

(The Family and Medical Leave Act of 1993 - CFR 29-825)

The federal Family and Medical Leave Act (FMLA) entitles you, if you meet its definition of eligible employee (see below), to a total of 12 work weeks of leave during any 12-month period for one of the following reasons:

- The birth of your child and to care for your newborn child;
- The placement of a child with you for adoption or foster care;
- The care of your spouse, child or parent who has a serious health condition;
- A serious health condition that makes you unable to perform the functions of your job; or
- Leave for a qualifying exigency for a spouse, child or parent on covered active duty during deployment to a foreign country.

The FMLA entitles you, if you meet its definition of an eligible employee (see below), to a total of 26 work weeks of leave during any 12-month period for the following reason:

1. To care for a spouse, child, or parent who is injured while serving on active military duty, including veterans who are undergoing medical treatment, recuperation, or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

The 12-month period during which you may take up to 12 weeks of FMLA leave is the calendar year (January through December). In the case of your child's birth or adoption, the 12-month period begins with the child's birth or placement. The actual amount of FMLA leave you take after your child's birth or adoption should be mutually agreed upon with your supervisor, taking into account your doctor's recommendations and any birth-related complications or serious health conditions. In the case of military caregiver leave, the 12-month period begins with the date taken to care for the service member.

Family and medical leave is leave without pay. However, the university requires you to use your accrued paid leave for as much of the 12-week period as it will cover. If the reason for the family and medical leave is the birth or adoption of a child or an illness or injury for which you receive workers' compensation benefits, you may take unpaid leave, in accordance with university policies. Paid leave to handle personal and family medical needs is available under the sick leave, annual leave and catastrophic leave policies. Compensatory time off will be counted as part of your FMLA entitlement, but it must be exhausted before you are granted leave without pay, and you may request the use of your compensatory time for an FMLA reason.

When the university becomes aware that your leave is for a purpose covered by the FMLA, it has the responsibility to notify you that you have been placed on FMLA leave. The university must make a determination about whether the leave will count as FMLA

leave within five business days of the time you request the leave, or if there is not sufficient information to make the determination, at the point the information becomes available. If the university learns that your leave is for an FMLA purpose after your leave has begun or within five work days of your return to work, the entire leave or a portion of it may be counted retroactively as FMLA leave.

If you take or plan to take leave which meets the FMLA definitions, you must notify your supervisor that the leave was for an FMLA qualified event within five work days of your return to work and it must be designated as FMLA leave so you will have FMLA protection for your absence.

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances.

- If you take FMLA leave on an intermittent or reduced leave (part-time) schedule, it will not reduce the total amount of FMLA leave to which you are entitled. Only the amount of leave actually taken is counted toward your 12-week entitlement. For example, if you normally work five days a week and take one day off for a qualifying FMLA purpose, you will use one-fifth of a week of FMLA leave.
- You may take FMLA leave intermittently when it is medically necessary. If you request intermittent leave that is foreseeable because of planned medical treatment, your supervisor or department may require you to transfer temporarily to an available alternative position with equivalent pay and benefits but which better accommodates recurring periods of leave.
- When you take FMLA leave for the birth of your child or the placement of a child with you for adoption or foster care, you may take the leave intermittently only if your supervisor agrees to the proposed arrangement. You may, with your supervisor's agreement, work part-time after the birth or placement of your child or take FMLA leave in several segments, up to the 12-week cumulative limit. You do not need your supervisor's prior approval for FMLA leave if you are a new mother and have a serious health condition in connection with the birth of your child, if you are a new father and your spouse has a serious health condition in connection with the birth of a child, or if the newborn child has a serious health condition.
- If you are an expectant mother, you may take FMLA leave before the birth of your child for prenatal care or if your condition makes you unable to work. If you are an expectant father, you may take FMLA leave before the birth of your child to care for your spouse during prenatal care or if she is unable to work due to pregnancy.
- FMLA leave is designated for leave that is used before the actual placement or adoption of a child if your absence from work is necessary for the adoption or foster care placement to proceed. For example, you may be required to attend counseling sessions, appear in court, consult with your attorney, consult with a doctor who represents the birth parent or submit to a physical examination.
- You may use an intermittent or reduced leave schedule to care for a family member in a situation where the family member's condition itself is intermittent, when you need to share care responsibilities with another person, or when you need to make arrangements for changes in your family member's care, such as a transfer to a nursing home.

- You may take intermittent FMLA leave for your own serious health condition which requires treatment by a healthcare provider periodically, rather than for one continuous period of time.
- You may take intermittent or reduced schedule FMLA leave for absences when you are incapacitated or unable to perform the essential functions of your job because of a chronic serious health condition even if you do not receive treatment by a healthcare provider. If you must care for a family member who is incapacitated by a chronic serious health condition, you may use intermittent FMLA leave to care for him or her even if your family member does not receive treatment by a health care provider, as long as there has been an initial diagnosis by a healthcare provider and you have submitted the completed certification form (see below).

To be eligible for FMLA leave, you must have been employed by the state (University of Arkansas or another Arkansas state institution or agency) for at least 12 months and must have worked at least 1,250 hours during the 12-month period prior to the beginning of your leave.

If you and your spouse are both employed by the university, you are entitled to a total of 12 weeks leave, rather than 12 weeks each, for the birth or adoption of a child or to care for a sick parent. However, each of you is entitled to 12 weeks of FMLA leave for your own serious health condition or to care for your child or spouse. You and your spouse are entitled to a combined annual total of 12 weeks of FMLA leave to care for your own parents (not parents-in-law).

Your use of FMLA leave for your own serious health condition or to care for a seriously ill child, spouse or parent must be supported by a certificate issued by a healthcare provider. The certificate must contain the following information: the date on which the serious health condition began, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. If your FMLA leave is to care for a family member, the certificate must contain a statement that you are needed to care for your child, spouse or parent and an estimate of the amount of time required. If the FMLA leave is for your own serious health condition, a statement that you are unable to perform the functions of your job must be included.

FMLA leave designation forms and copies of the certificate to be completed by your or your family member's healthcare provider are available from your department leave representative or from Human Resources.

If you submit a complete certification signed by a healthcare provider, the university may not request additional information from your healthcare provider. However, a healthcare provider, human resources professional, leave administrator or management official who represents the university may contact your healthcare provider, with your permission, to clarify or authenticate the medical certification. If there is reason to doubt the validity of your medical certification, the university may require a second opinion from a healthcare provider it designates. If that opinion differs, the opinion of a third healthcare provider, jointly approved by you and the university, may be solicited. That

opinion shall be final and binding. The university will be responsible for the expense of the second and third opinions.

When the necessity for FMLA leave is foreseeable, you must provide the university with a completed [Certificate of Health Care Provider](#) form 30 days before your leave begins. If circumstances require that the leave begin in less than 30 days, you should provide as much notice as possible. In cases of illness, you may be required to report periodically on your leave status and your intention to return to work. You may be required to provide recertification on a reasonable basis. Any medical information which you or your medical care provider submit will be considered confidential.

Upon return from FMLA leave, you will be reinstated in your former position or a position with equivalent benefits, pay, and other terms and conditions of employment. Other than paid leave which you take during the FMLA leave period, you will not lose any benefits accrued prior to your leave. You will not be entitled to any right, benefit, or position other than what you would have been entitled to if you had not taken FMLA leave.

If you participate in the university's group healthcare benefit plan, your coverage will be maintained, and the university will continue to pay its share of your premium while you are on FMLA leave. You will be responsible for paying the employee portion of your premium. You may choose not to retain your healthcare coverage during your FMLA leave. If you do so, you are entitled to have your coverage reinstated upon your return to work, without any qualifying period, physical examination, exclusion of pre-existing conditions or other qualification that did not exist before you went on leave.

If your payment for your portion of the health insurance premium is more than 30 days late, the university's obligation to maintain your health insurance coverage ends. You must be given written notice that your payment has not been received, and that notice must be mailed at least 15 days before your coverage is to end. The university may recover its share of your health insurance premium paid during unpaid FMLA leave if you fail to return to work for a reason other than a serious health condition or because of circumstances beyond your control. If the university has maintained other benefits, such as life or disability insurance, in order to meet its responsibility to provide equivalent benefits upon your return from FMLA leave, it may recover the costs incurred for paying the premium, whether you return to work or not.

The Family and Medical Leave Act makes it unlawful for an employer to interfere with, restrain or deny the exercise of the rights provided by this law. It is also unlawful for an employer to discharge or discriminate against any employee who is involved in a proceeding related to the FMLA. Use of family and medical leave cannot be a consideration in decisions to hire, promote, or discipline employees.

The following definitions are used in the FMLA regulations:

**Serious health condition** means an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care: Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility;

2. Continuing treatment by a health care provider: Any period of incapacity of more than three consecutive calendar days, that also involves continuing treatment as follows:
  - Treatment two or more times by a healthcare provider, by a nurse or physician's assistant under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider; or
  - Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under supervision of a healthcare provider. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. It does not include taking over-the-counter medications or other similar activities that can be initiated without a visit to a healthcare provider.
3. Any period of incapacity due to pregnancy;
4. Treatment for a chronic health condition that 1) requires periodic visits (defined as at least twice a year) for treatment by a healthcare provider or by a nurse or physician's assistant under direct supervision of a healthcare provider, 2) continues over an extended period of time (including recurring episodes of a single underlying condition), and 3) may cause episodic rather than a continuing period of incapacity (asthma, diabetes, epilepsy, etc.);
5. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective: You or your family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, severe stroke, or the terminal stages of a disease;
6. Multiple treatments for non-chronic conditions: Any period of absence to receive multiple treatments (including any period of recovery there from) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider, either for restorative surgery after an accident or other injury, or for a condition such as cancer, severe arthritis or kidney disease that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment; or
7. Continuing supervision of, but not necessarily active treatment by, a healthcare provider because of a serious long-term or chronic condition or disability which cannot be cured.

NOTE: The FMLA allows leave for substance abuse in order to undergo treatment by a healthcare provider and specifically excludes employee absence because of the use of the substance. Stress qualifies as a serious health condition only if it rises to the level of a mental illness or results in a physical illness.

**Period of incapacity** means a period of time when an employee or family member is unable to work, attend school or perform other regular daily activities because of a serious health condition, treatment therefore, or recovery therefrom.

**Treatment**, for purposes of FMLA, includes examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations, eye examinations or dental examinations.

**Healthcare provider** is defined as a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Department of Labor to be capable of providing healthcare services. Included in the second part of that definition are podiatrists, dentists, clinical psychologists, clinical social workers, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated to exist by x-ray), nurse practitioners and nurse-midwives, and Christian Science practitioners.

**Spouse** is defined in accordance with applicable state law. Unmarried domestic partners do not qualify for FMLA leave to care for their partner.

**Parent** means the biological parent of an employee or an individual who stands or who stood *in loco parentis* to an employee when the employee was a son or daughter. It does not include parents-in-law.

**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 under 18 years of age or who is 18 years of age or older and incapable of self-care because of mental or physical disability.

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