted, the LDSS must provide the employee with notice and an election form at commencement of the LWOP. 7. <u>Health Care Coverage</u> a. Except as provided below, upon the commencement of LWOP, the employee will be provided with a COBRA Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for 18 months (longer if disabled or with the occurrence of a second qualifying event). The full cost of the continued coverage is borne fully by the employee. (1) If LWOP is taken under FMLA, the employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs. (2) For short and/or intermittent periods of LWOP, the LDSS has the option of providing continuing coverage on the same terms as if the employee was not on LWOP. If such is elected, the COBRA procedures		

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	do not apply. 8. <u>Other Benefits</u> If other benefits are provided to the employee, the LDSS should establish a policy on whether they continue during LWOP.		
Section IV: Leave Without Pay (Reasons for Requesting Leave Without Pay)	---	<u>Reasons Including Job Restoration</u> There are two (2) reasons that LWOP may be requested where employees are entitled to job restoration: 1. Personal or family illness covered under the Family and Medical Leave Act (see Part II – The Family & Medical Leave Act). 2. Military Leave (see Section V; Military Leave). <u>Reasons where Job Restoration is not Guaranteed</u> Outside of FMLA or military leave, LWOP may be requested for educational purposes (see Section VIII; "Educational Leave") or for any reason deemed appropriate by the LDSS local board and local director. The director and local board should carefully consider the business needs of the LDSS and whether the request will be burdensome. Please review "Abuse of Leave without Pay" for examples of requests for LWOP that are not appropriate. Job restoration is not guaranteed for the duration of the period of LWOP. If possible, the LDSS will hold the position open until the employee returns from the approved period of LWOP. However, the LDSS is responsible for notifying	New section incorporating information rewritten and reorganized from other sections of current version of manual.

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		the employee immediately once there is awareness that the position needs to be filled and is unable to be restored. Written notification must be sent to employees by United States Postal Service (USPS) Certified Mail, alerting the employee of the need to fill the position, and set the expectation that the employee: 1. Must return to work in full capacity; and 2. Must return by a specific date to avoid forfeiture of the position. The return date should offer a reasonable amount of time for the employee to receive and respond to the notification (e.g., one calendar week). USPS tracking documentation should be retained for recordkeeping purposes. An employee will be deemed to have resigned his/her position if the employee does not return to work at the end of LWOP, or if the position cannot be held and the employee fails to respond to the notification to return to work.	
Section IV: Leave Without Pay (Notice & Approval of Leave Without Pay)	---	<u>Advance Notice</u> Employees are required to notify their supervisor of the need for LWOP as soon as the absence is foreseeable. If the LWOP request is for a medical condition, foreseeable absences include, but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth. <u>Notice of Unforeseeable or Emergency Situations</u> Notice and approval are required in all circumstances. However, the employee must	New section incorporating information rewritten and reorganized from other sections of current version of manual.

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		provide notice of the need for LWOP as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. <u>Approval</u> 1. LWOP must be approved and granted to eligible employees for FMLA and military leave, <u>regardless of whether or not the employees have other accrued or credited leave types available.</u> 2. For all other requests, approval of LWOP is dependent upon the current needs/priorities of the LDSS and the amount of leave requested by the employee. 3. Except for LWOP requests for FMLA and military leave, an employee cannot be on LWOP until all available accrued or credited leave types are exhausted. In extenuating circumstances, an LDSS may permit prorated or proportional use of paid leave and unpaid leave to prevent the employee from losing benefits (e.g., health insurance, retirement, etc.). 4. LWOP shall not be granted for more than three (3) months, except in instances where employees are on intermittent FMLA or military leave.	
Section IV: Leave Without Pay (Effect of Leave Without Pay on Benefits)	---	<u>Accrued Leave & Leave Anniversary Dates</u> An employee who is on LWOP does not accrue annual or “traditional” sick leave for that pay period. “Hybrid” leaves do not accrue. However,	New section incorporating information rewritten and reorganized from other sections of current version of manual.

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		employees who are on approved LWOP when “hybrid” leave credit balances (sick, family and personal) are granted, will not receive their leave credit balances until they return to paid status. After fourteen (14) consecutive days of LWOP, the LDSS must adjust the employee’s <u>annual</u> leave anniversary date as follows: <table><tr><th>Calendar Days on Leave without Pay</th><th>Extension of Anniversary Date (Pay Periods)</th></tr><tr><td>1-14 Days</td><td>No Extension of Anniversary Date</td></tr><tr><td>15-31 Days</td><td>1 Pay Period</td></tr><tr><td>32-46 Days</td><td>2 Pay Periods</td></tr><tr><td>47-61 Days</td><td>3 Pay Periods</td></tr><tr><td>62-76 Days</td><td>4 Pay Periods</td></tr><tr><td>77-91 Days</td><td>5 Pay Periods</td></tr></table> <u>Effect on Raises & Bonuses</u> An employee on LWOP may have performance raises and bonuses affected by the absence from work. <u>Retirement</u> LWOP must be reported to the Virginia Retirement System (VRS), which may result in impacts to an employee’s years of service. VRS is the resource for policies and procedures for maintaining retirement contributions. <u>Life Insurance</u> LDSS have the following options: 1. The LDSS may elect to make its contribution for life insurance for all or part of the employee’s LWOP period; or 2. The LDSS may permit the employee to continue coverage at the employee’s expense for the duration of the LWOP period. The employee must receive notice and be	Calendar Days on Leave without Pay	Extension of Anniversary Date (Pay Periods)	1-14 Days	No Extension of Anniversary Date	15-31 Days	1 Pay Period	32-46 Days	2 Pay Periods	47-61 Days	3 Pay Periods	62-76 Days	4 Pay Periods	77-91 Days	5 Pay Periods	
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		provided with the election form at the beginning of the LWOP period. Employees should contact the locality with any questions concerning life insurance coverage. <u>Health Insurance</u> Except as provided below, upon the commencement of LWOP, the employee will be provided with a Consolidated Omnibus Budget Reconciliation Act (COBRA) Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for eighteen (18) months or longer, if disabled or with the occurrence of a second qualifying event. The full cost of the continued coverage is the full responsibility of the employee. 1. Under FMLA: The employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs. 2. Short/intermittent periods of LWOP unrelated to FMLA: The LDSS should follow the practices set by the locality, the plan administrator, for all employees under the healthcare plan. If the locality permits continued coverage during a short/intermittent period of LWOP, COBRA procedures do not apply. Employees should contact the locality with any questions concerning health insurance coverage.	

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		<u>Other Benefits</u> Benefits may vary from locality to locality. It is recommended that the LDSS establish an internal policy indicating how other benefits specific to the locality will continue during periods of LWOP.	
Section IV: Leave Without Pay (Abuse of Leave Without Pay)	---	LWOP is not intended for casual use based on an employee's failure to manage available leave balances to cover future planned events or for unexpected, noncritical events (i.e., minor illness or injury, car trouble, etc.). Employees must adhere to the request and approval process outlined in this section. Abuse of LWOP occurs when an employee <i>continually</i> exhausts all available leave balances and makes <i>repeated</i> requests to use LWOP due to the failure to maintain a leave balance throughout the year. Abuse of LWOP may be met with disciplinary action, up to and including termination of employment. The LDSS local board and local director may establish a limit to the amount of LWOP an employee may request within a calendar year for purposes incidental to this policy. Contact the VDSS Local HR Support Team with general questions about LWOP and the VDSS Employee Relations Team (hr.employeerelations@dss.virginia.gov) with questions about the abuse of LWOP.	New section incorporating information rewritten and reorganized from other sections of current version of manual.
Military Leave (Purpose)	The purpose of this policy is to provide the procedures governing leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees' job restoration rights under the federal Uniformed	No Changes	No changes, but please note that this information appears in the updated draft as part of Section V:

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	Services Employment and Reemployment Rights Act of 1994 (USERRA) and § 44-93 and 44-93.1 of the <i>Code of Virginia</i> .		Military Leave (General Information)
Military Leave (Scope)	This policy applies to all employees who are in non-temporary positions and who are called to covered service in the U.S. Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services. Covered service includes: voluntary and involuntary duty; active or inactive duty; training; and full-time duty with the National Guard, Naval Militia, or Public Health Service.	This policy applies to all employees who are in non-temporary positions and who are called to covered service in the <u>United States</u> U.S. Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services. Covered service includes: 1. <u>V</u> v oluntary and involuntary duty; 2. <u>A</u> a ctive or inactive duty; 3. <u>T</u> t raini <u>ng</u> ; and 4. <u>F</u> f ull-time duty with the National Guard, Naval Militia, or Public Health Service.	This information appears in the updated draft as part of Section V: Military Leave (General Information)
Military Leave (Military Leave)	An employee is eligible for military leave if the employee has not used five years of military leave during his employment with the LDSS. 1. <u>Advanced Notice of Need for Leave</u> a. To retain job restoration rights, and to be granted leave, an employee must provide the LDSS with advanced notice, either in writing or orally, of the call to military service which includes training duty. b. Advanced notice must be provided unless providing such notice is not possible or reasonable under the circumstances. c. The employee should provide the LDSS with a copy of the military orders at time of notice, but if not presented at that time, may be provided to the LDSS after the leave is	---	Section removed, but the information presented here has been rewritten and incorporated into other parts of Section V: Military Leave (see below).

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	granted. 2. <u>Military Leave with Pay</u> a. Per federal fiscal year, a public employee must be granted up to 15 workdays (120 hours) of military leave with pay per federally funded tour of duty. b. For employees who do not normally work approximately equal workdays of five or more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not taking into account any holidays, paid or unpaid leaves of absence, or other absences. c. Benefits received while on military leave with pay are the same as if the employee were employed. 3. <u>Military Leave without Pay</u> a. Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five years and they have not been dishonorably discharged. b. Benefits during military leave without pay: (1) Leave Benefits (a) Annual Leave (i) Employees will not accrue annual leave when they are on leave without pay status. (ii) Employees may retain all or a portion of their accrued annual leave, may use all or part of the accrued leave to supplement		

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	military pay, or be paid for the accrued annual leave at the commencement of military leave without pay. (iii) Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes. (b) Compensatory and Special Duty Leave Employees may retain all or a portion of their compensatory and special duty leave, may use all or part of the leave to supplement military pay, or be paid for the leave at the commencement of military leave without pay. (c) Sick Leave (i) Employees will not accrue sick leave while on leave without pay status. (ii) Employees with less than five years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances, which are reactivated upon reinstatement to local service. (iii) Employees with five or more years of continuous employment with the LDSS at the time military leave begins may retain their entire sick leave balances (which shall be reactivated upon reinstatement) or may receive payment for the accrued sick leave under the provisions of the sick leave policy. Once payment for sick leave is made, all remaining balances are lost and		

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	can not be reinstated upon reemployment. ▪ Employees who received payment for their sick leave balances and then return to work must serve another five years of continuous local service before being eligible for sick leave payment upon termination. ▪ Employees may not repurchase any sick leave for which they have been paid. (2) Health Plan Participation (a) Employees called for active duty have the right to continue participating in the LDSS's health care plan for 24 months beginning one month after the date leave without pay commences provided that they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents. (b) Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. (Note: under USERRA, an employee who is on military leave for less than 31 days is entitled to participate in the health plan on the same terms as if employment was not interrupted.) (c) The election rights are for the employee as well as other qualified beneficiaries. (d) Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan cannot impose a waiting period or other exclusion		

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	provisions. (3) Retirement Plan Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.		
Military Leave (Reinstatement from Military Service)	1. An employee who has been on military leave for a period of 31 days or longer should notify the LDSS of the employee's intention to be reemployed and the expected date of return. 2. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee: a. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service. b. Returns to work within the following time periods (in addition to the time periods set forth below, reasonable time for safe travel and rest must be allowed): (1) <u>Military leave of less than 30 days</u> – after 8 hours of rest the employee must report to work on the first regularly scheduled workday following return home from military service; (2) <u>Military leave of 31 to 180 days</u> – must either send an application to return to work or report to work within 14 days of completing military service; (3) <u>Military leave of 181 days or longer</u> – must either send an application to return to work	<u>Employees who have</u> An employee who has been on military leave for a period of <u>thirty-one (31)</u> days or longer should notify the LDSS of <u>their</u> the <u>employee's</u> intention to be reemployed and the expected date of return. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee: 1. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service. 2. Returns to work within the <u>period specified in the « Reinstatement Reporting Timeline » chart below</u>; following time periods (in addition to the time periods set forth below, reasonable time for safe travel and rest must be allowed): Military leave of less than 30 days – after 8 hours of rest the employee must report to work on the first regularly scheduled workday following return home from military service; Military leave of 31 to 180 days – must either send an application to return to work or report to work within 14 days of completing military service; Military leave of 181 days or longer – must either send an application to return to work or report to	

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	or report to work within 90 days of completing military service. (4) <u>Service-related incapacities</u> – the reporting deadlines for employees who are hospitalized or convalescing because of a service-related injury or illness are extended to up to two years. c. Is qualified, or can reasonably be retrained, for the position that the employee: (5) Would have held if employment had not been interrupted due to the military leave; (6) Held at the time military leave commenced; or (7) Of like seniority, pay, and status. 4. In determining the position to which the employee may be entitled, the “escalator principle” is to be used. Under the escalator principle, an employee is to be placed in the position with the highest priority in the re-employment options. The returning employee is to step back in the seniority escalator at the point the employee would have occupied had no military leave been taken. The position would not necessarily be the same job the person previously held. 5. When an employee becomes disabled during military service and cannot perform duties of the previous position and reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies.	work within 90 days of completing military service. Service-related incapacities – the reporting deadlines for employees who are hospitalized or convalescing because of a service-related injury or illness are extended to up to two years. 3. Is qualified, or can reasonably be retrained, for the position that the employee would have held if employment had not been interrupted due to the military leave; held at the time military leave commenced; or is of like seniority, pay, and status. <table><tr><th>Military Leave Amount</th><th>Reinstatement Reporting Timeline</th></tr><tr><td colspan="2">In addition to the time periods set forth below, reasonable time for <u>safe travel and rest</u> <u>MUST</u> be allowed.</td></tr><tr><td>Military leave of less than 30 days</td><td>After eight (8) hours of rest, the employee must report to work on the first regularly scheduled workday following return home from military service.</td></tr><tr><td>Military leave of 31 to 180 days</td><td>Must either send an application to return to work or report to work <u>within fourteen (14) days</u> of completing military service.</td></tr><tr><td>Military leave of 181 days or longer</td><td>Must either send an application to return to work or report to work <u>within ninety (90) days</u> of completing military service.</td></tr><tr><td>Service-related incapacities</td><td>the reporting deadlines for employees who are hospitalized/recovering because of a service-related injury/illness are <u>extended to up to two (2) years.</u></td></tr></table> <u>Reinstatement Position Determination Process</u> <u>Escalator Principle</u> In determining the position to which the employee may be entitled, the “escalator principle” is to be used. <u>meaning that the</u>. Under the escalator principle, an employee must <u>is to be reemployed in a position that reflects “with reasonable certainty” the pay, benefits, seniority, and any other position benefits that he/she would have attained if not for the period of absence due to military service. Also, the position may not necessarily be the same job the employee</u>	Military Leave Amount	Reinstatement Reporting Timeline	In addition to the time periods set forth below, reasonable time for <u>safe travel and rest</u> <u>MUST</u> be allowed.		Military leave of less than 30 days	After eight (8) hours of rest, the employee must report to work on the first regularly scheduled workday following return home from military service.	Military leave of 31 to 180 days	Must either send an application to return to work or report to work <u>within fourteen (14) days</u> of completing military service.	Military leave of 181 days or longer	Must either send an application to return to work or report to work <u>within ninety (90) days</u> of completing military service.	Service-related incapacities	the reporting deadlines for employees who are hospitalized/recovering because of a service-related injury/illness are <u>extended to up to two (2) years.</u>	
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	6. If employee no longer meets the minimum qualifications of the former position because of changes in job duties, the employee must meet the changed requirements within a reasonable time after reemployment or be offered a position requiring skills comparable to those required in the former position with regard to seniority, status, pay and location. 7. Reinstatement is not required if the LDSS's circumstances have changed thereby making it impossible or unreasonable to reinstate the employee. (a) If the employee's formerly held position has been abolished, the employee shall be placed in a position comparable in status and pay to those previously held. (b) If such comparable position is not available, the employee shall be considered affected by a lay-off and lay-off policies shall apply.	previously held, placed in the position with the highest priority in the re-employment options. The returning employee is to step back in the seniority escalator at the point the employee would have occupied had no military leave been taken. The position would not necessarily be the same job the person previously held. <u>Position Determination Where Disability is a Factor</u> When an employee becomes disabled during military service and cannot perform duties of the previous position, <u>the LDSS must attempt to provide reasonable accommodations. If</u>and reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies. <u>Position Determination when the Employee no Longer Meets Minimum Requirements</u> <u>Cases may occur where the</u> If employee no longer meets the minimum qualifications of the former position because of changes in job duties; <u>In the event the employee no longer meets the minimum qualifications of the position,</u>the employee must meet the changed requirements within a reasonable time after reemployment or <u>The employee must be offered an opportunity to meet the new requirements within a reasonable time after reinstatement.</u> 2. <u>The employee must</u> be offered a position requiring skills comparable to those required in the former position with	

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		regard to seniority, status, pay and location. <u>Circumstances where Reinstatement is not Required</u> Reinstatement is not required if the LDSS's circumstances have changed thereby making it impossible or unreasonable to reinstate the employee. <u>However, the LDSS remains responsible for:</u> <u>1. Placing the employee in a position comparable in status in pay to the position the employee previously held if the employee's former has been abolished.</u> <u>2. Considering the employee to be affected by lay-off and following lay-off policies if a comparable position is not available. See Chapter 7 of the LDSS Administrative/HR Manual for more information on layoffs.</u> If the employee's formerly held position has been abolished, the employee shall be placed in a position comparable in status and pay to those previously held. If such comparable position is not available, the employee shall be considered affected by a lay-off and lay-off policies shall apply.	
Section V: Military Leave (Requirements for the Use of Military Leave with Job Restoration Coverage)	---	- The employee's absence request must be on account of service in the uniformed services. - The employee must give advance notice (written or oral) to the LDSS that he/she is requesting leave for service (including	New Section

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		training) in the uniformed services, unless such notice was precluded by military necessity or otherwise impossible or unreasonable. - The employee must provide a copy of his/her military orders either at the time of the advance notice, or if the orders are not yet available, after the leave is granted. - The cumulative period of military leave granted by the LDSS must not have exceeded five (5) years (see “Helpful Hints – Additional Information on Calculating the Five-Year Period” for more information). - The employee must not have been released from military service under dishonorable or other punitive conditions. - Unless impossible or unreasonable, the employee must have reported back to work at the LDSS in a timely manner or have submitted a timely application for reemployment.	
Section V: Military Leave (Helpful Hints: Additional Information on Calculating the Five-Year Cumulative Period)	---	An employee is eligible for military leave if he/she has not used five (5) cumulative years of military leave during employment with the LDSS. Per the Department of Labor, most types of service will be covered within the five (5) year cumulative period limit. However, there are eight (8) exceptions to this rule where military leave must be granted regardless of the five-year cumulative cap.	This “Helpful Hint” appears as an insert in Section V: Military Leave (Requirements for the Use of Military Leave with Job Restoration Coverage), above.

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		These exceptions are: 1. Service required beyond five (5) years to complete an initial period of obligated service. 2. An obligation to service that, through no fault of his/her own, the employee is unable to obtain release. 3. The required two-week annual training for Reservists/National Guard members. 4. Involuntary calls to service for a domestic emergency. 5. Being ordered to service during a time of war or national emergency declared by the President or Congress. 6. Selected Reservists who are ordered active duty for “operational missions.” 7. Service members who are ordered to active duty by the Secretary involved to support a “critical mission requirement.” 8. A member(s) of the National Guard who are called by the President to execute the laws of the United States. Contact the VDSS Local HR Support Team with questions about this calculation.	
Section V: Military Leave (Military Leave with Pay)	1. <u>Military Leave with Pay</u> a. Per federal fiscal year, a public employee must be granted up to 15 workdays (120 hours) of military leave with pay per federally funded tour of duty. b. For employees who do not normally work approximately equal workdays of five or	<u>Military Leave with Pay</u> 1. Per federal fiscal year, a public employee must be granted up to <u>fifteen (15)</u> workdays (120 hours) of military leave with pay per federally funded tour of duty. <u>The total number of hours in the workday must be consistent with the</u>	New section created using information incorporated from other sections of the current version.

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	more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not taking into account any holidays, paid or unpaid leaves of absence, or other absences. c. Benefits received while on military leave with pay are the same as if the employee were employed.	<u>weekly schedule of the LDSS (40-hour week = 8-hour day, 37.5 hour week = 7.5 hour day, or 35-hour week = 7 hour day).</u> The federal fiscal year runs from October 1 of one calendar year through September 30 of the next. 2. <u>The minimum charge to leave is one hour. An employee may be charged military leave only for the hours that the employee would otherwise have worked and received pay.</u> 1.3. <u>Inactive Duty Training is authorized training performed by members of a Reserve or National Guard component not on Active Duty. It is performed in connection with the prescribed activities of the Reserve or National Guard. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. Employees who request military leave for Inactive Duty Training (generally two, four, or six hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel.</u> 2.4. For employees who do not normally work approximately equal workdays of five (5) or more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not considering<u>taking</u> into account any holidays, paid or unpaid leaves of absence, or other	

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		absences. 3.5. Benefits received while on military leave with pay are the same as if the employee were employed.	
Section V: Military Leave (Military Leave Without Pay)	1. <u>Military Leave without Pay</u> a. Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five years and they have not been dishonorably discharged. b. Benefits during military leave without pay: (1) Leave Benefits (a) Annual Leave (i) Employees will not accrue annual leave when they are on leave without pay status. (ii) Employees may retain all or a portion of their accrued annual leave, may use all or part of the accrued leave to supplement military pay, or be paid for the accrued annual leave at the commencement of military leave without pay. (iii) Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes. (b) Compensatory and Special Duty Leave Employees may retain all or a portion of their compensatory and special duty leave, may use all or part of the leave to supplement military pay, or be paid for the	<u>Military Leave without Pay</u> Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five <u>(5)</u> years, and they have not been dishonorably discharged. Benefits during military leave without pay: <u>Leave Benefits</u> <u>Annual Leave</u> 1. Employees will not accrue annual leave when they are on leave without pay status. 2. Employees may: a. Retain all or a portion of their accrued annual leave, may b. <u>U</u>se all or part of the accrued leave to supplement military pay, or - a.c. Be paid for the accrued annual leave at the commencement of military leave without pay. 2.3. Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes. <u>Compensatory and Special Duty Leave</u> <u>Employees may:</u>	New section created using information incorporated from other sections of the current version.

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	leave at the commencement of military leave without pay. (c) Sick Leave (i) Employees will not accrue sick leave while on leave without pay status. (ii) Employees with less than five years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances, which are reactivated upon reinstatement to local service. (iii) Employees with five or more years of continuous employment with the LDSS at the time military leave begins may retain their entire sick leave balances (which shall be reactivated upon reinstatement) or may receive payment for the accrued sick leave under the provisions of the sick leave policy. Once payment for sick leave is made, all remaining balances are lost and can not be reinstated upon reemployment. ▪ Employees who received payment for their sick leave balances and then return to work must serve another five years of continuous local service before being eligible for sick leave payment upon termination. ▪ Employees may not repurchase any sick leave for which they have been paid. (2) Health Plan Participation (a) Employees called for active duty have the right to continue participating in the LDSS's health care plan for 24 months beginning one month after the date leave without pay	1. <u>R</u>etain all or a portion of their compensatory and special duty leave. may 2. <u>U</u>se all or part of the leave to supplement military pay. or 1-3. <u>B</u>e paid for the leave at the commencement of military leave without pay. <u>“Traditional” Sick Leave</u> 1. Employees will not accrue sick leave while on leave without pay status. 2. Employees with less than five <u>(5)</u> years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances. <u>Sick leave balances will be</u> which are reactivated upon reinstatement to local service. 3. Employees with five <u>(5)</u> or more years of continuous employment with the LDSS at the time military leave begins may: a. <u>R</u>etain their entire sick leave balances (which shall be reactivated upon reinstatement) or may. b. <u>R</u>ecieve payment for the accrued sick leave under the provisions of <u>Section II, « Sick Leave (« Traditional ») »</u> the sick leave policy. 3-4. <u>If the balance is retained, it must be reactivated upon reinstatement to local service. If Once payment for sick leave</u>	

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	commences provided that they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents. (b) Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. (Note: under USERRA, an employee who is on military leave for less than 31 days is entitled to participate in the health plan on the same terms as if employment was not interrupted.) (c) The election rights are for the employee as well as other qualified beneficiaries. (d) Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan cannot impose a waiting period or other exclusion provisions. (3) Retirement Plan Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.	is <u>processed</u>made, all remaining balances are lost and <u>cannot</u>can not be reinstated upon reemployment. 4.<u>5.</u> Employees who received payment for their sick leave balances and then return to work must serve another five <u>(5)</u> years of continuous local service before being eligible for sick leave payment upon termination. 5.<u>6.</u> Employees may not repurchase any sick leave for which they have been paid. <u>“Hybrid” Leave</u> <u>“Hybrid” leaves do not accrue. However, employees who are on approved leave without pay when “hybrid” leave credit balances (sick, family, and personal) are granted, will not receive their leave credit balances until they return to paid status.</u> <u>Health Plan Participation</u> <u>Health insurance plans and other benefit options are facilitated by the locality and may differ from locality to locality. Questions specific to benefit plans, coverage options, etc., should be addressed to the locality.</u> 1. Employees called for active duty have the right to continue participating in the LDSS's health care plan for <u>twenty-four (24)</u> months beginning one <u>(1)</u> month after the date leave without pay commences, <u>if provided that</u> they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents. 2. Upon commencement of leave without	

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		pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. NOTE <u>Note: Under</u> USERRA, an employee who is on military leave for less than <u>thirty-one</u> (31) days is entitled to participate in the health plan on the same terms as if employment was not interrupted.) 3. The <u>E</u>lection rights are for the employee as well as other qualified beneficiaries. 4. Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan cannot impose a waiting period or other exclusion provisions. <u>Retirement Plan</u> Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.	
Military Leave (Family and Medical Leave Act)	Employees returning from military service who request Family and Medical Leave upon return to work are entitled to additional considerations in the determination of their eligibility for Family and Medical Leave under USERRA. Refer to Section X. Family and Medical Leave for further policy specifications.	USERRA requires that the reinstated employee be given credit for any months and hours of service he or she would have been employed but for the USERRA-covered service in determining eligibility for FMLA leave. Part II - Section III, "FMLA Military Leave Entitlements," provides more information on the qualification and certification process for specific military leave entitlements under the FMLA.	Section Rewritten
Military Leave	Annually the LDSS must provide every employee with a notice of the rights afforded under this	Annually <u>T</u> he LDSS <u>is required to</u> must provide every employee with a notice of the rights	

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(Annual Notice of Military Leave Rights)	policy. The LDSS can meet this obligation by providing an employee a copy of this policy or by referring the employee to the policy and having it available for distribution.	afforded under this policy <u>on an annual basis</u> . The LDSS may meet this obligation by providing an employee a copy of this policy or by referring the employee to the policy and having it available for distribution.	
Section VIII: Educational Leave (General Information)	---	Educational leave is available to all LDSS employees and is provided to support employees' self-development through the pursuit of formal educational opportunities relating to their career with the LDSS.	New Section
Educational Leave (Purpose)	The purpose of this policy is to afford employees the opportunity to pursue educational pursuits that further their employment skills.	---	Section Removed
Educational Leave (Scope)	This policy applies to all employees.	---	Section Removed
Educational Leave (Use of Educational Leave)	1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the Director setting forth the course or program, the benefits to the LDSS from the employee's attendance in this course, dates for the leave and suggested means to execute the employee's duties during the absence. 2. An employee may be granted educational leave for specific course(s) of study related to the work of the LDSS provided reasonably adequate provisions can be made for the performance of the employee's assigned duties. 3. Educational leave can be with or without pay. If leave with pay is granted its duration	1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the <u>LDSS Director</u> <u>providing the following information:</u>setting forth a. <u>The name, location, and dates of attendance of</u> the course or program, the benefits to the LDSS from the employee's attendance in this course; b. <u>How the employee's completion of this course or program will benefit the LDSS.</u> dates for the leave and a-c. <u>The</u> suggested means to execute the employee's duties during the absence. 2. An employee may be granted educational	

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	shall not be longer than three months. 4. The LDSS may consider a schedule adjustment in lieu of granting leave.	leave for <u>a</u> specific course(s) of study related to the work of the LDSS, provided reasonably adequate provisions can be made for the performance of the employee's assigned duties. 3. Educational leave may <u>can</u> be <u>granted</u> with or without pay. <u>Educational leave granted with pay</u> If leave with pay is granted its duration shall not be granted for longer than three <u>(3)</u> months. 3.4. <u>LDSS granting educational leave without pay must follow the policies in Section IV, « Leave Without Pay (LWOP) ».</u> 4.5. The LDSS may consider a schedule adjustment in lieu of granting leave.	
Educational Leave (Return from Educational Leave)	1. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position. 2. The employee shall have all creditable years of service before the date of separation plus the period of educational leave considered in determining the rate of accrual. 3. An employee returning from educational leave with pay will be placed in his or her former position. With educational leave without pay, there is no obligation to hold the position vacant during the period of leave.	1. <u>An employee returning from educational leave with pay will be placed in his/her former position.</u> 1.2. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position. 3. The employee shall <u>be given credit for the period of educational leave when determining an increase to the annual leave accrual rate</u> have all creditable years of service before the date of separation plus the period of educational leave considered in determining the rate of accrual. 2.4. <u>The LDSS is under no obligation to hold a position vacant during the period of educational leave without pay. See</u>	

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		<u>Section IV, LWOP, « Reasons Where Job Restoration is not Guaranteed » for more information.</u> An employee returning from educational leave with pay will be placed in his or her former position. With educational leave without pay, there is no obligation to hold the position vacant during the period of leave.	
Educational Leave (Educational Pursuits Required by the LDSS)	If attendance in a course of study, a seminar, or conference is required by the LDSS, the hours in attendance count as hours worked and the employee is to receive his or her regular rate of pay. Educational leave shall not be used for this purpose.	<u>Educational leave shall not be used if</u> attendance in a course of study, a seminar, or conference is required by the LDSS. <u>The</u> hours in attendance count as hours worked and the employee is to receive his or her regular rate of pay. Educational leave shall not be used for this purpose.	
Section IX: Administrative Leave (General Information)	---	The administrative leave policy applies to all LDSS employees and relates to the procedures of granting leave for the performance of non-work activities away from the LDSS in specific circumstances.	New Section
Administrative Leave (Purpose)	The purpose of this policy is to provide procedures for the use of administrative leave.	---	Section Removed
Administrative Leave (Scope)	This policy applies to all employees.	---	Section Removed
Administrative Leave (Use of Administrative Leave)	1. Administrative leave is leave with or without pay granted by the LDSS for an employee to be away from the worksite performing non-work activities. Administrative leave is not an entitlement, and its use is purely discretionary on the part of the LDSS. 2. A LDSS may place an employee on	Administrative leave is leave with or without pay <u>may be</u> granted by the LDSS for an employees <u>who are</u> to be away from the worksite performing non-work activities. Administrative leave is not an entitlement, and its use is purely discretionary on the part of the LDSS. <u>LDSS granting administrative leave without pay must follow the</u>	

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	administrative leave with pay when a. The LDSS is investigating the employee for misconduct and the LDSS has not determined whether discipline is warranted; or b. Other legitimate LDSS reasons.	<u>policies in Section IV, “Leave Without Pay (LWOP)”.</u> A LDSS may place an employee on administrative leave with pay when: 1. The LDSS is investigating the employee for misconduct, and the LDSS has not determined whether discipline is warranted; or 2. Other legitimate LDSS reasons. <u>The LDSS is strongly encouraged to contact the VDSS HR Employee Relations Team (hr.employeerelations@dss.virginia.gov) prior to placing an employee on administrative leave.</u>	
Administrative Leave (Benefits While on Administrative Leave with Pay)	An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled to including earned annual and sick leave. Administrative leave with pay, however, does not count as hours worked for the purposes of overtime.	An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled, to including earned annual and sick leave. Administrative leave with pay, however , does not count as hours worked for the purposes of overtime.	
Section VI: Bereavement Leave (General Information)	---	Bereavement leave is available to all LDSS employees and is provided so that employees may have time off following the death of a family member. Bereavement leave is permitted if taken within eight (8) weeks of the death of the family member.	New Section
Bereavement Leave (Purpose)	The purpose of this policy is to set forth the provisions for leave for the death of a family member.	---	Section Removed
Bereavement Leave (Scope)	This policy applies to all employees.	---	Section Removed

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Bereavement Leave (Use of Bereavement Leave)	<u>Leave for Death of Family Member</u> - An employee may use annual leave for absences that are due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes provided that the leave time is requested in advance or as soon as practical under the circumstances and the time requested is reasonable under the circumstances. - During a calendar year, an employee may use three (3) days of sick leave for the death of a family member and no more than a total of six (6) days when there are multiple family member deaths during the calendar year. Under the Sick Leave policy, a family member (whether the relationship is by birth, adoption, foster care, marriage) is defined as parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home. - Leave without pay may also be granted for bereavement purposes subject to the rules set forth in that policy. - Bereavement leave is permitted if taken within eight weeks of the death of the family member. <u>Death of Child or Spouse</u> For the death of an employee's child or spouse, the LDSS may grant the use of up to three weeks of accrued sick leave during the	<u>Leave for Death of Family Member</u> <u>Annual Leave</u> An employee may use annual leave for absences that are due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes providing: <u>The</u>that the leave time is requested in advance, or as soon as <u>it is reasonable to do so under the circumstances.</u>practical under the circumstances and 1. 2. <u>The</u> time requested is reasonable under the circumstances. <u>In the event of the death of an employee's child or spouse, the LDSS may grant the use of up to three (3) weeks of accrued sick leave during the period immediately following the death.</u> <u>Sick Leave</u> During a calendar year, an employee may use: <u>Three (3) days of either « traditional » or « hybrid » sick leave for the death of a family member.</u>and <u>No</u>more more than a total of six (6) days when there are multiple family member deaths during the calendar year. <u>For use of either "traditional" or "hybrid" sick leave, the definition of a "family member" includes</u>Under the Sick Leave policy, a family member (whether the relationship is by birth, adoption, foster care, marriage) is defined as: <u>Parents;</u> <u>Stepparents;</u>	Please note that the information in this section has been expanded upon and reorganized.

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	period immediately following the death.	3. <u>S</u>spouse; 4. <u>C</u>hildren; 5. <u>S</u>tepchildren; 6. <u>S</u>iblings; 7. <u>G</u>randparents; 8. <u>G</u>randchildren and 4. 9. Any relative by blood, or marriage, <u>or through legal custody/guardianship</u> who resides in the employee's home. <u>Leave Without Pay (LWOP)</u> Leave without pay may also be granted for bereavement purposes subject to the rules set forth in <u>Section IV, "Leave Without Pay (LWOP)"</u> that policy. Bereavement leave is permitted if taken within eight weeks of the death of the family member. <u>Death of Child or Spouse</u> For the death of an employee's child or spouse, the LDSS may grant the use of up to three weeks of accrued sick leave during the period immediately following the death.	
Section II: Sick Leave (General Information)	---	Sick leave, also referred to as "traditional" sick leave, exists to provide employees with paid leave for time away from work for: 1. Personal illness or injury. 2. Medical appointments that cannot be scheduled outside of work hours. 3. For the illness or injury of a family member.	New Section

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		<u>Qualification to Receive Sick Leave</u> 1. Sick leave is available to all LDSS employees <u>except</u>: a. Employees in temporary or emergency positions. b. Employees in restricted positions where benefits are not provided by the funding source. c. Employees who were hired after January 1, 2014, AND whose locality has chosen to adopt the LDSS Disability Leave Program (“hybrid” leave) or a comparable locality leave policy. 2. Part-time employees must work at least <u>one half</u> of the agency’s workweek hours or greater to qualify to earn “traditional” sick leave. Please note the following: <table><tr><th>Agency Workweek Schedule</th><th>Part-Time Minimum Weekly Hours</th></tr><tr><td>40 Hours Per Week</td><td>20 Hours Per Week</td></tr><tr><td>37.5 Hours Per Week</td><td>18.75 Hours Per Week</td></tr><tr><td>35 Hours Per Week</td><td>17.5 Hours Per Week</td></tr></table>	Agency Workweek Schedule	Part-Time Minimum Weekly Hours	40 Hours Per Week	20 Hours Per Week	37.5 Hours Per Week	18.75 Hours Per Week	35 Hours Per Week	17.5 Hours Per Week	
Agency Workweek Schedule	Part-Time Minimum Weekly Hours										
40 Hours Per Week	20 Hours Per Week										
37.5 Hours Per Week	18.75 Hours Per Week										
35 Hours Per Week	17.5 Hours Per Week										
Sick Leave (Purpose)	The purpose of this policy is to provide employees with paid leave for time away from work for personal illness or injury, medical appointments that cannot be scheduled outside work hours, or for the illness or injury of a family member.	---	Section Removed								
Sick Leave (Scope)	This policy applies to full-time and part-time employees who are not in temporary or emergency positions. Part-time status is working half-time hours or greater.	---	Section Removed								
Section II: Sick Leave	---	Employee disclosure of a serious medical condition, personal injury, or disability may	New Section								

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(Associated Federal Laws)		trigger applicable federal laws. Please refer to Part II – "The Family & Medical Leave Act," and Part II - Section V, "FMLA & Other Federal Laws," for more information on these laws, employer/employee responsibilities, and associated resources and training.	
Sick Leave (Americans With Disabilities Act)	The Americans with Disabilities Act (ADA) requires consideration of accommodations for qualified employees who have disabilities. Such accommodation may be in the form of intermittent sick leave. Further policy regarding ADA can be found in Section X.O. The Family Medical Leave Act (FMLA), the American with Disabilities Act (ADA) as amended and the Pregnancy Discrimination Act (PDA).		
Sick Leave (Sick Leave Accrual)	<u>Rate</u> Employees earn paid sick leave on a pay period basis as follows: - A full-time employee earns sick leave at the rate of 1.25 days a month. - A part-time employee earns sick leave at a proportionate rate: e.g., and employee working half-time would earn ½ day of sick leave monthly and an employee working three quarters time would earn ¾ day a month. - For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned on a monthly basis: e.g., for LDSS with a semi-monthly pay period, the rate would be ½ day for each pay period for full time employees (for half-time employees	<u>Sick leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period.</u> <u>Rate</u> Employees earn paid sick leave on a <u>per-pay-period</u>pay period basis as follows. <u>If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave accrual must be prorated based on the number of hours in the workweek.</u> <u>Based on a forty (40) hour-per-week schedule:</u> - A full-time employee earns sick leave at the rate of 1.25 days <u>(10 hours)</u> per month. - A part-time employee earns sick leave at a proportionate rate. <u>See « Helpful Hints – Calculating « Traditional » Sick Leave for Part-Time Employees » for additional information. :- e.g., and employee working</u>	<u>Note that some information removed from this section has been relocated to subsequent sections in the updated draft.</u>

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	the rate would be ¼ day). d. If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours), sick leave accrual must be prorated based on the number of hours in the work week. 2. <u>Monthly and Semi-monthly Sick Leave Accrual Charts:</u> 40 Hour Workweek (8 Hours per Day) <table><tr><td>Monthly Accrual Rate in Days</td><td>Monthly Accrual Rate in Hours</td><td>Semi-Monthly Accrual Rate in Hours</td></tr><tr><td>1.25</td><td>10.00</td><td>5.00</td></tr></table> 37.5 Hour Workweek (7.5 Hours per Day) <table><tr><td>Monthly Accrual Rate in Days</td><td>Monthly Accrual Rate in Hours</td><td>Semi-Monthly Accrual Rate in Hours</td></tr><tr><td>1.25</td><td>9.375</td><td>4.6875</td></tr></table> 35 Hour Workweek (7 Hours per Day) <table><tr><td>Monthly Accrual Rate in Days</td><td>Monthly Accrual Rate in Hours</td><td>Semi-Monthly Accrual Rate in Hours</td></tr><tr><td>1.25</td><td>8.75</td><td>4.375</td></tr></table>	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours	1.25	10.00	5.00	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours	1.25	9.375	4.6875	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours	1.25	8.75	4.375	half-time would earn ½ day of sick leave monthly and an employee working three quarters time would earn ¾ day a month. 3. For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned <u>monthly on a monthly basis: e.g., For instance, for an LDSS with a semi-monthly pay period, the rate would be ½ day (5 hours) for each pay period for full time employees (for half-time employees the rate would be ¼ day).</u> <table><tr><th>Workweek Hours</th><th>Monthly Accrual Rate in Days</th><th>Monthly Accrual Rate in Hours</th><th>Semi-Monthly Accrual Rate in Hours</th></tr><tr><td>40 Hours (8 hours per Day)</td><td>1.25</td><td>10</td><td>5</td></tr><tr><td>37.5 Hours (7.5 Hours per Day)</td><td>1.25</td><td>9.375</td><td>4.6875</td></tr><tr><td>35 Hours (7 Hours per Day)</td><td>1.25</td><td>8.75</td><td>4.375</td></tr></table>	Workweek Hours	Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours	40 Hours (8 hours per Day)	1.25	10	5	37.5 Hours (7.5 Hours per Day)	1.25	9.375	4.6875	35 Hours (7 Hours per Day)	1.25	8.75	4.375	
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5.	<u>Carry Over</u> There is no limit to the amount of sick leave that is permitted to be carried over to the next year.	<u>Accrual</u> Sick leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period.																																			

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		<u>Effect of Leave without Pay on Accrual</u> If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period. <u>Carry Over</u> There is no limit to the amount of sick leave that is permitted to be carried over to the next year.	
Sick Leave (Use of Sick Leave)	<u>Use</u> Sick leave cannot be used until it is accrued. There is no borrowing against future accruals. <u>Reasons for Use</u> Sick leave may be used for either personal or family reasons. - Employee's Own Use of Sick Leave Unless the LDSS has set a limitation, an employee may use the full amount of accrued sick leave for the employee's own care as follows: (1) When medically necessary and the employee is unable to perform the essential functions of the position; (2) Pregnancy and child-birth related medical conditions; (3) Medically documented chronic conditions; (4) Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or (5) Family and Medical Leave Act leave.	<u>Receipt</u>Use <u>Sick leave does not accrue until the end of the pay period in which it is earned. Newly accrued sick leave hours are available for use the first day of the following pay period or workweek. Borrowing against future leave accruals is not permitted.</u>Sick leave cannot be used until it is accrued. There is no borrowing against future accruals. <u>Personal Use of Sick Leave</u>Reasons for Use Sick leave may be used for either personal or family reasons. <u>Employee's Own Use of Sick Leave</u> Unless the LDSS has set a limitation, an employee may use<u>Employees are permitted to use the full amount of their accrued sick leave for their own care, as follows: The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use.</u> <u>Personal reasons for use include:</u> When <u>leave from work is</u> medically necessary, and the employee is unable to perform the essential functions of the position.	Referred to as "Receipt & Use of Accrued Leave" in updated draft version.

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	b. Use of Sick Leave for Family Purposes Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use accrued sick leave for the care of family members as follows: (1) Circumstances in which sick leave may be used for family. (a) When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member; (b) The death of a family member; (c) Family and Medical Leave Act leave. (2) A family member for the purposes of circumstances (a) and (b) above (whether the relationship is by birth, adoption, foster care, or marriage) includes parents, stepparents, spouse, children, step- children, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home (refer to Section X. Family and Medical Leave Act leave). (3) During a calendar year, an employee may use up to eight days of accrued Sick Leave for family sick leave.	2. Pregnancy and childbirth related medical conditions. 3. Medically documented chronic conditions. 4. <u>Use in conjunction with the Family and Medical Leave Act (see Part II – « The Family & Medical Leave Act »).</u> 4.5. Medical appointments that cannot be scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours. (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or Family and Medical Leave Act leave. <u>Use of Sick Leave for Family Purposes</u> <u>Reasons for Use</u> 1. <u>Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").</u> 2. <u>When an employee's family member has a medical condition that requires the employee to directly assist in the family member's care or provide transportation for care-related activities.</u> 3. <u>The death of a family member.</u> <u>Definition of a Family Member</u> 1. <u>For use of "traditional" sick leave in conjunction with the Family and Medical Leave Act (FMLA), the agency must follow</u>	

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		<u>the definition of a “family member” as specified by the FMLA, which is a child, parent, or spouse.</u> 2. <u>For use of “traditional” sick leave for reasons that do not qualify for FMLA, the definition of a “family member” includes:</u> a. <u>Parents</u> b. <u>Stepparents</u> c. <u>Spouse</u> d. <u>Children</u> e. <u>Stepchildren</u> f. <u>Siblings</u> g. <u>Grandparents</u> h. <u>Grandchildren</u> i. <u>Any relative by blood, marriage, or through legal custody or guardianship who resides in the employee’s home.</u> <u>This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship.</u> <u>Amounts Available for Use for Family Purposes</u> <u>During a calendar year:</u> 1. <u>Employees may use up to 33% of their accrued sick leave balance in conjunction with FMLA.</u> 2. <u>Employees may use up to eight (8) days of their accrued sick leave balance for the care of family members for reasons that do not qualify for FMLA.</u>	

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		<u>The LDSS local board and local director may choose to establish different limits on the amount of accrued sick leave available for use for family purposes.</u> Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use accrued sick leave for the care of family members as follows: Circumstances in which sick leave may be used for family: When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member; The death of a family member; Family and Medical Leave Act leave. A family member for the purposes of circumstances (a) and (b) above (whether the relationship is by birth, adoption, foster care, or marriage) includes parents, stepparents, spouse, children, step children, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home (refer to Section X. Family and Medical Leave Act leave). During a calendar year, an employee may use up to eight days of accrued Sick Leave for family sick leave.	
Helpful Hints: Calculating "Traditional" Sick Leave for Part-Time Employees	---	Sick leave accruals for part-time employees are prorated based on the number of hours they work <i>on a weekly basis</i> . For instance, an employee working one-half of the agency's workweek hours would earn ½ of a day (5 hours) of sick	This "Helpful Hint" appears as an insert in Section II: Sick Leave (Receipt & Use of Accrued Leave), above.

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		leave per month and an employee working three-quarters of the agency's workweek hours would earn $\frac{3}{4}$ of a day (7.5 hours) per month. However, it can get tricky when an employee's hours vary from those amounts. Look at this example: Jake has been with his agency for one year and works a set schedule of 19.5 hours per week for an agency that has a 37.5-hour agency workweek schedule. Jake's hours equate to 52% of the full-time schedule. The full-time accrual rate for a one-year employee is 9.375 hours per month (based on a 37.5- workweek). Jake's accrual rate would be 4.875 hours per month, or 52% of the full-time accrual rate. Here are some recommendations to make leave calculation for part-time employees easier: ◆ Adopt a standard agency workweek schedule of 40-hours per week. This is recommended to prevent miscalculation of leave accrual for <i>all</i> employees, and it can also aid in preventing miscalculation of pay and overtime hours. ◆ Do not adopt an alternate agency workweek schedule outside of the options provided in the LDSS Administrative/HR Manual (37.5 or 35 hours per week). Need help with calculating leave accrual amounts? Contact the VDSS Local HR Support Team with questions.	
Sick Leave (Notice and Approval)	1. <u>Advanced Notice</u> If an employee has a medical condition that necessitates an absence from work, the	<u>Advanced Notice & Approval</u> <u>Employees are required to notify their</u>If an employee has a medical condition that	

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	employee must notify the supervisor on the leave request form as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include but are not limited to elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth. 2. <u>Notice and Approval Required at All Times</u> For absences that are not foreseeable, or for emergency situations, the employee must provide notice as soon as practicable. Until notice is provided, and the request is approved, the time will count as leave without pay.	necessitates an absence from work, the employee must notify the supervisor <u>on the sick</u> leave requests <u>for approved reasons</u> form as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include, but are not limited to, elective and non-emergency surgery, regular or routine medical appointments, pregnancy, and childbirth. <u>Notice & Approval for Unforeseeable or Emergency Situations</u> <u>Notice and approval are required in all circumstances. However, the employee must provide notice as soon as it is reasonably possible for absences that are unforeseeable or result from an emergency. The time will count as leave without pay until notice is provided and the request is approved. See Section IV, "Leave without Pay (LWOP)," for more information on the appropriate use of LWOP and potential impacts of the use of LWOP on employee benefits.</u> Notice and Approval Required at All Times For absences that are not foreseeable, or for emergency situations, the employee must provide notice as soon as practicable. Until notice is provided, and the request is approved, the time will count as leave without pay.	
Sick Leave (Verification of Need for Sick Leave)	1. <u>Verification of Need May Be Required</u> Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave. The use of sick leave will not be approved until requested verification is provided.	<u>Verification of Need May Be Required</u> Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave. The use of sick leave will not be approved until requested verification is provided. <u>Types of Verification</u>	

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	2. <u>Types of Verification</u> The following types of verification will be deemed sufficient: a. FMLA health care provider certification; b. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period of time that the employee will be absent from work; or c. Evidence that there was a medical appointment that could not have been scheduled during non-work hours. 3. <u>Re-Verification</u> If an employee is absent for an extended period of time or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave can be conditioned on providing the requested verification.	The following types of verification will be deemed sufficient: 1. FMLA health care provider certification. 2. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period of time that the employee will be absent from work. 3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours. <u>Re-Verification</u> If an employee is absent for an extended period of time or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave can be conditioned on providing the requested verification.	
Sick Leave (Treatment of Sick Leave Upon Change in Status)	1. <u>Payment at Termination</u> a. An employee must have worked continuously for the same LDSS for five years or longer to be entitled to a payment for accrued sick leave at termination or death. b. When employment is terminated, the employee may be paid for accrued sick leave in a lump sum up to the maximum allowable	<u>Payment at Termination</u> 1. An employee must have worked continuously for the same LDSS for five (5) years or longer to be entitled to a payment for accrued sick leave at termination or death. 2. When employment is terminated, the employee may be paid for accrued sick leave in a lump sum up to the maximum	

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	amount. The amount of payment is the lesser of 25% of the accrued leave or the maximum payout amount as determined by the local Board and approved by VDSS. c. For the purpose of unemployment compensation such leave payment will be allocated as wages for the equivalent daily/weekly periods as the employee would have received had employment continued. 2. <u>Payment at Death</u> Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §64.2-601 and §64.2-602 which govern the process by which those payments are made. The guidelines and legal requirements governing deceased pay can be complicated. Individual circumstances can vary and may require additional guidance from the city/county payroll office and attorney. 3. <u>Right to Repurchase</u> An employee, who is rehired by the same LDSS within twelve (12) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the sick leave balances restored by paying the amount of any payout received at termination for accrued sick leave. 4. <u>Leaves of Absence are Not Terminations</u> Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued	allowable amount. The amount of payment is the lesser of 25% of the accrued leave or the maximum payout amount as determined by the local Board and approved by VDSS. 3. For the purpose of unemployment compensation, such leave payment will be allocated as wages for the equivalent daily/weekly periods as the employee would have received had employment continued. <u>Payment at Death</u> Leave payments owed to a deceased employee are subject to certain provisions within Code of Virginia §64.2-601 and §64.2-602 which govern the process by which those payments are made. The guidelines and legal requirements governing <u>wages earned by an employee prior to death</u> deceased pay can be complicated. Individual circumstances can vary and may require additional guidance from the <u>locality</u> city/county payroll office and attorney. <u>Right to Repurchase</u> An employee, who is rehired by the same LDSS within twelve (12) months from the date of a layoff, or an employee who is reinstated by a grievance panel, may have the sick leave balances restored by paying the amount of any payout received at termination for accrued sick leave. <u>Leaves of Absence are Not Terminations</u> Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued sick leave.	

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	sick leave.		
Sick Leave (Transfer of Leave)	As an inducement to accept an offer of employment, an LDSS may offer to credit an employee with some or all of the sick leave balances that would be uncompensated when the employee resigns from employment with another LDSS or the Virginia Department of Social Services. An employee may only be credited with sick leave if there is no break in service.	As an inducement to accept an offer of employment, an LDSS may offer to credit an employee with some or all of the sick leave balances that would be uncompensated when the employee resigns from employment with another LDSS or the Virginia Department of Social Services (<u>VDSS</u>). An employee may only be credited with sick leave if there is no break in service.	
Sick Leave (Change in Employment Status)	If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.	<u>Provisions of Section III, “Disability Leave Program”, may apply if</u> the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.	
Sick Leave (Employee Accountability)	1. The employee is responsible for knowing the amount of sick leave balances that should have been accrued. 2. An employee will be required to reimburse the LDSS for leave taken if there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement or charging the time to other accrued paid leave. LDSS may work out a repayment plan with the employee. 3. If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.	1. The employee is responsible for knowing the amount of sick leave balances that should have been accrued. 2. An employee will be required to reimburse the LDSS for leave taken if there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement or charging the time to other accrued paid leave. LDSS may work out a repayment plan with the employee. <u>LDSS employees are not responsible for reimbursement of errors resulting from miscalculation of accrual amounts by the LDSS (i.e., leave accrual</u>	

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	4. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.	<u>amounts for agency employees are not appropriately prorated based on an alternate agency workweek schedule – 37.5 or 35 hours per week).</u> 3. If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period. <u>4. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.</u> <u>4.5. Reimbursement due to employee error may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals.</u>	
Section III: LDSS Disability Leave Program (General Information)	---	<u>Background</u> On January 1, 2014, the Virginia Retirement System (VRS) implemented the Hybrid Retirement Plan. With the implementation came the requirement that all Commonwealth of Virginia localities covered under the VRS Hybrid Retirement Plan automatically enroll in the VRS Virginia Local Disability Program (VLDP) or a comparable program provided by the local jurisdiction¹. As a result of this change, full-time employees enrolled in the VRS Hybrid Retirement Plan would have access to short- and long-term disability benefits that may not have been previously available. A leave system was not a part of the implementation of the Hybrid	New section which incorporates new or expanded information alongside information pulled from other sections which have been removed or rewritten.

¹ [§ 51.1-1153](#)

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		Retirement Plan or the VLDP, thus the creation of a leave system was necessary. The LDSS Disability Leave Program was created to fill the need for a leave system by allowing local boards to address the leave needs of employees covered under employer paid short- and long-term disability programs. High employee sick leave balances result from pairing the "traditional" sick leave accrual system (Section II of this chapter) with an employer paid short- and long-term disability program. The LDSS Disability Leave Program was created to prevent high “traditional” sick leave balances by offering a leave system where employees receive a finite amount of leave credits each year that do not accrue and are lost if unused within the agency’s leave year. The leave associated with the LDSS Disability Leave Program is often referred to as “hybrid” leave because the VRS Hybrid Retirement Plan was introduced during the same timeframe; however, the two are indirectly related. Employees who have questions about the VRS Hybrid Retirement Plan or the VLDP should contact VRS. <u>Options for Local Boards</u> Local boards may choose one of the following leave systems for employees covered under short- and long-term disability programs: 1. The LDSS Disability Leave Program. 2. The local jurisdiction’s leave policy. 3. The State Board sick leave accrual policy (also referred to as “traditional” sick leave).	

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		It is recommended that LDSSs work with their local boards and their locality to determine the best approach for local department employees under a disability plan. The LDSS must have an approved deviation to follow the local jurisdiction's leave policy. Check the LDSS Profile Summary to verify deviation status or contact the <u>VDSS HR Policy Team</u> (hr.employeerelations@dss.virginia.gov) to inquire about the policy deviation process. If the local jurisdiction's leave policy is chosen, it must apply to all local jurisdiction employees, including employees of the local department of social services.	
Disability Leave Program (Purpose)	To provide an alternative leave system for use by local boards to address the leave needs of employees covered under employer paid short- and long-term disability programs. Local boards may choose to allow employees covered under short- and long-term disability programs to follow: 1) State Board sick leave accrual policy; 2) local jurisdiction's leave policy; or 3) State Board disability leave program policy. If the local jurisdiction's leave policy is chosen, it must apply to all local jurisdiction employees, including employees of the local department of social services. It is recommended that local departments work with their local boards and their locality to determine the best approach for local department employees under a disability plan. If a local jurisdiction policy is chosen, local departments will submit an updated Local Policy Request	---	Section removed, however relevant information has in some cases been incorporated into other sections of the updated draft version, to include (but not limited to), Section III: LDSS Disability Leave Program (above).

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	Form to VDSS HR for approval.		
Disability Leave Program (Scope)	This policy applies to full-time or part-time employees who are not in temporary or emergency positions and whose local boards have chosen to limit their sick leave as part of a short- and long-term disability plan. This group of employees includes full-time employees hired or rehired on or after January 1, 2014; full time employees who choose to opt-in to the hybrid retirement plan; or other employees as determined by the local board.	This policy applies to full-time or part-time employees who are not in temporary or emergency positions, and whose local boards have chosen to limit their sick leave as part of a short- and long-term disability plan. This group of employees includes: 1. <u>F</u>ull-time employees hired or rehired on or after January 1st, 2014, <u>and who are enrolled in the Virginia Retirement System (VRS) Hybrid Retirement Plan.</u> 2. <u>F</u>ull time employees who choose to opt-in to the hybrid retirement plan; or 3. <u>O</u>ther employees as determined by the local board. <u>Employees eligible for sick leave accrual and who were hired before January 1, 2014, are covered under the State Board sick leave accrual policy (“traditional” sick leave). This policy is covered in Section II of this chapter. Employees who continue to participate in VRS Plan 1 or VRS Plan 2 will continue to accrue “traditional” sick leave. Employees should contact VRS with questions about their retirement plans.</u>	
Helpful Hints: Key Differences Between the LDSS Disability Leave Plan & “Traditional” Sick Leave	---	There are some important differences between the sick leave credit offered under the LDSS Disability Leave Plan and what is commonly referred to as “traditional” sick leave. Let’s look: ◆ Accompanies a short- and long-term disability program.	This “Helpful Hint” appears as an insert in Section III: Disability Leave Program.

VDSS HR Guidance Documents – Recommended Changes

Guidance Document Title: *Leave & Related Areas*

Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
		◆ The Disability Leave Plan provides both a sick leave ('hybrid') and family and personal leave credit. ◆ Leave types do not accrue. Employees receive either partial* or full leave credit amounts at a specific time during the year. ◆ Neither sick leave nor family and personal leave credits roll over. Leave credits not used in the previous year will be lost when leave credit amounts renew for the following year. ◆ There is no payout upon separation. “Traditional” Sick Leave ◆ Stand-alone leave; no short- and long-term disability plan. ◆ Employees only receive sick leave ('traditional'); family and personal leave are not included. ◆ Accrues on a pay period basis. ◆ Sick leave accrual amount rolls over from year to year. ◆ May be paid out upon separation from the LDSS. Questions? Contact the VDSS Local HR Support Team for assistance. *New employees starting on or after July 1 only receive partial leave amounts until the beginning of the following year.	

VDSS HR Guidance Documents – Recommended Changes

Guidance Document Title: *Leave & Related Areas*

Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Section III: LDSS Disability Leave Program (Applicable Federal Laws)	---	Employee disclosure of a serious medical condition, personal injury, or disability may trigger applicable federal laws. Please refer to Part II – "The Family & Medical Leave Act," for more information on the FMLA, employer/employee responsibilities, other federal laws that may intersect with the FMLA, and associated resources and training.	New Section
Disability Leave Program (Sick Leave Credit)	Sick leave will be credited on the following basis: 1) <u>Sick Leave Credit</u> (a) Full-time employees employed between January 1 and June 30, or other current full-time employees as determined by their local boards are credited the entire sick leave credit on the first day of their first full payroll period. (b) Full-time employees participating in the hybrid retirement plan and hired July 1 or later or current employees who opt into the hybrid retirement plan are credited 50% of the sick leave credit on the first day of their first full pay period or on the effective date of their election as applicable. (c) Part-time employees hired on January 1, 2014, or later may be granted a proportionate sick leave credit as determined by their local boards. (d) In subsequent years, the sick leave credit will be credited to eligible employees on the first day of the first full payroll period in January. (e) If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours),	1. Full-time employees participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive the full sick leave credit amount on the first day of their first full payroll period. 2. Full-time employees participating in the VRS Hybrid Retirement Plan and hired July 1 or later will receive 50% of the full sick leave credit amount. Receipt occurs on the first day of their first full pay period. a. In subsequent years, employee hired after July 1 or later will receive the full sick leave credit amount on the first day of the first full payroll period in January. 3. Part-time employees hired on or after January 1, 2014, may receive a proportionate sick leave credit amount, as determined by their local boards. If the weekly work schedule of the LDSS is not forty (40) hours (e.g., 37.5 hours, 35 hours), sick leave credit amounts <u>must</u> be prorated	Rewritten as Section II: LDSS Disability Leave Program (Receipt of Sick Leave Credit), with some information being removed or relocated to other sections, as appropriate.

VDSS HR Guidance Documents – Recommended Changes

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	sick leave accrual must be prorated based on the number of hours in the work week. 2) <u>Sick Leave Credit Charts</u> Eligible full-time employees hired from January 1 and June 30: 40 Hour Workweek (8 Hours per Day) <table><tr><th>Years of Service with LDSS</th><th>Sick Leave Credit in Days</th><th>Sick Leave Credit in Hours</th></tr><tr><td>0 through 4</td><td>8</td><td>64</td></tr><tr><td>5 through 9</td><td>9</td><td>72</td></tr><tr><td>10 and beyond</td><td>10</td><td>80</td></tr></table> 37.5 Hour Workweek (7.5 Hours per Day) <table><tr><th>Years of Service with LDSS</th><th>Sick Leave Credit in Days</th><th>Sick Leave Credit in Hours</th></tr><tr><td>0 to 4</td><td>8</td><td>60</td></tr><tr><td>5 to 9</td><td>9</td><td>67.5</td></tr><tr><td>10 and beyond</td><td>10</td><td>75</td></tr></table> 35 Hour Workweek (7 Hours per Day) <table><tr><th>Years of Service with LDSS</th><th>Sick Leave Credit in Days</th><th>Leave Credit in Hours</th></tr><tr><td>0 to 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	<u>Credit</u> If an employee is on leave without pay on the day that the sick leave credit is granted, the sick leave credit is not granted until the employee is on paid status. 4) <u>No Carry Over or Payment Upon Separation</u> The sick leave credit does not accrue. No carryover of the sick leave credit from year to year is allowed. Sick leave credit balances are not paid out upon separation. 5) <u>Use of Sick Leave Credit</u> (a) <u>Use</u> The sick leave credit cannot be used until it is granted. There is no borrowing against future credits. (b) <u>Reasons for Use</u> The sick leave credit may be used for either personal or family reasons. • <u>Employee's Own Use of Sick Leave Credit</u> Unless the LDSS has set a limitation, an employee may use the full amount of the sick leave credit for the employee's own care as follows: • When medically necessary and the employee is unable to perform the essential functions of the position; • Pregnancy and child-birth related medical conditions; • Medically documented chronic conditions; • Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be		

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	scheduled outside of work hours, when possible); or • Family and Medical Leave Act leave (see Section X). • <u>Use of Sick Leave Credit for Family Purposes</u> Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use the sick leave credit for the care of family members as follows: • <u>Circumstances in which the sick leave credit may be used for family:</u> • When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member; • The death of a family member; • Family and Medical Leave Act leave (see Section X). • A family member for the purposes of circumstances (i) and (ii) above (whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship) includes parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage or through legal custody or guardianship who resides in the employee's home. For Family and Medical Leave Act leave see Section X. • During a calendar year, an employee may use up to 33% of their unused sick leave		

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	credit balance for family sick leave. 6) <u>Sick Leave Balances of Employees Opting Into the Hybrid Retirement Plan</u> (a) <u>Purpose</u> To address the sick leave balances of employees opting-in to the VRS hybrid retirement plan or other employees whose local boards have decided to limit sick leave in connection with participation in a short- and long-term disability plan. (b) <u>Use of Previous Sick Leave Balance</u> Upon participation in the local short- and long-term disability plan, the sick leave balances of eligible employees will be frozen. At the discretion of the local board, these frozen sick leave balances may be used as follows: • To supplement income during periods when an employee is receiving short- or long-term disability benefits. Total income replacement from the disability benefit and leave cannot exceed 100% of an employee's pre-disability income per pay period. • For any allowable use of accrued sick leave, as noted in Chapter 4. Section VIII. C., during the one year waiting period prior to disability benefits. The local board may also choose to: • Make a payout of the frozen sick leave balance. Payout options include: 1) Treatment of frozen sick leave upon Change in Status		

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	Upon a change in status, treatment of frozen sick leave balances should be consistent with the treatment of accrued sick leave balances as noted in Chapter 4, Section VIII.F. 2) Prior to separation, payout of the remaining frozen sick leave balance may be made as follows: (a) A one-time lump sum payout up to the maximum allowable amount. The amount of payment is the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS; or (b) A lump sum payout up to the maximum allowable payout, whereby payment is split over two or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS. • Convert a portion of each employee's frozen sick leave balance to annual leave (not to exceed the maximum carryover for annual leave). (a) <u>Compensation Plan</u> The option or options approved by the local board to address the sick leave balances of employees opting into the hybrid retirement plan will be documented on the Local Department of Social Services Compensation Plan.		

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Section III: LDSS Disability Leave Program (Use of Sick Leave Credit)	1) <u>Use of Sick Leave Credit</u> (b) <u>Use</u> The sick leave credit cannot be used until it is granted. There is no borrowing against future credits. (c) <u>Reasons for Use</u> The sick leave credit may be used for either personal or family reasons. • <u>Employee's Own Use of Sick Leave Credit</u> Unless the LDSS has set a limitation, an employee may use the full amount of the sick leave credit for the employee's own care as follows: • When medically necessary and the employee is unable to perform the essential functions of the position; • Pregnancy and child-birth related medical conditions; • Medically documented chronic conditions; Medical appointments that cannot be scheduled outside of work hours (regularly • scheduled, routine appointments should be scheduled outside of work hours, when possible); or • Family and Medical Leave Act leave (see Section X). • <u>Use of Sick Leave Credit for Family Purposes</u> Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use the sick leave credit for the care of family members	<u>Use of Sick Leave Credit</u> <u>Use</u> The sick leave credit cannot be used until it is credited<u>granted</u>. <u>Employees are not permitted to</u>There is no borrowing against future credits. <u>Sick leave credit may be used for either personal or family illness, injury, or medically documented condition.</u> <u>Reasons for Use</u> The sick leave credit may be used for either personal or family reasons. <u>Personal</u> Employee's Own <u>Use of Sick Leave Credit</u> <u>Employees are permitted to</u> Unless the LDSS has set a limitation, an employee may use the full amount of the sick leave credit <u>available for the calendar year for</u> their <u>the employee's</u> own care. <u>The LDSS local board and local director may choose to establish different limits on the amount of sick leave credits available for use.</u> <u>Reasons for use include</u> as follows: 3. When <u>leave from work is</u> medically necessary, and the employee is unable to perform the essential functions of the position.; 4. Pregnancy and childbirth related medical conditions.; 5. Medically documented chronic conditions.; 6. <u>Use in conjunction with the Family and Medical Leave Act (See Part II – « The Family & Medical Leave Act »).</u> 7. <u>Medical appointments that cannot be</u>	New section consisting primarily of rewritten and reorganized information pulled from “Disability Leave Program (Sick Leave Credit)” in the current version.

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	as follows: • <u>Circumstances in which the sick leave credit may be used for family:</u> • When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member; • The death of a family member; • Family and Medical Leave Act leave (see Section X). • A family member for the purposes of circumstances (i) and (ii) above (whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship) includes parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage or through legal custody or guardianship who resides in the employee's home. For Family and Medical Leave Act leave see Section X. • During a calendar year, an employee may use up to 33% of their unused sick leave credit balance for family sick leave.	<u>scheduled outside of work hours. When possible, employees are expected to schedule regular appointments outside of work hours.</u> 6. Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or Family and Medical Leave Act leave (see Section X). <u>Use of Sick Leave Credit for Family Purposes</u> <u>During a calendar year, employees may use up to 33% of their unused sick leave credit balance for family sick leave. The LDSS local board and local director may choose to establish different limits on the amount of family sick leave credits available for use for family purposes.</u> <u>Sick leave credits may be used for family purposes in the following situations:</u> <u>1. Use in conjunction with the Family and Medical Leave Act (see Part II – "The Family & Medical Leave Act").</u> <u>2. When an employee's family member has a medical condition that requires the employee to directly assist in the family member's care or provide transportation for care-related activities.</u> <u>3. The death of a family member.</u> <u>Definition of a Family Member</u> <u>1. For use of sick leave credits in conjunction with the Family and Medical Leave Act</u>	

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		(FMLA), the agency must follow the <u>definition of a “family member” as specified by the FMLA, which is a child, parent, or spouse.</u> 2. <u>For use of sick leave credits for reasons that do not qualify for FMLA, the definition of a “family member” includes:</u> a. <u>Parents</u> b. <u>Stepparents</u> c. <u>Spouse</u> d. <u>Children</u> e. <u>Stepchildren</u> f. <u>Siblings</u> g. <u>Grandparents</u> h. <u>Grandchildren</u> i. <u>Any relative by blood, marriage, or through legal custody/guardianship who resides in the employee’s home.</u> <u>This definition applies regardless of whether the relationship is by birth, adoption, foster care, marriage, or legal custody / guardianship.</u> Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use the sick leave credit for the care of family members as follows: <u>Circumstances in which the sick leave credit may be used for family:</u> When a family member has a medical condition	

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		that requires the employee to assist in the family member's care or in transporting the family member; The death of a family member; Family and Medical Leave Act leave (see Section X). A family member for the purposes of circumstances (i) and (ii) above (whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship) includes parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage or through legal custody or guardianship who resides in the employee's home. For Family and Medical Leave Act leave see Section X. During a calendar year, an employee may use up to 33% of their unused sick leave credit balance for family sick leave.	
Section III: LDSS Disability Leave Program (Verification of Need for Sick Leave)	---	<u>Verification of Need May be Required</u> Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave credits. The use of sick leave credits will not be approved until requested verification is provided. <u>Types of Verification</u> The following types of verification will be deemed sufficient: 1. FMLA health care provider certification. 2. Statement from the medical provider that because of the medical condition the	New Section

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
		employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period that the employee will be absent from work. 3. Evidence that there was a medical appointment that could not have been scheduled during non-work hours. <u>Re-Verification</u> If an employee is absent for an extended period or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave credits can be conditioned on providing the requested verification.	
Section III: LDSS Disability Leave Program (Effect of Leave Without Pay on Sick Leave Credit)	1) <u>Effect of Leave without Pay on Sick Leave Credit</u> If an employee is on leave without pay on the day that the sick leave credit is granted, the sick leave credit is not granted until the employee is on paid status.	Effect of Leave without Pay on Sick Leave Credit <u>Employees who are</u> If an employee is on approved leave without pay <u>when on the day that the sick</u> leave credit <u>balances are</u> is granted <u>will not receive their sick leave credit balance until they return to</u> , the sick leave credit is not granted until the employee is on paid status.	New section created using information pulled from “Disability Leave Program (Sick Leave Credit)” in current version.
Section III: Disability Leave Program (No Sick Leave Carryover or Payment Upon Separation)	1) <u>No Carry Over or Payment Upon Separation</u> The sick leave credit does not accrue. No carryover of the sick leave credit from year to year is allowed. Sick leave credit balances are not paid out upon separation.	No Carry Over or Payment Upon Separation <u>Sick</u> The sick leave credit does not accrue. <u>Remaining sick leave balances do not carry over from year to year, nor are they paid out upon separation.</u> No carryover of the sick leave credit from year to year is allowed. Sick leave credit balances are not paid out upon separation.	New section created using information pulled from “Disability Leave Program (Sick Leave Credit)” in current version.

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
Section III: LDSS Disability Leave Program (Electing to Move from the State Board-Approved Leave System [“Traditional” Sick Leave] At a Later Date)	1) <u>Sick Leave Balances of Employees Opting Into the Hybrid Retirement Plan</u> (d) <u>Purpose</u> To address the sick leave balances of employees opting-in to the VRS hybrid retirement plan or other employees whose local boards have decided to limit sick leave in connection with participation in a short- and long-term disability plan. (e) <u>Use of Previous Sick Leave Balance</u> Upon participation in the local short- and long-term disability plan, the sick leave balances of eligible employees will be frozen. At the discretion of the local board, these frozen sick leave balances may be used as follows: - To supplement income during periods when an employee is receiving short- or long-term disability benefits. Total income replacement from the disability benefit and leave cannot exceed 100% of an employee’s pre-disability income per pay period. - For any allowable use of accrued sick leave, as noted in Chapter 4. Section VIII. C., during the one year waiting period prior to disability benefits. The local board may also choose to: - Make a payout of the frozen sick leave balance. Payout options include:	The requirements of § 51.1-1153 dictate that all localities must participate in a short- and long-term disability program. LDSS local boards were initially given three options to choose from for a leave system to accompany the short- and long-term disability plan for employees enrolled in the VRS Hybrid Retirement Plan. One option was to continue to follow the State Board-Approved Leave System (“traditional” sick leave). Any LDSS that initially elected to keep the “traditional” sick leave policy may elect to move to either the LDSS Disability Leave Program, or a comparable locality leave policy² at a future date. However, when making this choice, the LDSS must determine how to address employees’ remaining “traditional” sick leave balances. <u>Addressing Remaining “Traditional” Sick Leave Balances</u> Once the decision is made to move to another leave program option, the eligible employees’ “traditional” sick leave balances must be frozen. The local board may choose from the following options to address the frozen balances. The option(s) chosen and approved by the local board must be documented on the Local Department of Social Services Compensation Plan. Available options are: To allow employees to use the frozen balance, which may also include conversion	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Sick Leave Credit)”

² Per [§22VAC40-675-50](#), LDSS seeking to follow a comparable locality leave policy are required to complete the policy deviation process and receive approval from the Virginia State Board of Social Services.

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Section	Current Wording in Guidance Document	Recommended Changes (highlighted/underlined)	Notes
	1) Treatment of frozen sick leave upon Change in Status Upon a change in status, treatment of frozen sick leave balances should be consistent with the treatment of accrued sick leave balances as noted in Chapter 4, Section VIII.F. 2) Prior to separation, payout of the remaining frozen sick leave balance may be made as follows: (a) A one-time lump sum payout up to the maximum allowable amount. The amount of payment is the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS; or (b) A lump sum payout up to the maximum allowable payout, whereby payment is split over two or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS. Convert a portion of each employee's frozen sick leave balance to annual leave (not to exceed the maximum carryover for annual leave).	of a portion of the frozen leave balance to annual leave; or 2. Make a payout of the frozen balance. <u>Allowing Use or Conversion of a Frozen Balance</u> An employee may use the remaining leave balance: - For any allowable use of “traditional” sick leave as noted in Section II of this chapter; or - To supplement income during periods when the employee is receiving short- or long-term disability benefits. Total income replacement from the disability benefit and leave cannot exceed 100% of an employee's pre-disability income per pay period. The local board may also choose to allow the conversion of a portion of the frozen balance to annual leave. However, conversion amounts must not exceed the maximum carryover amount for annual leave. <u>Payout of a Frozen Balance</u> Payout may occur with a change in status or prior to separation. Change in Status: Treatment of accrued “traditional” sick leave balances should be consistent with <u>Section II</u> of this chapter. Separation: Prior to separation, payout of the remaining frozen sick leave balance may be made as follows:	

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		a. A one-time lump sum payout, up to the maximum allowable amount. The amount of the payment is lesser of 25% of the remaining frozen sick leave balance, or the maximum payout amount as determined by the local board and approved by VDSS; or b. A lump sum payout up to the maximum allowable payout, whereby payment is split over two (2) or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance, or the maximum payout amount as determined by the local board and approved by VDSS.	
Disability Leave Program (Family and Personal Leave Credit)	A. Family and personal leave will be credited on the following basis: 1. <u>Family and Personal Leave Credit</u> a. Eligible full-time employees employed from January 1 to June 30 will be credited with the entire annual family and personnel leave credit on the first day of their first full pay period. b. Eligible full-time employees hired on or after July 1 and those current employees who opt-in to the hybrid retirement plan will have family and personal leave credited at 50% of the annual credit on the first day of	---	Section removed, with relevant information being relocated and rewritten in other sections (see below).

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	the first full pay period after the effective date of their election or hire date as applicable. c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate annual family and personal leave credit as determined by their local boards. d. In subsequent years, eligible employees will have the entire annual family and personal leave credit credited on the first day of the first full payroll period in January. e. Family and personal leave may not be used before it is credited. f. If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours), family and personal leave accrual must be prorated based on the number of hours in the work week. 2. <u>Family and Personal Leave Credit Charts</u> Employees with less than 120 months of employment: <table> <tr> <th>Employment (or election) Date</th><th>Amount for 40-hour work week/ 8-hour workday</th><th>Amount for 37.5-hour work week/ 7.5-hour workday</th><th>Amount for 35-hour work week/ 7-hour workday</th></tr> <tr> <td>January 1- June 30</td><td>32 hours (4 days)</td><td>30 hours (4 days)</td><td>28 hours (4 days)</td></tr> <tr> <td>July 1- December 31</td><td>16 hours (2 days)</td><td>15 hours (2 days)</td><td>14 hours (2 days)</td></tr> </table> Employees with 120 or greater months of employment: <table> <tr> <th>Employment (or election) Date</th><th>Amount for 40-hour work week/ 8-hour workday</th><th>Amount for 37.5-hour work week/ 7.5-hour workday</th><th>Amount for 35-hour work week/ 7-hour workday</th></tr> <tr> <td>January 1- June 30</td><td>40 hours (5 days)</td><td>37.5 hours (5 days)</td><td>35 hours (5 days)</td></tr> <tr> <td>July 1- December 31</td><td>20 hours (2.5 days)</td><td>18.75 hours (2.5 days)</td><td>17.5 hours (2.5 days)</td></tr> </table> 3. <u>Effect of Leave without Pay on Family and Personal Leave Credit</u> If an employee is on leave without pay on the day that the family and personal leave is granted, the family and personal leave credit	Employment (or election) Date	Amount for 40-hour work week/ 8-hour workday	Amount for 37.5-hour work week/ 7.5-hour workday	Amount for 35-hour work week/ 7-hour workday	January 1- June 30	32 hours (4 days)	30 hours (4 days)	28 hours (4 days)	July 1- December 31	16 hours (2 days)	15 hours (2 days)	14 hours (2 days)	Employment (or election) Date	Amount for 40-hour work week/ 8-hour workday	Amount for 37.5-hour work week/ 7.5-hour workday	Amount for 35-hour work week/ 7-hour workday	January 1- June 30	40 hours (5 days)	37.5 hours (5 days)	35 hours (5 days)	July 1- December 31	20 hours (2.5 days)	18.75 hours (2.5 days)	17.5 hours (2.5 days)		
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	is not granted until the employee is on paid status. 4. <u>No Carryover or Payment Upon Separation</u> The family and personal leave credit does not accrue. No carryover of the family and personal leave credit from year to year is allowed. Family and personal leave credit balances are not paid out upon separation.		
Section III: LDSS Disability Leave Program (Receipt of Family & Personal Leave)	B. Family and personal leave will be credited on the following basis: 1. <u>Family and Personal Leave Credit</u> a. Eligible full-time employees employed from January 1 to June 30 will be credited with the entire annual family and personnel leave credit on the first day of their first full pay period. b. Eligible full-time employees hired on or after July 1 and those current employees who opt-in to the hybrid retirement plan will have family and personal leave credited at 50% of the annual credit on the first day of the first full pay period after the effective date of their election or hire date as applicable. c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate annual family and personal leave credit as determined by their local boards. d. In subsequent years, eligible employees will have the entire annual family and personal leave credit credited on the first day of the first full payroll period in January. e. Family and personal leave may not be used	Family and personal leave will be credited on the following basis: <u>Family and Personal Leave Credit</u> 1. Eligible Ffull-time employees <u>participating in the VRS Hybrid Retirement Plan and hired between January 1 and June 30 will receive</u> employed from January 1 to June 30 will be credited with the full entire annual family and personnel leave credit amount on the first day of their first full payrollpay period. 2. Eligible Ffull-time employees <u>participating in the VRS Hybrid Retirement Plan and hired</u> hired on or after July 1 or later will receive and those current employees who opt-in to the hybrid retirement plan will have family and personal leave credited at 50% of the full family and personal leave credit amount. Receipt occurs annual credit on the first day of theirthe first full pay period after the effective date of their election or hire date as applicable. a. <u>In subsequent years, employees hired July 1 or later will receive the full family and personal leave credit amount on the first day of the first full payroll</u>	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Family and Personal Leave Credit)”

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	before it is credited. f. If the weekly work schedule of the LDSS is not forty hours (e.g., 37.5 hours, 35 hours), family and personal leave accrual must be prorated based on the number of hours in the work week.	<u>period in January.</u> 2.3. Part-time employees hired on January 1, 2014 or later may be granted a proportionate annual family and personal leave credit as determined by their local boards. In subsequent years, eligible employees will have the entire annual family and personal leave credit credited on the first day of the first full payroll period in January. Family and personal leave may not be used before it is credited. If the weekly work schedule of the LDSS is not forty <u>(40)</u> hours (e.g., 37.5 hours, 35 hours), family and personal leave <u>credit amounts</u>accrual must be prorated based on the number of hours in the work week.																																																				
Section III: LDSS Disability Leave Program (Family & Personal Leave Credit Charts)	2. Family and Personal Leave Credit Charts Employees with less than 120 months of employment: <table><tr><td>Employment (or election) Date</td><td>Amount for 40-hour work week/ 8-hour workday</td><td>Amount for 37.5-hour work week/ 7.5-hour workday</td><td>Amount for 35-hour work week/ 7-hour workday</td></tr><tr><td>January 1- June 30</td><td>32 hours (4 days)</td><td>30 hours (4 days)</td><td>28 hours (4 days)</td></tr><tr><td>July 1- December 31</td><td>16 hours (2 days)</td><td>15 hours (2 days)</td><td>14 hours (2 days)</td></tr></table> Employees with 120 or greater months of employment: <table><tr><td>Employment (or election) Date</td><td>Amount for 40-hour work week/ 8-hour workday</td><td>Amount for 37.5-hour work week/ 7.5-hour workday</td><td>Amount for 35-hour work week/ 7-hour workday</td></tr><tr><td>January 1- June 30</td><td>40 hours (5 days)</td><td>37.5 hours (5 days)</td><td>35 hours (5 days)</td></tr><tr><td>July 1- December 31</td><td>20 hours (2.5 days)</td><td>18.75 hours (2.5 days)</td><td>17.5 hours (2.5 days)</td></tr></table>	Employment (or election) Date	Amount for 40-hour work week/ 8-hour workday	Amount for 37.5-hour work week/ 7.5-hour workday	Amount for 35-hour work week/ 7-hour workday	January 1- June 30	32 hours (4 days)	30 hours (4 days)	28 hours (4 days)	July 1- December 31	16 hours (2 days)	15 hours (2 days)	14 hours (2 days)	Employment (or election) Date	Amount for 40-hour work week/ 8-hour workday	Amount for 37.5-hour work week/ 7.5-hour workday	Amount for 35-hour work week/ 7-hour workday	January 1- June 30	40 hours (5 days)	37.5 hours (5 days)	35 hours (5 days)	July 1- December 31	20 hours (2.5 days)	18.75 hours (2.5 days)	17.5 hours (2.5 days)	<u>Eligible full-time with LESS than 120 Months of Employment:</u> 40-Hour Workweek – 8 Hours Per Day <table><tr><td>Employment Date</td><td>F&P Leave Credit in Hours</td><td>F&P Leave Credit in Days</td></tr><tr><td>January 1 – June 30</td><td>32</td><td>4</td></tr><tr><td>July 1 – December 31</td><td>16</td><td>2</td></tr></table> 37.5 Hour Workweek – 7.5 Hours Per Day <table><tr><td>Employment Date</td><td>F&P Leave Credit in Hours</td><td>F&P Leave Credit in Days</td></tr><tr><td>January 1 – June 30</td><td>30</td><td>4</td></tr><tr><td>July 1 – December 31</td><td>15</td><td>2</td></tr></table> 35 Hour Workweek – 7 Hours Per Day <table><tr><td>Employment Date</td><td>F&P Leave Credit in Hours</td><td>F&P Leave Credit in Days</td></tr><tr><td>January 1 – June 30</td><td>28</td><td>4</td></tr><tr><td>July 1 – December 31</td><td>14</td><td>2</td></tr></table> <u>Eligible full-time employees with MORE than 120 Months of Employment:</u>	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	32	4	July 1 – December 31	16	2	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	30	4	July 1 – December 31	15	2	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	28	4	July 1 – December 31	14	2	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Family and Personal Leave Credit)”
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		40-Hour Workweek – 8 Hours Per Day <table><tr><th>Employment Date</th><th>F&P Leave Credit in Hours</th><th>F&P Leave Credit in Days</th></tr><tr><td>January 1 – June 30</td><td>40</td><td>5</td></tr><tr><td>July 1 – December 31</td><td>20</td><td>2.5</td></tr></table> 37.5-Hour Workweek – 7.5 Hours Per Day <table><tr><th>Employment Date</th><th>F&P Leave Credit in Hours</th><th>F&P Leave Credit in Days</th></tr><tr><td>January 1 – June 30</td><td>37.5</td><td>5</td></tr><tr><td>July 1 – December 31</td><td>18.75</td><td>2.5</td></tr></table> 35-Hour Workweek – 7 Hours Per Day <table><tr><th>Employment Date</th><th>F&P Leave Credit in Hours</th><th>F&P Leave Credit in Days</th></tr><tr><td>January 1 – June 30</td><td>35</td><td>5</td></tr><tr><td>July 1 – December 31</td><td>17.5</td><td>2.5</td></tr></table>	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	40	5	July 1 – December 31	20	2.5	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	37.5	5	July 1 – December 31	18.75	2.5	Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days	January 1 – June 30	35	5	July 1 – December 31	17.5	2.5	
Employment Date	F&P Leave Credit in Hours	F&P Leave Credit in Days																												
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Section III: LDSS Disability Leave Program (Use of Family & Personal Leave Credit)	Family and personal leave may not be used before it is credited.	Family and personal leave credit may be used for any reason but cannot be used until it is credited. Employees are not permitted to borrow against future credit.	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Family and Personal Leave Credit)”																											
Section III: LDSS Disability Leave Program (Effect of Leave without Pay on Family & Personal Leave Credit)	If an employee is on leave without pay on the day that the family and personal leave is granted, the family and personal leave credit is not granted until the employee is on paid status.	Employees who are on approved leave without pay when family and personal leave credit balances are granted will not receive their family and personal leave credit balance until they return to paid status.	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Family and Personal Leave Credit)”																											
Section III: LDSS Disability Leave Program (No Family & Personal Leave Carryover or Payment Upon Separation)	The family and personal leave credit does not accrue. No carryover of the family and personal leave credit from year to year is allowed. Family and personal leave credit balances are not paid out upon separation.	Family and personal leave credit does not accrue. Remaining family and personal leave credit balances do not carry over from year to year, nor are they paid out upon separation.	New section created incorporating information relocated from other sections and rewritten, notably “Disability Leave Program (Family and Personal Leave Credit)”																											
Helpful Hints: Understanding the Benefits of a Short- or Long-Term Disability Plan	---	A short- and long-term disability (STD/LTD) plan is designed to provide income protection in the event a serious non-work or work-related illness or injury prevents an employee from working. All Virginia localities are required to adopt STD/LTD plans (§51.1-1153), giving the LDSS local boards the option to move away from the use of “traditional” sick leave, where	This “Helpful Hint” appears as an insert in Section III: LDSS Disability Leave Program (No Family & Personal Leave Carryover or Payment Upon Separation), above.																											

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		employees accumulate sick leave over time. STD/LTD plans offer more consistency for coverage of illness/injury for the LDSS's entire employee group, while also providing financial relief for the LDSS. Let's take a closer look at STD/LTD benefits: Employees with less tenure in the organization will have had less time to earn sick leave, creating gaps in coverage should serious illness, injury, or another covered condition (i.e., pregnancy, etc.) occur. The STD/LTD plan allows more protection by reducing gaps in coverage for employees in these types of situations. Sick leave balances are eligible for payout in certain circumstances (see Section II – Sick Leave; <i>Treatment of Sick Leave Upon Change in Status</i>). Depending upon how many employees are eligible in any given year, sick leave payouts can be financially burdensome for an agency. a. While LDSS local board have three (3) leave program options to select from to accompany the locality STD/LTD plan, selecting the LDSS Disability Leave Plan can eliminate the financial burden of payouts. b. The locality STD/LTD plan provides eligible employees with	

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		income protection and the LDSS Disability Leave Plan provides employees a set amount of sick leave and family and personal leave credits each year. The credits are lost if not used within the year and are not eligible for payout. Questions? Contact the locality HR or human resources department for specific questions about the STD/LTD program available to the LDSS. Contact the VDSS Local HR Support Team with questions about the LDSS Disability Leave Program.	
PLEASE NOTE: Due to the length of Part II: Family & Medical Leave Act as well as the amount of reorganization which has occurred in the related section(s), the FMLA portion of the updated draft in question will be presented as a separate document for consideration by the State Board of Social Services.			
Section X: Leave Sharing Program (General Information)	---	An LDSS may establish a leave sharing program that fits the needs of both the LDSS and its employees. The following are suggested procedures for the implementation of such a program. If created, the leave sharing program applies to all LDSS employees in either regular or restricted positions. Contact the VDSS Local HR Support Team for additional guidance. <u>Purpose</u> The purpose of establishing a leave sharing program for the LDSS is to assist employees with leave in relation to their own “serious health condition,” the “serious health condition” of an employee’s immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. Employee leave requests must only be for these reasons. However, employees do not have to be eligible	New section created by incorporating new or revised information alongside information from removed sections (See “Leave Sharing (Purpose)” and “Leave Sharing (Scope)”, below)

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		for FMLA to receive leave donations under the leave sharing program. For instance, employees may still request leave for the conditions described above even if they have exhausted the allotted twelve (12) week/480 hours of FMLA leave or if they have not yet met the FMLA eligibility timeframe.	
Leave Sharing (Purpose)	The following are suggested procedures for the implementation of a leave sharing program for those LDSSs that elect to have such a program. An LDSS has the discretion to design a program that fits its needs.	---	Section Removed (but see “Section X: Leave Sharing Program (General Information), above)
Leave Sharing (Scope)	This policy applies to employees in regular or restricted positions.	---	Section Removed (but see “Section X: Leave Sharing Program (General Information), above)
Leave Sharing (Eligibility)	<u>Exhaustion of Paid Leave Balances</u> An employee who desires to receive donated leave must have used all paid leave that is available for such absences (e.g., annual, sick, compensatory, special duty). <u>Family and Medical Leave Act Purposes</u> An employee who requests donated leave may only use such for a “serious health condition” of the employee, the employee’s immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. The fact that the employee may not otherwise qualify for FMLA leave (e.g., has exhausted the allowed 12-weeks or has not worked the 1250 hours in the past 12 months) is not disqualifying under this policy.	<u>Exhaustion of Paid Leave Balances</u> An employee who desires to receive donated leave must have used <u>all</u> paid leave that is available for such absences (e.g., annual, sick, compensatory, special duty). <u>Family and Medical Leave Act Purposes</u> An employee who requests donated leave may only use such for a “serious health condition” of the employee, the employee’s immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. The fact that the employee may not otherwise qualify for FMLA leave (e.g., has exhausted the allowed 12-weeks or has not worked the 1250 hours in the past 12 months) is not disqualifying under this policy. <u>Certification of Health Care Provider</u>	Information regarding “Waiting Period” has been moved to Section X: Leave Sharing Program (Waiting Period), below.

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	3. <u>Certification of Health Care Provider</u> An employee is not eligible for donated leave until such time as the FMLA <i>Certification of Health Care Provider</i> form (Form WH-380*E or WH-380-F) establishes qualification for such leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for the leave. 4. <u>Disqualifying Absences</u> Employees in the following categories are ineligible for leave sharing donations: • An employee who is on a disciplinary suspension; • An employee who is absent because of an occupationally related illness or injury that falls within that definition under the Virginia Worker's Compensation Act (whether or not benefits have been received under the Act), • an employee who is absent because of an injury or illness that is deliberately self inflicted • or an employee who is absent because of an injury or illness which has occurred while the employee was engaging in an unlawful act. 5. <u>Waiting Period</u> An LDSS may require a waiting period to establish eligibility for leave share donations.	<u>FMLA-Eligible Employees</u> An employee is not eligible for donated leave until such time as the <u>employee has provided the required documentation to establish FMLA</u> <i>Certification of Health Care Provider form (Form WH-380*E or WH-380-F)</i> <u>establishes the</u> qualification for <u>FMLA</u> such leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for <u>FMLA</u> the leave. <u>FMLA-Ineligible Employees</u> <u>In situations where the employee is requesting a leave donation and is ineligible to receive FMLA, the employee is still required to provide adequate documentation from a health care provider to substantiate the need for the request. It is not recommended that the LDSS provide FMLA forms for employees who are not eligible to receive FMLA. The LDSS may develop an agency health care provider certification form for FMLA-ineligible employees. Contact either the locality HR representative or attorney or the VDSS Local HR Team for additional guidance with creating the form.</u> <u>Disqualifying Absences</u> Employees in the following categories are ineligible for leave sharing donations: 1. An <u>e</u>Employees who <u>are</u> is on a disciplinary suspension.; 2. An <u>e</u>Employee who <u>are</u> is absent <u>for leave for reasons that fall because of an occupationally related illness or injury that falls within that definition</u> under the	

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		Virginia Worker's Compensation Act (<u>regardless of</u> whether or not benefits have been received under the Act). 3. an <u>E</u>mployees who <u>are</u> is absent because of an injury or illness that is deliberately self inflicted. 4. or an <u>E</u>mployees who <u>are</u> is absent because of an injury or illness which has occurred while the employee was engaging in an unlawful act. <u>Waiting Period</u> An LDSS may require a waiting period to establish eligibility for leave share donations.	
Section X: Leave Sharing Program (Waiting Period)	<u>Waiting Period</u> An LDSS may require a waiting period to establish eligibility for leave share donations.	<u>Waiting Period</u> <u>While employees are not required to be FMLA-eligible to participate in the leave sharing program, A</u> an LDSS may <u>establish its own</u> require <u>a</u> waiting period <u>for employees to be eligible to participate in the program</u> to establish eligibility for leave share donations.	
Leave Sharing (Requests / Approvals)	Each LDSS participating in this program must develop a form by which an employee may request donated leave. The form should be designed so that when the employee is physically or mentally unable to make the leave request, an agent may make the request on behalf of the employee.	Each LDSS participating in this program must develop a form <u>on</u> by which an employee may request donated leave <u>the request for leave and the approved status may be documented</u> . The form should be designed so that when the employee is physically or mentally unable to make the leave request, <u>the request may be made on the employee's behalf</u> an agent may make the request on behalf of the employee.	
Leave Sharing (Status While on Donated Leave)	An employee must be on leave without pay (LWOP) status in order to receive donated leave. Donated leave is intended to provide supplemental compensation only and does not	An employee must be on leave without pay (LWOP) status in order to receive donated leave. Donated leave is intended to provide supplemental compensation only, and does not	

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	place the employee on the equivalent of paid leave status. Accordingly, the LWOP policy benefit provisions apply to this leave period.	place the employee on the equivalent of paid leave status. Accordingly, the LWOP policy benefit provisions apply to this leave period.	
Leave Sharing (Discretionary Benefits)	In developing a policy on leave sharing, an LDSS may provide greater benefits than those allowed under the LWOP policy. These augmented benefits may include <u>Health Benefits</u> The LDSS may pay out of local funds its portion of the health care premium for up to 12 months inclusive of the health care premium payments required under FMLA. <u>Payroll Deductions</u> Federal and state withholding payments will be deducted from the compensation that the employee receives due to leave sharing. Voluntary payroll deductions may continue while an employee is receiving leave share donations provided that the compensation that the employee receives is sufficient to cover the deductions. If the compensation received through leave share donations is insufficient to cover such voluntary deductions, participation in the programs will be terminated unless the employee makes arrangements for timely payments. <u>Group Life Insurance</u> If local funds are available the LDSS may permit employees receiving leave share donations to continue to be covered under the LDSS's group life insurance policy for up to two years.	In developing a policy on leave sharing, an LDSS may provide greater benefits than those allowed under the LWOP policy. These augmented benefits may include: - Health Benefits: The LDSS may pay out of local funds its portion of the health care premium for up to <u>twelve (12) months</u>, inclusive of the health care premium payments required under FMLA. - Payroll Deductions: Federal and state withholding payments will be deducted from the compensation that the employee receives due to leave sharing. Voluntary payroll deductions may continue while an employee is receiving leave share donations provided that the compensation that the employee receives is sufficient to cover the <u>cost of the payments</u>. deductions. If the compensation received through leave share donations is insufficient to cover such voluntary deductions, participation in the programs will be terminated unless the employee makes arrangements for timely payments. Group Life Insurance If local funds are available the LDSS may permit employees receiving leave share donations to continue to be covered under the LDSS's group life insurance policy for up to two years.	

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Leave Sharing (Leave Bank Requirements)	Each LDSS that provides a leave sharing program has discretion to structure the program based on its needs. However, annual leave is the only leave that may be donated to the leave bank. <u>1. Annual Leave Donations</u> Annual leave may be donated in the following ways: - Annual leave that will be lost if not used by the end of the year; - Annual leave that is within the maximum accrual amount; - A fixed amount per donation or per year per employee; and/or - No limitations on amount or timing of donated leave. <u>2. Establishing a Leave Bank</u> There are three types of leave banks that may be established: - A non-designated leave bank which permits donating to a pool to be used by any eligible employee; - Donation to a designated employee of the LDSS; or - A combination of the above. <u>3. Returning Leave Donation</u> If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is in excess of the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in: (1) reverse order of the receipt of donations; or (2) a pro-rata	Each LDSS that<u>provid</u><u>ing</u>es a leave sharing program has discretion to structure the program based on its needs. However, <u>annual leave</u> is the only leave that may be donated to the leave bank. <u>Annual Leave Donations</u> Annual leave may be donated in the following ways: - Annual leave that will be lost if not used by the end of the year; - Annual leave that is within the maximum accrual amount; - A fixed amount per donation or per year, per employee;and/or - No limitations on amount or timing of donated leave. <u>Establishing a Leave Bank</u> There are three <u>(3)</u> types of leave banks that may be established: - A non-designated leave bank which permits donating to a pool to be used by any eligible employee; - Donation to a designated employee of the LDSS;or - A combination of the above. <u>Returning a Leave Donation</u> If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is <u>more than</u> in excess of the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in <u>either</u>;(+) <u>1. Reverse order of the receipt of</u>	

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	amount per donor. 4. <u>Reclaiming Leave</u> Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.	donations or (2) a <u>1.2. A prorated pro-rata</u> amount per donor. <u>Reclaiming Leave</u> Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.	
Leave Sharing (Penalties for Abuse)	If abuse of this policy is found, the employee will be required to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay. Additionally, the employee may be disciplined in accordance with provisions of the VDSS Standards of Conduct.	<u>Founded complaints of policy abuse require the employee</u> If abuse of this policy is found, the employee will be required to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay. Additionally, the employee may be <u>subject to disciplinary action up to and including termination of employment</u> disciplined in accordance with provisions of the VDSS Standards of Conduct.	
Part III: Workers' Compensation (Policy Statement)	---	The Virginia State Board of Social Services establishes a worker's compensation policy to ensure LDSS employees are aware of the benefits that may be available to them under the Virginia Workers' Compensation Act (VWCA), and to establish the responsibilities of an LDSS employee who is injured or becomes ill because of carrying out the duties of his/her job. Employees may be eligible for benefits under the VWCA if they sustain a compensable injury by accident, suffer from occupational disease ³ , or a compensable ordinary disease of life ⁴ .	New section created incorporating revised information from "Virginia Workers' Compensation (Purpose)", below.

³ § 65.2-400. "Occupational disease" defined

⁴ § 65.2-401. "Ordinary disease of life" coverage

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Virginia Workers' Compensation (Purpose)	The purpose of this policy is to advise employees of benefits that may be available to them under the Virginia Workers' Compensation Act (WCA). Employees may be eligible for benefits under the Act if they sustain a compensable injury by accident, suffer from an occupational disease or a compensable ordinary disease of life.	---	See "Part III: Workers' Compensation (Policy Statement)", above
Virginia Workers' Compensation (Scope)	This policy applies to all employees.	This policy applies to all employees <u>of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS.</u> <u>Additional Information:</u> <u>The workers' compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to Title 65.2. Workers' Compensation of the Code of Virginia.</u>	
Virginia Workers' Compensation (Definitions)	<u>Injury</u> A physical injury by accident both arising out of and in the course of employment. <u>Occupational Disease</u> A disease arising out of and in the course of employment, but, unless otherwise provided by the WCA. It is not an ordinary disease of life to which the general public is exposed outside of employment. <u>Permanent Partial Disability</u> A permanent loss to the body that was caused by an injury or occupational disease	The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the VWCC home page. VDSS does not administer the workers' compensation process for the LDSS. Contact the locality benefits administrator or the VWCC directly for assistance.	Section Rewritten & moved to the end of the updated draft (Glossary).

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	that does not result in the employee's total incapacity. An example of a permanent partial disability is the loss of, or partial loss of, a finger. 4. <u>Pre-Injury Average Weekly Wage</u> The injured employee's actual wages during the 52 week period preceding the date of injury, divided by 52. 5. <u>Workers' Compensation Leave</u> A type of leave from employment which results from an employee's incapacity to work and which has been determined to have resulted from an injury or occupational disease such that the employee is entitled to benefits required by the WCA.		
Part III: Workers' Compensation Section I: Workers' Compensation (General Information)	---	The Virginia Workers' Compensation Commission (VWCC) offers a robust glossary of all terms related to the Commission and to the Virginia Workers' Compensation Act (VWCA). The "VWC Glossary of Terms" is in the "VWC Resources" box on the VWCC home page.	New section. This information also appears in the "Glossary" section.
Virginia Workers' Compensation (Benefits to Which an Employee May be Entitled)	Once an employee has a compensable injury or illness, the following benefits may be available: 1. <u>Wage Replacement</u> An employee who suffers an injury or occupational disease may be entitled to wage loss benefits, as set forth under the WCA, if the employee is temporarily unable to return to regular employment and suffers a wage loss as a result of that disability. 2. <u>Medical Benefits</u> Under the WCA, an employee may be	Once an employee has a compensable injury or illness, the following benefits may be available: <u>Wage Replacement</u> An employee who suffers an injury or occupational disease may be entitled to wage loss benefits, as set forth under the <u>VWCA</u>, if the employee is temporarily unable to return to regular employment and suffers a wage loss <u>because as a result</u> of that disability. <u>Medical Benefits</u> Under the <u>VWCA</u>, an employee may be entitled	

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	entitled to lifetime medical benefits for treatment that is reasonable, necessary and causally related to the work related injury or disease as set forth and authorized under the WCA. 3. <u>Permanent Partial Disability Benefits</u> An employee may be entitled to compensation for permanent loss of use of a “scheduled” body part as set forth under the WCA.	to lifetime medical benefits for treatment that is reasonable, necessary and causally related to the work-related injury or disease as set forth and authorized under the <u>VWCA</u>. <u>Permanent Partial Disability Benefits</u> An employee may be entitled to compensation for permanent loss of use of a “scheduled” body part as set forth under the <u>VWCA</u>. <u>Accessing Benefits Under the VWCA</u> <u>The workers’ compensation process (reporting of injury/illness, administrative requirements, etc.) is facilitated and administered by the locality, the employer of the LDSS. For additional information, employees should contact the locality benefits administrator and may also refer to Title 65.2. Workers’ Compensation of the Code of Virginia.</u>	
Virginia Workers’ Compensation (Responsibilities of an Injured Employee)	- Once an injury has occurred, the employee must notify the employer immediately. The LDSS, not the employee, is to complete the accident report. - The employee must choose a treating physician from a panel of at least three physicians which will be provided by the LDSS. - If the employee is released to “light duty work,” he or she must accept “light duty work” if offered by the LDSS. - If “light duty” employment is not offered by the LDSS, the employee must seek his own employment within his light duty	- Once an injury has occurred, the employee must notify the employer <u>(the locality) immediately⁵</u>. The LDSS, not the employee, is <u>required</u> to complete the accident report, <u>not the employee</u>. - The employee must choose a treating physician from a panel of at least three <u>(3)</u> physicians which will be provided by the LDSS. - If the employee is released to “light duty work,” he or she must accept “light duty work”₂ if offered₁ by the LDSS. - If “light duty” employment is not offered by the LDSS, the employee must seek his own	

⁵ § 65.2-600. Notice of an accident.

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	restrictions.	employment within his light duty restrictions.	