



# Boston VA Research Institute, Inc.

**Date:** 10/20/2015

Department Human Resources

**POLICY NO. 15-29**

## **TITLE OF POLICY:**

Family and Medical Leave Act (FMLA) & Parental Leave Policy

### **1.0 PURPOSE**

To outline the eligibility requirements and process used by the Boston VA Research Institute, Inc, (BVARI) in order to comply with the Family and Medical Leave Act (FMLA) of 1993. In addition, this policy complies with the Commonwealth of Massachusetts General Law 149 section 105D on Parental Leave.

### **2.0 SCOPE**

This policy applies to all BVARI employees, who meet the eligibility requirements set forth in the statutes and regulations of the Family and Medical Leave Act of 1993 and those employees who are eligible for Parental Leave under M.G.L. 149 section 105D.

### **3.0 POLICY**

#### **FMLA**

All personnel with at least one year of service with BVARI and worked at least 1,250 hours during the 12 months preceding the start of the leave, are eligible to request a leave of absence under the FMLA for the following purposes:

- 1) The birth of the employee's son or daughter, and to care for a newborn child;
- 2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
- 3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- 4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.
- 5) Qualifying exigency which occurs while the employee's spouse, child, or parent is a military member of the National Guard or Reserves.
- 6) Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member. The Military Family Leave Act (MFLA) entitles eligible employees of BVARI to take up to a total of twenty-six (26) weeks of MFLA

leave, in a single 12-month period, to care for a service member (spouse, son, daughter, parent or next of kin) due to an illness or injury incurred in the line of duty or on active duty which may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

Up to twelve weeks of time may be taken during a rolling 12 month period measured backward from the date an employee requests leave for a Family and Medical Leave Act qualifying reason. During any FMLA absence of more than 30 days for the same qualifying event, Earned Time will stop accruing following the 30th day. Any Earned Time that the employee has or accrues during the FMLA absence must be used as part of the FMLA leave. Any remaining leave after the paid time available has been used will be unpaid time. During an FMLA leave, health benefits will continue. The portion of the monthly medical premium normally contributed by the employee must be paid to BVARI by the 25<sup>th</sup> of each month. Employees who do not qualify for 12 weeks of FMLA leave may nonetheless have rights to a parental leave of eight weeks duration under Massachusetts law (see section below on Parental Leave)

To the extent required by the FMLA and regulations thereunder, FMLA leave of up to 26 workweeks will also be granted to permit an employee who is the spouse, son, daughter, parent, or next of kin to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or to deal with any qualifying exigency (as the defined in regulations of the Department of Labor) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operations. Any such leave shall be subject to the provisions of this policy concerning leaves for other purposes.

Requests for leaves because of a serious health condition or to care for a spouse, child or parent with a serious health condition will require completion of the FMLA Certification of Healthcare Provider form, which is available from Human Resources, and BVARI may require an additional second or third medical opinion, depending on the circumstances. Leaves may be taken intermittently or on a reduced leave basis.

Where the FMLA leave is planned, the employee must request the leave thirty days in advance of the expected absence, and must include in the request the expected dates of absence, the reason for the absence, and the expected return date. For unplanned leaves, the employee must provide the same information as soon as practical.

Employees returning from an FMLA leave due to their own serious health condition will not be permitted to return to work until they have submitted medical documentation from their physician indicating that they are capable of performing the essential functions of their position.

Issues arising regarding Family or Medical leave which are not covered by this policy will be determined by BVARI in its discretion, subject to the provisions of the Family and Medical Leave Act of 1993, as amended, and its regulations.

### **PARENTAL LEAVE**

Under the Commonwealth of Massachusetts, so long as the employee has been employed by BVARI for at least three (3) consecutive months, this individual shall be allowed to take up to eight (8) weeks unpaid for parental leave for the birth or adoption of a child under the age of 18 or to care for a child, under the age of 23, who is mentally or physically disabled. It is imperative that the employee provide BVARI's Human Resources Department advance notice of at least two (2) weeks of their anticipated date of departure along with the date of their intended return. However, if the two (2) week notice is not practicable and beyond the BVARI employee's control, said individual must provide notice of their intent to use their parental leave as soon as possible.

Parental leave is gender neutral and upon the employee's return to BVARI, the individual maintains their previous employment status including all of their benefits. However, BVARI is not required to restart an employee on parental leave to their previous or similar position if other BVARI employees were laid off due to economic conditions or other operating changes occurred during the employee's parental leave which affected the individual's position. In addition, parental leave shall not affect the employee's rights to receive earned time and other BVARI benefits that the individual was eligible before the date of leave. However, during the employee's parental leave, BVARI shall not provide said individual with the cost of any of BVARI's benefits, such as medical and dental insurance, which were granted to the employee prior to the date of their parental leave nor shall any earned time accrue.

If there are two BVARI employees who are the parents of the same child, then their 8 weeks of parental leave shall be in aggregate for the birth or adoption of a child. Massachusetts General Law 149 section 105D shall govern this section regarding parental leave.

## **4.0 DEFINITIONS**

### **4.1 Definitions**

For purposes of the FMLA section only of, the following definitions shall apply:

“Parent” The biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child (minor).

Note: “In loco parentis” means that the employee has the day-to-day responsibilities for the care and financial support of a child or persons who had such a responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

"Child" A biological, adopted or foster son or daughter, a stepson or stepdaughter, a legal ward, or a son or daughter of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self care because of a mental or physical disability (as defined by the American with Disabilities Act (ADA)).

"Spouse" A husband or wife.

"Covered Active Duty" Covered active duty for members of a **regular** component of the Armed Forces means duty during deployment of the member of the Armed Forces to a foreign country. "Covered Active duty" for members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

"Covered Service member" A member of the Armed Forces, including a member of the Armed Forces and a veteran of the Armed Forces , 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 illness.

Outpatient Status with respect to a covered service member, means the status of a member of the Armed Forces assigned to:

- a. a military medical treatment facility as an outpatient; or
- b. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

"Next of Kin" The nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative.

"Serious Injury or Illness for a service member" In the case of a member of the Armed Forces including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

"Son or daughter on active duty or call to active duty status" The employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or called to active duty status, and who is of any age.

"Leave because of a qualifying exigency" Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on active duty or called to active duty status as defined for one or more of the following qualifying exigencies:

- a. *Short-notice deployment* to address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment. Leave may begin on the day the covered military member is notified of an impending call or order to active duty in support of a contingency operation.
- b. *Military events and related activities* to attend any official ceremony, program, or event sponsored by the military that is related to the active duty. To attend family support or assistance programs and informational briefings sponsored or promoted by the military.
- c. *Childcare and school activities* to arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child. To provide childcare on an urgent immediate need basis (but not on a routine, regular, or everyday basis). To enroll in or transfer a child to a new school or day care facility, when enrollment or transfer is necessitated by the active duty status of a covered military member. To attend meetings with staff at a school or daycare facility when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered service member.
- d. *Financial and legal arrangements* to make or update financial or legal arrangements to address the covered service members absence while on active duty. To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits.
- e. *Counseling* to attend counseling provided by someone other than a health care provider for oneself, for the covered service member, or for the child provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
- f. *Rest and Recuperation* To spend time with a covered military member who is on short term temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance.
- g. *Post Deployment activities* to attend arrival ceremonies.
- h. *Additional activities* to address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Note: "Qualifying exigency leave" only is provided for family members of service members in the reserve components of the military - not for service members in the regular armed forces.

"Serious health condition" An illness, injury, impairment or physical or mental condition that involves the following:

- a. Inpatient care in a hospital, hospice or residential medical care facility.
- b. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- i. A period of incapacity for more than three consecutive calendar days and treatment that involves:
  - a. Treatment two or more times by a health care provider within the first 30 days, the first visit occurring within the first 7 days, or
  - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment.
- c. A period of incapacity due to pregnancy or for prenatal care.
- d. A period of incapacity or treatment due to a chronic serious health condition, which:
  - i. Requires periodic visits (defined as at least twice a year) for treatment by a health care provider,
  - ii. Continues over an extended period of time, and
  - iii. May cause episodic rather than continuing periods of incapacity.
- e. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Examples include: alzheimer's, a severe stroke or terminal stages of a disease.
- f. A period of absence to receive multiple treatments by a health care provider or by the provider of healthcare services under orders of or on referral by a health care provider, either for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis or kidney disease.

**“Health Care Provider”**

A health care provider is defined as:

- a. Doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices,
- b. A podiatrist,
- c. A dentist,
- d. A clinical psychologist,
- e. An optometrist,
- f. A chiropractor,
- g. A nurse practitioner,
- h. A nurse-midwife,
- i. A physician assistant,
- j. A Christian Scientist practitioner,
- k. A clinical social worker, or
- l. Other persons determined by the United States Secretary of Labor to be capable of providing health care services.

Note: The federal law places restrictions on specific purposes under which chiropractors and Christian Science practitioners may be health care providers; an employee shall check with an official of Human Resources for an interpretation before relying that these persons are health care providers.

## Parental Leave

Parent(s) under M.G.L. 149 section 105D is both men and women.

**5.0 RESPONSIBILITIES**

5.1 BVARI's Human Resources are responsible for the administration of this policy. Employee or supervisory questions regarding this policy, will be directed to BVARI's Human Resources department.

**6.0 CRITERIA**

All personnel with at least one year of service (12 months) with BVARI and who have worked at least 1,250 hours during 12 months preceding the start of the leave, are eligible to request a leave of absence under the FMLA. An employee may take FMLA leave for 12 consecutive weeks, may use the leave intermittently or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule if medically necessary for his/her own serious health condition or the serious health condition of an immediate family member. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) over a 12-month period.

BVARI may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with BVARI before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

Intermittent leave is not available for birth, adoption or foster care.

**5.2**

Parental Leave is allowed after (3) three consecutive months of service and is unpaid for eight weeks.

**7.0 RELATED DOCUMENTS:**

**Massachusetts General Law Chapter 149 section 105D.**

**8.0 REVISION HISTORY**

<b>Revision Letter</b>	<b>Author</b>	<b>Revision Date</b>	<b>Description of Changes</b>
A	Jeffrey Burd	5/24/2012	New Policy
B	Jeffrey Burd	10/20/2016	Added changes to reflect the changes in the Massachusetts Law

**Transmittal Sheet**

**REASON FOR ISSUE:**

**SUMMARY OF CHANGES:**

None

**RELATED DOCUMENTS:**

None

**RESPONSIBLE OFFICER:**

Director of Human Resources

**RECISSION:**

**RECERTIFICATION: This policy is scheduled for recertification on or before the last working day of May, 2018.**

**Nancy Watterson-Diorio**

**Chief Executive Officer**

**DISTRIBUTION**

Board of Directors, Date:

FLD: Sharepoint Server \_\_\_\_\_ E-mailed \_\_\_\_\_ to:

BVARI Staff, Stakeholders