

EVALUATION OF PARENTAL LEAVE POLICIES AND
PRACTICES FOR STATE EMPLOYEES

IN RESPONSE TO HCR 93 OF THE 2019 REGULAR
LEGISLATIVE SESSION



PERFORMANCE AUDIT SERVICES
ISSUED DECEMBER 19, 2019

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

December 19, 2019

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our review of all policies related to family and parental leave for state employees, as requested by House Concurrent Resolution 93 of the 2019 Regular Legislative Session. The purpose of this audit was to evaluate the policies and practices among state agencies as compared to competitive best practices.

Overall, we found inconsistencies within and across state agencies regarding FMLA/parental leave policies and the implementation of FMLA/parental leave.

Specifically, we found that while executive and judicial agencies are subject to the provisions of the 1993 Family and Medical Leave Act (FMLA), legislative offices are not. As a result, the parental leave policies of most legislative offices do not mirror FMLA protections.

In addition, parental leave policies vary in how detailed they are and do not always include all provisions of FMLA, such as the requirement to restore an employee to an equivalent position when he or she returns from leave. Most policies also do not include the protections provided by Louisiana's pregnancy anti-discrimination statutes.

We also identified inconsistencies in the usage of parental leave within and across executive agencies. No entity within Louisiana is responsible for ensuring consistent leave usage; instead it is left up to the individual agencies. For example, some agencies require employees to use FMLA for prenatal visits while others do not.

Finally, other states and some entities in Louisiana provide additional protections and benefits for parents, such as paid maternity and paternity leave, and access to flexible sick leave. Adopting these protections and benefits for all state employees could improve Louisiana's efforts to recruit and retain state employees.

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives
December 19, 2019
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The report contains our findings, conclusions, and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the staff of the Louisiana Department of State Civil Service and the human resources staff at the executive agencies, judicial offices, and legislative offices for their assistance during this audit.

Respectfully submitted,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is written in a cursive style with a large, stylized initial "D".

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

PARENTALLEAVEPOLICIES

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Parental Leave Policies and Practices for State Employees

December 2019

Audit Control # 40190014

Introduction

House Concurrent Resolution (HCR) 93 of the 2019 Regular Legislative Session requested that the Legislative Auditor compile all policies relative to family and parental leave for state employees, compare the policies, and report on the status of family and parental leave policies applicable to state employees. According to HCR 93, such a review is important because offering competitive family and parental leave to employees can be an effective recruiting tool, enhance the work environment, and increase employee retention; and it is important to understand how Louisiana's policies compare with competitive best practices.

Parental leave policies for most state entities are covered under the agency's Family and Medical Leave Act (FMLA) policy. The Family and Medical Leave Act of 1993¹ provides job-protected leave for eligible employees who take time off to care for themselves or family while they are sick or temporarily disabled, or for leave related to the birth or adoption of a child or the placement of a foster child. FMLA entitles eligible employees to take up to 12 weeks of job-protected, unpaid leave; although, employees may elect to or employers may require that employees use any accrued paid vacation, personal, or family leave while on FMLA.

Family Medical Leave Act (FMLA) Eligibility Requirements

An employee who has been employed for at least 12 months and has worked at least 1,250 hours during the previous 12-month period at a worksite with more than 50 employees.

Ensuring compliance with FMLA requirements is the responsibility of the human resources (HR) administrators within each state entity. While Louisiana's State Civil Service Commission (Commission) has established rules related to leave accrual and use for state workers, the Commission does not oversee the implementation of FMLA or the utilization of FMLA leave because FMLA is a federal law. Employee complaints regarding FMLA can be directed to their human resources administrators or the Federal Department of Labor.

In addition to the federal FMLA requirements, states may pass laws that provide additional protections and benefits related to parental leave. Louisiana established pregnancy anti-discrimination laws² in 1997 that provide job-protected leave for pregnant women. The provisions of these laws apply to an employer who employs more than 25 employees and states that it is unlawful for the employer to refuse to allow a female employee to take leave on account of pregnancy for a reasonable period of time, not to exceed six weeks for normal pregnancies/births and 16 weeks when there are complications due to pregnancy/birth.

¹ 29 U.S.C.A. § 2601-2654

² Louisiana Revised Statute (L.R.S.) 23:341 and 23:342

In 2016, the National Partnership for Women & Families published a report³ analyzing laws that protect expecting and new parents across all 50 states and scored each state. Louisiana received a grade of “C” and was ranked 15th. The 14 states that ranked higher than Louisiana offer more generous benefits than Louisiana, such as paid maternity and paternity leave and additional protections and benefits for parents after they return to work.

To conduct this audit, we requested FMLA/parental leave policies from all state agencies, university systems, and judicial and legislative offices, conducted a survey of employees in five state agencies/university systems,⁴ reviewed LaGov-HCM leave reports, and reviewed best practices research. We were unable to calculate how many state employees took parental leave because the leave tracking system that most state entities use (LaGov-HCM) only codes that an employee used FMLA leave but does not differentiate for what reason. Therefore, agencies would have to manually review employee records to determine who took FMLA for parental leave which for large agencies is time prohibitive.

The objective of this review was:

Evaluate the policies and practices related to parental leave for state employees.

Our results are summarized on the following pages, along with our recommendations to assist Louisiana in strengthening its policies, procedures, and laws related to parental leave. Appendix A summarizes our scope and methodology, and Appendix B lists FMLA provisions related to parental leave.

³ *Expecting Better: A State-by-State Analysis of Laws that Help Expecting and New Parents*. 2016 <http://www.nationalpartnership.org/our-work/resources/economic-justice/expecting-better-2016.pdf>

⁴ We sent a survey to a total of 1,543 state workers who used FMLA at some point during fiscal years 2018 and 2019. A total of 168 respondents reported they took FMLA for the birth, adoption, or fostering of a child during this time period.

Objective: Evaluate the policies and practices related to parental leave for state employees.

Overall, we found inconsistencies within and across state agencies regarding FMLA/parental leave policies and the implementation of FMLA/parental leave. Specifically, we found:

- **While executive and judicial agencies are subject to FMLA, legislative offices are not. As a result, we found that the parental leave policies of most legislative offices do not mirror FMLA protections.** For example, the House of Representatives' policy does not specify a minimum or maximum number of weeks of leave allowed. Although legislative offices are not subject to FMLA provisions, developing parental leave policies that mirror FMLA provisions would offer employees of legislative offices more economic security and stability for their families.
- **Parental leave policies for state employees vary in the level of detail and do not always include all provisions of FMLA, such as the requirement to restore an employee to an equivalent position when they return from leave. In addition, most policies do not include the protections provided by Louisiana's pregnancy anti-discrimination statutes.** Under state law, female employees who become disabled as a result of pregnancy or childbirth are entitled to up to 16 weeks of leave.
- **We identified inconsistencies in leave usage for parental leave within and across executive agencies. There is no entity within the state that is responsible for ensuring consistent leave usage; instead, it is left up to the individual agencies.** For example, some agencies require employees to use FMLA for prenatal visits, while others do not. We also identified inconsistencies in FMLA usage for prenatal doctor visits within agencies. It is important that each agency consistently implement leave usage policies and civil service rules.
- **Other states and some entities in Louisiana provide additional protections and benefits for parents. Adopting these protections and benefits for all state employees may improve Louisiana's competitive advantage in recruiting and retaining state employees.** These protections and benefits include paid maternity and paternity leave, and access to flexible sick leave which parents can use to care for sick children, including babies born prematurely with resulting health complications.

Our results, along with four recommendations to assist Louisiana in strengthening its policies related to parental leave for state employees, are discussed in detail on the following pages.

While executive and judicial agencies are subject to FMLA, legislative offices are not. As a result, we found that the parental leave policies of most legislative offices do not mirror FMLA protections.

FMLA covers classified and unclassified employees of executive and judicial agencies of the state, including university system employees if they meet the eligibility requirements. However, employees of the legislative branch are not covered by FMLA because the definition of employee used by FMLA excludes individuals employed in the legislative branch or legislative body of the state.⁵ Therefore, the Senate, the House of Representatives, legislative services agencies (Legislative Fiscal Office, Legislative Auditor), and the State Law Institute are not subject to FMLA provisions. To help ensure that employees of legislative branch offices have protections similar to those provided by FMLA, these offices may want to develop parental leave policies that mirror FMLA. These policies would offer employees of legislative offices more economic security and stability for their families.

We reviewed the policies for legislative offices and found that they do not provide all the similar protections afforded under FMLA, including job-protection status, and are generally vague. Exhibit 1 describes each legislative office's parental leave policy.

Exhibit 1 Parental Leave Policies for Legislative Offices Description of Policy Issues	
Legislative Office	Overview of Parental Leave Policy
House of Representatives	Policy for full-time employees (except for legislative assistants) does not specify a minimum or maximum number of weeks of leave allowed. Employees may use annual, compensatory, and sick leave for "maternity/paternity leave." If all accrued leave is used, employee may be granted leave without pay.
Senate	Policy states that full-time salaried employees are allowed six weeks of leave for "maternity" reasons unless a doctor certifies that the employee needs more time for medical reasons. Employees may use annual, compensatory, and sick leave for maternity reasons. If all accrued leave is used, employees may be granted leave without pay.
Legislative Fiscal Office	Policy states that an employee shall be granted six weeks of sick leave for maternity reasons, unless a doctor certifies in writing that an extended amount of time is needed due to medical causes.
Legislative Auditor	Refers to parental leave as "time an employee may take due the birth and care of a newborn biological child or legal adoption of a child." Employees may take up to 12 weeks of parental leave in a calendar year. This leave may be taken intermittently over a course of six months from the birth or legal adoption of the child. Leave may be taken in the following order: available sick, compensatory, annual, leave without pay.
State Law Institute	Has no parental leave policy but generally refers to the leave policies of State Civil Service for guidance.
Source: Created by Legislative Audit staff using parental leave policies provided by Legislative offices.	

While employees of legislative offices are not covered under FMLA, they are protected under the state's pregnancy anti-discrimination statutes. However, none of the policies

⁵The FMLA definition of employee, found in 29 U.S.C.A. § 203, reference the Fair Standards Labor Act (FSLA) definition which specifically excludes employees of legislatures.

mentioned above communicate protections that allow women to take up to 16 weeks of job-protected leave when they experience complications due to pregnancy or birth.

Matter for Legislative Consideration: The legislature may wish to consider requiring legislative offices to develop parental leave policies that mirror FMLA, as well as communicate protections offered by state statutes.

Parental leave policies for state employees vary in the level of detail and do not always include all provisions of FMLA, such as the requirement to restore an employee to an equivalent position when they return from FMLA leave. In addition, most policies do not include the protections provided by Louisiana’s pregnancy anti-discrimination statutes.

Louisiana does not have a uniform, statewide parental leave policy for all state workers. As a result, each agency has developed its own FMLA/parental leave policies. However, these policies are inconsistent in the level of detail they provide and do not consistently include essential FMLA provisions related to parental leave.⁶ For example:

“The policy as written (is) not what was explained to me when I was trying to figure out how and when leave was to be taken and what my rights were.”

**LLA Survey of State Workers
(August 2019)**

- The length and amount of guidance contained in policy documents vary by agency. In two examples, the policies are only one paragraph long, with one of the policies only referring to a 1993 State Civil Service memorandum on FMLA while the other policy only lists FMLA tenure requirements and the 12 weeks of leave allowed under the law. Other agencies’ policies are more than 10 pages long and include everything from eligibility requirements to detailed procedures for applying for FMLA and coding FMLA leave.
- Policies do not always clearly explain how leave is to be used while on FMLA. Some policies provide clear guidance on the type and order in which accrued leave is to be used, while others simply state that while absent for an FMLA event an employee is required to use any available balance of applicable leave.
- FMLA requires that employers restore employees to the position of employment held by the employee when the FMLA leave commenced, or restore the employee to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, not all FMLA/parental leave policies include this essential provision. Our review found that 7 (13.7%) of the 51 policies for state entities subject to FMLA didn’t include this provision.

⁶ Appendix B lists FMLA provisions related to parental leave.

Other states⁷ have statewide parental leave policies or guidance documents that include essential FMLA provisions. According to our survey of state workers who used FMLA for parental leave, 27 (18.4%) out of 147 respondents feel that their agency’s policy is not clear. However, best practices⁸ state that every employer covered by FMLA should have a written policy that is clear, concise and up-to-date. These best practices also state that policies should be written in clear language and provide good guidelines and expectations to help ensure compliance with FMLA and to help ensure fair and consistent treatment of employees. Clear, well-written policies provide employees with correct information regarding their FMLA rights and may lessen the chances for misunderstandings that lead to grievances and lawsuits, thus making HR processes more efficient.

“I feel like there was inadequate knowledge of how the FMLA process worked.”

**LLA Survey of State Workers
(August 2019)**

Only nine (16.1%) of 56 policies from state agencies, university systems, legislative and judicial branch offices cite the state’s pregnancy anti-discrimination law.⁹ This law allows women to take up to 16 weeks of leave when they experience medical complications due to pregnancy or birth. This is more generous than FMLA, which only allows 12 weeks. State workers who are not eligible for FMLA because they have not worked for a full year are eligible for protections under Louisiana’s pregnancy anti-discrimination law. In our survey of state employees, when asked what improvements they would make to their agency’s FMLA/parental leave policy, one employee stated that she only “stumbled upon” this statute by “luck/research” because it was not included in the agency’s policies.

Matter for Legislative Consideration: The Legislature may wish to consider requiring the Department of State Civil Service to develop state wide FMLA and maternity leave guidance documents for all state employees and agencies to use as a reference. FMLA leave guidance documents should include all essential FMLA provisions and maternity leave guidance documents should include all protections offered by state statutes.

⁷ Alaska, Colorado, Connecticut, Georgia, Indiana, Iowa, Kansas, Oregon, South Dakota, Tennessee, Wisconsin

⁸ Society for Human Resources Management (SHRM)

⁹ L.R.S. 23:341-23:342

We identified inconsistencies in leave usage for parental leave within and across executive agencies. There is no entity within the state that is responsible for ensuring consistent leave usage; instead, this is left up to the individual agencies.

According to State Civil Service rules, employees can only use sick leave when the employee is sick.¹⁰ As a result, while on maternity leave, a mother should use sick leave until she is released by her doctor, which normally happens six to eight weeks after the birth but may be extended due to medical issues of the mother that are related to the birth. After being medically released, this rule requires that mothers switch from sick leave to annual leave, compensatory leave, or leave without pay while “bonding with the child.” However, we identified inconsistencies in leave usage for FMLA/parental leave within state agencies.

We identified instances in which agencies allowed employees to use sick leave after they were released from their doctor, or the agency could not provide us with documentation for why women were allowed to use sick leave beyond the customary time frame. For example, in one agency we identified six (26.1%) of the 23 employees who took FMLA/parental leave in fiscal years 2018 or 2019 used more than eight weeks of sick leave. The agency acknowledged it did not consistently require women to submit medical documentation identifying the dates they were released from their doctor. In another agency, 11 (45.8%) of 24 women who used more than eight weeks of sick leave were allowed by the agency to use sick leave beyond the date their doctor medically released them, or the agency was not able to provide medical release forms to support their extended use of sick leave. In our survey of state employees, respondents from multiple agencies commented that their agency's policies concerning leave usage was not clear, and they were not given clear guidance on the type of leave to use while on FMLA. State agencies should provide clear guidance on leave usage during FMLA, such as the use of sick leave only until new mothers are medically released, and ensure consistent enforcement of such policies.

We also identified inconsistencies in FMLA usage related to prenatal doctor visits, because some women were required to use FMLA for prenatal visits while others were not. This is important because FMLA provides job-protected leave for a maximum of 12 weeks and any FMLA time that is used prior to delivery takes away from the time a woman can be home with their child after the birth. Agencies’ FMLA/parental leave policies regarding whether routine prenatal care must be coded to FMLA leave are vague which can lead to different interpretations and implementation of the policy within agencies. Thirty-four (66.7%) of the 51 policies for state entities subject to FMLA specifically list prenatal care as a qualifying event for granting FMLA leave, but only one of these policies specifically states that it must be coded to FMLA. One policy specifically states that employees are not required to use FMLA for

“When in (one section), employees were required to start FMLA at the first notification of pregnancy (for doctor’s appointments) which cut into your time off to bond with your baby. In my new section, it was done properly. I used sick leave for doctor’s appointments and went on FMLA to bond.”

LLA Survey of State Workers (August 2019)

¹⁰ SCS Rule 11.13 (Use of Sick Leave)

routine prenatal visits. We asked HR staff in three agencies, whose policies listed prenatal care as a qualifying event for FMLA leave, whether women were required to use FMLA for prenatal care and received three different answers. One agency indicated that women should use FMLA leave for prenatal care,¹¹ another said that FMLA is offered to employees experiencing complications, and the third stated that employees could use regular sick leave until they filed their FMLA leave request.

Leave usage reports for employees in one of these three agencies indicated that 11 (11.5%) out of 96 women who took maternity leave during fiscal years 2018 through 2019 used FMLA leave for routine prenatal care while the other women did not. This supports comments from survey respondents. Some commented that FMLA usage related to prenatal doctor visits within their agency varies by department because of supervisors' differing interpretations of agency policies. While agencies are allowed discretion in requiring the use of FMLA for prenatal visits, it is important that this policy is clearly stated and that all employees are treated consistently.

Matter for Legislative Consideration: The Legislature may wish to consider requiring agencies to clearly state in their policies whether routine prenatal visits are to be coded as FMLA leave or not, as well as requiring agencies to implement their policies consistently for all employees.

Other states and some entities within Louisiana provide additional protections and benefits for parents. Adopting these protections and benefits for all state employees may improve Louisiana's competitive advantage in recruiting and retaining state employees.

In 2016, the National Partnership for Women and Families published a report analyzing laws that protect expecting and new parents across all 50 states. Louisiana received a grade of "C" and was ranked 15th. The 14 states that ranked higher and received a better grade than Louisiana did so because they offer more generous legal protections than Louisiana. These states provide additional protections or benefits for parents including paid maternity and paternity leave, and access to flexible sick leave which parents can use to care for sick children. Implementing more generous or flexible leave benefits may improve Louisiana's competitive advantage in recruiting and retaining state employees.

"I think it would be very beneficial (to new mothers especially) to change the rules to allow parents to use sick leave for care of dependents. Our state is one of the only ones this is not allowed for and it ABSOLUTELY places hardship on parents."

**LLA Survey of State Workers
(August 2019)**

¹¹ This is not the agency whose policy states that employees must use FMLA leave for routine prenatal visits.

As of 2016, 46 states and the federal government allow their public sector employees to use their sick leave to care for family members.¹² Flexible sick leave is a policy that allows workers to use their accrued paid sick leave to care for family members, including children, parents, or a spouse. For example, parents can utilize this when babies are born prematurely and have resulting health complications. In addition, flexible leave policies are beneficial to fathers who want to take leave to take care of their disabled spouse. Currently, Louisiana state employees who fall under State Civil Service rules may only use their accrued sick leave when they are sick. They are required to use compensatory and annual leave to care for family members then go on leave without pay when these are exhausted.

There are many variations of implementation of flexible sick leave found across the 46 states, particularly in the amount of sick time employees are allowed to take to care for family members. For example, Connecticut allows employees to take three days per year to care for family members, while other states, such as Georgia and Ohio, have no maximum. The majority of states with flexible sick leave policies specifically allow workers to use their sick leave to care for a spouse disabled by pregnancy. In Louisiana, State Supreme Court and Circuit Court of Appeals policies allow their employees to use up to 20 days per year of sick leave to care for an employee's immediate family. Some of Louisiana's legislative branch offices also offer flexible sick leave.

At least 15 states have enacted some form of paid leave for new parents that can be used for bonding with or care of a new child including for birth, adoption, and fostering. However, the details of these programs vary by state; including who is covered, the amount of pay covered, length of time of the benefit, and how the benefit is paid for. For example, in eight states,¹³ the leave is paid via insurance that is funded through payroll deductions. In some states only the employee contributes, and in other states both the employee and employer contribute. The amount of the benefit varies by state, but in general employees are paid a percentage of their average weekly wage. For example, in New Jersey, the weekly benefit is 66% of a worker's average weekly wage. Paid leave ranges from four to 14 weeks. Eligibility requirements, exemptions, and restrictions, such as maximum payments, vary by state and not all public sector workers are covered in each state.

Four states have enacted laws or implemented regulations to provide paid leave to state workers through mechanisms other than insurance. For example,

- Ohio provides state workers with four weeks of paid leave at 70% of the employee's base pay.
- Illinois provides state employees with four weeks of paid maternity leave and three weeks of paid paternity leave.
- Maryland provides that state employees may use up to 60 days of parental leave to care for a child after birth or adoption. If the employee does not have enough accrued annual or personal time, the State Agency shall provide additional leave to attain 60 days of parental leave.

¹² According to the National Partnership for Women and Families

¹³ California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut, and Oregon

- Arkansas allows four weeks of paid leave for “maternity purposes” for state employees via a voluntary Catastrophic Leave Bank.

In addition, three state governors have signed Executive Orders that provide public sector employees with access to paid parental leave. Indiana provides 150 hours of paid leave to be used after the required use of sick leave. Kansas provides state employees under the jurisdiction of the governor with paid parental leave at 100% of their regular salary for six weeks for the primary caregiver and three weeks for the secondary caregiver. In Virginia, an eligible employee receives eight weeks of parental leave at 100% of the employee’s regular salary and requires that the parental leave shall not be counted against an employee’s annual or sick leave.

Research¹⁴ demonstrates that providing paid parental leave is good for employers because it is tied to employee retention and increased productivity. In addition, when employees have access to paid leave, morale improves and employees show more loyalty toward the employer.

Matter for Legislative Consideration: The Legislature may wish to consider whether implementing flexible sick leave policies and paid leave for new parents would improve recruitment and retention of state employees.

¹⁴ *Expecting Better: A State-by-State Analysis of Laws that Help Expecting and New Parents*. 2016 <http://www.nationalpartnership.org/our-work/resources/economic-justice/expecting-better-2016.pdf> and Paid Parental Leave in the United State: *What the data tell us about access, usage, and economic and health benefits*. 2014 <https://iwpr.org/publications/paid-parental-leave-in-the-united-states-what-the-data-tell-us-about-access-usage-and-economic-and-health-benefits/>

APPENDIX A: SCOPE AND METHODOLOGY

This report provides the results of our evaluation of parental leave policies for Louisiana state employees. We conducted this performance audit under the provisions of House Concurrent Resolution (HCR) 93 of the 2019 Regular Legislative Session and Title 24 of the Louisiana Revised Statutes of 1950, as amended. Our audit scope was fiscal years 2018 and 2019 which allowed us to analyze the most recent implementation of FMLA leave for executive branch agencies, university systems, and the legislative and judicial branches. We also evaluated the current parental leave policies of these state entities. Our audit objective was:

Evaluate the policies and practices related to parental leave for state employees.

This audit was not conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States; however, we used those standards as a guide and believe the evidence obtained provides a reasonable basis for our findings and conclusions. To answer our objective, we performed the following audit steps:

- Researched the Federal Family Medical Leave Act (FMLA), the Federal Fair Labor Standards Act, and Louisiana State Laws related to parental leave.
- Met with State Civil Service staff and contacted human resources staff at executive agencies, judicial offices, and legislative offices to understand leave usage requirements and FMLA/parental leave procedures.
- Obtained FMLA/Parental Leave policies from state agencies, university systems, and the judicial and legislative branches.
- Used FMLA criteria to compare specific elements of each FMLA policy, documented differences, and followed up as needed with state agencies to understand differences.
- Researched best practices and other states practices related to FMLA/Parental Leave. This included researching relevant laws, and executive orders.
- Obtained leave reports for a selection of state agencies and university offices.
- Used leave reports to identify state employees that took FMLA leave during fiscal years 2018 and 2019. These reports do not specify the reason that an employee took FMLA. As a result, we could not use them to identify state workers who used FMLA for parental leave.
- To identify state workers who used FMLA for parental leave, we developed and sent a survey in August 2019 to 1,543 state workers from a selection of state agencies and university programs that used FMLA at some point during fiscal

years 2018 and 2019. A total of 168 respondents reported they took FMLA for the birth, adoption, or fostering of a child during this time period, and 147 of the 168 respondents answered all the survey questions.

- Analyzed leave reports to identify inconsistencies in leave usage for state employees who responded to our survey that they used FMLA for parental leave during fiscal years 2018 and 2019. We then followed up with a targeted selection of three state agencies to understand any inconsistencies.
- Shared a draft of the audit report with management of the Department of State Civil Service and obtained their comments.

APPENDIX B: FMLA PROVISIONS RELATED TO PARENTAL LEAVE

Family Medical Leave Act (FMLA) Provisions	
Provision	Description
Restoration to Position	Upon return from leave an employee is entitled to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
Eligible Employee	An employee who has been employed for at least 12 months by the employer, and provided at least 1,250 hours of service with such employer during the previous 12 month period.
Employer	Any person/entity engaged in commerce or affecting commerce who/that employs 50 or more employees in each working day; this includes any “public agency” as defined by FLSA (sect 203 of Title 29 labor).
Leave Requirements (Entitlement to Leave)	Eligible employees shall be eligible for leave during any 12-month period for one of the following reasons: birth of employee’s child or placement of a child with employee for adoption or foster care, to care for a spouse, child, or parent who has a serious health condition, or due to the employee’s own serious health condition that makes them unable to perform the functions of their position.
Substitution of Paid Leave	An eligible employee may elect, or an employer may require the employee, to substitute any accrued leave for any part of the 12 week leave entitlement period.
Requirement of Notice for Foreseeable Leave	In any case in which the necessity of leave is foreseeable based on an expected birth or placement of a child, the employee shall provide the employer with not less than 30 days’ notice before the date the leave is to begin. If the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as practicable.
Spouses Employed by the Same Employer	The aggregate number of workweeks of leave spouses employed by the same employer may be entitled to may be limited to 12 workweeks during any 12-month period.
Medical Certification	An employer may require that a request for leave be supported by a certification issued by a health care provider of the eligible employee. The employee shall provide, in a timely manner, a copy of such certification.
Maintenance of Health Benefits	The employer shall maintain coverage under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee did not take leave.
Serious Health Condition	Any illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.
Intermittent Leave	Working intermittently or on a reduced leave schedule may be permitted if the employer and employee agree.
Entitlement Expiration	Entitlement to FMLA leave shall expire at the end of the 12-month period beginning on the date of the birth of a child or placement of a child with employee for adoption or foster care.
Source: Created by Legislative Audit staff using the Family Medical Leave Act (29 USCA § 2601-2654)	