



PERSONNEL CABINET

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MEMORANDUM

PERSONNEL MEMO 08-08

TO: Cabinet Secretaries
Agency Heads
Personnel Administrators

FROM: Nikki R. Jackson, Secretary 

DATE: April 22, 2008

SUBJECT: Leave for the Birth of a Child under the Family and Medical Leave Act

General guidance on the Family and Medical Leave Act ("FMLA") provided on the Personnel Cabinet's website states that employees can take up to a total of 12 workweeks of leave during any 12-month period for the birth or placement of child for adoption or foster care. The Personnel Cabinet's guidance states that state employees are not required to designate leave for a qualifying condition as FMLA until that employee has utilized all of his accrued paid leave. Therefore, Kentucky state employees are offered the additional option of taking up to 12 weeks of FMLA leave in addition to or in combination with accrued paid annual, sick, and compensatory leave. The option as to whether the FMLA leave is to be taken in combination with accrued sick, annual or compensatory leave is the employee's.

The Pregnancy Discrimination Act ("PDA") requires that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work." 42 USCA § 2000e-12. More specifically, disabilities "caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions..." 29 CFR 1604.10 (b). Therefore, the PDA requires that leave for childbirth and related conditions should be granted to employees on the same basis that leave is granted for other health reasons.

Therefore, at the request of the Kentucky Commission on Human Rights, the Personnel Cabinet advises that employees taking FMLA leave for pregnancy or the birth of a child be allowed to take up to 12 weeks of FMLA leave in combination with or in addition to accrued annual, sick, and compensatory leave time. Employees taking sick leave must meet the requirements of 101 KAR 2:102, Section 2 as in any other case.



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