

PREAMBLE

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: to modify Procedures 3-18.

Chapter 3 – Compensation

Authority for rules promulgated in this chapter is found in one or more of the following: the State of Colorado Constitution Article XII, Section 13, § 24-50-104 (1)(a), (b), (c), (e), (f), (4), (5), (6), (9), and 24-50-104.5(1), 109.5, 136, 137, and 208, C.R.S. Board rules are identified by cites beginning with "Board Rule".

Lateral Adjustments

3-18. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same class and position. Base pay can be offered at a rate that falls within the pay range of the class and does not exceed the grade maximum. In addition, in-range salary movements are subject to the provisions below. (1/1/14)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements shall not be retroactive and unless specifically noted in these rules, frequency is limited to one in-range salary movement in a 12-month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments must develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the Director prior to implementation. If granted, there must be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the Director when requested. (02/2017)

- A. **Salary Range Compression.** Used as a salary leveling increase where longer-term or more experienced employees are paid lower in the range for the class than new hires or less experienced employees over a period of time resulting in documented retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in the class to recognize contributions equal to or greater than the newly hired or less experienced employees. Justification shall be required based on facts. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (9/1/12)
- B. **Counteroffer.** Used when an employee with critical, strategic skills receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. Written confirmation of the other entity's salary offer is required. The increase may be up to 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum.

- C. **Delayed Promotional Increase.** Used when a promotion is made with no salary increase or partial salary increase because production expectations are unproven and/or funds may be unavailable at the time of promotion. This is a one-time base salary increase within 12 months of the date of promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase.
- D. **New Hires.** Used at the time an employee is hired when production expectations for critical skills are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase.
- E. **Competency-Based Increase.** Used when an employee achieves the complete set, or a subset, of competencies required at the fully-operational level for a specific position. Required competencies must be specifically defined with deadlines for achievement, and must be communicated in writing to the employee prior to granting an increase. Competencies that are the basis for this increase must be required to perform permanent, essential functions assigned to the position. The intent of this increase is to promote career development by aligning pay increases with achieving all required competencies at the fully-operational level. Increases are limited to no more than two per 12-month period. This type of increase shall not be applied as a substitute for Merit Pay. To be eligible, an employee must demonstrate required competencies as evidenced by a written evaluation by the supervisor. The increase may be up to 10 percent or the maximum permitted by the department's policy, whichever is greater, and subject to the pay grade maximum. (02/2017)

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Chapter 5 - Time Off

Authority for rules promulgated in this chapter is found in one or more of the following: ~~§ 24-50-104 (1)(g) and (7), 24-50-109.5, 1-6-122, 1-7-102, 8-13-3-101 through 104, 12-34-101.5, 13-71-119 and 134, 19-5-211, 24-10-103, 24-11-101 and 112, 24-32-2202 and 2223 through 2228, 24-34-402.7, 24-50-401(1), 28-1-102 through 106, 28-3-601 through 612, 31-30-1131, and 24-50 Part 3, C.R.S. Beard rules are identified by cites beginning with "Beard-Rule". the State of Colorado Constitution Article XII, Section 13, The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63, State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017).~~

General Principles

- 5-1. Employees are required to work their established work schedule unless on approved leave. Employees are responsible for requesting leave as far in advance as possible. The leave request must provide sufficient information to determine the type of leave. (5/1/10)
- A. The appointing authority shall respect the employee's privacy rights when requesting adequate information to determine ~~if family/medical leave (FML) is appropriate.~~ type of leave. (02/2017)
 - B. Appointing authorities are responsible for approving all leave requests and for determining the type of leave granted, subject to these rules and any additional departmental leave procedures. ~~Departmental procedures shall be provided to employees.~~ (02/2017)
 - C. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action.
 - D. ~~Requiring an employee to have a specified leave balance is prohibited~~ Mandates to maintain a minimum balance of sick or annual leave (or a combination or both) are not permitted except under a leave sharing program or a corrective or disciplinary action. (02/2017)
- 5-2. Paid leave is to be exhausted before an employee is placed on unpaid leave, unless the reason for leave does not qualify for the type of leave available, or during a mandatory or voluntary furlough. ~~(5/1/10)~~ (02/2017)
- 5-3. Departments shall keep accurate leave records in compliance with rule and law and be prepared to report the use of any type of leave when requested by the Director. (5/1/10)

Accrued Paid Leave

- 5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not

be allowed, or must be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave that will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours must be paid before the end of the fiscal year. (5/1/10)

- 5-5. Sick leave is for health reasons only, including diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may be used for the health needs of the employee, employee's child ~~who is under the age of 18 or an adult child who is disabled~~, parent, spouse, injured military service member as established under Rule 5-20, legal dependent, or a person in the household for whom the employee is the primary care giver. The appointing authority may require documentation of the familial relationship. ~~(1/1/14)~~ (02/2017)
- A. Appointing authorities may use discretion to send employees home for an illness or injury that and charge sick leave if an employee comes to work with what an appointing authority determines to be an illness or injury that either impacts the employee's ability to perform the job or the safety of others. Sick leave shall be charged but Annual leave shall be charged if sick leave is exhausted; unpaid leave if both annual and sick leave are exhausted. (02/2017)
- B. Employees must shall provide ~~a State of Colorado Medical Leave Form (or other an~~ official document ~~containing the same information)~~ from a health care provider for an absence of more than three consecutive full working days for any health reason or the use of sick leave shall be denied. Appointing authorities have the discretion to require a Medical Leave Form for absences of less than three days when the appointing authority has a reasonable basis for suspecting abuse of sick leave. ~~(7/1/13)~~ (02/2017)
1. This form (or other official document containing the same information) must be completed by a health care provider. The completed form must be returned within 15 days from the appointing authority's request. (7/1/13)
 2. Failure to provide the form (or other official document containing the same information) may shall result in denial ~~of leave and possible~~ corrective/disciplinary action. ~~(7/1/13)~~ Appointing authorities have the discretion to grant other forms of leave if sick leave is denied. (02/2017)

Exhaustion of Leave and Administrative Discharge

- 5-6. If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave. (5/1/10)
- A. The notice of administrative discharge must inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.
- B. An employee cannot be administratively discharged if FML or short-term disability leave (includes the 30-day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship.
- C. A certified employee who has been discharged under this rule and subsequently recovers has reinstatement privileges.

5-7. Table (7/1/13) (02/2017)

Monthly Leave Earning, Accrual, Payout, and Restoration for Permanent Employees								
Annual Leave				Sick Leave				
Years of Service*	Hrs. / Mon.	Max. Accrual**	Payout	Hrs./Mon.	Max. Accrual***	Restoration	Payout	
Years 1 - 5 01 - 60 Months	8	192 hours	Upon termination or death, unused leave is paid out up to the maximum accrual rate.	6.66	360 hours	Previously accrued sick leave up to 360 hours is restored when eligible for reinstatement or reemployment.	Upon death or if eligibility to retire, 1/4 of unused leave paid out to the maximum accrual rate. PERA's age and service requirements under the Defined Benefit plan are applied regardless of the plan actually enrolled in.	
Years 5 - 10 61 - 120 Months	10	240 hours						
Years 11 - 15 121 - 180 Months	12	288 hours						
Year 16 or Greater 181 or more Months	14	336 hours						
*Years of service is computed from the 1st calendar day of the month following the hire date; exception if the employee began work on the 1st working day of a month, include that month in the count. Employees with prior permanent state service, in or out of the state personnel system, earn leave based on the total whole months of service, excluding temporary assignments.								
** Over-accrued amounts are forfeited at the beginning of the new fiscal year (July 1st).								
General Provisions:								
Employees must be at work or on paid leave to earn monthly leave. Leave is credited on the last day of the month in which it is earned and is available for use on the first day of the next month, subject to any limitations elsewhere in Chapter 5, Time Off. A terminating employee shall be compensated for annual leave earned through the last day of employment.								
Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest 1/100 of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours worked by the number of work hours in the pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations.								

Leave payouts at separation are calculated using the annualized hourly rate of pay (annual salary divided by 2080 hours for full-time employees), and employees are only eligible for the sick leave payout one time - initial retirement.

Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed.

Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.

Use of annual leave cannot be required for an employee being laid off.

Make Whole: When an employee is receiving workers' compensation payments, accrued paid leave is used to make the employee's salary whole in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials. Leave earning is not prorated when an employee is being made whole.

Short-Term Disability: Employees are required to use paid leave during the 30-day waiting period for short-term disability benefits, including the use of accrued annual leave and/or compensatory time once sick leave has been exhausted. Any remaining sick leave beyond the 30-day waiting period must be exhausted prior to eligibility for short-term disability benefit payments.

Leave Sharing

- 5-8. Leave sharing allows for the transfer of annual leave between permanent state employees for an unforeseeable life-altering event beyond the employee's control, and is subject to the discretionary approval of a department head. Departments must develop and communicate their programs prior to use, including criteria for qualifying events. The authority to approve leave sharing shall not be delegated below the department head without advance written approval of the Director. ~~(5/1/10)~~ (02/2017)
- 5-9. Employees must have at least one year of state service to be eligible. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the leave payout upon termination or death. (5/1/10)
- A. Donated leave is allowed for a qualifying event for the employee or the employee's immediate family member as defined under Rule 5-5. In order to use donated leave, the employee must first exhaust all applicable paid leave and compensatory time and must not be receiving short-term disability or long-term disability benefits. If all leave is exhausted, donated leave may be used to cover the leave necessary during the thirty (30) day waiting period for short-term disability. The transfer of donated leave between departments is allowed only with the approval of both department heads. (02/2017)

Holiday Leave

- 5-10. Permanent full-time employees on the payroll when the holiday is observed are granted eight hours of paid holiday leave (prorated for part-time work or unpaid leave in the month) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. (5/1/10)
- A. Department heads have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. The department must be open and at least minimally operational for both days and the employee must have work to perform.
- B. Each department shall establish an equitable and consistent policy to ensure that all permanent employees are awarded granted their full complement of holidays. (02/2017)

Other Employer-Provided Leaves

- 5-11. The types of leave in this section do not accrue, carry over, or pay out. (5/1/10)
- 5-12. Bereavement leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may provide up to 40 hours (prorated for part-time work or unpaid leave in the month) of paid leave to permanent employees at the time of for the death of a family member or other person. Employees are responsible for requesting the amount of leave needed. ~~The appointing authority may require verification of the death.~~ Documentation may be required when deemed necessary by the supervisor. ~~(7/1/13)~~ (02/2017)
- 5-13. Military leave provides up to 15 paid workdays in a fiscal year to permanent employees who are members of the National Guard, military reserves, or National Disaster Medical Service to attend the annual encampment or equivalent training or who are called to active service, including declared emergencies. Unpaid leave is granted after exhaustion of the 15 workdays. The employee may request the use of annual leave before being placed on unpaid leave. (5/1/10)
- A. In the case of a state emergency, the employee must return upon release from active duty. In the case of federal service, the employee must notify supervisor of the intent to return to work, return

to work, or may need to apply to return, and is entitled to the same position or an equivalent position, including the same pay, benefits, location, work schedule, and other working conditions. This leave is not a break in service. (02/2017)

5-14. Jury leave provides paid leave to all employees; however, temporary employees receive paid leave for a maximum of three (3) days of jury leave. Jury pay is not turned over to the department. Proof may be required. (7/1/13) (02/2017)

5-15. Administrative leave may be used to grant paid time when the appointing authority wishes to release employees from their official duties for the good of the state. In determining what is for the good of the state, an appointing authority must consider prudent use of taxpayer and personal services dollars and the business needs of the department. ~~Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (5/1/10) (02/2017)~~

A. ~~Administrative leave that exceeds 20 consecutive working days must be reported to the department head and the Director. Activities performed in an official employment capacity, including job-related training and meetings, voluntary training, conferences, participation in hearings or settlement conferences at the direction of the Board or Director, and job-related testimony in court or official government hearings required by an appointing authority or subpoena are work time and not administrative leave. Administrative leave is not intended to be a substitute for corrective or disciplinary action or other benefits and leave. (02/2017)~~

B. ~~An appointing authority may grant administrative leave up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. Administrative leave may be granted for the following: (02/2017)~~

1. Up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross. (02/2017)

2. One period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed 90 days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. (02/2017)

3. Employee participation in community or school volunteer activities. (02/2017)

4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan. (02/2017)

C. ~~If a department head adopts a policy granting one period of administrative leave for the initial call up to active military service in the war against terrorism, it shall not exceed 90 days and applies after exhaustion of paid military leave. It is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training. Administrative leave must be granted for the following: (02/2017)~~

~~D. A department shall adopt a policy to address whether or not to grant administrative leave for employee participation in community or school volunteer activities.~~
E.D. (02/2017)

- 5-16. ~~Administrative leave must be granted for the following. Administrative leave that exceeds 20 consecutive working days must be reported to the department head and the Director. (02/2017)~~
- ~~A. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open. (02/2017)~~
 - ~~B. Up to two days per fiscal year for organ, tissue, or bone donation for transplants. (02/2017)~~
 - ~~C. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee must provide evidence of service. (02/2017)~~
 - ~~D. Up to 15 days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service. (02/2017)~~
- 5-17. Unpaid leave may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on unpaid leave for unauthorized absences and may consider corrective and/or disciplinary action. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. Unpaid leave is calculated based on the monthly hourly rate. (1/1/14)
- A. Short-term disability (STD) leave is a type of unpaid leave of up to six months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees must have one year of service and an application for the STD benefit must be submitted within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all accrued sick leave. The employee must also notify the department at the same time that a benefit application is submitted.
 - B. Voluntary furlough is unpaid job protection granted for up to 72 workdays per fiscal year when a department head declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred.
 - C. Victim protection leave is unpaid job protection granted for up to 24 hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee must have one year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. Retaliation against an employee is prohibited; however, this rule does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used.
- 5-18. Parental Academic leave. Departments may provide up to 18 hours (prorated for part-time) ~~in an academic year~~ for parents or legal guardians to participate in academic-related activities. ~~These activities are parent teacher conferences; or meetings related to special education services; response to interventions, dropout prevention, attendance, truancy, and disciplinary issues.~~ A department shall adopt and communicate a policy on whether the leave will be unpaid or paid. ~~If paid, the policy shall address~~ the amount and type of paid leave, and specifically the substitution of annual leave or use of administrative leave. (5/1/10) (02/2017)

Family/Medical Leave (FML)

- 5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act (FCA), and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (1/14/15) (02/2017)
- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a serious health condition and is administered consistent with FML. (02/2017)
- 5-20. FML is granted to eligible employees for the following conditions: ~~(1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child under the age of 18 or an adult child who is disabled, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; (4) an employee's own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within 5 years of the beginning of that treatment. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter. (1/14/15) (02/2017)~~
- A. Birth and care of a child and must be completed within one (1) year of the birth; (02/2017)
- B. Placement and care of an adopted or foster child and must be completed within one (1) year of the placement; (02/2017)
- C. Serious health condition of an employee's parent, child under the age of 18, an adult child who is disabled at the time of leave, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; see Chapter 1, Organization, Responsibilities, Ethics, Payroll Dedication, And Definitions for the definition of serious health condition and ADA definition for disability; (02/2017)
- D. Employee's own serious health condition; (02/2017)
- E. Active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or (02/2017)
- F. Military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within five (5) years of the beginning of that treatment. (02/2017)
- 5-21. To be eligible for FML, an employee must have 12 months of total state service as of the date leave will begin, regardless of employee type. A state temporary employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours. (5/1/10) (02/2017)
- A. Full-time employees will be granted up to 13 weeks (520 hours) per rolling 12 month period. The amount of FML leave is determined by the difference of 13 weeks and any FML leave taken in the previous 12 month period and is calculated from the date of the most recent

request. The amount of leave is prorated for part-time employees based on the regular appointment or schedule. Any extension of leave beyond the amount to which the employee is entitled is not FML, see Rule 5-1 B. and is subject to other rules in these chapters. This section 5-21 A is effective July 1, 2014. (02/2017)

- 5-22. Military caregiver leave is a one-time entitlement of up to 1040 hours (prorated for part-time) in a single 12-month period starting on the date the leave begins. While intermittent leave is permitted, it does not extend beyond the 12-month period. In addition, the combined total for military caregiver and all other types of FML shall not exceed 1040 hours. (5/1/10)
- 5-23. All other types of leave, compensatory time, and make whole payments under workers' compensation run concurrently with FML and do not extend the time to which the employee is entitled. The employee must use all accrued paid leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML. An employee on FML cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (7/1/13)
- 5-24. Unpaid leave rules apply to any unpaid FML except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits must comply with the requirements of that plan.
- 5-25. Employer Requirements. It is the appointing authority's human resource director or FMLA coordinator must responsibility to designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Departments shall follow all written directives and guidance on designation and notice requirements. ~~(5/1/10)~~(02/2017)
- 5-26. Employee Requirements. Written notice of the need for leave must be provided by the employee 30 days in advance. If an employee becomes aware of the need for leave in less than 30 days in advance, the employee shall provide notice either the same day or the next business day. Failure to provide timely notice when the need for leave is foreseeable, and when there is no reasonable excuse, may delay the start of FML for up to 30 days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, an adult family member or other responsible party may give notice, by any means, if the employee is unable to do so personally. (5/1/10)
- 5-27. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc. (5/1/10)
- 5-28. Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed in Rules 5-29 through 5-32. If the employee does not provide the required original and additional medical certificates, the absences and requested paid leave will not qualify as FML and will be denied. ~~(5/1/10)~~(02/2017)

Medical Certificates

- 5-29. ~~When seeking FML, E~~ employees must provide an approved and completed State of Colorado Mmedical Ccertification Fform when initiating an FML leave request. Appointing authorities have the discretion to require periodic medical certification to determine if FML continues to applyies or when the appointing authority has a reasonable basis for suspecting leave abuse. Medical certification for FML may be required for the first leave request each fiscal year in an employee's rolling 12-month period. Additional medical certification may be required every 30 days or the time period established in the original certification, whichever is longer, unless circumstances change or new information is received. ~~(7/1/13)~~ (02/2017)

- A. The medical certification must be completed by a health care provider as defined in federal law. The completed medical certification must be returned within fifteen (15) days from the appointing authority's request. If it is not practical under the particular circumstances to provide the requested medical certification within fifteen (15) days despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time involved, but no later than thirty (30) calendar days after the initial date the appointing authority requested such medical certification. (7/1/13) (02/2017)
- B. Failure to provide the medical certification shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)
- 5-30. When incomplete medical certification is submitted, the employee must be allowed seven days to obtain complete information, absent reasonable extenuating circumstances. (7/1/13)
- A. Following receipt of the information or the seven (7) days from which it was requested, Only the department's human resources director or FMLA coordinator in the department's human resource office and/or statewide leave coordinator designated by the Director may, with the employee's written permission, have direct contact with an the employee's health care provider following the seven days or sooner with the employee's written permission. Such contact is limited to verifying the authenticity and clarifying the content for purposes only of clarification and authentication of the medical certification. (7/1/13) (02/2017)
- 5-31. When medical certification is submitted to demonstrate that the leave is FML-qualifying, the department has the right to request a second opinion on the original certification. If the original and second opinion conflict, the department may require a binding third opinion by a mutually agreed upon health care provider. Under both circumstances the cost is paid by the department. Second and third opinions are not permitted on additional certification for recertification purposes. (7/1/13) (02/2017)
- 5-32. If an absence is more than 30 days for the employee's own condition, the employee must provide a fitness-to-return certificate. The fitness-to-return certificate may be required for absences of 30 days or less based on the nature of the condition in relation to the employee's job. The department may also require a fitness to return certificate from employees taking intermittent FML every 30 days if there are reasonable safety concerns regarding the employee's ability to perform his or her job duties. (7/1/13)
- A. When requested, employees must present a completed fitness-to-return certificate before they will be allowed to return to work. Failure to provide a fitness-to-return certificate as instructed could result in delay of return, a requirement for new medical certification, or administrative discharge as defined in Rule 5-6. (7/1/13)
- B. When an incomplete fitness-to-return certification is submitted, the employee must be allowed seven (7) days to obtain complete information, absent reasonable extenuating circumstances. Following receipt of the information or the seven (7) days from which it was requested, the department's human resources director or FMLA coordinator may with the employee's written permission, contact the health care provider for purposes only of clarification and authentication of the fitness-to-return certification. (02/2017)
- 5-33. Benefits coverage continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. If the FML is unpaid, the employee must pay the employee share of premiums as prescribed by benefits and payroll procedures. (5/1/10)
- 5-34. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee must be given an opportunity to fulfill the requirement. (5/1/10)

- A. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, and the employee does not have restoration rights under FML, ~~and then~~ the appointing authority may separate the employee pursuant to use Rule 5-6 subject to any applicable ADA provisions. (02/2017)
 - B. The employee does not have restoration rights if the employment would not have otherwise continued had the FML leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment.
- 5-35. FML does not prohibit adverse action that would have otherwise occurred had the leave not been taken. (5/1/10)
- 5-36. The use of FML cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML cannot be considered. (5/1/10)
- 5-37. Records. Federal law requires that specified records be kept for all employees taking FML. These records must be kept for three years. Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, And Definition. (5/1/10) (02/2017)

Injury Leave

- 5-38. Injury Leave. A permanent employee who suffers an injury or illness that is compensable under the Workers' Compensation Act shall be granted injury leave up to 90 occurrences (whole day increments regardless of the actual hours absent during a day) with full pay if the temporary compensation is assigned or endorsed to the employing department. (5/1/10)
- A. If after 90 occurrences of injury leave an employee still is unable to work, the employee is placed on "make whole", under the "make whole" policy. The employee will receive temporary disability benefits at 2/3 of his or her average weekly wage pursuant to the Colorado Workers' Compensation Act. The employing department will make up the difference between the temporary disability benefits and the employee's full pay using sick leave first, then annual leave. Once all paid leave is exhausted, employees may be given unpaid leave. Workers' compensation payments after termination of injury leave shall be made to the employee as required by law. (02/2017)
 - B. The appointing authority may invoke Rule 5-6 if the employee is unable to return to work after exhausting all accrued paid leave and applicable job protection. Termination of service under that rule will not affect continuation of payments under the Workers' Compensation Act.
 - C. If the employee's temporary compensation payment is reduced because the injury or occupational disease was caused by willful misconduct or violation of rules or regulations, the employee shall not be entitled to or granted injury leave. Any absence shall be charged ~~on a~~ "make whole" basis using sick leave first, then annual leave or, at the appointing authority's discretion, unpaid leave may be granted and the temporary compensation payments shall be made to the employee. (02/2017)
 - D. ~~If an employee has a compensable injury or illness, but the first 24 hours are not paid for by the provider, the employee shall not be entitled to or granted injury leave for those 24 hours. The first three regular working days missed as a result of a compensable work injury will be charged to the employee's sick leave, then annual leave as available. Injury leave will only be granted once an eligible employee misses more than three regular working days. Sick or annual leave for the first three regular working days will be restored if the employee is off work for more than two weeks.~~ (02/2017)

- E. If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.

PREAMBLE

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 2005, pursuant to a Statement of Basis & Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005. This version reflects rulemaking by the State Personnel Director as follows: to modify Procedures 11-3, 11-7, 11-9, 11-11, 11-12, 11-16, 11-19, 11-21.

Chapter— 11 – State Benefit Plans

Authority for rules promulgated in this chapter is found in State of Colorado Revised Statutes (C.R.S.) § 24-50-104, 24-50-109.5, and Part 6, ~~C.R.S. Board rules are identified by cites beginning with "Board Rule"~~ the State of Colorado Constitution Article XII, Section 13, The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), and 26 U.S.C. 63.; The Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Family Care Act (FCA), Uniformed Services Employment and Reemployment Rights Act (USERRA), State of Colorado Revised Statutes (C.R.S.) §§ 1-6-115, 1-6-122, 1-7-102, 8-40-101, 14-2-101, 14-15-103, 24-11-101, 24-11-112, 24-18-102, 24-33.5-825, 24-50-104, 24-50-109.5, 24-50-401, 28-1-104, 28-3-601, 28-6-602, 28-3-607, 28-3-609, and 28-3-610. (02/2017).

General Principles

- 11-1. The state reserves the sole right to add, modify, or discontinue any state group benefits as deemed necessary. (7/1/10)
- 11-2. The Director complies with applicable federal and state law and regulations that govern state group benefit plans, as well as the terms and conditions of the state group benefit plans contracts and plan documents. Governing laws and regulations, and these rules shall prevail in the event of a conflict with contracts or plan documents. (7/1/10)
- 11-3. The rules in ~~this~~ Chapter 11, State Benefit Plans, apply to all departments administering and all employees eligible for state benefit plans. ~~(7/1/10)~~(02/2017)

Director Responsibilities

- 11-4. The Director will provide all group benefits information, written directives and training to departments necessary for department benefit administrators to fulfill their responsibilities as delegated agents to the plans. (7/1/10)
- 11-5. The Director has sole authority to determine eligibility, negotiate contracts, determine plan designs, set rates and coverage tiers, define the plan year, and establish open enrollment periods, in accordance with law, regulations, and approved funding. (7/1/10)
- 11-6. The Director's online benefits administration system is the official system of record for all eligibility and enrollment transactions. (7/1/10)

Department Responsibilities

- 11-7 All departments shall exercise due diligence when administering group benefits in the best interests of the plans and all members. As delegated agents of the Director in their respective departments, each department benefits administrator's responsibilities include, but are not limited to, the following. (7/1/10)

- A. Know and comply with plan documents and basic plan features, law and regulations, rules, benefits administration system, deadlines, the Director's website, and written directives.
- B. Communicate, disseminate, explain, and answer questions on all benefits-related information including, but not limited to, options and changes, process, requirements and eligibility.
- C. Provide prompt notice of enrollment opportunities and information so employees can elect benefits during open enrollment or enroll within 31 days of hire or an employee's notice of a qualified event. The first day (day 1 of the 31 days) is the day after hire or a qualified event. (1/1/14)
- D. Monitor deadlines and assist employees with meeting those deadlines.
- E. Provide access to and training in the use of the benefits administration system, and assist employees with transactions.
- F. Refrain from advising an employee of which individual elections to make and assisting an employee in the commission of fraud or attempted fraud of a state benefit plan.
- G. Process timely and accurate transactions and payments. This includes regular review of pending actions, supporting documentation, and system reports in order to promptly approve elections, terminate coverage, investigate suspicious or questionable actions or data, correct errors, and verify continuing dependent eligibility.
- H. ~~Maintain records of all supporting documentation pertaining to the state group benefit plans to demonstrate compliance with law, rules, and written directives.~~ Repealed (02/2017)

11-8 These responsibilities apply to all departments, including those that offer their own separate group benefit plans to other employees not covered by the "State Employees Group Benefits Act". (7/1/10)

Employee Responsibilities

- 11-9. Employees are responsible for knowing, understanding, and adhering to these rules, plan documents for the terms and conditions of coverage, and eligibility and enrollment requirements in order to make timely and informed choices, including, but not limited to, the following. (1/1/14)
- A. Employees shall enter all required information in the benefits administration system in a timely and accurate manner in order to comply with eligibility and enrollment requirements for themselves and eligible dependents.
 - B. Enrollment of employees and eligible dependents is restricted to initial hire, annual open enrollment, and limited qualified events defined by law and plan documents. Elections are irrevocable for the plan year, except in limited circumstances specified by law or regulations. Failure to enroll or change elections within deadlines is not a qualifying event.
 1. Any permitted enrollment, modification, or termination of enrollment shall be entered into the official benefit administration system ~~and accompanied by supporting documentation during open enrollment or~~ within 31 days of a qualifying ~~event during the year.~~ Any supporting documentation required for the enrollment, modification, or termination of enrollment must be submitted within 45 days of the qualifying event. The first day of the 31-day period is the day after the qualifying event. For Open Enrollment, transactions shall be entered into the official benefits administration system with accompanying documentation within the allotted time period established. (02/2017)

2. Failure to enroll or modify enrollment on or before the 31st day of the qualifying event requires the employee to wait until the next open enrollment or ~~when the employee or dependents no longer meet eligibility requirements at the time of another qualifying event.~~ (02/2017)
 3. Enroll and verify elections annually.
 4. Employees who transfer from one department to another must notify both department benefit administrators to avoid a potential lapse in coverage.
- C. Employees shall remove any dependent by the end of the month in which the dependent ceases to meet eligibility requirements. Failure to do so results in the employee's continuing financial liability for total premium (employee and employer contributions) and cost of paid claims for the ineligible dependent, as specified in law and regulations, plan documents, and these rules.
- D. Any enrollment or qualified change to enrollment constitutes authorization to begin or end payroll deductions.
1. Employees must verify the accuracy of their payroll deductions and notify their department benefits administrator of any error. The notice must be in writing and within 15 days from the pay date in which the first payroll deduction occurred.
 2. If an employee fails to notify the department of the payroll error within the 15-day period, the employee will continue to be liable for the election for the remainder of the plan year unless the election is not consistent with plan documents, rules, laws, regulations, and written directives.
- 11-10. It is unlawful for any employee, or dependent to intentionally provide false, incomplete, or misleading facts, information, or document in written or electronic form, including the benefits administration system for the purpose of defrauding or attempting to defraud the State of Colorado. The Director shall investigate when there is reason to believe an employee or dependent is committing or attempting to commit fraud against any state group benefit plan. If the Director finds evidence of fraud or attempted fraud, the employee, dependent, or both may be subject to any or all of the following sanctions. (7/1/10)
- A. Immediate termination of coverage.
 - B. Denial of future enrollment.
 - C. Requirement to reimburse the state contributions and claims costs during the time of ineligible coverage.
 - D. Filing of criminal charges.
 - E. Notice to the employee's department, which may take employment action, such as corrective or disciplinary action.

Eligibility

- 11-11. Employees and their dependents must meet the eligibility requirements as defined in state law, plan documents, and rules to qualify for enrollment in the state group benefit plans. (7/1/10)
- A. Dependents may not enroll in the State Benefit Plans unless the employee is enrolled. If the employee and spouse/partner are both employees of the state, each may be enrolled as an employee or covered as a dependent of the other person but not both. If both the employee

and spouse/partner make a separate election under the State Benefit Plans, only one parent may enroll children as dependents. (02/2017)

- 11-12. ~~Eligible dependents include only those listed below.~~ Additional criteria and documentation requirements are contained in the State of Colorado Salary Reduction Plan, documents-law and regulations, rule, and other written directives, which are available in the Employee Benefits Unit. Dependents may be federal tax dependents (qualified) or non-tax dependents (non-qualified). Non-qualified dependents' coverage is subject to taxable income regulations. Eligible dependents are specified in statutes, primarily § 24-50-603(5) and (6.5), C.R.S., as modified or further defined by other state statutes (e.g., Title 10) or federal regulations (e.g., Affordable Care Act [ACA], IRC on taxable income). ~~(1/1/14)~~(02/2017)

~~A. An employee's current spouse, including common-law spouse are defined as the following:~~

- ~~1. Spouse means an individual to whom the employee is legally married, or~~
- ~~2. Common law spouse means an adult, at least 18 years of age:
 - ~~a. with whom the employee cohabitates; and,~~
 - ~~b. who represent themselves to the community as married to each other; and~~
 - ~~c. there is no legal impediment to the marriage.~~~~

~~B. A same-gender domestic partner is an adult, at least 18 years of age:~~

- ~~1. with whom the employee has shared an exclusive, committed relationship with that same person for at least one year prior to enrollment with the intent for the relationship to last indefinitely;~~
- ~~2. who is not related to the employee by blood to a degree that would prohibit marriage; and~~
- ~~3. neither the employee nor partner is married to another person or in a civil union partnership with another person.~~

~~C. Partner in a legally recognized civil union.~~

~~D. A child is defined as an individual under 26 and is:~~

- ~~1. Biological or natural child, or~~
- ~~2. Legally adopted, or~~
- ~~3. Legally placed for adoption or foster care, or~~
- ~~4. Step child as long as the employee and natural parent are married, or~~
- ~~5. Child of a same-gender domestic partner or partner in a civil union as long as the employee and parent are in a committed relationship, or~~
- ~~6. Child for whom the employee has a court order granting legal custody or allocation of parental responsibility that specifies responsibility for health insurance coverage.~~

~~D. A disabled child is defined as a child with a physical or mental disability who is:~~

- ~~1. unmarried;~~

~~2. disability is certified by the State's medical carrier or third-party administrator (in the case of dental or life only, a Social Security Administration SSI determination);~~

~~3. not covered by other government programs; and~~

~~4. the employee is the major source of financial support or directed by a court order to provide coverage.~~

~~E. Excluded are ex-spouses and same-gender domestic ex-partners and their children, opposite-gender domestic ex-partners, and their children, civil-union ex-partners and their children, parents, grandparents and grandchildren, siblings, aunts and uncles, nieces and nephews, cousins, and any other relatives or non-relatives in the household. The only exception is when a court determines a qualified dependent relationship exists and issues an order specifying responsibility for coverage~~

11-13. Legal documentation is required to add any dependent to State benefits. (1/1/14)

Coverage of Benefits

11-14. Initial coverage in group benefit plans is effective on the first day of the month following the date of hire or initial eligibility unless otherwise specified by the contracts, law, or regulations. (1/1/14)

11-15. All coverage for a qualifying event is prospective from the beginning of the next month or the date of entry into the official benefit administration system, whichever is later, except for initial coverage for new employees and newborn children. (1/1/14)

11-16. Elections made during open enrollment are effective the first day of the new plan year, with the exception of optional benefits. (7/1/10)(02/2017)

11-17. Termination of coverage is subject to law and regulation, plan documents, and contracts, as well as the following rules. (7/1/10)

A. If at any time during the plan year any dependent ceases to meet the eligibility criteria, coverage ends on the last day of the month in which that dependent becomes ineligible.

B. Coverage in state group benefit plans is terminated on the last day of the month that employment ends.

Payment of Contributions

11-18. Departments shall make prompt monthly payments based on enrollment in the official benefit administration system. (7/1/10)

A. The employee's current department as of the last day of the month is responsible for payment.

B. A department is liable for both state and employee contributions when failing to promptly enter an employee termination.

11-19. Employees must make an irrevocable election for the plan year to have contributions deducted on a pre-tax or after-tax basis as defined by the State of Colorado Salary Reduction Plan, law and regulations, rule, and written directives. The employee's contribution is deducted from the employee's pay or, under certain circumstances, paid by personal payment for the selected state group benefit plans, in arrears as of the end of the month in which an employee is covered. (7/1/10)(02/2017)

- 11-20. An enrolled employee who works or is on paid leave one or more regularly scheduled, full workdays in a month is eligible for the full state benefit contribution. (7/1/10)
- 11-21. When an employee is on leave, departments shall continue to pay the state contribution for non-contributory, fully paid benefits (e.g., basic life and short-term disability) as long as the employee remains on the payroll, regardless of status. (1/1/14)
- A. During paid leave or mandatory furlough, the employee contribution continues to be paid through payroll deduction and the department continues to pay the state contribution.
- B. During unpaid leave, the employee shall pay the total premium (employee and employer contributions) to the department within the month of coverage, except as follows.
1. During unpaid ~~family/medical leave~~, leave pursuant to the Family Medical Leave Act of 1993, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution by the due date specified in the family/medical leave notice. If the employee fails to pay the employee contribution when due, coverage will be terminated but shall be reinstated upon return to work. In the event any contributions are owed upon the employee's return to work, such contributions shall be collected from the employee. If the employee fails to return after the leave, any contributions due will be recovered as specified by federal regulations. (02/2017)
 2. While an employee is on voluntary furlough or short-term disability leave, the department shall continue to pay the state contribution as long as the employee continues to pay the employee contribution in a timely manner. If the employee fails to pay the employee contribution by the due date, coverage shall be terminated and the employee must wait for the next annual open enrollment.
- 11-22. Refunds for employee and state contributions are subject to plan limitations and as defined in law and regulations, rule, and written directives. (7/1/10)
- 11-23. When there is a difference between the contribution paid by the employee and the actual contribution due, the difference is paid by the employee (e.g., change in coverage tier). (7/1/10)

Appeal Procedures

- 11-24. Appeals regarding denial of eligibility for state group benefit plans must be submitted in writing to the Director, at the address below, within 31 days of receipt of the ineligibility decision. Use of the standard ***“Colorado State Employees Group Benefits Eligibility Determination Appeal Form”*** found on the Director's web site is required. (1/1/14)

Appeals should be submitted to the Department Of Personnel and Administration, Division of Human Resources via mail, email, or by fax.

Department of Personnel and Administration
Division of Human Resources
1525 Sherman Street
Denver, CO 80203
benefits@state.co.us
Fax: 303-866-3879

The Director will issue a final written decision within 45 days of receipt of the appeal. The ineligibility decision is overturned only if found to be arbitrary, capricious or contrary to rule or law.

11-25. Appeals of denied claims under any of the state group benefit plans shall follow the specific appeal process defined in the specific contract, plan document, summary plan description, or regulated entity. The provider will issue a final written decision in accordance with its process. (7/1/10)

A. Appeals of denied claims under fully insured plans are regulated by the State of Colorado Division of Insurance, and follow the plan's appeal process as defined in the contract and plan document.

B. Appeals of denied claims under self-funded plans are not regulated by the State of Colorado Division of Insurance, and follow the third-party administrator's appeal process as defined in the contract and plan document.

Colorado State Employee Assistance Program

11-26. Services provided include but are not limited to counseling services, crisis intervention, consultations with supervisors and managers, facilitated groups, trainings, and workshops. (7/1/10)

11-27. Any state employee and any department may participate in the program. (7/1/10)

A. The program may request the participation of other persons if necessary to provide effective assistance to the employee.

B. The limit per employee is one six-session course of counseling in a 12-month period. At the discretion of the counselor, additional sessions may be authorized.