MEMORANDUM

TO: **All Agency Heads**
All Agency HR Managers
All Agency Benefits Managers

FROM: **Pat Writt, DPS, FMLA Manager**
SUBJECT: **FMLA**
DATE: **January 7, 2009**

The final rules for the revised Family Medical Leave Act (FMLA) were published on November 17, 2008 and go into effect on January 16, 2009. The Division of Personnel Services is creating and will be providing in depth training for agencies this spring. However, while the basic law remains very similar, there are some new and revised areas we need to bring to your attention right away.

1. Postings and Employee Information

Every agency is required to post, and keep posted, on its premises, in conspicuous places where employees are employed, a notice explaining the provisions of the FMLA and providing information concerning the procedures for filing complaints of violations. (A copy of this posting may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm)

Dissemination of FMLA information may be done in a number of ways: via Employee Handbooks, Agency Websites, New Employee Orientation, annual distribution to all employees.

2. Policies

Each agency should review its policy(s) on FMLA and make sure all policies are in compliance with the revised law including the military provisions, notification requirements, and medical certification requirements.

3. Military Family Leave: (This is a brand new area of the law with 2 distinct parts)

a. Qualified Exigencies: Gives specified family members of covered Armed Forces personnel up to 12 weeks off for qualified exigencies due to being called to active duty. Leave may be taken for spouse, child, or parent. This applies only to members of the Reserves, National Guard and certain retired members of the Regular Armed Forces and retired Reserves and only for federal calls to active duty.
Qualified Exigencies include: up to 7 days for short-notice deployment; military events and related activities; childcare and school activities;

financial and legal arrangements; counseling; rest and recuperation; additional activities.

The employer may require the employee to provide a copy of the service member's active duty orders or other documentation issued by the military.

(b) Injury Leave: Provides up to 26 weeks of leave for a spouse, parent, child or next of kin to care for a service member who becomes seriously ill or is seriously injured while on active duty.

4. **Employer Notice Obligations**

When employees request FMLA leave, employers must provide employees with notice within five (5) business days that they are eligible for FMLA leave. After the employer has received sufficient information that the request for leave is FMLA qualifying the employer must designate the leave as such within five (5) business days and notify the employee in writing.

5. **Medical Certification**

The DOL has split the recommended medical certification form into two parts: one for an employee's own health condition and another for a family member's serious health condition. The DOL also provides forms for an employee's eligibility and designation of leave notice, as well as certifications for qualifying exigency and for serious injury or illness of covered service members. It is recommended that these forms be used. The may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

6. **Nonconsecutive Periods of Service**

Employers are required to count any service an employee had with the employer prior to a break in service of up to seven years toward the 12 month eligibility threshold.

7. **Serious Health Condition**

The new regulations clarify the definition of "serious health condition". It would be considered a "serious health condition" if an employee takes leave for a medical condition involving more than three consecutive calendar days of incapacity and would need to have two visits to a health care provider. Those visits must occur within 30 days of the period of incapacity for the condition to be classified as a serious health condition. For a chronic serious health condition to be present, an employee must make at least two (2) visits per year to a health care provider for the condition.

As soon as the FMLA training is in place, you will be notified of dates and times. There will be a short briefing on the FMLA at the HR Conference on April 1, 2009. In the meantime, if you have any questions, or need assistance, please do not hesitate to contact Pat Writt, 785-296-4352, pat.writt@da.ks.gov.