



# North Carolina Department of Public Safety

## Human Resources

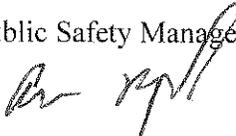
Beverly Eaves Perdue, Governor  
Reuben F. Young, Secretary

Bennie Aiken, Chief Deputy Secretary  
Alvin G. Ragland, Director

February 21, 2012

**ADMINISTRATIVE MEMORANDUM:**                      **02-2012**

**TO:**                      Department of Public Safety Managers and Supervisors

**FROM:**                Alvin Ragland 

**RE:**                      **Family Illness Leave Policy Changes**

Effective January 1, 2012, the State Personnel Family Illness Leave Policy was revised to remove the employee's right to choose between coverage under Family Medical Leave (FML) or Family Illness Leave (FIL) when leave is needed to care for a seriously ill family member, which qualifies an employee for both FML and FIL. This was necessary to ensure compliance with the federal Family Medical Leave Act [825.22(d)] which requires that the Family Medical Leave benefit be fully exhausted before eligibility for Family Illness begins. As specifically stated in the federal regulation:

“Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA. For example, employees (or their collective bargaining representatives) cannot “trade off” the right to take FMLA leave against some other benefit offered by the employer.”

Since FIL does not provide the same benefits (health insurance coverage) as FML and is not administered the same as far as accounting for leave (weeks verses hours) toward the total benefit, it was found to be challenging for our employees in making benefit choices when faced with determining which type of leave to use. By allowing the employee a choice, they were effectively waiving their benefit rights under FML. In addition, it was extremely difficult to administer the FML and FIL policies and determine overlapping benefits when an employee was intermittently using both policies (FML for themselves and FIL for a family member) during the same period of time. As a result, the State Personnel Commission approved revising the FIL policy to require the FML benefit be fully exhausted before eligibility for FIL begins. In addition, FIL cannot run concurrently with FML; therefore, an employee can no longer intermittently overlap both policies during the same period of time.

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Since this is a compliance issue with federal law, employees currently on FIL need to be re-evaluated as of January 1, 2012 to determine if they need to be switched to FML coverage. If the employee has already exhausted their FML benefit, then they can remain on FIL until the benefit is exhausted. If the employee has not fully exhausted the FML benefit, they will need to be switched to FML coverage as of January 1, 2012 until the FML benefit is exhausted or the employee returns to work. This is necessary even if the employee has already returned to work. Additionally, we have confirmed with the Office of State Personnel that it is within the rules to retroactively designate FML under these circumstances. If the employee continues to need leave at the end of FML coverage, the employee should be reassessed for eligibility under FIL.

If it is determined that the employee needs to be switched, he/she shall be notified in writing, advised of the switch, the reason for the switch and any adjustments relevant to dates and leave balances (FML, FIL).

The designation of FML and FIL is managed by field staff within the Division of Adult Correction. Therefore, please ensure that work unit HR staff is aware of this policy change and takes the necessary action to comply.

The designation of FML and FIL for the Division of Law Enforcement and the Division of Juvenile Justice is managed centrally by the Human Resource staff. Therefore, they will be reviewing the status of employees that are or have been on FIL to determine if any changes are needed and will notify affected employees in writing.

Please forward and share this with staff. A policy revision will be forthcoming in the future.

If you have questions concerning the policy change or need assistance assessing the proper benefit coverage of current FML/FIL employees and preparing written notice to the employee, please contact your division HR representative or the DPS HR office as follows:

Adult Correction	Liz Brown
Law Enforcement	Ruth McPherson or Delores Cooper
Juvenile Justice	Sharon Prince

Thank you for your attention in this matter.

AR:MKS

cc: Secretary, Reuben F. Young  
Chief Operating Officer, Mikael R. Gross  
Chief Deputy Secretary, Adult Correction, Jennie Lancaster  
Chief Deputy Secretary, Law Enforcement, Gerald A. Rudisill  
Chief Deputy Secretary, Juvenile Justice, Linda W. Hayes  
Chief Deputy Secretary, Administration, Bennie Aiken