

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 123:1-34-01

Rule Type: Amendment

Rule Title/Tagline: Leave of absence without pay.

Agency Name: Department of Administrative Services

Division: Division of Human Resources

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 9/15/2023
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 124.09
5. **What statute(s) does the rule implement or amplify?** 124.09
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

Mandatory rule review.
8. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Contains the parameters, procedures, and protocols for dealing with an employee on a leave of absence without pay. Rule restriction removal.

9. **Does the rule incorporate material by reference?** No
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Not Applicable.

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not Applicable.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? No
18. Does this rule have an adverse impact on business? No
- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No
 - B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No
 - C. Does this rule require specific expenditures or the report of information as a condition of compliance? No
 - D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes
- A. How many new regulatory restrictions do you propose adding to this rule? 2

(C)(2) Licensed practitioner's certificate. An employee requesting a leave of absence without pay due to a disabling illness, injury or condition will present, at the time the request is made, a licensed practitioner's certificate stating the probable period for which the employee will be unable to perform the essential job duties of the employee's position. The specialty of the licensed practitioner providing the certificate will be based upon the employee's diagnosed condition. If a request for leave is based upon a diagnosis of a mental disorder, including but not limited to, psychosis, mood disorders, and anxiety, then such request must be confirmed by a licensed mental health practitioner.

(A)(8) Benefits. While on a leave of absence without pay that lasts longer than one pay period, the employee is responsible for both the employer's and employee's share of health care benefit premiums, unless prohibited by law.

B. How many existing regulatory restrictions do you propose removing from this rule? 23

Nothing in this rule shall be construed as limiting, superseding, or requiring any leave granted under The Family and Medical Leave Act of 1993 (FMLA).

(A).... An employee must request, in writing, all leaves of absence without pay.

(A).... The request shall state reasons for taking leave of absence without pay and the dates for which such leave is being requested.

(A)(1).... Renewal or extension beyond the maximum allowed shall not be granted except as provided in this rule.

(A)(1)(c).... Renewal or extension beyond the two-year period shall not be allowed.

(A)(4) Return to service. Upon completion of a leave of absence without pay, the employee shall be returned to the same or similar position within the employee's former classification.

(A)(4).... If the employee's former classification no longer exists the employee shall, with approval of the director, be assigned to a position in a classification similar to that formerly occupied.

(A)(5) ... Employees that do not return to service from a leave of absence without pay shall not receive service credit for the time spent on such leave.

(A)(6) Reporting leaves. The appointing authority shall report to the director any leave of absence without pay which extends for one pay period or longer, and the subsequent return from such a leave.

(A)(6).... Any leave of absence without pay shall be reported for an employee serving a probationary period.

(A)(7).... The period during which an employee is on a leave of absence without pay shall not be counted towards an employee's original or promotional probationary period.

(A)(8) Benefits. While on a leave of absence without pay lasting longer than one pay period, the employee is responsible for both the employer's and employee's share of health care benefit premiums, except as required by law.

(B).... Such leave shall be reported to the director but is not subject to the director's approval.

(B).... Return of an employee in the unclassified service to active pay status shall be at the discretion of the appointing authority.

(C).... The employee must demonstrate that the probable length of disability will not exceed six months.

(C)(1) Length of leave. Leaves of absence without pay shall be limited to the period of time that the employee is unable to perform the essential job duties of the employee's position.

(C)(2) Licensed practitioner's certificate. An employee requesting a leave of absence without pay due to a disabling illness, injury or condition must present, at the time the request is made, a licensed practitioner's certificate stating the probable period for which the employee will be unable to perform the essential job duties of the employee's position.

(C)(3) Sick leave usage. Upon request, and in accordance with the rules of the director on sick leave and disability leave benefits, an employee not eligible to receive disability leave benefits under a program offered by an appointing authority shall be permitted to use any or all of the employee's accumulated sick leave credit only for the period of time, as certified by the licensed practitioner's certificate, that the employee is unable to work as a result of a disabling illness, injury or condition.

(C)(3)... An employee using sick leave credit shall not be prevented from receiving a leave of absence without pay for the remainder of the period as defined in paragraph (C)(1) of this rule.

(C)(4) Vacation leave usage. Subject to the provisions contained in Chapter 123:1-33 of the Administrative Code, an employee not eligible to receive disability leave benefits under a program offered by an appointing authority shall, upon request, be permitted to use any or all of the employee's accumulated vacation leave at any reasonable time prior to, during, or following the period as defined in paragraph (C)(1) of this rule.

(C)(6) Return to work. The appointing authority of an employee on a leave of absence without pay for a disabling illness, injury or condition may require the employee, prior to the employee's return to work, to provide a physician's certificate that confirms the employee is able to perform the essential job duties of the employee's position.

(D)... All requests for leave of absence without pay for purposes of child care shall be considered on a nondiscriminatory basis without regard to the sex of the employee.

An adoptive or foster parent's request for leave of absence for purposes of child care shall be considered on the same basis as that of a biological parent under similar circumstances.

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

D. Please justify the adoption of the new regulatory restriction(s).
Addition, removal, and editing of existing language. "Prohibit" being added when describing events which may be "prohibited by law" which is a legal term of art. "Must" being added when clarifying requirement to use appropriate licensed mental health practitioner so as to ensure any employees seek medical certification for mental health issues do so from an appropriate provider.

