

# Family & Medical Leave

Employees may be eligible for an unpaid leave of absence under the federal Family Medical Leave Act ("FMLA"), subject to its eligibility requirements and other terms, conditions and restrictions. In addition, employees may be eligible for other unpaid leave provided as a matter of University policy or under applicable state or local law.

## Section I: Definition/Purpose of Leave

A family and/or medical leave of absence shall be defined as an approved absence available to eligible employees for up to twelve weeks (12) of unpaid leave under particular circumstances that are critical to the life of a family. An eligible employee shall be eligible for a total of twelve (12) workweeks<sup>[1]</sup> of unpaid, job protected leave in a designated twelve (12) month period for one or more of the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth
- To care for the employee's son or daughter after birth<sup>[2]</sup>
- To care for the employee's son or daughter upon placement with the employee for adoption or foster care<sup>[2]</sup>
- In order to care for the employee's spouse, son or daughter or parent, if such spouse, son or daughter or parent has a serious health condition (as described below)
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job
- Because of a "qualifying exigency" due to the fact that the employee's spouse, son, daughter or parent is a member of the National Guard or Reserves who is either on active duty or has been notified of an impending call or order to active duty in the Armed Forces support of a contingency operation. This leave does not apply if the employee's spouse, son, daughter or parent is a member of the Regular armed forces<sup>[3]</sup>
- In order to care for a covered servicemember who is the spouse, son, daughter, parent or "next-of kin" of an eligible employee. As explained below, for this type of leave only, employees may be eligible for up to twenty-six (26) weeks of unpaid FMLA Leave in a single twelve (12) month period ("covered servicemember leave")

In addition, as noted above, the FMLA also provides eligible employees with a special leave entitlement to take up to twenty-six (26) workweeks of unpaid leave within a "single twelve (12) month period" to care for a covered servicemember who is the spouse, son, daughter, parent or "next-of kin" of an eligible employee. A "covered servicemember" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation or therapy, or is on outpatient status or is on the temporary disability retired list.

The single twelve (12) month period in which an eligible employee may take up to twenty-six (26) workweeks of unpaid covered servicemember leave is measured forward from the first day the eligible employee takes FMLA Leave to care for a covered servicemember and ends twelve (12) months after that date. This FMLA Leave entitlement is applied on a per covered-servicemember, per injury basis.<sup>[4]</sup>

However, an eligible employee is limited to a combined total of twenty-six (26) workweeks of unpaid FMLA Leave for any FMLA qualifying reason during the "single twelve (12) month period," provided that an eligible employee is eligible for no more than twelve (12) weeks of FMLA Leave because of the following, alone or in combination with each other: the birth of a son or daughter of the employee and in order to care for the son or daughter; because of the placement of a son or daughter with an employee for adoption or foster care; in order to care for the spouse, son, daughter or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. In other words, the expanded twenty-six (26) workweeks of unpaid FMLA Leave applies only in the limited circumstances of caring for a covered servicemember as noted above and may not be used to expand the length of time (twelve (12) workweeks) available to an employee to be taken for other FMLA-qualifying reasons.<sup>[5]</sup>

For example, assume during a "single twelve (12) month period" an employee takes sixteen (16) weeks of FMLA Leave to care for a covered servicemember; that employee would be eligible for another ten (10) weeks of FMLA Leave to care for a newborn child (or for any other FMLA qualifying purpose). However, the employee may not take more than twelve (12) weeks of FMLA Leave to care for a newborn child (or any other FMLA qualifying purpose other than to care for a covered servicemember) during the "single twelve (12) month period," even if the employee takes fewer than fourteen (14) weeks of FMLA Leave to care for a covered servicemember.

## **Section II: Scope**

An eligible employee does not need to use his or her FMLA Leave entitlement in one block. FMLA Leave may be taken intermittently or on a reduced schedule basis when medically necessary. Employees requesting intermittent or reduced leave must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the University's operations. FMLA Leave due to a "qualifying exigency" may also be taken on an intermittent or a reduced schedule basis.

If an eligible employee needs intermittent or reduced-schedule leave that is foreseeable based upon planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from the serious health condition or if the University agrees in its discretion to permit intermittent or reduced schedule leave for the birth of a child or for the placement of a child for adoption or foster care, the University may require the employee to transfer temporarily to an alternative position for which the employee is qualified and which better accommodates the intermittent or reduced leave schedule.

## **Section III: Eligibility**

To be eligible for leave under this policy you must have been employed for at least twelve months in total and must have worked at least 1250 hours during the twelve month period preceding the commencement of the leave. You may take a maximum of twelve weeks FMLA Leave during a twelve month period<sup>1</sup>. The twelve month period is determined going forward from the date leave is first taken.

Time off due to a job-related illness or injury that has resulted in a serious health condition will be applied to an eligible employee's leave under this policy.

Exception: If you are a salaried employee who is among the highest paid ten percent of the University's employees, you may not be entitled to reinstatement if substantial economic injury to the university would result. In this situation,

however, you will be notified that reinstatement may be denied and, when it is determined that keeping the job open would result in substantial economic injury, you will be given an opportunity to return to work immediately or at the expiration of any paid leave to which you otherwise may be entitled.

#### **Section IV: Definition of a Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the function of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment required may be met by a period of incapacity of more than three (3) consecutive, full calendar days combined with at least two (2) visits to a health care provider or one (1) visit and a regimen of continuing treatment, or incapacity due to pregnancy or prenatal care, or incapacity due to a chronic condition. Other permanent and long-term conditions as well as conditions requiring multiple treatments may also meet the definition of continuing treatment.

#### **Section V Notification/Certifications**

An employee will be required to complete a Request for FMLA Leave of Absence Form to apply for FMLA Leave. If the University learns that your leave is being taken for a purpose set forth in Section I, the University may designate the leave as FMLA Leave under this policy regardless of whether you submit an application. You must complete the application in detail, sign it, and forward it to the Office of Human Resources.

In addition, the University will provide the employee with a Health Care Provider Certification Form. This form must be completed in full and returned to the Office of Human Resources within fifteen days of the request of your leave. In the case of a medical certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.

Within two (2) business days (absent extenuating circumstances) of receiving a request for FMLA Leave under this policy, the University will complete and return to the employee a Response to Request for Family and Medical Leave form. However, when FMLA Leave requires certification of a serious health condition, it cannot be approved until the Health Care Provider Certification Form is completed and returned and the leave request has been determined to meet the eligibility requirements of the FMLA.

An employee will be required to provide periodic reports of the employee's status and intent to return to work. The University may also require a second or third medical opinion. In addition, the University may also require recertification of an employee's need for leave. These requirements apply both in the event an employee is requesting leave for his or her own serious health condition and in the event of the serious health condition of a parent, spouse or child or, as applicable, covered servicemember. In connection with a request for FMLA Leave due to a "qualifying exigency," or to care for a covered servicemember, the University may also require an employee to provide a complete and sufficient certification and/or other documentation in support of the leave.

The University will require that an employee provide a fitness for duty certification prior to permitting an employee to return to work from FMLA Leave due to his or her own serious health condition. Where an employee is on intermittent

or reduced schedule leave for his own serious health condition, the employee may also be required to provide a fitness for duty certification periodically.

Where the need for FMLA Leave is foreseeable, an employee must give thirty (30) days' advance notice of the need for FMLA Leave, where possible. When the need for FMLA Leave is foreseeable and thirty (30) days advance notice is not possible, the employee must give notice "as soon as is practicable." "As soon as practicable" means as soon as possible and practicable. When an employee becomes aware of a need for FMLA Leave less than thirty (30) days in advance, it is generally practical for the employee to provide notice of the need for leave either the same day or the next business day.

Note: For foreseeable leave due to a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance such leave is foreseeable. Where the need for leave is not foreseeable, an employee must provide notice to the University as soon as practicable under the facts and circumstances of a particular situation. In addition, absent an emergency or other unusual circumstances, employees are expected to provide notice in accordance with the departmental call-out procedures.

## **Section VI Employee Benefits During Leave of Absence**

If you are entitled to paid leave under another benefit plan or policy, you must take the paid leave first which will be counted toward the twelve weeks available under this policy<sup>1</sup>. If you take leave for the birth of a child or because of your own serious illness, you must substitute available accrued sick time for all or part of the twelve weeks. If, under these circumstances, you must be absent from work beyond the available number of days in your sick bank, you may be eligible for **Short-term Disability** benefits.

If you take leave for adoption or foster care of a child or to care for a spouse, parent or child with a serious illness, you have the option to use **Parental or Family Care Leave**. If, under these circumstances, you must be absent from work beyond the number of days you are eligible to convert, you must substitute all accrued vacation time for the balance of the twelve weeks.

While on leave, you are entitled to the continuance of group health coverage under the same conditions that you received coverage prior to the leave. To continue health insurance, you must arrange to pay your contribution, if any, to the total premium during the period of unpaid absence.

If you go on leave, you may revoke or change your existing election under the Healthcare Spending Account Plan. To continue coverage during unpaid leave, you may pre-pay for the coverage, pay for coverage on an after-tax basis while on leave, or arrange a schedule to "catch up" payments upon return.

Life Insurance, Short-term Disability benefits, Long-term Disability Insurance, and Long-term Care Insurance will be continued during periods of FMLA Leave.

Up to twelve weeks of FMLA Leave time will be credited for calculating service at the University for vacation and tuition benefits. Time off beyond twelve weeks will not be credited.

Where FMLA Leave is taken in a full week increment, and a holiday occurs during that week, the holiday has no effect; the entire week counts as FMLA Leave and employee will not be paid for the Holiday. Where an employee uses FMLA Leave in increments of less than one week, the Holiday will not count against the FMLA Leave used by

the employee, unless the employee was otherwise scheduled and expected to work on the holiday. In addition, to the extent permitted by law, employees shall be ineligible for Bereavement or Juror/Witness Pay during FMLA Leave.

#### **Section VII: Return to Work**

Generally, employees are guaranteed to return to the same or an equivalent position if they return to work prior to or immediately after exhausting their FMLA entitlement. "Key employees" as defined by the FMLA in terms of compensation may be denied restoration of employment by the University where such restoration of employment would cause substantial and grievous economic injury to the operations of the University. An employee will be informed at the time of the FMLA Leave request if he or she is a Key employee as defined by the Act. Any employee may be denied restoration to the same or equivalent position if his or her position would have been eliminated and/or changed if he or she had remained continuously employed.

As stated above, the University will require that an employee provide a fitness for duty certification prior to permitting an employee to return to work from FMLA Leave due to his or her own serious health condition.

#### **Section VIII: The University's Responsibilities under the FMLA**

The University will inform employees requesting leave whether they are eligible under FMLA. If an employee is eligible, the University will provide a notice specifying any additional information required as well as the employee's rights and responsibilities. If the University determines that an employee is not eligible, the University will provide the employee with a reason for the ineligibility. The University will inform the employee whether the leave requested will be designated as FMLA Leave and the amount of leave that will be counted against the employee's FMLA Leave entitlement. If the University determines that the employee's leave is not FMLA protected, then the University will notify the employee. The University cannot and will not interfere with, restrain, or deny the exercise of any right provided under the FMLA, or discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA. The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

For additional information: 1-866-4US-WAGE (1-866-487-9243); TTY 1-877-889- 5627; [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

[1] In certain circumstances as set forth below, an employee may be eligible for up to twenty-six (26) workweeks of FMLA Leave.

[2] Leave taken under these circumstances must be completed within twelve (12) months of the birth or placement to which the leave relates.

[3] Qualifying exigencies may include handling issues arising from short-term deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, resting and recuperating and attending post-deployment reintegration briefings.

[4] The "per covered-servicemember, per-injury basis" means that an eligible employee may be entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious illness or injury, except that no more than twenty-six (26) workweeks of leave may be taken within any "single twelve (12) month period."

[5] In addition, in the event spouses work for the University, the total amount of FMLA Leave available to both spouses may be additionally limited in accordance with the FMLA.

*Policy Effective January 16, 2009*