

CF OPERATING PROCEDURE
NO. 60-40, Chapter 5

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, May 9, 2019

Human Resources

MANAGING UNAUTHORIZED USE OF SICK LEAVE

5-1. Purpose. This operating procedure establishes the Department's policy for managing the unauthorized use of sick leave where there is a pattern of absence by an employee.

5-2. Scope. This operating procedure applies to employees filling positions in the Career Service, Selected Exempt Service, and Senior Management Service.

5-3. References.

- a. Section 110.219, Attendance and Leave, Florida Statutes (F.S.).
- b. Rule 60L-34.0042, Sick Leave, Florida Administrative Code (F.A.C.).
- c. CFOP 60-55, Chapter 1, Standards of Conduct and Standards for Disciplinary Action for Department Employees.
- d. Family Medical Leave Act of 1993 and implementing regulations.
- e. CFOP 60-4, Chapter 11, Family Supportive Work Program.
- f. CFOP 60-10, Chapter 1, Americans with Disabilities Act (ADA) Accommodation Procedures for Applicants/Employees/General Public.

5-4. Definitions.

a. Pattern of Absence. A series of repetitive absences not supported by medical verification that occur over a period of time on predictable occasions. For example, consistent absence on the day before or after the employee's regular day(s) off; absence on the same day of each week or each month; or, unscheduled absences resulting in the employee's failure to consistently complete the employee's regular work schedule.

b. Caretaker. For the purpose of using sick leave, an employee who provides needed care or supervision to his or her spouse, children or to parents of the employee or the spouse, individuals for whom the employee or spouse have legal responsibility, or a Department recognized substituted care relationship such as foster care that does not create a conflict of interest.

5-5. Policy.

a. The Department complies with the provisions of the Family Medical Leave Act of 1993 (FMLA), the State's Family Supportive Work Program (FSWP) for eligible employees and Americans with Disability Act (ADA).

b. Sick leave shall be authorized for the following purposes:

(1) The employee's personal illness, injury, or exposure to a contagious disease that would endanger others. Personal illness shall include disability caused by or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom.

(2) The employee's personal appointments with a doctor, dentist, or other recognized practitioner.

(3) Illness, injury, or well-care check-ups of the employee's spouse, children or parents of the employee or the spouse, or of a person for whom the employee or the spouse has a caretaker responsibility, when the employee's presence is necessary.

c. Upon request, an employee may use accrued sick leave credits subject to the following:

(1) An employee may use sick leave only for authorized purposes. Unauthorized use may be revealed by a pattern of absence by an employee. Medical certification may be required when there is a pattern of absence in accordance with this operating procedure.

(2) After three workdays or partial workdays of absence in any 30-day period, the Department may require medical verification of any further absence(s) due to illness or injury.

(3) After ten consecutive days of absence, the employee is required to submit medical verification from the attending physician before additional use of sick leave credits or approved leave without pay will be authorized. If absence continues, the Department shall require, as appropriate, further medical verification for each 30 consecutive days of absence. To justify further sick leave, the medical verification must indicate that the employee is unable to perform regularly assigned duties.

5-6. General.

a. Responsibility.

(1) Supervisors and Managers. Supervisors and managers are responsible for managing the unauthorized use of sick leave by early identification of a pattern of absence by employees in their work unit. Supervisors and managers are responsible for monitoring the use of sick leave by their employees and must document all absences including specific dates, times, duration of such absences and reasons reported by the employee. Supervisors or managers must also document dates and purposes of attendance discussions related to the absences. Any medical documentation received shall be maintained securely and confidentially.

(2) Human Resources. The Human Resources Office is responsible for providing technical assistance on the provisions and application of this operating procedure, the FMLA and FSWP, an authorized Leave of Absence beyond Protected Leave (FMLA/FSWP), the ADA and the clarification of medical documentation provided, as necessary.

b. Action to be Taken. When the supervisor or manager determines that an employee's use of sick leave shows a pattern that indicates possible unauthorized use of sick leave by the employee, the supervisor or manager will:

(1) Discuss the employee's sick leave usage with the employee, pointing out to the employee the specific dates that appear to constitute a pattern of absence.

(2) Allow the employee an opportunity to provide medical verification which may establish that the absences were for a bona fide reason, illness or injury.

(3) Where appropriate, inform the employee of the availability of benefits, assistance and services of the Employee Assistance Program, CFOP 60-30, Chapter 4.

(4) Notify the Human Resources Office of an employee with unauthorized absence due to their own or an immediate family member's medical condition. Any medical documentation submitted by the employee should be forwarded to the Human Resources Office. The Human Resources Office will determine eligibility for FMLA/FSWP and notify the employee. The Human Resources Office will inform the employee of the process for requesting coverage if it appears that the employee may be eligible for FMLA/FSWP job-protected leave.

(5) When the employee does not provide appropriate medical verification for his/her pattern of absences, the supervisor or manager must provide the employee with written notification that the approval of future sick leave or authorized leave without pay will be granted only after the employee presents appropriate medical verification of a bona fide illness or injury and that such verification is required until attendance improves, for a period of up to 90 calendar days. To justify further sick leave, the medical verification must indicate that the employee is unable to perform regularly assigned duties. If the employee does not provide acceptable medical verification, the supervisor or manager may require that the employee submit to a medical examination, performed by a physician selected and paid for by the Department.

(6) If, after written notification that no further sick leave will be granted, the employee fails to comply with the procedure outlined in paragraph 5-6b(5) above, no additional sick leave will be granted for any absence that appears to the supervisor or manager to be part of the employee's pattern of absence. Any such absence constitutes unauthorized leave and will be handled in accordance with CFOP 60-55, Chapter 1, relating to disciplinary actions.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

SHELBY JEFFERSON
Acting Human Resources Director

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

This revision updates Department policy to include the following:

1. Revises paragraph 5-2 to include Selected Exempt Service and Senior Management Services employees.
2. Clarifies that medical certification may be required when there is a pattern of absence under DMS Rule 60L-34.0042(4)(a) based on interpretative advice from the Florida Department of Management Services.
3. Adds new paragraph 5-6b(4) requiring notification to the Human Resources Office of an employee with unauthorized absence due to his or her medical condition or the medical condition of an immediate family member.