

WAYNE STATE UNIVERSITY

ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

3.4.5 Family and Medical Leave Act

POLICY

The University is a covered employer under Title I of The Family and Medical Leave Act of 1993. The Employment Service Center is responsible for administering this policy.

Definitions:

1. Consecutive Leave

A consecutive FMLA leave is taken in one continuous block of time from the start of the leave until the end of the leave.

2. Family Member

“Family member” includes the employee’s spouse, son, daughter, or parent (but not a parent “in-law”). A “son” or “daughter” is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day to day basis and for whom the employee is financially responsible. A “son” or “daughter” is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent may be an individual who assumes day to day and financial responsibility for the employee when the employee was a child. *Parent does not include an in-law or grandparent.*

3. Intermittent Leave

An intermittent FMLA leave is taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Leave must be taken in two hour increments.

4. Health Care Provider

A “health care provider” is any doctor of medicine or osteopathy, podiatrist, optometrist, and nurse practitioner, or nurse midwife performing within the scope of their practice as defined under state law. Christian Science practitioners and Chiropractors are health care providers to the extent defined under regulations issued by the U.S. Department of Labor.

5. Paid Time Off*

- a. Illness Bank - Illness days with pay for all personnel working at least half-time.
- b. Vacation - Salaried staff members with appointment of half-time or more are entitled to vacation in proportion to the fraction of time worked, e.g., a person with

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a 4/5 time appointment accrues/earns vacation time at 80% of the full time rate.
Persons with nine-month assignments are not entitled to vacation time.

- c. Personal Time
 - i. Floating holidays – schedule at the option of the employee with the approval of the unit administrator
 - ii. Special needs days
 - iii. Attendance at the funeral of a person not in the immediate family (up to 7.5 hours per occurrence)
Care of member of the immediate family (up to 15 consecutive hours per occurrence) up to a total of 37.5 consecutive hours per each death of a member of the immediate family.
- d. Any purpose days

*As may be defined by university policy and collective bargaining agreements.

6. Reduced Schedule

A reduced leave schedule is an intermittent FMLA leave that reduces an employee's usual number of working hours per workweek, or hours per workday. The reduced hours are considered intermittent FMLA leave and are counted against the 12 weeks annual leave available under FMLA for a family or personal serious health condition or a combined total of 26 weeks for a service member family leave during a 12-month period.

7. Rolling 12-Month Period

Calculate available leave by determining the amount of leave used by an employee for the 12 months prior to each day for which leave is requested and subtracting that number from the total number of days equal to 12 work weeks. This is referred to as the “rolling” method of calculation.

The determination of whether or not the employee has worked 1250 hours in the previous year to eligible for FMLA also uses a rolling 12 month period.

8. Serious Health Condition

“Serious Health Condition” is defined as an illness, injury, impairment or physical or mental condition that involves a period of incapacity or treatment following in-patient care (overnight stay) in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three days absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable; or pre-natal care.

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“Incapacity” occurs when the employee is unable to perform work at all or cannot perform any one of the essential functions of the employee’s position.

9. Spouse

Spouse is defined by the applicable state law.

10. Active Duty

The term “active duty” means duty under a call or order to active duty under a provision of law.

11. Covered Service Member

A member of the Armed Forces, including a member of the National Guard or Reserves, 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 injury or illness.

12. Outpatient Status

The term “outpatient status” with respect to a covered service member, means the status of a member of the Armed Forces assigned to:

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

13. Next of Kin

The nearest blood relative of that individual.

14. Serious Injury or Illness

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 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.

Family and Medical Leave Act

The Family and Medical Leave Act of 1993 is a federal law enacted to help employees balance their work and family life and to promote the stability and economic security of families. It allows eligible employees to take job-protected unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks during a 12-month period for a family or personal serious health condition which qualifies under FMLA or a combined total of 26 weeks for a service member family leave during a 12-month period.

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Employee Eligibility:

Employees who have worked for Wayne State University (WSU) for a total of 12 months (may have been intermittent employment) and having at least 1,250 work hours during the 12-month period immediately preceding the commencement of Family Medical Leave Act (FMLA) leave.

The 1,250 hours requirement is counted only for hours actually worked and does not count hours spent on vacation, sick, and personal leave, etc. However, under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), employees called for active (or National Guard) duty are entitled, upon their return to employment, to all the benefits of employment that they would have obtained if they had been continuously employed.

Leave Entitlement:

This policy generally describes the university's FMLA leave policy. It is not intended to grant greater FMLA benefits than those provided by law, regulations or any collective bargaining agreement.

A. Employees are entitled to FMLA leave:

1. For the birth and care of the newborn child anytime within the first 12 months of the birth of the child, *includes leave related to prenatal care*;
2. For the placement of a child for adoption or foster care anytime within the first 12 months of the placement;
3. To care for a family member (see definitions) with a serious health condition; or
4. To take medical leave when an employee is unable to work because of serious health condition (see definitions).
5. SERVICE MEMBER FAMILY LEAVE

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered SERVICE MEMBER shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the SERVICE MEMBER. The leave described in this paragraph shall be only available during a single rolling 12 month period.

6. COMBINED LEAVE TOTAL

During the single rolling 12 month period described in "5". SERVICE MEMBER FAMILY LEAVE, an eligible employee shall be entitled to a combined total of 26 workweeks of leave under "Employee Eligibility," "Leave Entitlement" and "SERVICE MEMBER FAMILY LEAVE" sections. Nothing in this paragraph shall be construed to limit the availability of leave under "Employee Eligibility" and "Leave Entitlement" sections during any other 12 month period.

7. Spouses employed by WSU are jointly entitled to a combined total of 26 weeks for a service member family leave, the birth and care of a newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

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8. Paid/Unpaid Leave

The FMLA leave may be paid, unpaid or a combination of paid and unpaid depending upon the circumstances and as specified in this policy. FMLA leave is concurrent with existing maternity and other paid/unpaid leaves of absence taken for FMLA reasons.

A. Employees who take leave because of their own serious health conditions or to give birth to a child must exhaust paid leave before being eligible for unpaid leave in the following order:

- i. Accrued Illness Banks
- ii. Vacation Banks
- iii. Personal Business Time (see definitions)

B. Employees who take a service member family leave or a leave for the birth, adoption, or foster care of a child or to care for a seriously ill spouse, child, or parent must use all accrued vacation and personal business time respectively (see definitions) before being eligible for unpaid leave. The use of accrued illness bank is not permissible.

9. Maintenance of Health Benefits

An employee may continue medical and dental benefits under the same conditions and at the same cost as if the employee had continued to work.

Payroll deduction of benefit premiums will continue while the employee is on paid FMLA leave. Benefit premiums due during unpaid FMLA leave will be billed to the employee.

If an employee chooses not to return to work for reasons other than a continued serious health condition, WSU will require the employee to reimburse the university the amount the university paid for the employee's health insurance during the leave.

Return to Work

An employee who takes a leave under this policy will be returned to the same or an equivalent position with the same benefits and terms of employment. In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Employees returning from a medical FMLA leave will be required to present medical documentation of fitness for duty. Failure to provide a medical documentation of fitness for duty may result in a denial of job reinstatement until medical certificate release is provided.

Notice and Certification

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Employees are expected to notify their supervisor in advance when he/she expects to be absent. 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 need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. As soon as an employee learns of their need for leave, they are expected to promptly notify: (1) their supervisor of their expected period(s) of absence, and then (2) an Employment Service Center (ESC) representative regarding FMLA eligibility/qualification. Employees need not share specific personal information (diagnosed illness/injury) when notifying his/her supervisor of the need for leave. Except for medical emergencies, failure to call or notify their supervisor of the need for leave, prior to a scheduled work day, may be treated as an unexcused absence.

For a serious health condition lasting more than three consecutive days, WSU may require employees to provide:

1. Medical certification supporting the need for leave due to a serious health condition affecting the employee or a family member;
2. Second or third medical opinions (at the university's expense) and periodic recertification; and
3. Periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent (see definitions) leave is needed for a service member family or to care for a family member or the employee's own serious health condition, and is for planned medical treatment, the employee must consult with their supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt the business unit's operation. When possible employees are expected to consult with their supervisor prior to the scheduling of treatment in order to workout a treatment schedule which best suits the needs of both the business unit and the employee.

Enforcement and Protection

FMLA makes it unlawful for any employer to:

1. Interfere with, restrain, or deny the exercise of any right provided under FMLA;
2. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

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An eligible employee may bring a civil action against an employer for violations.

PROCEDURE

Responsibility

Action

Employee

4. Provide employer at least verbal notice sufficient to indicate need for FMLA-qualifying leave.
5. Provide employer at least thirty (30) day notice when illness is foreseeable and as soon as practicable when illness is not foreseeable.
6. Submit two completed forms to the employer:
(1) Request for Leave of Absence and
(2) Medical Certification.
7. Provide employer “fitness-for-duty” certification before returning to work from leave.
8. Complete form(s).
9. Send to Benefits Administration.

Supervisor

3. Sign “Request for Leave of Absence” form for employee and immediately submit it to the Employment Service Center.
4. Contact Employment Service Center (ESC) if employee is absent from work more than (3) consecutive calendar days due to illness.
5. Notify Employment Service Center when receive notice from employee sufficient to indicate need for FMLA-qualifying leave.
6. Properly code employee time sheet.

Risk Manager

1. Contact Employment Service Center if an employee has been approved for Workers’ Compensation.

Employment Service Center

1. Administer the Family and Medical Leave Process in accordance with Family and Medical Leave Act of 1993.
2. Immediately notify Business Manager that employee has applied for FMLA in order for supervisor to assess staffing requirements.
3. Review employee documentation.

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4. Determine employee eligibility and entitlement for FMLA leave. For example: (1) Approved (2) Denied (3) Type of Leave – Consecutive, Intermittent or Reduced Work Schedule.
5. Send “Employer Response Letter” to employee and Business Unit Manager within two (2) business days outlining leave parameters and instructions for maintaining FMLA benefits while on leave.
6. Determine order in which employee exhaust accrued illness banks, vacation banks, personal business time, etc.
7. Manage leave in accordance with the parameters outlined in the “FMLA Employer Response Letter” and The Family and Medical Leave Act of 1993.

Business Unit Manager

1. Immediately notify employee’s supervisor of FMLA application for staff planning purposes.
2. Verify employee timesheets are coded in accordance with the information provided in the “Employer’s Response Letter.”
3. Monitor employee’s pattern of intermittent leave to determine if inconsistent with qualifying medical condition.

Total Compensation and
Wellness Plan Administrator

1. Administer appropriate benefits.