Family and Medical Leave

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**Policy**

In compliance with the Federal Family and Medical Leave Act of 1993 (FMLA), the University provides its eligible employees up to 12 weeks of unpaid, job-protected leave in a 12-month period for qualifying family and medical reasons. The 12-month period in which leave may be taken begins on the date an employee uses any leave permissible under the FMLA. An employee’s position with the University will be guaranteed for the period of leave that is covered by the FMLA.

On January 28, 2008 and again on October 28, 2009 the National Defense Authorization Act extended the FMLA to provide broader leave coverage for family members of those serving in the armed services. The new entitlements run concurrently with all other existing leave entitlements under the FMLA.

**Employee Eligibility**

To be eligible for leave under FMLA, an employee must meet all of the following conditions:

1. The employee must have worked for the University for a total of 12 months.
2. The employee must have worked for the University at least 1,250 hours over the 12 months prior to the date leave is requested to commence.
3. The employee must work at a location where the University employs at least 50 employees within 75 miles.

**Leave Entitlement**

Eligible employees may take up to a total of 12 workweeks of leave during a specified 12-month period for one or more of the following reasons:

- The birth and care of the son or daughter of the employee.
- The placement of a son or daughter for adoption or foster care.

The FMLA defines a son or daughter as a “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is a) under 18 years of age; or b) 18 years of age or older and incapable of self-care because of a mental or physical disability.”

Spouses of employees who are also employed by the University are jointly entitled to a combined total of 12 workweeks of family leave for the birth and care of the newborn child or placement of a child for adoption or foster care. Leave for birth and care, or
placement for adoption or foster care must conclude within 12 months of the birth or placement.

- To care for an immediate family member (spouse, child, or parent) with a serious health condition.

- To take medical leave when the employee is unable to work because of a serious health condition.

Spouses of employees who are also employed by the University are jointly entitled to a **combined** total of 12 workweeks of family leave to care for a parent who has a serious health condition.

A **serious health condition** means an illness, injury, impairment, or physical or mental condition that involves either any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) due to:

1. A health condition lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
   - Treatment two or more times by or under the supervision of a health care provider whereby the first visit **must** take place within 7 days of the first day of incapacity and the second visit **must** occur no later than 30 days from the beginning of the period of incapacity; or
   - One treatment by a health care provider with a continuing regimen of treatment.

2. Pregnancy or prenatal care.

3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes).

4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer’s, a severe stroke, terminal cancer).

5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

- An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member or veteran may take up to 26 weeks of FMLA leave in a single 12-month period to care for the service member who is undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred while on active duty in the Armed Forces, including the National Guard and Reserves, as long as the service member or veteran was a member of the Armed Forces at any time during the five years preceding the date of treatment, recuperation or therapy.

A serious injury or illness is defined as one incurred by the covered service member in the line of duty on active duty in the Armed Forces or within five years of requiring
medical treatment, recuperation or therapy that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.

The next of kin is the nearest blood relative (other than a spouse, parent, son or daughter) in the following order of priority: a relative who has been granted legal custody of the covered service member, brothers, sisters, grandparents, aunts, uncles, and first cousins, or a specific blood relative who has been designated as a service member’s caregiver.

- An eligible employee who is the spouse, son, daughter, or parent being on, or called to active duty in either the regular Armed Forces deployed to a foreign country, the National Guard or Reserves, with up to 12 weeks of FMLA job protected leave for any qualifying exigency that arises while the covered family member is on active duty or called to active duty status in support of a contingency operation.

A qualifying exigency may be categorized as: (1) short notice deployment; (2) to attend military events and related activities; (3) to arrange, provide or attend to childcare and school activities; (4) to make or update financial and legal arrangements; (5) to attend counseling; (6) for rest or recuperation (to spend up to five days of leave with a covered military member who is on short term, temporary, rest and recuperation leave); (7) for post deployment activities; (8) additional activities.

**Intermittent Leave**

Under some circumstances, employees may take FMLA leave intermittently, that is, in blocks of time, or by reducing the normal weekly or daily work schedule. FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work. If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the University’s approval. An employee who takes intermittent FMLA leave must make reasonable efforts not to disrupt the University’s business operations when scheduling his or her leave.

**Procedures**

1. Employees who wish to request family or medical leave under the FMLA should contact the Benefits Office for information and to complete a Request for Leave form.

2. **Notice:** Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If the leave is unforeseeable, employees must contact the Benefits Office if they are out for more than five (5) days.

3. **Medical and Other Certifications:** For any qualified family or medical reason, or if the request is for an intermittent or reduced leave schedule, employees will need to provide the Benefits Office with medical certification and periodic re-certifications. In some cases, the University may at its own expense, require that a second or third medical opinion be obtained. Medical certification forms are available from the Benefits Office. In the case of adoption or foster care, the employee will need to provide the Benefits Office with supporting legal documentation.

4. During the leave period, employees are required to provide the University with periodic reports regarding their status and intent to return to work.
5. **Substitution of Paid Leave**: The University is not required to pay employees during periods of FMLA leave, however, any accrued sick time is applied at the commencement of the leave period, and employees have the option to use any accrued vacation time. FMLA leave runs concurrently with any paid or unpaid time off.

For administrators, sick time can only be applied when the leave is due to the employee’s own health condition. Staff can use sick time for their own health condition or that of an immediate family member. Any remaining FMLA leave is taken unpaid. During any unpaid portion of FMLA leave, paid leave (including sick, vacation, and holiday) does not accrue. (See the sick time policy, #402, for more information on the appropriate use of accrued sick time.)

6. **Continuation of Health Benefits**: While the University is not required to pay employees during the period of leave, employees are entitled to receive health benefits under any group health plan maintained by the University at the level and under the conditions that coverage would have been provided had they continued to be at work. Employees are notified of any premium payment schedule at the time their leave commences.

If an employee does not return to his or her position with the University after the leave period has ended, the University may recover any premiums due, unless the employee’s inability to return is due to personal illness.

7. Employees continue to be credited with service at the University during FMLA leave. See policy #126, Breaks in Service and Rehire, for information on continuous service credit.

8. **Job Restoration**: Upon return from FMLA leave, the University will restore the employee either to the employee’s original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment (a limited exception to this requirement exists for highly compensated employees, that is, the top 10%). **When an employee has exhausted the 12 weeks of leave under the FMLA, the University may recruit to fill the position or eliminate or restructure the position based on the needs of the department or the University.**

An employee’s failure to return to work after the expiration of FMLA may be interpreted by the University as a voluntary resignation. An employee who is unable to work at the expiration of FMLA leave may apply for an extension of the leave, if eligible, under the Americans with Disabilities Act (ADA). Please see policy #103 Disabilities in the Workplace for eligibility requirements. If the employee does not meet the criteria for an extension of his/her leave under the ADA, the employee may request a Personal Leave of Absence (see policy #501). An administrator who has accrued paid sick time balance remaining at the end of the FMLA-covered leave period should refer to the Sick Time policy #402.

At the end of the FMLA-covered period, if the employee does not return to work, or does not request or is not granted a Personal Leave of Absence, or when the employee exhausts all accrued sick time and the general leave of absence period expires, the employee will be terminated from employment with the University.