Family and Medical Leave Act Questions

**What is FMLA?**

The Family and Medical Leave Act of 1993 is a federal law designed to provide employees with up to 12 weeks of unpaid job-protected leave for qualified family and medical related reasons.

**Who is eligible under FMLA?**

To be eligible for leave under FMLA, the individual must have been employed by the University for 12 months or a total of 52 weeks (need not be consecutive) and have worked at least 1,250 hours during the 12-month period preceding the FMLA qualifying event. Unpaid leave would not count towards the 1,250 hours requirement. However, if an employee would have worked 1,250 hours but for documented military leave, the employee may be eligible for FMLA.

**What is a qualifying event?**

The birth and care of a newborn child;

1. The placement of a child for adoption or foster care and to care for the newly placed child;
2. Care of the employee’s spouse, son, daughter, or parent with a serious health condition;
3. The employee’s own serious health condition.
4. Certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation.  Qualifying exigency leave is only available to a family member of a military member in the National Guard or Reserves.

Additionally, eligible employees may qualify for up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty.

**Access the Department of Labor’s FMLA Employee Guide:**

<http://www.dol.gov/whd/fmla/employeeguide.pdf>

**What is the University's FMLA calendar year?**

The University designates the FMLA calendar year as a 12-month period measured forward from the date of an employee's first FMLA event, also known as the rolling calendar method.

**Will an employee receive pay while on FMLA protected leave?**

FMLA in itself is unpaid leave. However, employees are required to run applicable accrued leave simultaneous with the approved FMLA leave to cover the FMLA absence. Employees on paid Workers Compensation will receive pay as provided under current university policy. All paid time off runs concurrently with FMLA.

**Will the employee receive university benefits while on FMLA protected leave?**

The university will continue to pay the cost of the university provided insurance coverage for employees for the 12 weeks of FMLA protected leave. The employee will continue to be responsible for payment of premiums for any elective coverage. It is the employee's responsibility to contact Employee Services to determine premium payment requirements.

**Am I still covered under FMLA if I run out of paid leave?**

Yes, as long as you have not exhausted your 480 hours of FMLA for your qualifying event year, you would still be covered under FMLA.

**What does the employee need to know before returning to work from a FMLA leave for their own serious health condition?**

The employee will be required to obtain a medical release from the attending physician, and possibly a Fitness for Duty certificate before returning to the workplace. An employee returning from FMLA job-protected leave is restored to the same benefits eligibility, seniority, position or equal position including the same shift, skill level, effort requirements and responsibility.

**If a University holiday falls during a week when I am on continuous FMLA, is that day counted toward my FMLA leave entitlement?**

Yes.  The University does count a holiday towards an employee’s FMLA leave entitlement when the employee is on continuous FMLA leave.  However, during the winter break when the University is closed down, the typical 3 additional days of holiday and mandatory days will not count against FMLA entitlement.

**What types of leave are available under the FMLA?**

The FMLA provides for different types of leave depending on the situation. Leave may be taken in continuous, full-time periods or may be taken intermittently or on a reduced schedule when medically necessary or for a qualifying exigency due to a call to covered active duty.

When intermittent or reduced schedule leave is needed to care for an immediate family member or the employee’s own condition, and is for planned medical treatment, the employee must consult with the supervisor and make a reasonable effort to schedule treatment so as not to unduly disrupt the department’s work.

Leave for birth or adoption of a child or placement of a foster child must be taken in one continuous period and must be concluded within one year of the birth, adoption or placement of the child. Either parent may ask the department to consider a reduced schedule rather than one continuous leave, but that decision is discretionary with the supervisor based on department needs and employee equity.

**What is a “serious health condition”?**

“Serious health condition” means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

The term ‘‘incapacity’’ means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

The term “inpatient care” means an overnight stay in a hospital, hospice, or residential medical care or any subsequent treatment in connection with the inpatient care.

The term ‘‘treatment’’ includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

The term “continuing treatment by a health care provider” means any one of the following:

1. A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30 days, or treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

2. Any period of incapacity due to pregnancy or prenatal care.

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a health care provider, which continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.

4. Permanent or long-term conditions.

5. Conditions requiring multiple treatments.

**What if I am not completely healed at the end of the FMLA leave?**

You must present a return to work release to return to work at the end of continuous FMLA leave. The FMLA provides for 12/26 weeks of leave each calendar year. If you are totally or partially unable to return to work at the end of the FMLA leave, you should contact Human Resource Services as soon as possible to discuss what options may be available, such as an extension of leave or initiating the interactive process to determine whether workplace accommodations or modifications may be warranted. If you extend the leave of absence beyond the allowed 12/26 weeks of FMLA, benefits may no longer be continued. Contact the Benefits Office in that situation.

**If I am off work for a work-related injury covered by workers compensation, does the FMLA apply?**

Yes, if the injury or illness meets the definition of a serious health condition.

**If I am off work for a work-related injury covered by workers compensation, must I accept light duty work?**

No. If you are eligible for FMLA, you may choose to take the FMLA leave and reject the light duty work. However, you may risk loss of some workers compensation benefits by rejecting the light duty work – it is best to consult Human Resource Services.

**What happens if my term or appointment ends while I’m on FMLA?**

If you are a term or temporary employee and your term or appointment ends while you are on FMLA leave, your FMLA leave ends as of the last day of your appointment – FMLA does not extend the appointment. You should contact the Benefits Office to determine when your benefits, such as health insurance, will end.

**Can I be discharged while on FMLA leave?**

You cannot be discharged simply because you took FMLA leave. However, termination of employment may occur while you are on approved FMLA leave if you job would have been lost if you had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal.

***Can I be disciplined while on FMLA leave?***

You cannot be disciplined simply because you took FMLA leave. However, a supervisor may discipline you for any legitimate reason that is not related to the FMLA leave. For instance, if you fail to follow established call-in protocol for reporting absences.

***Can my supervisor transfer me to another position if I am taking FMLA?***

A supervisor may temporarily transfer you to an alternative position in order to accommodate intermittent absences or a request for a reduced schedule, provided that it provides “equivalent pay and benefits” and the transfer is permitted by policy or contract.

**I am a full-time faculty member on a 9-month appointment. How does the FMLA apply to me?**

The FMLA covers you assuming you meet the eligibility criteria set out in the policy. FMLA only governs leaves of absence from time you would otherwise be working – your 9-month appointment. FMLA would not cover the three months you are not employed by OSU. If you are paid by OSU and continue to perform services for OSU over the summer, you should seek clarification as to whether the FMLA might cover you in such a situation.

**What happens if I do not complete the paperwork?**

If you fail to request FMLA leave in advance and you knew you would need the time off, the University may delay the start of your FMLA leave for 30 days. If you fail to submit the required certification documentation, your FMLA leave may be delayed or even denied. If you fail to submit requested recertification, future FMLA leave may be delayed or denied. If you fail to submit the return to work release, you will not be able to return to work from continuous leave taken for your own serious health condition.

**Why is the University asking me to recertify a serious health condition when I have already provided medical documentation before?**

The University may seek recertification of your need for FMLA leave in a few different situations.

First, ongoing conditions can change or heal. The University may request recertification every 30 days unless the original certification specified a certain date when the condition would be healed or updated; however, in all cases the University may request recertification at least annually, or may choose to seek recertification every 6 months even if the certification includes a certain date when the condition would be healed or updated. Second, sometimes the health care provider may incorrectly estimate the length or frequency of your absences. If the Department learns of new developments that cause the supervisor to question your need for leave or question the accuracy of the original certification, the University may seek recertification in those situations.

**I am approved for intermittent FMLA. Do I need to call in for each absence?**

Yes. You need to follow your department’s call-in procedures (e.g., when to call, whom to call) for intermittent or unplanned absences. If you do not know those call-in procedures, ask your supervisor.

**I am approved for intermittent FMLA. Do I need to provide a new certification for each absence?**

No, you do not need new medical certification of the condition that causes the intermittent absence if that condition is already approved. However, it may be necessary to document the reason for the absence; that is, that you were out that day for that reason and not some other reason.

**I am approved for intermittent FMLA. Can my supervisor ask me questions about my absences?**

Yes. The supervisor has an obligation to accurately track your absences. The supervisor can ask you for information necessary to determine whether the absence is covered by FMLA. You have an obligation to respond to those questions.

**Where is my medical information kept?**

Human Resource Services is the central storage location for your FMLA and medical information. The information will be kept confidential.

**Why do I need to authorize you to speak with my health care provider (on the Certification of Health Care Provider)?**

It is not required that you give the University permission to speak with your health care provider; however, it can speed up the review and approval of your request for FMLA leave. Sometimes an employer cannot read or understand the health care provider’s comments and clarification is needed. To save everyone’s time, we ask that you give permission at the time you are turning in the certification. Otherwise, OSU may need to contact you after receiving the medical certification and obtain your signature – this slows down the review and approval process.

**I have a lot of sick leave. Why do I need to go through the FMLA process for my absence?**

The University is required to designate and track FMLA leave even if you have sufficient sick leave to cover the leave of absence. Remember that the sick leave and FMLA run together at the same time.

**What is an “exigency” related to service member leave?**

Eligible employees may take FMLA leave while the employee’s spouse, son, daughter, or parent (the ‘‘covered military member’’) is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) Short-notice deployment. (i) To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty in the Armed Forces seven or less calendar days prior to the date of deployment; (ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty;

(2) Military events and related activities. (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and (ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member;

(3) Childcare and school activities. (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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; (ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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; (iii) To enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and (iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member;

(4) *Financial and legal arrangements*. (i) To make or update financial or legal arrangements to address the covered military member’s absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and (ii) 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 while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member’s active duty status;

(5) *Counseling*. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member;

(6) *Rest and recuperation*. (i) To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment; (ii) Eligible employees may take up to five days of leave for each instance of rest and recuperation;

(7) *Post-deployment activities*. (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member’s covered active duty status; and (ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;

(8) *Additional activities*. To address other events which arise out of the covered military member’s covered active duty or call to covered 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.