

Department of Finance and Administration

Office of Personnel Management

Policy Title: **Leave of Absence Without Pay (LWOP)**

Policy Number: **55**

Authority: **Ark. Code Ann. § 21-4-210**

Revised: **March 19, 2018**

Leave of absence without pay (LWOP) is the least desirable employment status and should be requested by employees only in rare circumstances. An employee on unapproved LWOP may be subject to disciplinary action, up to and including termination.

Employees may not take LWOP until all their leave has been exhausted except in the following circumstances:

1. Maternity leave;
2. Inclement weather as designated by state policy;
3. Active duty military leave;
4. Budget reductions as determined by an agency director; and
5. Agency disciplinary actions according to the agency's written policies.

An agency director may grant continuous leave without pay. Any such period shall not exceed 6 continuous months. Each request for LWOP is to be considered on a case-by-case basis. At the expiration of a 6 month period of LWOP, additional extensions may be requested by the employee if updated justification with appropriate documentation is provided to the agency director.

Approval or disapproval of requests for leave without pay as an accommodation should be determined based upon impact on the agency's operation and mission and whether approval would create an undue hardship on the agency.

"Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in relationship to a number of factors. These factors may include, but not limited to, the nature of the position occupied by the employee and cost of the request in relation to the size, resources, nature and structure of the agency's operation and mission. Whether or not an accommodation request would create an undue hardship focuses on the resources and circumstances of the particular state agency in relationship to the cost or difficulty of providing a specific leave request. Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of operation of the agency.

Agency directors may declare an undue hardship where a leave request accommodation would be unduly disruptive to other employees' ability to work efficiently. For example, if granting leave would prevent other employees from doing their jobs, then the significant disruption to the operations of the agency constitutes an undue hardship. In some situations, an employee may be able to provide only an approximate date of return because treatment and recuperation do not always permit exact timetables. If an agency is able to show that the lack of a fixed return date imposes an undue hardship,

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then the agency can deny the leave. An undue hardship could result if the agency can neither plan for the employee's return nor permanently fill the position. In other situations, an agency may be able to be flexible.

An employee may not earn leave when in a leave without pay status for 10 or more cumulative days within a calendar month. This includes annual, sick, holiday and birthday leave. The annual leave that is lost due to the LWOP is based on the rate of accrual authorized for that employee.

Employees may continue to participate in agency group insurance programs during the period of LWOP. Employees who choose this option must pay the total cost (employee deduction and employer matching) of the coverage. However, if an employee is on FMLA or Workers' Compensation related leave, agencies are required to remit the employer's matching portion of coverage.

Employees having kept their group insurance in effect while on LWOP are to be fully reinstated in insurance programs when they return to duty. However, employees on FMLA leave are eligible for reinstatement in the insurance program even if the employee failed to pay their premium while on FMLA leave. Upon return from FMLA, LWOP employees are responsible for payment of the total amount of premiums that are in arrears. Employees who receive less than ten hours of pay in a given pay period and who do not have Workers' Compensation Leave, Military Leave, or FMLA Leave approved for that pay period will be responsible for the employee premium as well as the employer portion of their medical insurance.

The employee will be reinstated with full rights at the end of the period of LWOP. An employee who is on LWOP and returns within the required six months continues to earn credited service toward the next rate in the leave accrual schedule just as the employee who had never gone on LWOP. A returning employee's leave accrual rate will not be affected by periods of LWOP, nor will the time of entitlement to a change in leave accrual rate be adjusted because of LWOP. If the position the employee left is no longer available due to a budgetary reduction in staff, the employee will have no options and cannot be reinstated.