



		<b>Policy Section:</b>	Institutional Support
<b>Policy Number:</b>	5521-08	<b>Policy Title:</b>	Family and Medical Leave
<b>Original Effective Date:</b>	1/1/05	<b>Department:</b>	Human Resources
<b>Date Last Revised:</b>	6/3/16		

**Purpose:**

This policy addresses the University’s implementation of the 1993 Family and Medical Leave Act (“FMLA”), including the National Defense Authorization Act’s (NDAA) provisions for military family leave which took effect January 28, 2008.

**Definitions:**

FMLA:

- Provides mandated family and medical leave benefits to eligible employees to take up to the equivalent of 12 weeks of leave during a 12-month period for one or more of the following qualifying reasons:
  - For the birth or adoption of a child or the placement of a child with the employee for foster care;
  - To care for the employee’s own serious health condition which causes him/her to be unable to perform his/her job function;
  - To care for a spouse, child or parent with a serious health condition;
  - For a “qualifying exigency” that arises when a spouse, child, parent or next of kin is on active duty or is notified of an impending call to active duty status in support of a military operation.
- Provides mandated military family leave benefits to a spouse, child, parent, or next of kin of an injured or ill covered U.S. military service member to take up to 26 work weeks of unpaid leave during a 12-month period to care for the service member. 26 weeks of leave per 12-month period is the maximum FMLA leave allowed, including leave taken for military related reasons only, or a combination of military and non-military related reasons.

Covered Service Member – A member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status or on the temporary disability retired list, for a serious injury or illness.

Intermittent Leave – leave that is taken in separate blocks of time for a single qualifying reason, rather than during a continuous period. Such leave may be taken for a period of hours or a period of days, thus reducing the employee’s normal work day or workweek. Reasonable efforts must be taken to schedule planned medical treatments so as not to disrupt unduly the University’s operations.

Next of Kin – a spouse, child, parent or the nearest blood relative of a service member.

Qualifying Exigency – Situations such as escorting a service member who is being deployed to the place of departure; meeting a service member returning from active duty; handling economic issues resulting from a service member’s deployment, or undertaking related financial planning; and managing childcare issues caused by the immediate family member’s deployment.

Rolling 12-month Eligibility Period – To determine eligibility and the amount of FMLA leave for which an employee is entitled, a rolling 12-month period is used. On each occasion that an employee seeks to utilize FMLA leave, the eligibility will be determined as below (see Eligibility), and the amount of leave available

would equal the difference between any leave already used in the immediately-preceding 12 months and the full allotment of 12 weeks (26 weeks if military family leave is involved).

Serious Health Condition – a non-military related illness, injury or impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility, or;
- Any period of incapacity requiring absence of more than three calendar days from work, school or other regular daily activities, and that also involves continuing treatment by or under the supervision of a health care provider, or;
- Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; and for prenatal care.

Serious Injury or Illness – An injury or illness incurred by service members while on active duty that may render them medically unfit to perform the duties of their office, grade, rank, or rating.

Work-Related Injury or Illness – An injury or illness which occurs in the course of an employee’s performance of job-related duties.

**Eligibility:**

Employees who have worked for the University for at least 12 months and at least 1,250 hours during the 12-month period immediately preceding the leave are eligible for FMLA leave. Employees are eligible for no more than 12 weeks of FMLA leave within a rolling 12-month period.

Married couples employed by the University are jointly eligible for a combined total of 12 weeks of family leave for the birth or placement of a child for adoption or foster care. Leave for birth or adoption or foster care placement must conclude within 12 months of the birth or placement.

**Procedures:**

1.0 Employee Request for and Notification of Leave

- 1.1 Employees are required to contact their supervisor to request FMLA-qualifying leaves of absence in advance of the leave whenever possible. Leaves are to be requested or confirmed in writing by completing the required FMLA forms, as applicable (see 1.3, below).
  - 1.1.1 If the leave is for the birth or placement of a child or for planned medical treatment, including caring for a covered service member, the employee is to give notice at least thirty (30) days in advance of the date on which the leave is to commence, or as soon as is reasonable and practicable.
  - 1.1.2 When medical emergencies prevent advance request for leave, employees are to verbally request leave from their supervisors at the earliest possible time. The leave is to be confirmed in writing as soon as practicable thereafter.
- 1.2 Supervisors and employees are to direct all inquiries about FMLA leave to the Department of Human Resources. Supervisors are to notify the Department of Human Resources as soon as possible following notification of an employee’s potential need for leave.
- 1.3 The Department of Human Resources will provide the employee, either directly or through the employee’s supervisor, with a Request for Leave of Absence Covered Under the Family and Medical Leave Act form.
- 1.4 If the leave is for the employee’s, or an eligible family member’s serious health condition, the employee may be required to produce:

- 1.4.1 Certification of Health Care Provider for Employee's Serious Health Condition, to be completed if the leave is due to the employee's serious health condition.
  - 1.4.2 Certification of Health Care Provider for Family Member's Serious Health Condition to be completed if the leave is due to eligible family member's serious health condition.
  - 1.4.3 Periodic reports during the term of the employee's leave regarding his/her or the eligible family member's status and the employee's intent to return to work; and
  - 1.4.4 A fitness for duty certification to return to work, if applicable.
- 2.0 Use of Intermittent Leave
- 2.1 Method of Calculation

The amount of leave available on an intermittent basis is calculated by prorating the employee's normal workweek to an hourly basis. Employees working a 40 hour week, for example, will be entitled to a total of 480 hours of leave; employees working a 30 hour week will be entitled to a total of 360 hours of leave, etc. If an employee's schedule varies, an average of hours worked over the 12 weeks before the beginning of the leave is to be used to calculate an average workweek.
  - 2.2 Use of Intermittent Leave in the Case of a Serious Health Condition

The employee's leave may be intermittent if medically necessary as required by either the employee's or the eligible family member's medical condition. Intermittent leave is limited to times that are scheduled for treatment, recovery from treatment, or recovery from illness. This includes both periods of disability due to a chronic serious health condition and time taken to provide care or comfort when such psychological care would prove beneficial to the patient.

    - 2.2.1 Notification from the employee's or family member's health care provider must be provided to substantiate the reason for use and scheduling requirements of intermittent leave.
    - 2.2.2 Intermittent leave, when used for the employee's own serious health condition, is limited to leave that is requested, scheduled, and approved in advance; it does not apply to general, unscheduled use of sick/personal time.
  - 2.3 Use of Intermittent Leave in the Case of Birth or Adoption

When FMLA leave is for the birth or placement for adoption or foster care, approval for use of intermittent leave must be obtained from the employee's supervisor and the Department of Human Resources. Approval must be requested in writing and submitted to the employee's supervisor. Intermittent leave used for this reason expires 12 months after the event.
  - 2.4 Since the University may continue a percentage of pay during use of intermittent leave, the University will temporary track specific hours for exempt employees as non-exempt for purposes of maintaining accurate attendance and pay records. This does not change the exempt status of these positions.
- 3.0 Pay During Leave
- 3.1 Unused PTO must be substituted for unpaid leave to the extent that it is available. Except for reasons of employee's own illness, remaining leave time following use of PTO will be considered unpaid FMLA leave.
    - 3.1.1 For example, if an employee has ten days of PTO and requests an FMLA leave, the employee will be required to use the ten (10) days of PTO as part of the FMLA leave and will be paid for that period. Thereafter, the employee will be entitled to ten (10) weeks of remaining FMLA leave, unpaid.
  - 3.2 University-observed holidays are paid to employees who are otherwise eligible for paid-time off benefits. Time off for paid holidays that fall within the leave period is counted as leave time.

- 3.3 When FMLA is used for the employee's own illness, short-term disability pay will be continued through the leave following the employee's use of available personal PTO. (Please see Short-Term Disability, Policy 5521-21.)
- 3.4 When FMLA leave also involves an employee's work-related injury, the following applies:
  - 3.4.1 Pay for full days of absence of 1 to 7 days (the workers' compensation waiting period) are paid by the University. Employees are not required to use accrued, unused sick/personal or vacation time during this week.
  - 3.4.2 Reimbursement of a portion of compensation for full days off in excess of 7 days is made to the University by the workers' compensation insurance carrier. The University continues full pay to employees who qualify for FMLA, and who are placed on a leave of absence for medical reasons due to the work-related injury or illness.
  - 3.4.3 Continuation of pay for leave used on a partial day (intermittent leave) basis is not provided by Worker's Compensation, and is provided by the University, on a prorated hourly basis. Employees will be required to first use available sick/personal or vacation time.
    - 3.4.3.1 Employees may use intermittent FMLA to attend doctor's visits or obtain other medical services related to the work-related injury or illness. However, accrued, unused sick/personal time must first be used.

#### 4.0 Record-keeping

It is the responsibility of the employee's supervisor to oversee that attendance records showing the employee's absence due to FMLA leave, both paid and unpaid, are maintained. Please refer to 5521-05, Attendance and Timekeeping. The Department of Human Resources will assist in establishing a customized FMLA timesheet for employees whose leave involves intermittent leave, unpaid leave, and/or short-term disability.

#### 5.0 Continuation of Benefits

- 5.1 Benefits for which an employee is eligible prior to the leave are continued throughout the leave period.
  - 5.1.1 An exception to the above: Employees taking leave due to their own serious health condition may not enroll in courses under the University tuition remission program. Employees taking classes and using tuition remission at the time the need for leave due to their own serious health condition arises, may continue in the classes in which they are currently enrolled, but may not enroll in future courses until they return to active employment status.
- 5.2 Employees using unpaid leave are required to make arrangements for payment of employee contributions to medical, dental, flexible spending account and other benefits in which contributions are normally made through payroll deduction during active employment and the employee is enrolled. Although FMLA does not mandate that contributions applicable to unpaid portions of the leave period be paid before the employee returns from leave, the employee may elect to pay all or a portion of the contribution amounts prior to, during, or following the leave period. Arrangements may be made to increase payroll deductions before and/or after unpaid periods of leave to allow the employee to spread payments out and to continue to benefit from the reduction in taxable income if pre-tax deductions for contributions have been authorized.
  - 5.2.1 Employees are to discuss payment arrangements with the Department of Human Resources.
  - 5.2.2 If an employee fails to return to work after the expiration of the FMLA leave, the University is permitted by law to recover the cost of the premiums it paid to maintain

benefits during the term of the leave. The University reserves the right to seek reimbursement of all sums paid for insurance premiums should the employee fail to return to work after his/her leave has expired.

6.0 University's Responsibilities

6.1 The University will fulfill its responsibilities under the FMLA as follows:

- 6.1.1 Restore the eligible employee to the same job or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment;
- 6.1.2 Retain the employee's benefits and service time in the same manner as would have been the case had the employee not taken leave.
- 6.1.3 Will not discharge or discriminate against any employee for requesting or taking a leave of absence under the FMLA or because of any involvement in any proceeding relating to the FMLA.

6.2 If an employee believes that the University has violated his/her rights under the FMLA, the employee has the right to file a complaint with the U.S. Department of Labor, Wage and Hour Division, or to file a civil lawsuit. Questions regarding rights under the FMLA should be addressed to the Department of Human Resources.

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President Cabinet Representative

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Date