



LEAVE OF ABSENCE EMPLOYER GUIDE NDPERS INSURANCES

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This document should be used when a benefited employee will be on a leave of absence (paid or unpaid) to ensure NDPERS insurances, flexcomp, and EAP benefits are administered correctly.

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Family & Medical Leave Act (FMLA)

This type of leave is protected under the U.S. Department of Labor and allows eligible employees up to 12 weeks of protected leave (paid or unpaid). In order to qualify, an employee must have been employed by the same employer for at least 12 months and worked at least 1,250 hours for the employer during the previous 12 months. For state employees, the state is considered one employer.

If an employee exhausts their FMLA leave entitlement and is still on an approved medical leave of absence, please refer to the [Leave of Absence \(Paid/Unpaid – not FMLA/USERRA\)](#).

The employer is required to submit notice of all continuous FMLA leave to NDPERS through Employer Self Service (ESS) that indicates the beginning and ending dates of FMLA leave. The employee's FMLA return date cannot be submitted until the leave start date has been posted to the NDPERS employment record.

Any employer-paid NDPERS benefits must remain in place when an employee goes on FMLA leave (regardless whether the FMLA leave paid or unpaid). This includes health insurance, basic life insurance, and Employee Assistance Program (EAP), as applicable.

If an employee uses any available paid leave at the same time as they use FMLA leave, this is referred to as paid FMLA leave. All employee-paid NDPERS benefits must remain in place when an employee goes on a paid FMLA leave.

For employee-paid NDPERS benefits (dental, vision, supplemental life insurance, flexcomp), employees on unpaid FMLA leave have the option to continue these benefits. NDPERS will default to continuing any existing benefits in place before the FMLA leave began, unless otherwise notified. The employer must continue to collect the employee's monthly premium and submit it with the monthly billing for your employees.

The employer needs to notify NDPERS prior to the employee's unpaid FMLA leave start date if any current benefits are not to be continued during the unpaid leave. Notification should be in writing from the employee and sent to NDPERS at ndpers-info@nd.gov. NDPERS will suspend these benefits on the first of month following the FMLA leave start date if notified prior to leave start date; or the first of month following the notification date, whichever is later.

References:

[NDCC 54-52.4 \(North Dakota Family Leave Act of 1989 \(State\)\)](#)
29 CFR Part 825 (Family and Medical Leave Act of 1993 (Federal)).

Health Insurance & FMLA Leave

An agency must continue health insurance benefits at the same level and coverage as if the employee had not taken FMLA leave (regardless whether the FMLA leave is paid or unpaid).

While the employee is taking FMLA leave, the employer must continue to pay the health insurance premium for the employee under the conditions that applied immediately before the FMLA leave began. State agencies will continue to be charged the active state employee rate and not the LOA/Part-time Temporary rate.

If an employee elects not to continue the health insurance while on FMLA leave or cancels the coverage at any point during the leave, the employee must complete the *Health Insurance Application or Change-SFN 60036* form to request cancellation.

Upon their return to active, eligible employment, the employee must complete a *Health Insurance Application or Change-SFN 60036* form within 31 days of the employee's return to active employment to reinstate coverage. The coverage must be at the same level of coverage they had prior to the start of leave, unless another qualifying event is occurring.

If the employee does not return to work following their FMLA leave, the employer has the right to recover any premium contributions paid while the employee was on unpaid FMLA leave from the employee. The employee has the right to elect COBRA continuation coverage at their own expense.

Dental Insurance & FMLA Leave

Dental coverage will continue as currently enrolled for an employee taking paid FMLA leave. An employee taking unpaid FMLA leave may continue dental insurance coverage.

If an employee wants to cancel their dental coverage while on unpaid FMLA leave, the employee must complete the *Dental/Vision Insurance Application or Change SFN 58792* form to request cancellation. Please refer to the [FlexComp & FMLA Leave](#) section for employee's options on missed premiums when paid with pre-tax dollars.

Within 31 days of the employee returning from unpaid FMLA leave to active eligible employment, the employee must complete the *Dental/Vision Insurance Application or Change SFN 58792* form to reinstate dental coverage at the same level of coverage held prior to their leave, unless another qualifying event is occurring. Coverage will be effective the first day of the month following their return date.

If this form is not completed within the required period, the employee will need to wait until the next annual open enrollment or qualifying event to apply for coverage.

If the employee does not return to work following their FMLA leave, they will have the right to elect COBRA continuation coverage at their own expense, if their premium payments are up to date.

Vision Insurance & FMLA Leave

Vision coverage will continue as currently enrolled for an employee taking paid FMLA leave. An employee taking unpaid FMLA leave may continue vision insurance coverage.

If an employee wants to cancel their vision coverage while on unpaid FMLA leave, the employee must complete the *Dental/Vision Insurance Application or Change SFN 58792* form to request cancellation. Please refer to the [FlexComp & FMLA Leave](#) section for employee's options on missed premiums when paid with pre-tax dollars.

Within 31 days of the employee returning from unpaid FMLA leave to active, eligible employment, the employee must complete the *Dental/Vision Insurance Application or Change SFN 58792* to reinstate vision coverage at the same level of coverage held prior to their leave, unless another qualifying event is occurring. Coverage will be effective the first day of the

month following their return date.

If this form is not completed within the required period, the employee will need to wait until the next annual open enrollment or qualifying event to apply for coverage.

If the employee does not return from FMLA leave, they will have the right to elect COBRA continuation coverage at their own expense, if their premium payments are up to date.

Life Insurance & FMLA Leave

Life and any supplemental life insurance coverage will continue as currently enrolled for an employee taking paid FMLA leave.

An employee taking unpaid FMLA leave will continue to receive their life insurance coverage. **The employer will continue to pay the basic life insurance premium** and the employee may continue supplemental life insurance coverage. The supplemental life insurance (pre- or post-tax) may also be cancelled; however, there are options to catch-up on missed premium payments (pre- or post-tax). Please refer to the [FlexComp & FMLA Leave](#) section for employee's options on missed premiums.

If the employee does not return from FMLA leave, the employer has the right to recover any premium contributions paid while the employee was on the unpaid leave, and the employee will have the right to a conversion policy directly with insurance carrier.

If an employee chooses not to continue the life insurance during unpaid FMLA leave, upon their return to active, eligible employment, they will be enrolled **in the same level of coverage held prior to the start of the leave** effective first of month following return date. If the employee wants to increase Supplemental Life, Supplemental Dependent, and Supplemental Spouse coverage, the employee/dependents can only apply during a qualifying event (within 31 days) or the annual enrollment season and may need to provide Evidence of Insurability.

Employee Assistance Program (EAP) & FMLA Leave

The employer must continue to pay for the EAP coverage for an employee on paid or unpaid FMLA leave.

FlexComp & FMLA Leave

FlexComp will continue as currently enrolled for an employee taking paid FMLA leave.

If an employee goes on an unpaid leave covered by the Family and Medical Leave Act (FMLA), their medical spending and dependent care contributions may be made as follows:

- o *Pre-Pay Option:* the employee may pay the amounts due while on leave on a pre-tax basis by having the total amount due payroll deducted prior to the leave.
- o *Catch-Up Option:* NDPERS will continue coverage during an unpaid leave. Upon return from leave, a participant will catch up with pre-tax payroll deductions unless the leave crosses tax years. If the employee's return date is in a new tax year, the employee can still exercise the catch-up option but they would have to be paid with after-tax dollars directly to NDPERS.
- o *Not participate during leave:* The employee may choose not to participate while on unpaid

leave. If they elect not to participate, they will not be entitled to receive reimbursements for claims incurred after the last day of the month for which a contribution was received by the flexcomp carrier. Upon returning from leave, the employee benefit is reinstated at the previously elected annual pledge amount, less the contributions that were missed during the leave, as long as the return date is still within the same calendar year.

Employees must complete *FlexComp Change in Status SFN 53511* to direct NDPERS how they would like to address any missed contributions.

Leave of Absence (Paid/Unpaid – not FMLA/USERRA)

This section applies only to leaves of absence that are not covered by the Family and Medical Leave Act (FMLA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA). **The employer is required to submit a notice to NDPERS that indicates the beginning and ending dates of the leave if the leave will be one month or longer, regardless of the leave being paid or unpaid.** If the duration is unknown, employers should report the LOA in the event it does continue for a month or longer. The return date cannot be submitted until the leave start date has been posted to the employment record.

For any continued benefits, the employer must continue to collect the employee's monthly premium and submit it with the monthly billing for your employees.

Health

Upon notification of the employee's status change, NDPERS will update the health insurance premium to the temporary/LOA rate effective first of the month following the leave of absence start date (for state employees only). The employer will be responsible for collecting the premium and paying it to NDPERS. Any unpaid premiums are the responsibility of the employer to pay. If the employee **does not pay** the employer for any applicable portion of premium that the employee is responsible for, the employer can cancel the employee's coverage but only on a prospective basis. The authorized agent should send an email to the NDPERS info account at ndpers-info@nd.gov. If the reason for the cancellation is due to non-payment of premium, then the authorized agent needs to provide the name of the employee, ID number, effective date of cancellation (prospective only) and that the reason for the cancellation is non-payment of premium as NDPERS needs this information to determine COBRA eligibility. The authorized agent should also inform the employee of the coverage cancellation.

If an employee does not wish to continue health insurance during the LOA, the employee should complete *Health Insurance Application or Change-SFN 60036* indicating this, or the authorized agent may send an email to the NDPERS info account at ndpers-info@nd.gov prior to the start of the leave.

If an employee discontinues health coverage during the leave and the leave is more than 31 days in length, they will be required to complete a *Health Insurance Application or Change SFN 60036* within 31 days of return in order to re-enroll in the benefit at the same level of coverage prior to start of leave. Coverage will be effective the first day of the month following the return from LOA. If the employee does not return, they will have the right to COBRA continuation coverage at their own expense.

An employee can elect to cancel health insurance during the LOA by completing the *Health Insurance Application or Change-SFN 60036*, but cannot re-enroll without a qualifying event or until returning from the LOA.

If an employee is on a LOA but also under an approved leave under the ADA (Americans with Disabilities Act), the employer will still be billed the Part-Time/Temporary LOA rate; **however, it is the responsibility of the employer to determine if this premium should be collected from the employee.**

If the employee is enrolled in the High Deductible Health Plan (HDHP) with Health Savings Account (HSA), there will not be employer contributions paid during the LOA if the leave is more than 31 days (when employer is billed the Part-Time Temporary LOA rate).

Dental

An employee may continue dental insurance coverage at their own expense. If an employee does not wish to continue dental insurance during the LOA, the employee should complete *Dental/Vision Insurance Application or Change-SFN 58792* indicating this, or the authorized agent may send an email to the NDPERS info account at ndpers-info@nd.gov prior to the start of the leave.

An employee may also cancel their dental coverage if the LOA becomes unpaid leave by completing *Dental/Vision Insurance Application or Change-SFN 58792*. A member cannot cancel the dental insurance mid-year if it is paid LOA.

If an employee discontinues dental coverage during the leave and the leave is more than 31 days in length, they will be required to complete a *Dental/Vision Insurance Application or Change-SFN 58792* within 31 days of return in order to re-enroll in the benefit at the same level of coverage prior to start of leave unless another qualifying event occurred that allows a change in coverage. Coverage will be effective the first day of the month following the return from LOA.

If the employee **does not pay** the employer for any applicable portion of premium that the employee is responsible for, the employer can cancel the employee's coverage. Cancellation effective date will be determined by NDPERS based on the last paid premium or in accordance with NDAC 71-03-05-10.

Vision

An employee may continue vision insurance coverage at their own expense. If an employee does not wish to continue vision insurance during the LOA, the employee should complete *Dental/Vision Insurance Application or Change-SFN 58792* indicating this, or the authorized agent may send an email to the NDPERS info account at ndpers-info@nd.gov prior to the start of the leave.

An employee may also cancel their vision coverage if the LOA becomes unpaid leave by completing *Dental/Vision Insurance Application or Change-SFN 58792*. A member cannot cancel the vision insurance mid-year if it is paid LOA.

If an employee discontinues vision coverage during the leave and the leave is more than 31 days in length, they will be required to complete a *Dental/Vision Insurance Application or Change-SFN 58792* within 31 days of return in order to re-enroll in the benefit at the same level of coverage prior to start of leave unless another qualifying event occurred that allows a change in coverage. Coverage will be effective the first day of the month following the return from LOA.

If the employee **does not pay** the employer for any applicable portion of premium that the employee is responsible for, the employer can cancel the employee's coverage. Cancellation effective date will be determined by NDPERS based on the last paid premium or in accordance with NDAC 71-03-05-10.

Life Insurance

An employee may continue life insurance coverage at their own expense (including premium for Basic Life). If an employee chooses not to continue the life insurance during an unpaid leave, upon their return to active, eligible employment, they will be enrolled **for Basic Life only** effective first of month following return date. If the employee wants to re-enroll in Supplemental Life, Supplemental Dependent, and Supplemental Spouse coverage, the employee can only apply during the annual enrollment season and may need to provide Evidence of Insurability.

If the employee does not return from medical leave, you have the right to recover any premium contributions paid while the employee was on the unpaid leave. If the employee does not return, they will have the right to a conversion policy directly with insurance carrier.

Any unpaid premiums are the responsibility of the employer to pay. If the employee **does not pay** the employer for any applicable portion of premium that the employee is responsible for, the employer can cancel the employee's coverage but only on a prospective basis. The authorized agent should send an email to the NDPERS info account at ndpers-info@nd.gov. If the reason for the cancellation is due to non-payment of premium, then the authorized agent needs to provide the name of the employee, ID number, effective date of cancellation (prospective only) and that the reason for the cancellation is non-payment of premium as NDPERS needs this information. The authorized agent should also inform the employee of the coverage cancellation.

Employee Assistance Program (EAP)

If the employee is on an unpaid leave of absence and either the employee or the employer is paying the basic life premium during the leave, the EAP premium must comply with the payment method selected for the basic life premium. Employee cannot continue EAP if not continuing basic life insurance.

Example: Employee is on unpaid leave of absence and elects to continue their life insurance during the unpaid leave at their own expense. The employee is responsible for the premium for the EAP program as well as to make arrangements with their employer to pay the premiums due.

FlexComp

If an employee goes on a leave of absence not covered under FMLA or USERRA, their medical spending and dependent care contributions may be made as follows:

- o *Pre-Pay Option:* the employee may pay the amounts due while on leave on a pre-tax basis by having the total amount due payroll deducted prior to the leave.
- o *Catch-Up Option:* NDPERS will continue coverage during an unpaid leave. Upon return from leave, a participant will catch up with pre-tax payroll deductions unless the leave crosses tax years.
- o *Not participate during leave:* The employee may choose not to participate while on unpaid leave. If they elect not to participate, they will not be entitled to receive reimbursements for claims incurred after the last day of the month for which a contribution was received by the flexcomp carrier. Upon returning from leave, the employee benefit is reinstated at the

previously elected annual pledge amount, less the contributions that were missed during the leave, as long as the return date is still within the same calendar year.

Employees must complete *FlexComp Change in Status SFN 53511* to direct NDPERS how they would like to address any missed contributions.

Uniformed Services Employment and Reemployment Rights Act (USERRA) Leave

The employer is required to submit a notice to NDPERS that indicates the beginning and ending dates of the USERRA leave, regardless of duration. The return date cannot be submitted until the leave start date has been posted to the employment record.

Health & USERRA Leave

For absences of 31 days or less, benefits continue as if the member has not been absent. Members called to active duty whose leave exceeds 31 days become automatically covered through TRICARE and will have the following options:

1. The member, and any eligible family members that are covered on the NDPERS plan at the time of activation, may be eligible for COBRA continuation as follows:
 - a. For a 24-month period beginning on the date on which the employee's absence for the purpose of performing services begins; or
 - b. The period beginning on the date on which the employee's absence for the purpose of performing service begins and ending on the date on which he or she fails to return from service or report for work.
2. The member can drop NDPERS coverage and
 - a. Elect TRICARE for his/herself and for family members, or
 - b. Choose coverage through another group plan.

If the member elects COBRA continuation, a *Continuation of Group Insurance Coverage-SFN 14120* must be completed and submitted to their payroll/human resource office or NDPERS. If they elect COBRA continuation, the member will be direct billed for the monthly premium. This same policy applies to participating political subdivisions. If the employee also has coverage through TRICARE for his/her self or any dependents, TRICARE will be the primary payer and NDPERS will pay secondary on any claims.

If the member elects 2a or 2b above, he/she must complete *Health Insurance Application or Change-SFN 60036* or submit a letter to payroll outlining this intention. Send all forms or letters requesting changes in coverage to ndpers-info@nd.gov or upload the document(s) through Employer Self Service.

If coverage is not continued or is cancelled at any point during the leave, the member must be reinstated at the same level of coverage that was in effect prior to the start of leave. Enrollment will be effective first of the month in which the member returns to employment. A copy of the discharge papers must be submitted to NDPERS to verify the insurance effective date.

A member may defer reinstatement of coverage until TRICARE would end by submitting this request in writing to NDPERS when returning to covered employment. To apply under loss of coverage, the member must submit application through Member Self Service (MSS) or completing the *Health Insurance Application or Change-SFN 60036* within 31 days of the date they lose coverage through TRICARE. Member must provide certificate of coverage confirming the individuals losing coverage and the end date of such insurance. A copy of the discharge papers must be submitted to NDPERS if not provided previously. If application is made due to

loss of coverage, enrollment will be effective first of month following loss of coverage date. If an application is not submitted within this period, the member may enroll during the annual enrollment period conducted each year in the fall and coverage will be effective January 1.

Dental & USERRA Leave

For absences of 31 days or less, benefits continue as if the member has not been absent. Members called to active duty whose leave exceeds 31 days may continue coverage for the employee and any eligible dependents until the earliest of the following:

- 24 months from the last day of employment with the Employer (COBRA);
- the day after the employee fails to return to work; and
- the date the policy cancels.

If the member elects COBRA continuation, a *Continuation of Group Insurance Coverage (COBRA)-SFN 14120* must be completed and submitted to their payroll/human resource office or NDPERS. If they elect COBRA continuation, the member will be direct billed for the monthly premium.

If the member does not elect COBRA continuation while on leave, he/she must complete *Continuation of Group Insurance Coverage (COBRA)-SFN 14120* or submit a letter to payroll outlining this intention. Inaction by the member is considered a waiver of COBRA. Send all forms or letters requesting changes in coverage to ndpers-info@nd.gov or upload the document(s) through Employer Self Service.

If coverage is not continued or is cancelled during the leave, the member must be reinstated at the same level of coverage that was in effect prior to the start of the leave. Enrollment will be effective first of the month in which the member returns to employment and all services per the benefit schedule will be available. A copy of the discharge papers must be submitted to NDPERS to verify the insurance effective date.

If an application is not submitted within this period, the member may enroll during the annual enrollment period and coverage will be effective January 1.

Vision & USERRA Leave

For absences of 31 days or less, benefits continue as if the member has not been absent. Members called to active duty whose leave exceeds 31 days may continue coverage for the employee and any eligible dependents until the earliest of the following:

- 24 months from the last day of employment with the Employer (COBRA);
- the day after the employee fails to return to work; and
- the date the policy cancels.

If the member elects COBRA continuation, a *Continuation of Group Insurance Coverage (COBRA)-SFN 14120* must be completed and submitted to their payroll/human resource office or NDPERS. If they elect COBRA continuation, the member will be direct billed for the monthly premium.

If the member does not elect COBRA continuation while on leave, he/she must complete *Continuation of Group Insurance Coverage (COBRA)-SFN 14120* or submit a letter to payroll

outlining this intention. Inaction by the member is considered a waiver of COBRA. Send all forms or letters requesting changes in coverage to ndpers-info@nd.gov or upload the document(s) through Employer Self Service.

If coverage is not continued or is cancelled during the leave, the member must be reinstated at the same level of coverage that was in effect prior to the start of the leave. Enrollment will be effective first of the month in which the member returns to employment and all services per the benefit schedule will be available. A copy of the discharge papers must be submitted to NDPERS to verify the insurance effective date.

If an application is not submitted within this period, the member may enroll during the annual enrollment period and coverage will be effective January 1.

Life Insurance & USERRA Leave

The employee, dependent, and spouse supplemental life insurance can remain in force for up to 24 months after the date the employee stops active employment. If they elect to retain the life insurance coverage, the contract will remain on your monthly billing in the employee's name. The employee must pay the \$.28 basic life as well as any employee, spouse or dependent supplemental premiums by personal check made payable to NDPERS and submit it to their payroll office. If the employee is pre-taxing the premium for the first \$50,000 of employee supplemental life through the NDPERS FlexComp Plan, the options for payment during the leave are outlined in the [FlexComp](#) section. This also applies to participating political subdivisions.

If an employee chooses not to continue the life insurance during military leave, the member should submit this request in writing to NDPERS prior to or at the start of the leave. Upon return to active, eligible employment, they will be enrolled **in the same level of coverage held prior to the start of the leave** and will be effective first of the month in which the member returns to employment. If the employee wants to increase Supplemental Life, Supplemental Dependent, and Supplemental Spouse coverage, the employee can only apply within 31 days of a qualifying event or the annual enrollment season and may need to provide *Evidence of Insurability*.

In the event a member dies while on active duty, the basic and supplemental employee life benefit will be paid to the primary beneficiary on record. The Accidental Death & Dismemberment (AD&D) will not be paid as loss of life during active military duty is contract exclusion.

Employee Assistance Program (EAP) & USERRA Leave

If the employee is on an unpaid leave of absence and either the employee or the employer is paying the basic life premium during the leave, the EAP premium must comply with the payment method selected for the basic life premium. Employee cannot continue EAP if not continuing life insurance.

Example: Employee is on unpaid leave of absence and elects to continue their life insurance during the unpaid leave at their own expense. The employee is responsible for the premium for the EAP program as well as to make arrangements with their employer to pay the premiums due.

FlexComp & USERRA Leave

If an employee goes on military leave, their medical spending and dependent care contributions may be made as follows:

- o *Pre-Pay Option:* the employee may pay the amounts due while on leave on a pre-tax basis by having the total amount due payroll deducted prior to the leave.
- o *Catch-Up Option:* NDPERS will continue coverage during an unpaid leave. Upon return from leave, a participant will catch up with pre-tax payroll deductions unless the leave crosses tax years. If the employee's return date is in a new tax year, the employee can still exercise the catch-up option but they would have to be paid with after-tax dollars directly to NDPERS.
- o *Not participate during leave:* The employee may choose not to participate while on unpaid leave. If they elect not to participate, they will not be entitled to receive reimbursements for claims incurred after the last day of the month for which a contribution was received by the flexcomp carrier. Upon returning from leave, the employee may choose to not participate for the remainder of the Plan Year.

Employees must complete *FlexComp Change in Status SFN 53511* to direct NDPERS how they would like to address any missed contributions.

If the employee returns from military leave in a new Plan Year, they can make an election to participate for that Plan Year as long as it's made within 31 days of the return date. The effective date of the new Plan Year's election can either be retroactive to January 1 of that Plan Year or prospective based upon the first payroll deduction. Employee would need to indicate the effective date on the enrollment form to ensure election is processed correctly. Employee will be able to claim incurred eligible expenses from effective date for the Plan Year; however, contributions will be deducted prospectively for remainder of the Plan Year only.

Seasonal Employees

Seasonal employees, during the "off months", are subject to the same requirements as stated above under ["Leave of Absence \(Paid/Unpaid – not FMLA/USERRA\)"](#). For any approved LOA under FMLA or USERRA, please refer to the applicable section based on the type of leave.