

FAMILY AND MEDICAL LEAVE OF ABSENCE (FMLA)

Purpose: To ensure compliance with the provisions of the Family and Medical Leave Act and to afford eligible employees with FMLA leave, reinstatement rights and other benefits for the Act.

Policy: This policy provides the guidelines for requesting and the terms of a leave of absence granted in accordance with the Family and Medical Leave Act to employees who must be out of work due to their own or a family member's illness, injury or physical or mental disability, childbirth, new baby care, foster placement or adoption or for qualifying reasons related to a covered family member's military service.

Date Approved: August 1, 2005

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Revised: April 1, 2010

Practices and Procedures:

Eligibility: Employees who have been employed with the University for twelve (12) months and who have worked at least 1,250 hours during the previous twelve (12) month period and work at a worksite in which at least 50 employees are employed within 75 miles of the worksite is eligible for FMLA leave under this policy, subject to the applicable criteria set forth in and as defined by the Family and Medical Leave Act, as amended.

Basic Entitlement: Under the FMLA, eligible employees may take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- For the birth of a son or daughter, and to care for the newborn child;
- For placement with the employee of a son or daughter for adoption or in foster care;
- When a serious health condition makes an employee unable to perform the employee's job; or
- When an employee needs to care for the spouse¹, son, daughter, or parent of the employee because the spouse, son, daughter or parent has a serious health condition.

Definition of "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

¹ Under this policy (FMLA and Military Family FMLA Leave), the term "spouse," shall be defined consistent with federal law.

functions 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 requirement may be met by a period of incapacity of 3 or more consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Employees with questions about what constitutes a serious health condition should consult with Human Resources.

Military Family Leave Entitlements: The FMLA also provides unpaid, job-protected leave to an otherwise FMLA-eligible employee for reasons related to the military service of an employee's covered family members. Except as mentioned in subsequent paragraphs, the obligations and rights under the FMLA, as set forth in this policy, shall apply to Military Family Leave.

Leave for a Qualifying Exigency: An eligible employee with a spouse, son, daughter or parent who is a member of the National Guard, Reserves or Coast Guard, or regular Armed Forces and is on active military duty or has been notified of an impending call to active duty and may take up to 12 weeks of leave during the twelve-month period to address certain qualifying exigencies. Qualifying exigency leave is also available to eligible employees whose spouse, son, daughter or parent is called to active status from retired status of the Regular Armed Forces

"Qualifying exigencies" may include, but are not limited to attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending post-deployment re-integration briefings. Employees should direct questions about the circumstances that constitute qualifying exigencies to Human Resources.

Military Caregiver Leave: An eligible employee who is the spouse, son, daughter, parent, or "next of kin" of "covered service member" is entitled to take up to 26 weeks of leave to care for the covered service member during a "single 12-month period." The "single 12-month period" for Military Caregiver Leave begins on the first day the employee takes leave for this reason and ends 12 months later. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period. (Only 12 of the 26 weeks may be for a FMLA-qualifying reason other than care for a covered service member).

A "covered service member" is a current member of the Armed Forces, including 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 service member medically unfit to perform his or her duties for which the service member is undergoing medical

treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. In addition, a “covered service member” includes a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Military Family FMLA leave shall run concurrently with other leave entitlements provided under federal, state and local law.

Timing and Amount of Leave

Eligible employees are entitled to up to 12 workweeks of unpaid leave within a “rolling” 12-month period measured from the date the employee last used FMLA leave, unless leave is taken to care for a seriously ill or injured covered service member. Under the “rolling” twelve-month period, each time an employee takes FMLA leave, the remaining leave entitlement, if any, is the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

When a husband and wife are both employed by the University and eligible for FMLA leave, each spouse is entitled to FMLA leave. The spouses are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for: (1) the birth of the employees’ son or daughter or to care for the child after birth; (2) for placement of a son or daughter with the employees for adoption or foster care, or to care for the child after placement; or (3) to care for the employee’s parent with a serious health condition.

Spouses employed by the University and eligible for FMLA leave are limited to taking a combined total of 26 work weeks in a “single 12 month period” if the leave is to care for a covered service member with a serious injury or illness .

Eligible employees who take FMLA leave for childbirth, adoption of a child, or placement of a foster child must complete their leave within the 12-month period beginning on the date of birth or placement.

Intermittent FMLA Leave or a Reduced Leave Schedule

FMLA leave for medically necessary reasons or for a qualifying exigency may be taken intermittently or on a reduced work schedule. An employee who takes intermittent leave in order to accommodate a schedule of planned medical treatment is required (subject to the approval of the appropriate health care provider) to make a reasonable effort to schedule the treatment so as not to unduly disrupt department operations. Where an employee requests intermittent leave or leave on a reduced hours basis when medically necessary to care for a family member (or next of kin, if applicable), the University has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for

which the employee is qualified and which better accommodates the intermittent leave or reduced hours leave than the employee's regular job. The temporary position will have equivalent pay and benefits as the employee's regular job.

An employee may request intermittent or reduced schedule leave after the birth of a child or the placement of a child for adoption or foster care. In these cases, an employee may take leave intermittently only if the University agrees.

Employees will be paid for hours worked and must use available paid time off as described above.

Requesting/Designation of FMLA leave and Other Procedures

a. Requesting Leave:

When the reason for leave is foreseeable, a "FMLA Leave Request Form" must be submitted to Human Resources at least thirty (30) days prior to the intended date upon which the leave will begin. When it is not feasible for the employee to provide 30 days notice, or when the need for FMLA leave is unforeseeable, an employee must provide the University with notice as soon as practicable, which generally means within one or two business days. All employees also must comply with the University's normal procedures for calling-in and requesting leave, unless unusual circumstances prevent the employee from doing so. Absent unusual circumstances, when an employee fails to comply with request for leave or call-in procedures, the University may delay or deny FMLA-protected leave.

If an employee is requesting leave for a reason for which he or she was previously granted FMLA leave, the employee should notify Human Resources that he or she is seeking leave for the same reason.

Where the necessity for leave is due to planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the University's operation, subject to the approval of the healthcare provider.

b. Notice of Eligibility and Employee's Rights and Responsibilities/ Designation of Leave

Once the University has received an employee's request for leave or has reason to believe that an employee's absence may be FMLA-related (generally, absent for three consecutive days for potentially FMLA-qualifying reason) the University will provide the employee with Notice of Eligibility and Rights and Responsibilities under the FMLA. This Notice informs the employee of his or her eligibility status for FMLA leave, and in some circumstances may request that the employee provide additional information to permit the University to make a determination as to whether the reason for leave is FMLA-qualifying.

c. Employee Must Provide Sufficient Information for the University to Designate Leave as FMLA-Protected

Employees must provide sufficient information for the University to designate leave as FMLA-protected, including the anticipated timing and duration of the leave. Depending upon the reason for the leave, sufficient information may include: that the employee is unable to perform his or her job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider; or circumstances supporting the need for military family leave. To obtain such information, the University may require the employee to cause to be completed and return the appropriate certification within 15 days.

Employees also may be required to provide a periodic recertification supporting the need for leave. In addition, the University may also require an employee to obtain a second or third opinion at the University's expense. Failure to provide sufficient information or to comply with certification or recertification requirements may result in the denial or delay of FMLA leave.

After the employee has submitted sufficient information, the University will inform the employee of its determination as to whether the leave will be designated as FMLA-protected.

d. Intent to Return to Work from FMLA leave

Based on the individual circumstances relating to an individual's leave situation, the University may require an employee on FMLA leave to report periodically on his or her status and intent to return to work.

When it is necessary for an employee to take more FMLA leave than originally anticipated, or where an employee is able to return to work earlier than anticipated, the employee must provide reasonable notice (generally 2 business days) of the change in circumstances by speaking with Human Resources.

Pay, Use of Sick, Vacation and Personal Time, Benefits Continuation During FMLA leave.

FMLA leave is unpaid. However, if FMLA leave is due to an employee's own serious medical condition, the employee may be entitled workers' compensation or short-term disability benefits. Employees should contact Human Resources for information and claims forms if applicable.

Employees are required to use accrued unused sick, vacation and/or personal time during an FMLA leave prior to commencing the unpaid portion of their FMLA leave. Available sick, vacation and personal time ("paid time off") will be substituted for unpaid FMLA leave and will be counted toward an employee's total FMLA leave entitlement until all paid time off is exhausted. The University will begin drawing upon an employee's paid time off as follows: First all sick days will be used (if applicable to the need for leave); then all personal time will

be exhausted, and then vacation time. During this time, if the employee is out of work for more than 10 days in any given month he/she will not accrue vacation, sick or personal time for that month.

An employee whose FMLA leave is intermittent will be required to use available paid time off to supplement his/her hours worked to bring the employee to 100% pay (but not to exceed it) until all paid time off is exhausted.

When an employee receives workers' compensation or short-term disability benefits, subject to the employee and employer's written agreement to supplement benefits with PTO, the amount of paid time off to be used will be limited to the amount needed to bring the employee to 100% pay (but not to exceed it) until all earned time is exhausted.

Group health insurance benefits will continue during an FMLA leave and employees are required to continue making co-pay contributions at the employee's pre-leave contribution rate. If any period of an FMLA leave is substituted for paid time off, any co-pay contributions will continue to be paid by payroll deduction.

However, if the employee is not receiving paid time off monies, must be made in the manner designated by the University. Employees will be notified in writing of the terms and conditions under which payments must be made. If an employee elects to continue any non-health related benefit (e.g., life insurance, long-term disability insurance) while on leave, he or she will be required to pay the employee's normal costs associated with maintenance of the benefits.

In the event an employee does not return to work at the conclusion of a FMLA leave and subject to any applicable laws, the University may recover any sums it has paid for health or other health benefits paid by the University through any allowable deduction from any sums owed to the employee or through legal action.

Employees do not accrue sick, personal, holiday or vacation time while on continuous FMLA Leave. When on intermittent leave, if the FMLA is for over 80 hours in any given month, the employee does not accrue paid time off during that month.

Expiration of FMLA/Return to Work

When it is necessary for an employee to take more FMLA leave than originally anticipated, or where an employee is able to return to work earlier than anticipated, the employee must provide notice, within 2 business days if possible, of the change in circumstances by speaking with Human Resources.

Generally, when an eligible employee's FMLA leave ends, the employee will be reinstated to his/her same or an equivalent position for which the employee is qualified with equivalent pay, benefits and other terms and conditions of

employment, unless the employee would not otherwise have been employed at the time reinstatement is requested, for example, s/he would have been laid-off during the FMLA period. And, the University may deny job restoration if the employee is a “key employee” (defined as a salaried FMLA-eligible employee who is among the highest paid 10% of the University’s employees within a 75-mile radius of the facility at which the employee is employed) whose reinstatement would cause substantial and grievous economic injury to the operations of the University. (In this situation, the University will notify the employee prior to commencement of FMLA leave if he/she will not be restored to his/her position following the FMLA leave.)

Employees on FMLA because of their own injury or illness will not be permitted to return to work without a work release from his/her physician with our without restrictions. This information must be provided to Human Resources before the expiration of the FMLA, preferably 2 days before the anticipated return to work date. An employee’s failure to timely provide the University with a work release certifying the employee can return to work may result in the delay or denial of reinstatement.

If an employee is unable to return to work at the expiration of his/her FMLA leave entitlement, his/her reinstatement right under the FMLA ends.

Employees, who, after having exhausted their FMLA leave entitlement, are unable to return to work; or, who cannot be returned to their former or equivalent position; or, have not been granted an extension of their leave of absence, may be separated from employment.

Requesting Additional Leave

At the expiration of an employee’s 12-week FMLA leave entitlement; the employee may be eligible for additional leave under the University’s Leave of Absence Policy. Additional leave requests must be made at least 5 business days before the expiration of the employee’s current leave by completing another “Leave of Absence Request Form” and submitting the completed form along with any supporting medical or other documentation to Human Resources. Subject to applicable law, the University shall permit or deny additional requests for leave in its sole discretion.

Time Card Entries While On Intermittent FMLA

Employees on intermittent leave should record intermittent leave time away from work as “FMLA”. In addition, the time card should reflect the total number of hours absent each workday due to FMLA. The employee’s paid time off will be drawn upon as described above, until all paid time off is exhausted. When an employee on intermittent FMLA has used all paid time off, FMLA hours are unpaid.

Discrimination and Retaliation Prohibited

An employee's rights under the FMLA may not be unlawfully interfered with, restrained or denied. Persons exercising their rights under the FMLA are protected from unlawful retaliation or discrimination. The FMLA does not affect the application of any state or federal law prohibiting discrimination.

If an employee has a concern related to the exercise of his or her rights under the FMLA, he or she should immediately notify Human Resources. The University will promptly investigate the matter and take appropriate action as warranted by the circumstances.

Employees may obtain additional information concerning their rights related under the FMLA the FMLA from the U.S. Department of Labor.

Coordination with Other Statutes

The FMLA does not supersede any provision of any state law that provides greater family or medical leave rights than the rights established under the federal law. Leave entitlements under state law and the FMLA run concurrently where both laws cover the same type of leave.