TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OKDHS:2-1, Table of Contents; 2-1-26.1; 2-1-28 through 2-1-30; 2-1-31.1; 2-1-33; 2-1-35 through 2-1-36; 2-1-37 through 2-1-38; 2-1-45; 2-1-47; and 2-1-50 through 2-1-51.

EXPLANATION: Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.

OKDHS:2-1-26.1 is revised to reflect the movement of the Fair Labor Standards Act (FLSA) compliance officer position from Administrative Services to the Human Resources Management Division (HRMD).

OKDHS:2-1-28 is revised to: (1) adapt the definition of workweek from Subpart B, Part 778, Chapter 5, Title 29 of the Code of Federal Regulations (CFR) Pertaining to U.S. Department of Labor; (2) reflect the difference in the core hours of Oklahoma Department of Human Services (OKDHS) offices and 24-hour operations; and (3) ensure compliance with FLSA.

OKDHS:2-1-29 is revised to comply with Subpart B, Part 825, Chapter 5, Title 29 of CFR Pertaining to U.S. Department of Labor.

OKDHS:2-1-30 is revised to confirm employees’ responsibilities when working for more than one agency under the Executive Branch of the State of Oklahoma.

OKDHS:2-1-31.1 is revised to reflect the: (1) removal of the seven minute rule; and (2) movement of the FLSA compliance officer position from Administrative Services to the HRMD.

OKDHS:2-1-33 is revised to: (1) comply with Merit Rule OAC 530:10-15-50 and OKDHS:2-15-52; and (2) reflect when to use administrative leave.

OKDHS:2-1-35 is revised to comply with Merit Rule OAC 530:10-15-10(f).
OKDHS:2-1-36 is revised to: (1) comply with Merit Rule OAC 530:10-15-10(f); (2) comply with Subpart C, Part 825, Chapter 5, Title 29 of CFR Pertaining to U.S. Department of Labor; (3) comply with OKDHS:2-1-47; and (4) clarify the duration limit of leave requests.

OKDHS:2-1-37 is revised to correct the: (1) policy reference to OAC 340:2-1-8(b)(1); and (2) form reference to Form 10AD001E.

OKDHS:2-1-38 is revised to: (1) add Family and Medical Leave Act (FMLA) leave as an approved reason for leave without pay; and (2) correct the policy references and change to Merit Rule OAC 530:10-15-10(f) and 530:10-15-49.

OKDHS:2-1-45 is revised to include all time considered to be on duty.

OKDHS:2-1-47 is revised to comply with Part 825, Chapter 5, Title 29 of CFR Pertaining to U.S. Department of Labor.

OKDHS:2-1-50 is established to separate the provisions of court or jury leave from administrative leave.

OKDHS:2-1-51 is established to comply with Section 435 of Title 40 of the Oklahoma Statutes and the Patient Protection and Affordable Health Care Act.

Original signed on 9-28-10
Diane Haser-Bennett, Director
Human Resources Management Division

Sandra Harrison, Coordinator
Office of Intergovernmental Relations and Policy

WF # 10-Z (NAP)
INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

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Revised 10-1-10

(a) **Statement of policy.** The Oklahoma Department of Human Services (OKDHS) complies fully with the provisions of the Federal Fair Labor Standards Act (FLSA), as it applies to state and local governments. OKDHS managers, supervisors, and employees are responsible for making every effort to accomplish essential work within the regularly assigned 40 hour workweek.

1) **FLSA non-exempt employee workweek adjustment and overtime.**

   (A) OKDHS utilizes workweek adjustments, when possible, to avoid overtime work by FLSA non-exempt employees and, when workweek adjustments are not possible, to grant employees compensatory time at the rate of one and one-half times the number of overtime hours worked.

   (B) Any overtime worked by FLSA non-exempt employees:

      (i) must be necessary to the continued effective operations of OKDHS;

      (ii) is managed in the most efficient and economical manner possible; and

      (iii) is accomplished in accordance with FLSA and these regulations.

   (C) Payment for overtime work is made as required by FLSA, state law, Merit Rules, or when authorized by the OKDHS Director or designee. Any delegation of authority to approve overtime payments must be made in writing.

2) **FLSA exempt employee workweek and overtime.** FLSA exempt employees are expected to accomplish their assigned duties within the regular workweek. When this is not possible, employees are expected to devote whatever time is necessary to fulfill their responsibilities.

   (A) Compensatory time or overtime pay for FLSA exempt employees is granted only in exceptional circumstances when authorized by the Director, and, if paid, is based on prevailing market conditions.

   (B) OKDHS notifies the Office of Personnel Management (OPM) of any overtime payments for FLSA exempt employees.

3) **Local administrators responsibilities.** Local administrators are responsible for
ensuring that OKDHS employees have available for review the rules and regulations governing overtime work, including:

(A) OPM policy guidelines for FLSA;

(B) OKDHS FLSA regulations; and

(C) all posters required by the United States Department of Labor (USDOL).

(b) Designation of FLSA status. A list of OKDHS classifications indicating the FLSA exempt or non-exempt designation is located in the lists of classified job specifications and unclassified job specifications on the OKDHS Human Resources Management Division (HRMD) Web site.

(1) FLSA designation. A level of a job family descriptor (JFD) listed on the HRMD Web site with a blank space under the FLSA column must be reviewed on an individual basis to determine FLSA status. The employee occupying a JFD level so designated submits Form OPM-39, Position Description Questionnaire, through appropriate supervisory channels, to OKDHS FLSA compliance officer in HRMD.

(2) Review of FLSA status. When an employee and the employee's supervisor believe a position within the supervisor's authority is incorrectly designated, a review of FLSA designation must be requested by submitting Form OPM-39 through appropriate supervisory channels, to the OKDHS FLSA compliance officer in HRMD.

(c) Coverage of employees.

(1) FLSA exempt employees. The FLSA determines positions which are executive, administrative, computer, or professional and exempts those positions from the FLSA. These definitions are included in the 2004 Amendments to the USDOL FLSA Regulations and are reviewed when a question arises concerning the FLSA status of a particular position.

(A) Employees occupying FLSA executive, administrative, computer, or professional positions are exempt from the overtime provisions of FLSA and are designated FLSA exempt.

(B) FLSA exempt employees are not subject to the same minute by minute reporting as FLSA non-exempt employees. However, consistent with principles of public accountability in the State of Oklahoma, no employee, regardless of FLSA status, will be paid for time not worked. FLSA exempt employees work the number of scheduled hours in a pay period, filing leave for any time not worked,
and ensuring that there is full accounting of the hours of work required.

(2) **FLSA non-exempt employees.** OKDHS employees, regardless of status or type of service, who are not included in the executive, administrative, computer, or professional exemptions are subject to the provisions of FLSA and designated as FLSA non-exempt.

(d) **FLSA compliance and USDOL audits.**

(1) **FLSA compliance.** The OKDHS FLSA compliance officer has primary responsibility for:

   (A) conducting internal audits;

   (B) investigating complaints;

   (C) providing training and technical assistance on FLSA requirements and application;

   (D) assisting in the resolution of disputes of overtime issues; and

   (E) providing interpretation of FLSA policies, procedures, laws, and regulations for all OKDHS offices and facilities to ensure compliance with the FLSA.

(2) **Audits by USDOL.** OKDHS cooperates fully in investigations by the USDOL. The local administrator:

   (A) immediately notifies the division director for the office or program area under review, the OKDHS Legal Division, the chief administrative officer, and the OKDHS FLSA compliance officer of all contacts by USDOL officials; and

   (B) is authorized to provide access to records and report to USDOL officials as necessary for audit purposes.
OKDHS:2-1-28. Workweeks and work periods

Revised 10-1-10

(a) A workweek is a period of 168 hours during seven consecutive 24-hour periods. A workweek may begin on any day of the week and at any hour of the day. A work period consists of the time that an employee works during the workweek. For purposes of leave and overtime calculations, a 40-hour work period is considered the standard work period. Each employee is advised of his or her designated workweek in writing, either by memo or Form 11AD005E, Daily Time Sheet/FLSA Non-Exempt Employee, prior to the beginning of the designated workweek.

(b) Each local administrator, in cooperation with appropriate supervisory staff, is responsible for designating or establishing procedures for the designation of the beginning day and time for the workweek or work period for each employee within the office or unit. Workweeks are scheduled to ensure maximum opportunities to utilize workweek adjustments. Core hours for Oklahoma Department of Human Services (OKDHS) offices, excluding residential care facilities and other 24-hour operations, are 9:00 a.m. to 4:00 p.m. Scheduled shifts in OKDHS offices may not begin after 9:00 a.m. or end before 4:00 p.m.

1) Changes to the designated workweek may only be made at the beginning of a pay period and require the approval of the county director or local administrator and the Fair Labor Standards Act (FLSA) compliance officer.

(A) The proposed workweek is submitted to the OKDHS FLSA compliance officer, who will review the change for conformity with federal regulations and OKDHS policies and procedures. After receiving approval from the FLSA compliance officer and the county director or local administrator, the new workweek commences at the beginning of the next pay period.

(B) When a workweek is changed, resulting in overlapping days during which the employee performs work, any overtime compensation due the employee is determined by including the overlapping days in both the original workweek and the new workweek, computing the total hours for each of the two weeks, and compensating the employee for any overtime hours based on the higher of the two.

(C) Changes to the scheduled workweek may not be made retroactively, or for the purpose of avoiding overtime payments as required by federal regulations and OKDHS policies and procedures.
(2) Exceptions to the standard workweek and work period may be authorized by the appropriate division director, with approval of the chief administrative officer or designee and FLSA compliance officer.
OKDHS:2-1-29. Workweek adjustments

Revised 10-1-10

(a) Definition. Workweek adjustments are authorized changes made in an employee's regularly scheduled working hours to ensure the total number of hours worked during the workweek do not exceed 40. For example, an employee normally assigned to work an eight hour day who is required to work an additional two hours on Monday, for a total of ten hours that day, may be rescheduled to work two fewer hours on another day or days in the same workweek, so that the total hours for the week do not exceed 40.

   (1) Workweek adjustment is the Oklahoma Department of Human Services (OKDHS) preferred method of compensating non-exempt employees for extra hours worked.

   (2) Workweek adjustments are provided on an hour-for-hour basis for extra hours worked and may only be given in the same designated workweek in which the extra hours were worked.

(b) Scheduling. Workweek adjustments may be made either before or after the extra work is performed. For example, an employee who is scheduled to work four hours in the evening on a special assignment on the third day of the workweek may be given a four hour adjustment on any day of the workweek. If an employee cannot perform the extra work to make up for an adjustment by fault or control of OKDHS, no leave is charged to the employee. If the extra work is not performed due to reasons given by the employee, the employee is charged appropriate leave.

(c) Supervisor responsibility. Supervisors ensure that workweek adjustments are scheduled, when possible, to avoid overtime work, and that staff utilize workweek adjustment for extra hours worked in the workweek before charging any type of leave, excluding approved FMLA absences. It is the employee's choice whether to use available workweek adjustment or FMLA leave.
OKDHS:2-1-30. Overtime compensation and record keeping

Revised 10-1-10

(a) Compensatory time. It is the policy of the Oklahoma Department of Human Services (OKDHS) to use compensatory time in lieu of overtime payment for non-exempt employees except in resource centers and other residential care facilities. Local administrators establish and implement guidelines for how non-exempt employees utilize compensatory time.

(1) Limits. When workweek adjustments are not possible within the workweek, compensatory time is granted in lieu of overtime payments, provided:

   (A) compensatory time not used within 180 days of the pay period it accrued is paid at the appropriate overtime rate; and

   (B) compensatory time in excess of 240 accrued compensatory hours (160 hours worked) is paid at the appropriate overtime rate.

(2) Requirements. Compensatory time is requested and approved in the same manner as annual leave. Supervisors approve employee requests to use compensatory time unless the requests disrupt OKDHS operations or endanger public health, safety, or property.

   (A) Employees are responsible for making requests for use of compensatory time within a reasonable time period of the date it was earned.

   (B) Accrued compensatory time must be used prior to any approval for annual leave unless such use would result in the forfeiture of annual leave due to accrual limitations as provided in Merit Rules.

   (C) Except for employees in group home, residential facility, or resource center settings where 24-hour care, monitoring, or supervision is required for clients or residents, supervisors may require non-exempt employees to use accrued compensatory time when determined by the supervisor to be warranted or appropriate.

(3) Rate of calculation.

   (A) Compensatory time at the rate of time and one-half is granted to non-exempt employees for all time actually worked in excess of the regular 40 hour week.
(B) Hours in any type of leave status, with the exception of jury duty per Merit Rule OAC 530:10-15-46 and OKDHS:2-1-50, are not included in the computation of hours worked for purposes of determining hours to be compensated at the premium rate of time and one-half.

(C) Employees whose total hours for a workweek, including leave time, exceed 40 are given compensatory time on an hour-for-hour basis for hours in excess of 40, so long as the actual time worked does not exceed 40 hours.

(D) When the hours actually worked exceed 40 and the total hours for the workweek include leave time, overtime hours are computed at the time and one-half rate, with additional leave time computed at the straight time rate.

(b) Payment for compensatory hours. Payment for compensatory hours is made at the employee's regular rate of pay at the time of payment. Non-exempt employees receive payment for compensatory hours earned in excess of 240 hours, and for compensatory hours not used within 180 days of the date of accrual.

(1) A non-exempt employee who has accrued compensatory hours and is transferred or promoted to a different position or classification may be paid for the compensatory hours prior to the effective date of the promotion or transfer, or allowed to carry the compensatory hours over to the new position or classification.

(A) The reviewing supervisor and local administrator are responsible for determining the number of compensatory hours accrued and the rate of pay for the new position or classification and making a recommendation to the appropriate division director whether payment should be made.

(B) When the promotion or transfer involves reassignment to another division, the transferring division director ensures the receiving division director is notified of the number of accrued compensatory hours prior to the effective date of the promotion or transfer.

(C) Any disputes concerning the transfer or payment of accrued compensatory hours are submitted to the appropriate officer or division director for decision.

(2) A non-exempt employee who terminates employment with OKDHS is paid for all accrued compensatory hours at the rate of pay at time of separation or the average regular rate for the preceding three years, whichever is higher.

(c) Overtime pay. Overtime pay in lieu of compensatory hours for non-exempt employees requires the approval of the Director and is granted only in exceptional
circumstances. Managers and supervisors request and receive approval from the Director prior to authorizing non-exempt employees to work the overtime for payment. Managers and supervisors are responsible for ensuring that overtime payments are minimized. Overtime payment is made by entering the overtime hours into the timekeeping system, except situations requiring submission of Form 10PL003E, Overtime Wage Exemption Claim, to the Finance Division Payroll Unit.

(1) The overtime rate of pay, as applicable, for individual employees is composed of:

(A) regular base pay (BP);

(B) pay differential(s) (PD);

(C) on-call pay (CP); or

(D) longevity pay (LP).

(2) All forms of pay must be converted to an hourly rate prior to inclusion in the overtime pay formula. The formula used to determine the overtime rate of pay is (BP x 1 1/2) + PD/2 + CP/2 + LP/2 = Overtime Rate.

(3) Employees authorized to work overtime on a volunteer basis and performing duties outside their current job family descriptor and level are compensated at the established rate of overtime pay for the type of work performed.

(4) The Executive Branch of the State of Oklahoma is one employer for FLSA purposes; therefore, concurrent employment in more than one agency is considered joint employment. Employees working in one or more nonexempt positions in Executive Branch agencies, and who work more than 40 total hours per week, are eligible for overtime. An OKDHS employee may not be employed by another state agency without the prior written approval of the employee’s division director. It is the responsibility of all agencies involved to ensure that all FLSA requirements associated with multiple agency appointments are met.

d) Record keeping. To ensure full compliance with the Fair Labor Standards Act (FLSA), it is essential that accurate and complete records are maintained and accurately reflect all time worked by employees.

(1) Form 11AD005E, Daily Time Sheet/FLSA Non-Exempt Employee, is used to record all time worked by non-exempt employees and is a precise and accurate record of all time worked.
(2) All non-exempt employees are responsible for completing Form 11AD005E truthfully and accurately. Failure to do so may subject an employee to corrective discipline.

(3) Form 11AD005E is not used by exempt personnel.

(4) A memorandum which documents and explains any unauthorized overtime work must be submitted to the local administrator with Form 11AD005E. The local administrator is responsible for ensuring that corrective action is taken to prevent unauthorized overtime work.

(5) Compensatory time is entered on the OKDHS time/leave system as it is accrued and taken, in accordance with instructions issued by the Finance Division Payroll Unit.

Revised 10-1-10

(a) Employees permitted to work. All time during which Fair Labor Standards Act (FLSA) non-exempt employees are permitted to work, whether authorized or not, must be counted as hours worked, compensable time. This includes any time worked when the supervisor knew or should have reasonably known the work was performed. The explanations included in (1) through (11) of this subsection are provided to assist employees and supervisors in defining compensable time.

(1) Early arrivals and late departures. Non-exempt employees who begin work prior to their scheduled shift or leave work after their scheduled shift ends must be compensated for that time.

(A) Non-exempt employees sign in on Form 11AD005E, Daily Time Sheet/FLSA Non-Exempt Employee, when actually engaged in work activities and when required to be present for work.

(B) Non-exempt employees accurately record on Form 11AD005E the time they:

(i) begin work;

(ii) leave for meal periods;

(iii) are away from the work site for personal time off; and

(iv) complete their work.

(C) Employees determine hours worked using exact times. Total hours worked are calculated to the minute without rounding. Supervisors may impose appropriate corrective discipline for chronic or habitual tardiness.

(2) Meal periods. All employees are provided an uninterrupted, free-from-duty meal period of at least 30 minutes. Employees record any interruptions of meal periods and advise their supervisor as they occur. This is necessary to adjust time appropriately. To ensure uninterrupted meal periods, employees are encouraged not to eat at workstations during the meal period.

(3) Breaks and other brief rest periods of less than 20 minutes. If provided, breaks and other brief rest periods of less than 20 minutes are counted as time
worked. Normally employees are provided a 15-minute break during each four-hour period on duty. Breaks may be eliminated as necessary due to staffing or work necessities. Since breaks are counted as work time, employees are not permitted to save break time in order to count it towards late arrivals early departures, or extended lunch periods.

(4) **Work at home.** An employee who performs work at home, for which the Oklahoma Department of Human Services (OKDHS) accepts the benefits, must receive compensation for the time when the supervisor either knew or should have known the employee was performing the work.

(5) **After hours and weekend work.** Employees who work late, come in early, come back to the work location during evening or weekend hours, or otherwise work during regularly scheduled time off, either with the supervisor's knowledge or when the supervisor should have known the work was performed, must be compensated for such time.

(6) **Travel time.** Travel time, excluding normal home-to-work travel, must be counted as time worked when the travel:

   (A) is performed as part of the employee's regular work assignments, such as travel between various clients' homes or other work locations;

   (B) is to and from a location, performed all in one day and involves a one-day assignment in another city, including workshops and training activities. If the employee is not required to report at the work location prior to his or her departure and is permitted to leave from home, the time which would have been spent in normal home-to-work travel is deducted from total hours. When the employee's residence is closer to the designated location, travel time begins when the employee leave his or her residence; or

   (C) involves a special assignment in another city and includes an overnight stay, even if it occurs on the employee's regular day off. All travel occurs within normal working hours unless the supervisor determines it is unreasonable.

(7) **On-call time.** On-call time is counted as time worked when an employee is restricted to OKDHS premises during the time spent on-call or the employee is otherwise so limited in activities that he or she is restricted to a particular place designated by OKDHS.

   (A) Hours during which an employee is generally free to conduct personal business and is only required to remain within reasonable travel distance to the
work location, to leave word with the supervisor or designee as to how he or she may be reached, or to carry a pager or phone are not counted as hours worked.

(B) When an employee is on non-duty status, the supervisor may designate specific times when the employee calls in to be informed whether the employee is required to report for duty. Contact time is considered time worked.

(C) Supervisors do not place restrictions on employees who are on-call status that would cause on-call time to be counted as hours worked unless approved by the local administrator.

(D) Classified employees who are on-call receive a minimum of two hours of work if called to a work location. Compensable time begins at the call to duty.

(8) **Emergency client services.** Time spent responding to emergency calls for client services is counted as time worked. Time spent on telephone calls in an effort to resolve client situations is counted as time worked.

(9) **Sleep time during duty of 24 hours or more.**

   (A) Sleep time, up to a maximum of eight hours, is excluded from hours worked if at least five hours of uninterrupted sleep are possible during the scheduled sleeping period.

   (B) Employees must sign an agreement to exclude sleep time prior to the work period lasting 24 hours or more.

   (C) Interruptions of sleep time to perform duties are considered hours worked.

   (D) An employee who is responsible for the supervision of an OKDHS client or a child in OKDHS custody is considered performing duties for the entire period the client or child is under the employee's immediate supervision. In this situation, sleep time is not deducted.

(10) **Volunteer work.** Volunteer work on behalf of OKDHS is counted as hours worked if the work is:

   (A) performed during an employee's normal working hours;

   (B) not truly voluntary, but performed as a result of job expectations; or assignments, coercion, or the result of undue pressure; or
(C) the same or similar in nature to the work the employee is hired to perform.

(11) **Training.** Time spent attending OKDHS sponsored lectures, meetings, and training programs is compensable, except when:

(A) attendance is outside regular working hours;

(B) attendance is voluntary;

(C) the subject matter of the course does not relate to the employee's work; and

(D) the employee does not perform productive work during attendance.

(b) **Employee responsibility.** Employees are responsible for:

(1) understanding the regulations governing compensable time;

(2) accurately entering all compensable time on Form 11AD005E;

(3) complying with the local procedures regarding the assigned shift;

(4) obtaining authorization for overtime work; and

(5) immediately reporting all overtime worked to their supervisor.

(c) **Supervisory responsibility.** Supervisors are responsible for:

(1) monitoring and controlling the number of hours non-exempt staff work;

(2) utilizing workweek adjustments when possible to avoid overtime work by employees;

(3) establishing procedures for non-exempt staff to follow when requesting to work overtime;

(4) informing all non-exempt employees of the procedures for requesting approval to work overtime; and

(5) ensuring all non-exempt employees are trained in their FLSA rights and responsibilities.

(d) **Additional resources.** The OKDHS FLSA compliance officer in Human Resources
Management Division:

(1) provides explanations and interpretations to OKDHS staff concerning compensable time;

(2) reviews FLSA issues and conflicts; and

(3) recommends appropriate changes to ensure compliance with federal guidelines.
OKDHS:2-1-33. Administrative leave

Revised 10-1-10

In accordance with OAC 530:10-15-50 and OKDHS:2-15-52, an employee may be placed on paid administrative leave as a cooling off period to defuse a potentially violent occurrence in the workplace. An employee's time on administrative leave under this Section must not exceed 32 hours in any 12 month period.

(1) The employee may be assigned work to be performed during administrative leave or may be required to remain available to meet with Oklahoma Department of Human Services (OKDHS) personnel.

(2) Administrative leave under this Section is not accrued or accumulated, and is not charged to annual leave or sick leave.

(3) A record of the employee's hours of leave granted under this Section is kept separate from the employee's personnel files.

(4) OKDHS reports the number of paid, administrative leave hours granted under this Section to the Office of Personnel Management (OPM) as requested.
OKDHS:2-1-35. Annual leave

Revised 10-1-10

(a) Statement of policy. Annual leave is an employee benefit to be used for vacations, personal business, and other approved time off work not covered by other paid leave or holiday provisions. Annual leave is planned, requested in advance, and approved by the employee's supervisor prior to being taken. Approval of annual leave for unscheduled absences is not automatic. An unscheduled absence is subject to disciplinary action.

(1) A senior administrator, as defined in this Section means a chief officer, advocate general, general counsel, inspector general, or designee. A senior administrator may place an employee on annual leave, when such action is in the best interest of Oklahoma Department of Human Services (OKDHS). An employee is not required to reduce accrued annual leave below five working days, 40 hours. Leave taken under the provisions of this paragraph is neither returnable nor reimbursable.

(2) Annual leave may be utilized to supplement the receipt of temporary total disability (TTD) payments in accordance with Section 2e of Title 85 of the Oklahoma Statutes. Regardless of the type of supplemental leave option utilized, an employee receiving TTD payments must promptly report in writing to OKDHS and CompSource Oklahoma any change in:

(A) a material fact;

(B) the amount of income he or she is receiving; or

(C) his or her employment status.

(3) An employee who is ill or requires enforced leave during a scheduled period of annual leave may charge the absence to sick or enforced leave by submitting Form 10AD001E, Request for Approval of Leave.

(4) Per OAC 530:10-15-10(f), OKDHS may terminate an employee who is absent from work after the employee has exhausted all of his or her sick and annual leave accumulations unless the absence is covered by OKDHS:2-1-47 or OAC 530:10-15-49. Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the Oklahoma Statutes. This Section does not prevent the granting of leave without pay in accordance with OKDHS:2-1-38.
(b) **Employee's responsibility.** Each employee is responsible for:

1. submitting a written request in advance to his or her immediate supervisor for annual leave, using Form 10AD001E;
2. obtaining appropriate approvals prior to taking annual leave;
3. when advance planning of annual leave is not possible, notifying his or her supervisor of the reason(s) for the absence within the time frames established by local office procedure, but not later than two hours after the employee's scheduled reporting time;
4. submitting a written request for approval of annual leave on Form 10AD001E as soon as practical; and
5. submitting a written request for any cancellation or change in scheduled annual leave.

(c) **Supervisor's responsibility.** Supervisors are responsible for:

1. approving or disapproving advance requests for annual leave based on needs of the office, staffing requirements, and status of employee's workload. When, due to staffing requirements, a decision must be made between two or more employees who have requested annual leave for the same time period, the decision is based on the date the completed Form 10AD001E is received by the supervisor. If the requests are received on the same date, the decision is based on seniority with OKDHS;
2. approving or disapproving requests for unscheduled annual leave based on the reason(s) for the unplanned absence;
3. imposing appropriate corrective discipline for unscheduled absences; and
4. ensuring that any leave taken is accurately reported.
(a) **Statement of policy.** The Oklahoma Department of Human Services (OKDHS) employs and schedules employees to ensure efficient and effective delivery of services to clients. Employees are expected to be at work on all scheduled workdays. Sick leave is a benefit provided to employees to protect them in the event of serious illness or injury that prevents them from performing assigned duties.

(1) Sick leave may be utilized for a period in which the employee is incapacitated for the performance of his or her duties by illness, pregnancy, or injury, or for medical, surgical, mental health, dental, or optical examination or treatment, or when, by reason of his or her physical condition or exposure to contagious disease, his or her presence at work could jeopardize the health or safety of others. The fact that sick leave is due to a job-related illness or injury for which worker compensation benefits are or may be received does not relieve the employee of the responsibility to comply with OKDHS policies governing sick leave.

(2) Sick leave may be denied when the supervisor has facts to show the employee:

   (A) is abusing sick leave benefits; or

   (B) failed to furnish a written statement as required in (b)(4) of this Section.

(3) Excessive or abusive use of sick leave is grounds for disciplinary action.

(4) Sick leave may be utilized to supplement the receipt of temporary total disability (TTD) benefits in accordance with Section 2e of Title 85 of the Oklahoma Statutes. Regardless of the type of supplemental leave option utilized, any employee receiving TTD benefits must promptly report in writing to OKDHS and CompSource Oklahoma any change in:

   (A) a material fact;

   (B) the amount of income he or she is receiving; or

   (C) any change in his or her employment status.

(5) If an employee is physically unable to perform his or her duties for OKDHS, it is presumed that the employee cannot participate in certain other equally physically demanding activities while on leave from OKDHS. Although each case is evaluated
upon its specific circumstances, it is generally not appropriate for an employee who is on medical leave from OKDHS to work for another employer.

(6) In accordance with Merit Rule OAC 530:10-15-10(f), OKDHS may terminate an employee who is absent from work after the employee has exhausted all of his or her sick and annual leave accumulations, unless the absence is covered by OKDHS:2-1-47 or Merit Rule OAC 530:10-15-49. Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the Oklahoma Statutes. This Section does not prevent the granting of leave without pay (LWOP) in accordance with OKDHS:2-1-38.

(b) **Employee's responsibility.** Each employee is responsible for:

(1) scheduling sick leave, when possible, to accommodate OKDHS operations. The employee must provide his or her supervisor notice and Form 10AD001E, Request for Approval of Leave, a minimum of 30 days before the leave is to begin, or as soon as possible, when the leave is foreseeable. When the need for sick leave is unforeseeable, the employee is responsible for calling his or her supervisor or designee to report any absence due to illness or injury within the time frames established by local office procedures, but not later than two hours after the employee's scheduled reporting time. Employees must report on a daily basis except when the illness or injury results in an extended absence, in which case the employee makes arrangements with the supervisor to report on a less frequent basis;

(2) applying available workweek adjustment prior to charging sick leave for an absence;

(3) submitting Form 10AD001E to his or her immediate supervisor for absences as soon as practical, but no later than immediately upon return to duty. When the employee is absent, in excess of three full consecutive work days, the request for sick leave and the attending physician's statement must be submitted as soon as it is available, but not later than the fourth working day of such absence. This requirement does not apply to absences due to a serious health condition previously designated as Family and Medical Leave Act (FMLA) qualifying;

(4) furnishing a statement from the attending licensed medical or mental health professional for any absence in excess of three full consecutive workdays unless such requirement is waived in writing by the appropriate division director or if the absence is due to a FMLA qualifying event covered by OKDHS:2-1-47. The written waiver is attached and submitted with Form 10AD001E.
(A) A medical statement may be required for an absence of less than three consecutive workdays if the employee has been advised in writing in advance that such statement will be required. This requirement does not apply to absences due to a serious health condition previously designated as FMLA qualifying.

(B) An employee who fails to provide a required medical statement is charged unauthorized LWOP for the absence.

(C) An employee is not permitted to return to work if, due to physical condition or exposure to contagious disease, his or her presence would jeopardize the health or safety of the employee or others. In such instances, the employee is allowed three working days from the date the employee was not permitted to return to duty to provide a medical statement. Failure to provide a medical statement results in the absence being charged as unauthorized LWOP;

(5) monitoring his or her leave balances. When an absence due to illness or injury extends beyond the accrued sick leave balance, the remainder of the absence may be charged against the employee's accrued annual leave, compensatory time, holiday leave, or LWOP. The routine use of annual leave or LWOP to cover absences due to illness or injury is normally considered excessive use of leave and may result in appropriate disciplinary action; and

(6) indicating a beginning and ending date of the absence on Form 10AD001E. When an ending date is unknown, the duration of the request must not exceed three months.

(c) Supervisor's responsibility. Each supervisor is responsible for:

(1) ensuring employees under their supervision are aware of and have access to OKDHS policy and local office procedures governing attendance and leave;

(2) approving or disapproving requests for sick leave. In accordance with (a)(1) and (2) of this Section, sick leave may be denied and the absence charged as unauthorized LWOP when a supervisor has facts to show the employee:

(A) is abusing sick leave benefits; or

(B) failed to fulfill his or her responsibilities under this regulation;

(3) reviewing the medical statement to ensure that the employee is released to full duty. The supervisor, in consultation with appropriate administrative staff, ensures
that appropriate action is taken to address any limitations placed on the employee's work assignments;

(4) determining whether an employee's return to duty jeopardizes the health or safety of the employee or others. The supervisor, after consultation with appropriate administrative staff and within three working days of the date the employee is not permitted to return to duty, submits to the designated staff person written documentation detailing the reason(s) for his or her refusal to allow the employee to return to duty;

(5) ensuring the Employee Leave Summary and appropriate leave forms are provided to the employee. When an employee is on leave for an extended period, forms and summaries are mailed to the employee's home address of record;

(6) ensuring that any leave taken is accurately reported; and

(7) imposing appropriate corrective discipline per OKDHS:2-1-7 for excessive or abusive use of sick leave.
OKDHS:2-1-37. Enforced leave

Revised 10-1-10

(a) Appropriate use of enforced leave. Enforced leave is defined as absences necessary:

(1) when an employee experiences an extreme personal disaster, such as a tornado or home fire;

(2) when a relative of the employee or a resident in the employee's household requires the employee's care because of illness, injury, or incapacitation. Relative is defined in this Section as wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins, or foster relationship; or

(3) in the case of the death of a relative or a resident in the employee's household. Enforced leave to attend the funeral of a:

   (A) member of the employee's immediate family or household must not exceed ten working days in the payroll year; however, the employee may request annual leave for any additional time off. Immediate family in this paragraph means parents, spouse, children, or siblings; or

   (B) relative other than a member of the employee's immediate family or household is limited to the time for such attendance plus reasonable travel time; however, the employee may request annual leave for any additional time off.

(b) Computation of enforced leave. Enforced leave is charged against an eligible employee's accumulated sick leave. Enforced leave may not exceed ten working days, 80 hours, in any payroll year, December 16 through December 15. Enforced leave may not exceed the accrued sick leave balance.

(c) Procedure for approval of enforced leave. Requests for enforced leave are entered and processed in the same manner as requests for sick leave using Form 10AD001E, Request for Approval of Leave. Approval of enforced leave may be denied when the supervisor has facts to show the employee is abusing enforced leave privileges, or when the employee has failed to satisfy a request to provide evidence that the enforced leave was necessary.
OKDHS:2-1-38. Leave without pay - approved and unapproved - dereliction of duty

Revised 10-1-10

(a) Approved leave without pay (LWOP). Approved LWOP may be granted for:

(1) all Family and Medical Leave Act (FMLA) designated leave;

(2) extended absences in lieu of exhausting accrued leave balances; or

(3) when all accrued leave has been exhausted. An employee on approved LWOP remains subject to all state laws, Merit Rules, and Oklahoma Department of Human services (OKDHS) policies applicable to his or her employment.

(A) For non-FMLA designated leave, approved LWOP is subject to rigorous review by the granting OKDHS official and is not automatically granted. The mission and needs of OKDHS, the length of time for which the leave is requested, the reasons for the request, the length and quality of the employee's service, and the employee's prior leave record is considered in determining whether to grant approved LWOP.

(B) Continuous approved LWOP is not granted for more than two years, except LWOP granted due to on-the-job injury or illness where the employee remains on total temporary disability.

(C) An employee remains subject to all State laws, Merit Rules, and OKDHS policies during periods of LWOP and sick leave. The fact that an extended absence is due to a job-related illness or injury, for which worker's compensation is or will be received, does not relieve an employee of the responsibility to comply with State laws, Merit Rules, and OKDHS policies governing LWOP and sick leave.

(D) An employee may be placed on approved LWOP due to an on-the-job injury or illness while in receipt of temporary total disability (TTD) payments in accordance with Section 2e of Title 85 of the Oklahoma Statutes. Regardless of the type of supplemental leave option utilized, an employee receiving temporary disability benefits must promptly report in writing to OKDHS and CompSource Oklahoma any change in:

   (i) a material fact;
(ii) the amount of income he or she is receiving; or

(iii) his or her employment status.

(E) Approved LWOP may be cancelled at any time by the granting OKDHS official. The employee is notified of the cancellation by certified mail sent to the last address of record and is provided 14 calendar days from the date of the mailing of the letter to return to work.

(i) An employee who is absent due to illness or injury, has exhausted all annual and sick leave, and fails to return to duty by the expiration of the 14 calendar days may be separated from employment in accordance with Merit Rule OAC 530:10-15-10(f).

(ii) An employee who has maintained accrued annual or sick leave balances and who fails to return to duty by the expiration of the 14 calendar days is considered derelict in his or her duty, and discharge proceedings are started.

(F) Requests for extension of approved LWOP must be submitted in writing to the granting OKDHS official no less than 14 calendar days prior to the expiration of the current approved LWOP. The granting OKDHS official may deny the request for an extension. Denials are in writing and include the reason for the denial. The employee is notified of a denial by certified mail sent to the last address of record, and is provided 14 calendar days from the date of the mailing of the letter to return to work.

(i) An employee who is absent due to illness or injury, has exhausted all annual and sick leave, and fails to return to duty by the expiration of the 14 calendar days may be separated from employment in accordance with Merit Rule OAC 530:10-15-10(f).

(ii) An employee who has maintained accrued annual or sick leave balances and who fails to return to duty by the expiration of the 14 calendar days is considered derelict in his or her duty and discharge proceedings are started.

(G) Employee’s responsibility. Any absence from the workplace can impact upon the fulfillment of the OKDHS mission, and each employee must make every effort to accrue sick and annual leave and to minimize his or her need for approved LWOP.

(i) An employee submits a written request for approved LWOP. The request is submitted in advance of taking leave, when possible, and includes a
detailed explanation for the request and why the usage of other types of leave is not possible.

(ii) A written request for approved LWOP must be submitted by the employee no less than five working days from the date that the approved LWOP begins.

(iii) In addition to the policy governing approved LWOP, an employee must comply with other relevant OKDHS policies governing leave.

(iv) An employee on approved LWOP is responsible for immediately informing the OKDHS official who granted the approved LWOP of any change in the employee's condition or situation initially warranting the leave. An employee's failure to immediately inform the granting OKDHS official of any change in the employee's condition or situation which warranted the approved LWOP may subject the employee to the cancellation of the leave and disciplinary action.

(v) An employee requesting an extension of approved LWOP beyond the current expiration date must submit the request no less than 14 calendar days prior to the expiration of the current leave. Extensions of approved LWOP may be denied by the OKDHS official who approved the initial request. Denials are in writing and include the reason for the denial.

(vi) An employee is responsible for returning to duty on the workday following the expiration of the approved LWOP period or within 14 calendar days of the date of the letter informing the employee that his or her leave has been cancelled or that his or her request for an extension has been denied. An employee who fails to return to duty is considered derelict in his or her duty or is separated from employment in accordance with Merit Rule OAC 530:10-15-10(f) depending upon the reason for which the approved LWOP was granted.

(H) Granting official's responsibility. Employee absences from the workplace impact upon the fulfillment of the OKDHS mission, and the granting of approved LWOP is carefully considered. Employees are encouraged to minimize the need for approved LWOP.

(i) For non-FMLA designated leave, approved LWOP is not automatic, and granting officials may decline requests for approved LWOP based upon the needs of OKDHS.

(ii) The granting of approved LWOP is in compliance with other relevant
OKDHS policies governing leave.

(iii) Approvals required with respect to the length of requested approved LWOP:

(I) one to five consecutive working days - local administrator;

(II) six consecutive working days through 90 consecutive calendar days - resource center administrator, county director, division administrator;

(III) 91 consecutive calendar days through one calendar year - associate director or designee; and

(IV) over one calendar year – OKDHS Director.

(I) Rights upon return from approved LWOP. An employee granted approved LWOP and who fully complies with the policy governing such leave is accorded the right to be returned to an equivalent position at the end of the leave period; however, when LWOP was granted due an on-the-job injury or illness, the employee is returned to his or her original position at the end of the leave period. If it is found necessary to fill the position during the interim, the new employee is notified at the time of appointment that it may be necessary to vacate the position upon the return of the employee.

(b) Unapproved LWOP. Unapproved LWOP negatively impacts upon the fulfillment of the OKDHS mission, and supervisors and granting OKDHS officials encourage employees to make every effort to avoid unapproved LWOP. An employee on unapproved LWOP remains subject to all state laws, Merit Rules, and OKDHS policies applicable to his or her employment.

(1) Any unauthorized or unapproved absence from the workplace is a serious matter and is considered unapproved LWOP.

(2) Appropriate disciplinary action is taken for incidents of unapproved LWOP.

(3) An employee who fails to return to duty after the expiration or cancellation of approved LWOP is considered on unapproved LWOP as of the expiration date or the effective date of cancellation.

(4) An employee who fails to appear for duty for three consecutive work days and fails to contact his or her immediate supervisor, or other delegated authority, during
that period to request authorization to be absent from duty and to explain the reason(s) for the request is considered on unapproved LWOP for the three days. The employee is also considered derelict in his or her duty as of the first day of the three-day absence.

(c) Dereliction of duty. The fulfillment of the OKDHS mission is dependent upon the regular, consistent, and predictable appearance for duty of all employees. OKDHS considers an employee's dereliction of his or her duty a serious matter.

(1) An employee, on either approved or unapproved LWOP, who fails to return to duty by the expiration of the leave, or by the effective date of cancellation of the leave, is considered derelict in his or her duty as of the workday following the expiration date of the effective date of the cancellation, except LWOP granted for on-the-job injury or illness granted pursuant to Merit Rule OAC 530:10-15-49.

(2) An employee who fails to appear for duty for three consecutive work days and who also fails to contact his or her immediate supervisor, or other delegated authority, during that period to request authorization to be absent from duty and to explain the reason(s) for the request is considered derelict in his or her duty.

(3) An employee who is derelict in his or her duty is not considered to have resigned his or her position.

(4) Progressive discipline is unwarranted for an employee who is derelict in his or her duty, and discharge proceedings are started.
OKDHS:2-1-45. Miscellaneous time considered on duty

Revised 10-1-10

(a) **OKDHS sponsored training.** An Oklahoma Department of Oklahoma (OKDHS) employee attending OKDHS-initiated training activities is on duty. No leave is charged for attendance, and the employee is reimbursed for travel time and expenses per OKDHS policy.

(b) **Leave for Office of Personnel Management (OPM) examinations.** An employee is considered on duty when he or she is authorized to be absent from his or her work location for the purpose of taking an OPM examination. An absence is authorized when the examination is for a position within OKDHS and does not affect the employee's critical tasks. A request for authorization is made prior to the absence. If the examination is at a time the employee's presence in the work location is critical, the absence is not authorized. Per OKDHS policy, the employee requests annual leave for an absence to take an examination for a position outside of OKDHS.

(c) **OKDHS representation.** An employee who attends official functions, ceremonies, funerals for state officials or employees, or other such events, who is designated as an OKDHS representative by the Director is considered on duty and no leave is charged. An employee who attends such events of his or her own volition must request, be approved for, and charged leave.

(d) **Interviews for positions in the classified service.** An OKDHS employee who interviews for an OKDHS classified position is considered on duty as outlined in OAC 340:2-1-84.

(e) **Attendance at Oklahoma Public Employees Retirement System (OPERS) retirement seminars.** An employee who is two years or less away from his or her planned retirement is considered on duty for the purpose of attending one OPERS retirement planning seminar, when prior supervisory notification is given, and if the seminar occurs during the employee's normal work schedule. Time away to attend additional sessions is charged annual leave. Time spent traveling to the approved seminar is considered on duty. Travel expenses are the responsibility of the employee.

(f) **Physical examinations in connection with military duty.** An employee who is ordered to report for physical examination in connection with military duty is not considered absent from OKDHS duty during the time required for the examination or the time required for travel.

(g) **Volunteer firefighters.** Per Section 840-2.20 of Title 74 of the Oklahoma Statutes,
an employee who is a volunteer firefighter pursuant to the Oklahoma Volunteer Firefighters Act and who is called to fight a fire is not required to use any accrued leave or make up any time due to the performance of his or her volunteer firefighter duties.
OKDHS:2-1-47. Family and medical leave

Revised 10-1-10

(a) **Purpose.** Family and medical leave (FMLA leave) is provided to employees in accordance with the federal Family and Medical Leave Act (FMLA) of 1993, as amended effective January 16, 2009, the provisions of the National Defense Authorization Act of 2008 as it applies to active duty leave and caregiver leave, and OAC 530:10-15-45 of the Merit Rules. This Section is not a comprehensive listing of FMLA of 1993, and is not intended to conflict with either the Act or regulations. For more detailed information regarding employee and employer rights, responsibilities, and procedures to be followed, refer to the Guide to Administering the Family and Medical Leave Act, found under Employee Info, Employee Rights and Responsibilities, Family and Medical Leave Act (FMLA) on Your InfoNet.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning unless the context clearly indicates otherwise:

1. **Activities of daily living** means adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating.

2. **Incapable of self care** means the person requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living.

3. **In loco parentis** means in place of a parent or instead of a parent. In loco parentis includes those with day-to-day responsibilities to care for or financially support a child. Those with no biological or legal relationship with a child may stand in loco parentis.

4. **Instrumental activities of daily living** means cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and similar activities.

5. **Parent** means a biological parent or a person who stands or stood in loco parentis to an employee when the employee was a child as defined in the definition of "son or daughter." This term does not include parents-in-law.

6. **Son or daughter** means a biological, adopted or foster child, stepchild, legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
(7) "Spouse" means a husband or wife as defined or recognized under state law.

(8) "Incapacity" means inability to work, attend school, or perform other regular daily activities due to the serious health conditions, treatment therefore, or recovery therefrom.

(c) Eligibility and exceptions. An employee must be employed by the State of Oklahoma for a minimum of 12 months and have worked a minimum of 1,250 hours during the preceding 12-month period. Time worked is defined literally. It does NOT include paid or unpaid leave or holidays. An employee on active military duty receives credit for the hours and months he or she would have worked but for the employee's military service, in compliance with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA). An eligible employee is entitled to FMLA leave as a result of:

(1) the birth of the employee's child and to care for the newborn child. The leave must be initiated and concluded within one year of the birth of the child;

(2) the placement with the employee of a child for adoption or foster care. The leave must be initiated and concluded within one year of the placement of the child;

(3) a serious health condition of the employee's spouse, child, or parent necessitating care from the employee. Care includes providing physical and psychological support, as deemed necessary by a health care provider;

(4) a serious health condition that makes the employee unable to perform the essential functions of the employee's job. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

   (A) any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical-care facility;

   (B) continuing treatment by a health care provider, including any one or more of the situations described in (i) - (v).

   (i) Incapacity and treatment. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

      (I) treatment two or more times by a health care provider, within 30 days of the first day of incapacity, unless extenuating circumstances exist; or
(II) treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider.

(ii) **Pregnancy or prenatal care.** Any period of incapacity due to pregnancy or for prenatal care. This includes severe morning sickness.

(iii) **Chronic conditions.** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one 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, including recurring episodes of a single underlying condition; and

(III) may cause episodic rather than a continuing period of incapacity.

(iv) **Permanent or long-term conditions.** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.

(v) **Conditions requiring multiple treatments.** Any period of absence to receive multiple treatments, including recovery, from a health care provider for:

(I) restorative surgery after an accident or injury; or

(II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days, in the absence of medical intervention or treatment;

(5) any qualifying exigency arising out of the fact that the spouse, 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 operation and is a covered servicemember.

(A) Son or daughter for this type of FMLA leave is defined as for other types of FMLA leave, except that the individual does not have to be a minor.

(B) Covered servicemembers, for purposes of this Section are:
(i) current members of the Armed Forces, including members of the National Guard or Reserves;

(ii) retired members of the regular Armed Forces;

(iii) retired members of the Reserve who retired after completing at least 20 years of active service.

(C) Qualifying exigencies include:

(i) short-notice deployment. Leave taken for this purpose can be used for a period of seven calendar days;

(ii) military events and related activities; and

(iii) child care and school activities;

(iv) financial and legal arrangements;

(v) counseling;

(vi) rest and recuperation. Eligible employees may take up to five work days for each period of rest and recuperation;

(vii) post-deployment activities; and

(viii) additional activities as mutually agreed by employer and employee.

(D) Leave may commence as soon as the person receives the call-up notice.

(E) Leave is counted toward the 12-week maximum of FMLA leave allowed in a 12-month period.

(F) The requesting employee must provide proof of the qualifying member's call-up or active military service. Documentation may be a copy of the military orders or other Armed Forces communication; or

(6) caring for an injured or ill servicemember.

(A) Leave can extend up to 26 weeks in a single 12-month period for an employee whose spouse, son, daughter, parent, or next of kin is injured or recovering from an injury suffered while on active military duty and who is unable
to perform the duties of the servicemember's office, grade, rank, or rating.

(B) Next of kin of a covered servicemember means the nearest blood relative other than the servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her next of kin.

(C) An employee is also eligible for this type of leave when the servicemember is receiving medical treatment, recuperation, or therapy, even if the servicemember is on the temporary disability retired list.

(D) An employee must provide certification of the family member or next-of-kin's injury, recovery, or need for care. Documentation can include a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the servicemember's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

(d) Limitations. Unless complications arise, the common cold, flu, ear ache, upset stomach, minor ulcer, headache other than migraine, routine dental or orthodontia problem, and periodontal disease are not considered serious health conditions. Routine physicals, eye examinations, and dental examinations are not considered treatment. Examinations to determine if a serious health condition exists or to evaluate the serious health condition are considered treatment.

(1) When both husband and wife are employed by the same division and in the same office, the total number of workweeks of FMLA leave to which both are entitled is limited to combined 12 workweeks for leave taken in accordance with (c)(1) or (2) of this Section or a combined 26 workweeks for leave taken in accordance with (c)(6) of this Section.

(2) OKDHS utilizes a rolling 12-month period. This is the current monthly pay period and the preceding 11 monthly pay periods beginning with the first day of the approved leave.

(e) Leave charges. FMLA leave is not a separate type of leave, and is not accrued or accumulated. It is a designation specified by law and is independent of actual leave used to cover the absence. When FMLA leave is taken to care for a sick family member or for the employee's own serious health condition, the leave may be taken
either consecutively or on an intermittent basis. A FMLA qualifying absence is filed as such from the onset of the absence.

(1) If the employee is eligible for a paid holiday while on FMLA leave, that leave day is not designated as FMLA leave.

(2) If the employee elects to use compensatory time earned in accordance with the Fair Labor Standards Act, such leave is designated as FMLA leave.

(3) If an absence is work-related, it is not exempt from the FMLA leave designation. All FMLA-qualifying absences must be designated and charged as such. The first 12 weeks of leave taken for a work-related injury are designated as FMLA leave, if the employee is eligible for FMLA leave and chooses not to supplement temporary total disability (TTD) payments with sick leave, annual leave, compensatory time or compensatory holiday leave.

(4) The options an employee has for charging FMLA leave are:

(A) charge to accumulated annual leave;

(B) charge to accumulated sick leave;

(C) charge to accumulated compensatory time;

(D) record as leave without pay (LWOP); or

(E) charge to shared leave after all available paid leave has been exhausted.

(f) Employee responsibility. When possible, an employee schedules FMLA leave to accommodate OKDHS operations. The employee provides the supervisor notice and a leave request a minimum of 30 calendar days before the leave is to begin, when the leave is foreseeable. When the need for FMLA leave is unforeseeable, the employee gives the supervisor as much notice and provides a leave request as soon as possible following discovery of the need. The notice and leave request must:

(1) be in writing;

(2) refer to Merit Rule OAC 530:10-15-45;

(3) describe the reason for the FMLA leave;

(4) specify the type of leave to be charged during the absence; and
include any information or documentation required for the type of absence requested, including such documents as Form 10AD001E, Request for Approval of Leave; and requested certification or supporting documentation. The employee's supervisor only requests what is traditionally required for that particular type of absence. A diagnosis is not requested. Information sufficient to establish the medical necessity for leave, the employee's ability to perform the essential functions of the job as well as other work restrictions and duration of treatment may be requested.

(g) Supervisor responsibility. The employee's immediate supervisor is responsible for reviewing all requests for leave. FMLA-qualifying absences are designated and charged as such. Within five business days of an employee giving notice of leave under this regulation or the supervisor acquiring information that an employee's leave may be FMLA-qualifying, the supervisor provides the employee with Form 11PE073E, Notice of Eligibility and Rights and Responsibilities Family and Medical Leave Act (FMLA). Form 11PE073E serves as notice of employee's FMLA eligibility and rights and responsibilities under this regulation, including the responsibility of required certification or documentation to determine that the absence qualifies as FMLA leave. Once requested certification or documentation is submitted by the employee, the supervisor, within five business days, determines whether leave qualifies for FMLA, notifies the employee as to how leave will be designated, and provides the employee with Form 11PE074E, Designation Notice Family and Medical Leave Act (FMLA). A supervisor does not interfere with, restrain, or deny the exercise of any right provided under this regulation.

(1) If the absence qualifies and the employee has complied with regulations, leave cannot be denied.

(2) The employee must be informed of such designation before returning from leave and advised of his or her rights and responsibilities. The supervisor does not designate leave as FMLA leave after the employee has returned to work except in the situations described in (A) and (B) of this paragraph.

(A) If the employee was absent for a reason under FMLA and the supervisor was not aware of the reason for the absence until the employee's return, the supervisor, within five business days of the employee's return to work, designates the leave retroactively with the appropriate notice to the employee.

(B) If the employee's supervisor knows the reason for the leave but has not been able to confirm that the leave qualifies under this regulation, or where the supervisor has requested medical certification which has not yet been received, the supervisor makes a preliminary designation and notifies the employee at the
time leave begins or as soon as the reason becomes known. Upon receipt of
the requisite information from the employee or medical certification, the
preliminary designation becomes final. If medical certification fails to confirm the
reason for the absence qualified under the regulation, the employee's supervisor
withdraws the designation.

(3) If the employee is not eligible for leave due to lack of tenure or time worked, the
employee is notified of the determination prior to the date the leave commences or
as soon as practicable. In the event of extenuating circumstances, notice of
determination must occur within five business days from the beginning of the
absence or receipt of request, whichever is sooner.

(A) If an employee is ineligible when leave is requested, the employee is advised
as to the number of months worked toward the 12-month service requirement or
hours worked for the employer in the preceding 12-month period.

(B) After eligibility is confirmed, or if the employee is not advised of ineligibility,
the employee is deemed eligible. The employee's eligibility is not later
challenged.

(4) If the employee's supervisor doubts the validity of a medical certification, the
supervisor may require the employee to obtain a second opinion at OKDHS expense.

(A) A second or third medical opinion can only be requested upon receipt of the
original medical certification for the FMLA qualifying condition and when a new
certification is requested at the beginning of each new rolling calendar year.

(B) Pending receipt of a second or third medical opinion, the employee is
 provisionally entitled to FMLA benefits, including maintenance of group health
benefits.

(C) When a certification does not ultimately establish the employee's entitlement
to leave, the leave is not designated as FMLA leave. It may be treated as paid
or unpaid leave under the leave regulations.

(D) The local administrator is permitted to designate a health care provider to
furnish the second opinion, provided the selected health care provider is not
employed on a regular basis by OKDHS. OKDHS does not regularly contract
with or otherwise regularly utilize the services of the health care provider
furnishing the second opinion.
(E) If the opinions of the employee's and the OKDHS designated health care provider differ, the local administrator requires the employee to obtain certification from a third health care provider, again at OKDHS expense.

(i) The third opinion is final and binding.

(ii) The third health care provider is designated or approved jointly by both the local administrator and the employee.

(iii) OKDHS and the employee act in good faith to attempt to reach agreement on the third opinion provider. If OKDHS does not attempt to reach agreement, OKDHS is bound by the first certification. If the employee does not attempt to reach agreement in good faith, the employee is bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. If OKDHS refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted, OKDHS may be failing to act in good faith.

(F) The local administrator provides the employee with a copy of the second and third medical opinions, when applicable and upon written request. Requested copies are provided within five business days unless extenuating circumstances prevent such action.

(G) If the local administrator requires the employee to obtain a second or third opinion, the employee or family member is reimbursed for any reasonable out-of-pocket travel expenses incurred. The local administrator cannot require an employee or family member to travel outside normal commuting distance for the purpose of obtaining the second or third medical opinions except in very unusual circumstances.

(H) A request for an additional medical opinion is approved by the employee's division director or designee.

(h) OKDHS responsibility. Upon return from FMLA leave, the employee is restored to the same or equivalent position with all benefits the employee would have had if he or she had been continuously employed during the period. The taking of FMLA leave is not used as a factor in employment actions. Benefit anniversary dates which normally are extended due to LWOP are subject to extension in accordance with applicable regulations. This includes, but is not limited to, longevity pay, leave accrual, and retention points. Time worked toward qualifying work experience is extended under this regulation only if an extension would apply to an absence under other regulations.
(i) **Insurance coverage.** OKDHS pays its portion of the group insurance premium, including the benefit allowance for dependent health coverage. The employee is responsible for paying the employee's portion of the applicable insurance premiums. If the employee remains on LWOP after exhausting FMLA leave, the employee is responsible for the insurance premium paid on his or her behalf. Failure to maintain premiums results in termination of coverage.

(1) If coverage has lapsed due to the non-payment of premiums and the employee returns during the 12-week period, he or she is eligible to re-enroll in coverage previously held at the time leave began.

(2) If coverage has lapsed due to non-payment of the premiums and the employee returns after the 12-week period, OKDHS restores coverage provided the employee notifies his or her local administrator within 30 calendar days of the employee's return to work. Failure to provide proper notification results in the loss of any optional coverage for a period of 12 months. The employee is not eligible for re-enrollment until the next plan year option period following the expiration of the 12-month waiting period.

(j) **Failure to return from FMLA leave.** Unless medically unfeasible, the employee is expected to return from FMLA leave. Failure to do so, when the FMLA leave is taken as unpaid leave, may subject the employee to liability for all insurance premiums paid by OKDHS pursuant to this Act.
(k) **Examples of computation of available FMLA leave (rolling 12-month period).** These examples assume an employee is on extended FMLA leave for a qualifying event.

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<thead>
<tr>
<th>PERIOD</th>
<th>LEAVE HOURS</th>
<th>FMLA HOURS</th>
<th>Notes</th>
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<tbody>
<tr>
<td>01-15-10</td>
<td>88</td>
<td>88</td>
<td>During the pay period ending 12-15-10 the system will look at FMLA charged for the preceding 11 pay periods (01-15-10 - 11-15-10). Any remainder is available for use during the 12-15-10 pay period.</td>
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<tr>
<td>02-15-10</td>
<td>168</td>
<td>168</td>
<td>He or she will have exhausted his or her FMLA in April and none is available for December.</td>
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<tr>
<td>03-15-10</td>
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<td>160</td>
<td>During the pay period ending 01-15-11, the system will look at FMLA charged for the preceding 11 pay periods (02-15-10-12-15-10). Any remainder is available for use during the 01-15-11 pay period.</td>
</tr>
<tr>
<td>04-15-10</td>
<td>184</td>
<td>64</td>
<td>Each month, the system moves forward to establish the 12-month period without regard to when the employee first used FMLA.</td>
</tr>
<tr>
<td>05-15-10</td>
<td>168</td>
<td>0</td>
<td>He or she has used a total of 392 hours and has 88 hours available.</td>
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<tr>
<td>06-15-10</td>
<td>176</td>
<td>0</td>
<td>Etc., etc.</td>
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<td>07-15-10</td>
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**OKDHS:2-1-50. Court or jury leave**

Issued 10-1-10

Upon application in writing, a permanent, probationary, temporary, unclassified, or exempt employee may be granted leave of absence as indicated below.

1. Attendance at court in connection with an employee's official duties and time required in going and returning is not considered absence from duty.

2. When, in obedience to a subpoena or direction by proper authority, an employee appears on a regular work day as a witness or a jury member for the federal government, the State of Oklahoma, or a political subdivision; as a witness before a state board, agency or commission, or as an expert witness in his or her capacity as a state employee, the employee shall be entitled to leave of absence for such duty with regular compensation.

3. When an employee is subpoenaed in private litigation by some party other than the federal government, the State of Oklahoma, or a political subdivision to testify, as an individual, the time absent shall be taken as annual leave or leave without pay at the employee's discretion.

4. A Federal Fair Labor Standards Act (FLSA) non-exempt employee who is called to appear in court on a normally scheduled work day in accordance with paragraph (2) of this Section is entitled to compensation for that time regardless of shift. For example, an employee who works an eight-hour shift from 11 p.m. to 7 a.m. and reports to court that day will be entitled to workweek adjustment or compensatory time for his or her time in court. Since jury duty is leave and not time worked, compensatory time is only computed hour for hour. An employee who is called to appear in court on a normally scheduled day off is not entitled to compensation for that time. The day in which the majority of the shift is scheduled determines the work day for the purpose of this policy.

5. When an employee is to perform jury duty, it is the responsibility of his or her supervisor to discuss the provisions of this subsection and point out his or her obligation to return to duty if he or she is dismissed during usual work hours.

6. Application for court or jury leave is made on Form 10AD001E, Request for Approval of Leave. A copy of the subpoena, summons, or other such notice must be attached to Form 10AD001E. Court or jury leave is charged in accordance with the employee's work schedule.
OKDHS:2-1-51. Nursing mothers

Issued 10-1-10

(a) The Oklahoma Department of Human Services (OKDHS) provides a reasonable break time for an employee to express breast milk for her nursing child, for one year after the child's birth, each time such employee has a need to express milk.

(b) Each work location must provide a place, other than a bathroom, that is shielded from public view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

(c) The break time, if possible, should run concurrently with any break time provided to the employee.