



LONG ISLAND UNIVERSITY

FAMILY AND MEDICAL LEAVE ACT Policy

PURPOSE

The Family and Medical Leave Act and its regulations are executed by this FMLA Policy. The Act, as enforced by the U.S. Department of Labor, Wage and Hour Division is linked here: <https://www.dol.gov/general/topic/benefits-leave/fmla>

STATEMENT OF POLICY

The Family and Medical Leave Act ("FMLA") is a federal law which requires that an eligible employee be granted up to 12 work weeks (or the equivalent of 60 work days) of unpaid, job protected, leave during any 12-month period, for any one or combination of the following reasons:

- The birth of a child of the employee and to care for the employee's newly-born child;
- The placement with an employee of a child for adoption or foster care;
- The care of an employee's spouse, son, daughter, or parent with a serious health condition;
- The employee's own serious health condition which renders the employee unable to perform his/her job duties, or
- To address a qualifying exigency due to the employee's spouse, son, daughter, or parent's service as a covered military member in the National Guard, Reserves or on active duty, or notice of an impending call or order to active duty in support of a contingency operation.
- To take up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.

Military Caregiver Leave

The FMLA also requires that an eligible employee be granted up to 26 work weeks of unpaid, job protected, leave during a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.

The 26 weeks may be taken for the sole purpose of Military Caregiver Leave or in combination with other leaves.

Leave Eligibility

Employees are eligible for leave if they have been employed with the University for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding commencement of the leave.

- The 12 months of employment need not be consecutive months. However, parameters for breaks in service under the FMLA and regulations implementing the FMLA must be followed. All periods of time when the employee was on the payroll, including casual and temporary employment, count toward determining eligibility.
- For purposes of calculating the requisite 1,250 hours, all periods of actual time worked will be included. Periods for holiday and paid or unpaid leave which are not considered work time under the Fair Labor Standards Act (FLSA) do not count towards the 1,250-hour threshold.

The 12 Month Period

The 12-month period is calculated as a "rolling" 12-month period, measured backward from the date an employee first uses FMLA leave. That is, when a leave is requested, the University will "look back" over the last 12 months to determine the amount of FMLA taken during that period. The amount of leave already taken during that 12-month period will be deducted from 12 weeks to yield the maximum amount of FMLA leave currently available.

The "single 12-month period" to care for a covered service member with a serious injury or illness under Military Caregiver Leave is calculated forward, beginning on the first day the employee takes leave to care for the covered service member and ending 12 months after that date.

FMLA and Other University Leaves

FMLA leave runs concurrently with other University and State-required leaves. Employees on FMLA leave for their own serious health condition are required to first use all available accrued sick leave, concurrently. On exhaustion of the employee's accrued sick leave, the employee is required to use all available accrued personal, vacation, and floater/holiday leave time, concurrently with the FMLA leave. Employees on leave for any reason authorized under this policy are required to use all available accrued personal, vacation, and floater/holiday leave time concurrently with the FMLA leave.

On exhaustion of all applicable paid leave, the remainder of any FMLA leave will be unpaid. Any combination of paid and unpaid FMLA leave may not exceed 12 work weeks in the 12 month period. If the employee continues to be unable to return to work upon the exhaustion of his/her FMLA leave due to his/her own serious health condition, the employee may request a leave of absence, pursue disability options, or be granted an accommodation. At no point shall any continued leave be counted as FMLA leave unless and until the employee again satisfies the requisite eligibility requirements.

Employees on intermittent or a reduced work schedule accrue leave in proportion to the hours actually worked. Employees do not accrue sick, vacation, personal, or floater/holiday leave while on unpaid FMLA leave, for any reason. Holidays have no impact on FMLA leave. If a holiday falls in a week when an employee is on such leave, the employee does not get "credit" for the holiday; the time is treated as part of the FMLA leave.

If a collective bargaining agreement sets forth a family and medical leave policy, that policy will govern where it is more generous than this policy.

Utilization of Intermittent or Reduced Leave

In circumstances where a health care provider determines and certifies in writing that, due to the employee's own or qualifying family member's serious health condition, it is medically necessary to take

leave intermittently (in blocks of time) or by reducing the employee's normal weekly or daily work schedule, such leave will be permitted if feasible.

The University will account for the intermittent or reduced leave using increments no greater than the shortest period of time that the University uses to account for use of other forms of leaves (within the employee's classification group) provided that the increment is not greater than one hour and provided further that the employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

Employees who require intermittent or reduced schedule leave should make a reasonable effort to schedule their leave to minimize disruption of their department's operation. During any period of intermittent leave or reduced schedule, the University reserves the right to transfer the employee to an alternative position for which the employee is qualified and which may better accommodate the periods of leave than the employee's regular position.

When the employee has requested reduced schedule or intermittent leave because the employee has planned medical treatments for his or her own health condition, the employee's medical certification must include the dates on which such treatment is expected, as well as the duration of the treatment.

PROCEDURES

Requesting an FMLA Leave

Notice and Medical Certification Submission

- The University may preliminarily designate absences for more than 3 consecutive days as FMLA Leave.
- Medical information of employees is maintained in strict confidence and only disclosed to those with a "need to know" to make decisions in administering these procedures. Employees must timely inform both their supervisor and Human Resources, through Benefits Administration, that they need family or medical leave and how long they expect to be absent. Supervisors should not ask or inquire about the reasons for the employee's leave request. Instead, to ensure the employee's privacy, Human Resources will make any necessary inquiries and evaluate whether the leave request should be approved.
- Eligible employees requesting FMLA leave should contact Human Resources to obtain a leave request form and a medical certification form (WH-380-E or WH-380-F); a military family leave certification for serious injury or illness (WH-385); or a military family leave certification of exigency (WH-384).
- The employee should return to Human Resources the appropriate leave request form at least 30 days in advance for foreseeable leaves, or as much time as practicable in advance of an unanticipated leave. Where the leave is for an unforeseeable circumstance, the employee must inform their supervisor and Human Resources as soon as practicable. The medical certification form is to be completed by the attending health care provider and returned to Human Resources before the leave begins, if possible, but in any event, no later than 15 business days after commencement of the leave.
- Medical certification that is not received in a timely fashion may result in a delay or denial of an employee's FMLA Leave.

FMLA Leave Authorization and Medical Certification

- When the employee requests FMLA leave or requests leave that may be for a FMLA purpose, the University will provide the employee with a Notice of Eligibility and Rights and Responsibilities form (WH-381) which notifies the employee of his or her eligibility to take leave, and informs the employee of his/her rights and responsibilities under the FMLA. The Notice of Eligibility and Rights and Responsibilities form may be provided to the employee prior to or with any of the requested certification forms.
- The University will respond to the employee's certification application with a Designation Notice (WH-382) within 5 business days. In its response, the University may approve the application and designate the leave as FMLA leave, deny the application, or notify the employee that the certification was incomplete and give the employee 7 days to cure the deficiency, among other things. If 7 days is not practicable under the employee's particular circumstances, the University will grant an extension.
- For purposes of authorizing and formally designating FMLA leave, the University, through Human Resources, may communicate with the employee to correct any deficiencies on his/her medical certification or directly contact his/her health care provider for clarification of the medical certification.
- If a medical certification is deficient, or the validity of the certification is suspect, the University reserves the right to challenge the certification and require the employee to see a health care provider selected and paid for by the University. Should this second health care provider's certification differ with the employee's health care provider, the University at its election and cost may seek a third health care provider to review the employee's condition. The third health care provider's decision is binding.
- The University, in accordance with FMLA, may require periodic medical certification updates as deemed appropriate to assess the employee's status and ability to return to work, or to support an extension of leave beyond the original certification period. The University may also request that a medical condition be recertified but no more often than every 30 days.
- In the event an employee and his/her spouse are both employees of the University, the spouses are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent (but not parent-in-law) who has a serious health condition to a combined total of 12 workweeks.
- All employees leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.
- The University, in accordance with FMLA, may require periodic medical certification updates as deemed appropriate to assess the employee's status and ability to return to work, or to support an extension of leave beyond the original certification period. The University may also request that a medical condition be recertified but no more often than every 30 days in connection with an absence by an employee.

Health Benefits

During FMLA leave, group health benefit coverage will be maintained as if the employee had been continuously working during the FMLA leave period. If the employee's premium payment obligations under the applicable plan are not covered by the employee's paycheck, the employee will have to provide the University with a check or money order in the appropriate amount. Specific questions may be directed to Human Resources. In the event that an employee fails to return from leave, he or she

may be required to reimburse the University for any health insurance contributions made during any unpaid period of leave. If, at any time, the employee fails to receive a paycheck, the employee will be expected to make arrangements with a benefits representative in the Human Resources Department to insure payment of the employee's share of the benefit cost.

Job Restoration and Medical Certification

- Employees have the right to return to their position or a position of equivalent pay, benefits, and other employment terms and conditions, upon completion of their FMLA Leave.
- In circumstances where the employee would not have been employed at the time reinstatement is requested, regardless of FMLA status, due to reorganization, reduction in force, or grant or term position, or if the employee was a "key employee" and reinstatement would cause economic harm to the University, the employee has no entitlement to job restoration.
- The University requires that an employee provide an acceptable fitness for duty certificate to Human Resources Benefits prior to reinstatement. Failure to provide a medical certificate of fitness for duty, or failure to return to work as scheduled after the exhaustion of the 12 work weeks of FMLA leave entitlement, may result in a denial of job reinstatement or termination from employment.
- The University will permit "light duty" return to work only where practicable and where there is no disruption in department operations.

DEFINITIONS

The following definitions are subject to modification to conform with regulatory change.

Spouse. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Parent. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law."

Son or daughter. For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

- "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
- "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j) issued by

the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

- Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Next of kin of a covered service member. "Next of kin of a covered service member" means the nearest blood relative other than the covered service member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

Adoption. "Adoption" means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave.

Foster care. Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Son or daughter on active duty or call to active duty status. "Son or daughter on active duty or call to active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

Son or daughter of a covered service member. "Son or daughter of a covered service member" means the service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the service member stood in loco parentis, and who is of any age.

Parent of a covered service member. "Parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents "in law."

Documenting relationships. For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.* The employer is entitled to examine documentation such as a birth certificate, *etc.*, but the employee is entitled to the return of the official document submitted for this purpose.

Leave because of a qualifying exigency. Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on active duty or called to active

duty status as defined for one or more of the following qualifying exigencies:

- **Short-notice deployment** to address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment. Leave may begin on the day the covered military member is notified of an impending call or order to active duty in support of a contingency operation.
- **Military events and related activities** to attend any official ceremony, program, or event sponsored by the military that is related to the active duty. To attend family support or assistance programs and informational briefings sponsored or promoted by the military.
- **Childcare and school activities** to arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child. To provide childcare on an urgent immediate need basis (but not on a routine, regular, or everyday basis). To enroll in or transfer a child to a new school or day care facility, when enrollment or transfer is necessitated by the active duty status of a covered military member. To attend meetings with staff at a school or daycare facility when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered service member.
- **Financial and legal arrangements** to make or update financial or legal arrangements to address the covered service member's absence while on active duty. To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits.
- **Counseling** to attend counseling provided by someone other than a health care provider for oneself, for the covered service member, or for the child provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
- **Rest and Recuperation** To spend time with a covered military member who is on short term temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance.
- **Post Deployment activities** to attend arrival ceremonies.
- **Additional activities** to address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Serious health condition. An illness, injury, impairment or physical or mental condition that involves the following:

Inpatient care in a hospital, hospice or residential medical care facility. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- A period of incapacity for more than three consecutive calendar days and treatment that involves:
 - Treatment two or more times by a health care provider within the first 30 days, the first visit occurring within the first 7 days, or
 - Treatment by a health care provider on at least one occasion which results in a regiment of continuing treatment.
 - A period of incapacity due to pregnancy or for prenatal care.

- A period of incapacity or treatment due to a chronic serious health condition, which:
 - Requires periodic visits (defined as at least twice a year) for treatment by a health care provider,
 - Continues over an extended period of time, and
 - May cause episodic rather than continuing periods of incapacity.
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Examples include: Alzheimer's, a severe stroke or terminal stages of a disease.
- A period of absence to receive multiple treatments by a health care provider or by the provider of healthcare services under orders of or on referral by a health care provider, either for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis or kidney disease.

Note: Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, *etc.*, are examples of conditions that do not meet the definition of a serious health condition, thus do not qualify for FMLA leave. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

Health Care Provider. A health care provider is defined as:

- Doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices,
- A podiatrist,
- A dentist,
- A clinical psychologist,
- An optometrist,
- A chiropractor,
- A nurse practitioner,
- A nurse-midwife,
- A physician assistant,
- A Christian Scientist practitioner,
- A clinical social worker, or
- Other persons determined by the United States Secretary of Labor to be capable of providing health care services.

Note: The federal law places restrictions on specific purposes under which chiropractors and Christian Science practitioners may be health care providers; an employee should check with Human Resources for further clarification on the use of such practitioners

Covered Active Duty. Covered active duty for members of a regular component of the Armed Forces means duty during deployment of the member of the Armed Forces to a foreign country. "Covered Active duty" for members of the reserve components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

Covered Service member. A member of the Armed Forces, including a member of the Armed Forces and a veteran of the Armed Forces, who is undergoing medical treatment, recuperation, or therapy, is

otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious illness.

Outpatient Status with respect to a covered service member, means the status of a member of the Armed Forces assigned to:

- a military medical treatment facility as an outpatient; or
- a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury or Illness for a service member. In the case of a member of the Armed Forces including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Key Employee. A person is a key employee if reinstatement after leave would cause "substantial and grievous economic injury" to University operations. Those employees must be salaried and paid in the highest 10% of all employees in the company.

APPROVAL

PRESIDENT

Signature _____ Date _____

POLICY TYPE: OPERATIONS