CHAPTER 54-52.4
STATE EMPLOYEE LEAVE POLICIES

54-52.4-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Child" means a child by birth, an adopted or foster child, a stepchild, or a legal ward, who is:
   a. Less than eighteen years of age; or
   b. More than seventeen years of age and incapable of providing self-care because of a serious health condition.
2. "Employee" means an individual employed in this state by an employer, who has been employed by the employer for at least twelve months, and who has worked at least one thousand two hundred fifty hours for the employer over the previous twelve months.
3. "Employer" means the state but does not include any political subdivision of the state.
4. "Employment benefit" means all benefits provided or made available to employees by an employer, including education, health care, insurance, leave, and retirement benefits.
5. "Health care provider" means a registered nurse licensed under chapter 43-12.1, a physician licensed under chapter 43-17, a psychologist licensed under chapter 43-32, or a licensed certified social worker licensed under chapter 43-41.
6. "Health care services" means services rendered by a health care provider within the scope of the provider's license, including long-term care and hospice and hospital care.
7. "Parent" means a birth parent, foster parent, adoptive parent, or stepparent.
8. "Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition involving:
   a. Inpatient care in a hospital licensed under chapter 23-16 or operated by the United States or this state, long-term care facility as defined in section 50-10.1-01, or hospice program licensed under chapter 23-17.4; or
   b. Outpatient care that requires continuing treatment by a health care provider.
9. "Spouse" means an employee's husband or wife.

54-52.4-02. Family leave.

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
   a. To care for the employee's child by birth, if the leave concludes within twelve months of the child's birth.
   b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave concludes within twelve months of the child's placement.
   c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
   d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
   e. Because of the death of the employee's child, if the leave concludes within six months of the child's death.
2. Except as otherwise provided under this section, for any combination of reasons specified in subsection 1, an employee may take family leave in any twelve-month period for not more than twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under subdivision a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under subdivision c or d of subsection 1 if the leave is medically necessary. The twelve weeks of family leave taken under subdivision e of subsection 1 may be taken intermittently if approved by the employer. If an employee normally works a part-time

schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

3. In any case in which a husband and wife entitled to family leave under this chapter are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to twelve workweeks during any twelve-month period.
4. An employee reasonably shall consider the needs of the employer in scheduling family leave under this section or in using leave under section 54-52.4-03.
5. The family leave required by this chapter is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
6. The family leave required by this chapter supplements any leave otherwise available to an employee.

54-52.4-03. Use of other available leave for bereavement of child or care of parent, spouse, or child.

An employer that provides leave for its employees for illnesses or other medical or health reasons shall grant an employee's request to use that leave for the purposes authorized under subsection 1 of section 54-52.4-02. Except as otherwise provided under this section, an employee may take no more than four hundred eighty hours of leave under this section in any twelve-month period. Any leave for bereavement is limited to one hundred sixty hours and must be taken within six months following the death of the child. The employer shall compensate the employee for leave used by the employee under this section on the same basis as the employee would be compensated if the leave had been taken due to the employee's own illness or other medical or health reason.

54-52.4-04. Notice to employer.

1. If an employee intends to take family leave for the reasons specified in subdivision a or b of subsection 1 of section 54-52.4-02, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the reasons specified in subdivision c or d of subsection 1 of section 54-52.4-02, the employee shall:
   a. Make a reasonable effort to schedule the planned care or treatment so the leave does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, parent, or employee; and
   b. Give the employer advance notice of the planned care or treatment in a reasonable and practicable manner.
3. If an employee intends to take family leave for the reason specified in subdivision e of subsection 1 of section 54-52.4-02, the employee shall make a reasonable effort to schedule the leave so the leave does not unduly disrupt the employer's operations and, as appropriate, give the employer advance notice of the leave in a reasonable and practicable manner.

54-52.4-05. Certification for leave to care for child, spouse, parent, or employee's serious health condition.

1. If an employee requests family leave for the reasons described in subdivision c or d of subsection 1 of section 54-52.4-02 or leave under section 54-52.4-03, the employer may require the employee to provide certification, as described in subsection 2, from the provider of health care to the child, spouse, parent, or employee.
2. An employer may not require certification of more than:
   a. That the child, spouse, parent, or employee has a serious health condition.
   b. The date the serious health condition commenced and its probable duration.
   c. Within the knowledge of the health care provider, the medical facts regarding the serious health condition.

54-52.4-06. Continued health coverage.

During a period that an employee takes family leave, the employer shall continue to make any group health insurance coverage or health care plan for its employees and their dependents available to the employee and the employee's dependents under the conditions that applied immediately before the family leave began. The employer is not required to pay any cost of insurance or health care for that employee and the employee's dependents while the employee is on family leave.

54-52.4-07. Position upon return from leave.

1. When an employee returns from family leave the employer shall immediately place the employee in an employment position as follows:
   a. If the employment position the employee held immediately before the family leave began is vacant, in that position.
   b. If the employment position which the employee held immediately before the family leave began is not vacant, in an employment position having equivalent compensation, benefits, hours of employment, and other terms and conditions of employment.
   c. If, during the family leave, the employer experiences a layoff and the employee would have lost a position had the employee not been on leave, pursuant to the good-faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights under the layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.
2. If an employee on family leave requests a return to work before the end of the leave as scheduled, the employer shall place the employee in an employment position of the type described in subsection 1 within a reasonable time not exceeding the duration of the leave as scheduled.
3. No employer may, because an employee received family leave, reduce or deny an employment benefit that accrued to the employee before the employee's leave began or accrued after the employee's leave began. However, this chapter does not entitle a returning employee to a right, employment benefit, or employment position to which the employee would not have been entitled had the employee not taken family leave or to the accrual of any seniority or employment benefit during a period of family leave, unless otherwise provided by a collective bargaining or other agreement between the employer and employee.

54-52.4-08. Prohibited acts - Individual remedies.

No person may interfere with, restrain, or deny the exercise of any right provided under this chapter. In addition to any remedies otherwise provided by law, any person injured by a violation of this chapter has a claim for relief to recover any damages, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.

54-52.4-09. Scope.

1. This chapter does not prohibit an employer from providing employees with rights to family leave which are more generous to the employee than the rights provided by this chapter.
2. This chapter does not limit or diminish an employee's rights or benefits under chapters 52-01 through 52-07.1.

54-52.4-10. Application.

This chapter first applies, with respect to any employee covered by a collective bargaining agreement on January 1, 1990, on the day after that collective bargaining agreement expires or is extended or renewed.