



STAFF EMPLOYMENT MANUAL

Title: 5.0 Benefits

Chapter: 5.08 Family and Medical Leave

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The University appreciates the significance of family issues in today's workforce and understands that employees often face conflicting demands of work requirements and family obligations. An employee may be faced with taking a personal leave from his/her position for a temporary period of time to address a serious health condition or certain family responsibilities. This policy complies with the federal Family and Medical Leave Act ("federal FMLA") and the Family and Medical Leave Act of the State of Connecticut ("Connecticut FMLA") and describes three different forms of unpaid leave collectively known as "Family and Medical Leave": non-military Family and Medical Leave ("Non-Military FMLA Leave"), military-related Family and Medical Leave for qualifying exigencies ("Military Exigency Leave"), and military-related Family and Medical Leave for the care of a covered military servicemember ("Military Caregiver Leave").

The University reserves the right to change the Family and Medical Leave Policy as it deems necessary and/or consistent with applicable law. For more details on employee rights and responsibilities regarding the Family and Medical Leave Acts, please refer to the U.S. Department of Labor, Wage and Hour Division Publication 1420 (revised January 2009). The legally-mandated notice regarding FMLA is also posted in the Auerbach Computer and Administration Center, the Handel Performing Arts Center, the Facilities building and in the office of HRD, located in the Financial and Administrative Services Building (FASB). Additional information is also online at www.wagehour.dol.gov.

1. Eligible Employees

For purposes of this policy, "Eligible Employees" are full-time and regular part-time employees of the University who (a) have been employed by the University for at least 12 months, which need not be consecutive months, and (b) have worked at least 1,000 hours in any employment classification in the 12 months immediately before the requested Family and Medical Leave is to begin.

2. Types of Family and Medical Leave

a. Non-military FMLA Leave

An Eligible Employee may take Non-Military FMLA Leave up to the time described in paragraph 3, below, for any of the following qualifying purposes:

- i. For the birth of and subsequent care for a child of the employee;
- ii. For the placement of a child with the employee by adoption or foster care arrangement;
Note: The right to take leave for the birth or placement of a child by adoption or foster care arrangement may arise prior to the birth or placement of the child, when required because of the impending birth or placement, and will expire 12 months from the date of the child's birth or placement.
- iii. To care for an employee's spouse, same-sex partner, child (who is either (a) under 18 years of age, or (b) age 18 or older and "incapable of self-care because of mental or physical disability"), parent, parent-in-law or parent of a same-sex partner who has a serious health condition;

- iv. For a serious health condition of the employee that renders the employee unable to perform the essential functions of her/his job (see definitions at end of this chapter); or
- v. To serve as an organ or bone marrow donor.

b. Military Exigency Leave

An Eligible Employee may take Military Exigency Leave up to the time described in paragraph 3, below, to use for any qualifying exigency arising because the employee's spouse, same-sex partner, child or parent, parent-in-law or parent of a same-sex partner (a) is in the National Guard, is in the Reserves, or has been retired from the Regular Armed Forces or Reserves and subject to call to active duty and (b) is under a call or order to active duty, or a notification of an impending call or order to active duty, in support of a covered contingency operation (as defined by federal regulation). Any of the following are qualifying exigencies:

- i. Dealing with any issues arising from short notice deployment of seven days or less, for up to seven days of leave;
- ii. Attending military events related to the covered military member's active duty or call to active duty, as well as qualifying family support or assistance programs and informational briefings;
- iii. Arranging for changes in schooling, child care and school activities or emergency child care required because of the covered military member's active duty or call to active duty status, and attending school meetings necessitated by the active duty or call to active duty;
- iv. Making or updating financial and legal arrangements to address the covered military member's absence, or serving as the covered military member's representative in front of governmental agencies to obtain, arrange or appeal military service benefits during and up to 90 days after the covered service member is on active duty or call to active duty status;
- v. Attending qualifying counseling for the Eligible Employee, the covered military member or child arising out of the covered military member's active duty or call to active duty;
- vi. Spending time with the covered military member for up to five days of leave for each instance that the covered military member is on short-term, temporary rest and recuperation leave during a covered period of deployment;
- vii. Attending arrival ceremonies, reintegration briefings and other qualifying programs and ceremonies sponsored by the military that occur up to 90 days after termination of the covered military member's active duty or call to active duty status; or
- viii. Addressing additional activities not covered above that are agreed to by the employer and the employee and related to the covered military member's active duty or call to active duty status.

c. Military Caregiver Leave

An Eligible Employee may take Military Caregiver Leave up to the time described in paragraph 3, below, to care for a spouse, same-sex partner, child, parent, parent-in-law or parent of a same-sex partner or nearest blood relative of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty in the Armed Forces. A covered servicemember must be a current member of the Armed Forces who is on the temporary disability retired list.

3. Amount of Leave Allowed

Eligible Employees may be granted Family and Medical Leave in the amounts described below in any 12-month period (or 24-month period, when calculating leave under the Connecticut FMLA). The amount of leave available is determined on a rolling month basis from the first day of leave of absence forward.

a. Non-Military FMLA Leave

Under this leave, Eligible Employees may be granted up to 12 weeks of unpaid leave during a 12-month period under the federal FMLA, and up to 16 weeks of unpaid leave during a 24-month period under the Connecticut FMLA. The federal and state law leaves run concurrently, and the law offering the longest period of leave to the employee over the period of any given leave request shall be applied. Under no circumstance would an employee be authorized to receive more than 16 weeks of Non-Military FMLA Leave or a combination of Non-Military Leave and Military Exigency Leave in any 12-month period.

b. Military Exigency Leave

This leave status expands the reasons for which an Eligible Employee may obtain Family and Medical Leave, but it does not increase the amount of total leave that an Eligible Employee is entitled to under the federal law in any given 12-month period: Military Exigency Leave is taken from the same 12 weeks authorized for Non-Military FMLA Leave. For example, an Eligible Employee who uses six weeks of Non-Military FMLA Leave in a 12-month period is entitled to no more than six weeks of Military Exigency Leave during the same 12-month period.

c. Military Caregiver Leave

This leave status expands both the reasons for which an Eligible Employee may obtain Family and Medical Leave, and the amount of total leave that an Eligible Employee may be entitled to under the federal law in any given 12-month period.

- i. An Eligible Employee may be granted a single Military Caregiver Leave of up to 26 weeks during a 12-month period, subject to the limitations of this paragraph 3(c).
- ii. Military Caregiver Leave is cumulative with and not in addition to other forms of Family and Medical Leave, and therefore the amount of Military Caregiver Leave available to an Eligible Employee is decreased by the amount of federal Non-Military FMLA Leave and Military Exigency Leave used in the same 12-month period. For example:
 - (a) An Eligible Employee who uses 12 weeks of Military Exigency Leave or federal Non-Military FMLA Leave during a 12-month period may only use up to 14 weeks of Military Caregiver Leave.
 - (b) An Eligible Employee who has already used 26 weeks of Military Caregiver Leave in a 12-month period is not entitled to any Military Exigency Leave or federal Non-Military FMLA Leave during the same 12-month period.

Note: In either of these examples, under certain circumstances, an Eligible Employee may be eligible for up to an additional four weeks of Non-Military FMLA Leave under the Connecticut FMLA. Affected employees should consult with HRD. Under no circumstances would an employee be eligible for more than 30 weeks in any combination of federal and state Non-Military FMLA Leave, Military Exigency Leave and Military Caregiver Leave in a 12-month period.

- iii. Military Caregiver Leave is available to an Eligible Employee for each serious injury or illness to a covered servicemember only one time during the Eligible Employee's employment at the University.
 - (a) If the same serious injury or illness continues into a subsequent 12-month period, the Eligible Employee is not entitled to a new granting of Military Caregiver Leave for that injury or illness during the subsequent 12-month period.

- (b) If the Eligible Employee does not use the entire Military Caregiver Leave available for a particular serious injury or illness to a covered servicemember during the 12-month period. For example, if only 10 weeks of Military Caregiver Leave is used for a particular injury or illness during a 12-month period, then the remaining Military Caregiver Leave for that particular injury or illness is forfeited and may not be applied to a subsequent 12-month period.
- iv. If the same covered servicemember subsequently sustains a different serious injury or illness, or if the Eligible Employee is eligible to be the caregiver for a different covered servicemember, the Eligible Employee is eligible to be granted a new Military Caregiver Leave, subject to the limitations of this paragraph 3(c). More than one Military Caregiver Leave may be used in a single 12-month period, so long as the total amount of Family and Medical Leave taken during that 12-month period under the federal FMLA does not exceed 26 weeks.
- d. For purposes of Non-Military Family and Medical Leave because of the Eligible Employee's own serious health condition or the serious health condition of a spouse, same-sex partner or child, the amount of leave time available is not affected by whether or not both spouses or same-sex partners are Eligible Employees working for the University.

If both spouses or same-sex partners work for the University and are Eligible Employees, they are entitled to a combined total of 16 weeks of leave in a 24-month period taken for birth or placement by adoption or foster care arrangement of a child, to care for a parent, parent-in-law or the parent of a same-sex partner with a serious health condition.

Similarly, if both spouses or same-sex partners work for the University and are Eligible Employees, they are entitled to a combined total of 26 weeks (or 30 weeks, depending on eligibility for Connecticut FMLA) to care for a covered servicemember with a serious injury or illness.

4. Notice Required

Applications for Family and Medical Leave of Absence must be made in accordance with the University's standard absence notification procedures (See **6.05-1, Attendance Management**) unless there are extenuating circumstances. The appropriate forms must be submitted to initiate a Family and Medical Leave and to return the employee to work upon completion of the leave. An employee requesting Family and Medical Leave for health-related reasons of the employee or covered family member, for a qualifying exigency or to care for a covered servicemember must provide the University with appropriate certification which establishes entitlement to this leave. Please contact HRD for the appropriate form(s) to initiate these types of leave.

Within two business days of the request, barring extenuating circumstances, in which case the period of time may be longer, the University will confirm, in writing, approval or denial of the leave. Failure to provide required certification may result in loss of the leave entitlement. The University may also require the employee to obtain periodic recertification of status, or recertification under other limited circumstances consistent with applicable law, and to provide notice of intent to return to work on a reasonable basis. Under certain limited circumstances, the employee may be required to provide additional information or to submit to an independent medical exam by a designated health care provider at the expense of the University. Final approval for Family and Medical Leave will be granted by HRD.

In circumstances where additional clarification of eligibility for a Family and Medical Leave exists, Eligible Employees may need to provide releases in compliance with the Health Insurance Portability

and Accountability Act (HIPAA) so that the University can obtain sufficient information when deemed necessary. If an employee chooses not to provide such releases, and the employee has not provided sufficient information to determine eligibility for this type of leave, the Family and Medical Leave may be denied.

An employee may request that a leave be retroactively designated as a Family and Medical Leave upon returning to work. The University reserves the right to retroactively designate a leave as a Family and Medical Leave as appropriate under applicable law.

Questions regarding this policy or applicable state or federal laws should be directed to HRD.

5. Pay and Benefits

a. Pay

If the employee is on a Family and Medical Leave for his/her own serious health condition, and is approved for Short-term Disability (STD) benefits, the portion of leave covered under STD will pay according to the schedule of benefits (See also **5.06, Short-term Disability Insurance**). The Family and Medical Leave will run concurrent with an employee's STD absence. A staff member on an approved Family and Medical Leave will be required to use his/her allotted Personal Days and Vacation if and when the unpaid portion of the leave begins.

Vacation and Personal Days will not be allotted during any type of leave of absence. In addition, an employee may not engage in other employment during a Family and Medical Leave.

b. Benefits

FMLA requires the University to continue group medical and/or dental insurance coverage under the same conditions that would have governed had no leave been taken. Therefore, during a leave, the University will continue to pay its portion of group medical insurance premiums, while the employee is required to pay his/her share of the premium(s). During paid leave, the premiums will be deducted from the employee's wages. During an unpaid leave, the employee will be responsible for payment under the same schedule that payment is made by other employees through payroll deduction. Monthly billing will be coordinated by the Bursar's Office. Failure of the employee to pay his/her portion of the medical and/or dental insurance premium(s) within 30 days of the due date may result in loss of coverage. An employee may choose not to maintain group medical and/or dental insurance coverage during the period of a Family and Medical Leave, and to resume coverage upon return to work. Employees wishing to learn more about this option should contact HRD.

No benefits or employment conditions available to the employee up to the day which the Family and Medical Leave begins will be lost unless the benefit or condition of employment was discontinued or changed for other employees during the leave period. Other non-health benefits will be treated in the same manner during a Family and Medical Leave as during other approved leaves of absence without pay (See also **5.09, Unpaid Leaves of Absence**). Group life insurance(s) may be continued according to the provisions of the plan, but the employee will be responsible for the continued payment of the all coverage-related premiums. During any portion of a Family and Medical Leave that is unpaid, all payroll deductions will cease as well as the University's contribution to the Defined Contribution Retirement Annuity Plan (TIAA-CREF).

When any period of a Family and Medical Leave due to the employee's own serious health condition overlaps into a new fiscal year, restored eligibility for vacation in the new fiscal year does not occur until the employee has been medically certified able to return to regular duties on a full-time basis, and the employee has worked a minimum of 20 consecutive full working days.

If an employee fails to return to work after expiration of a Family and Medical Leave, the University reserves the right to seek reimbursement of the employer's share of any group medical insurance premiums, unless the employee does not return to work due to the continuation, recurrence or onset of a serious health condition of the employee or a family member, or a serious injury or illness of a covered servicemember, or due to other circumstances beyond the employee's control.

6. Intermittent or Reduced-Hours Leave

An intermittent or reduced-hours leave for the birth and subsequent care for a child of the employee, to care for a spouse, same-sex partner, parent, parent-in-law, parent of a same-sex partner or child with a serious health condition or the employee's own serious health condition may be taken only if such leave is deemed medically necessary and medical certification is provided indicating the leave must be taken intermittently in order to best accommodate the medical need. Intermittent or reduced-hours leave may also be taken for Military Exigency Leave or Military Caregiver Leave in appropriate circumstances.

If intermittent or reduced-hours leave is foreseeably required based on planned medical treatment for the employee, a family member or a covered servicemember, the University may, at its sole discretion, temporarily transfer the employee to another position with equivalent pay and benefits for which the employee is qualified that better accommodates that type of leave.

In the case of leave for the birth or placement of a child by adoption or foster care arrangement, intermittent leave is not permitted unless both the employee and the University agree.

7. Workers' Compensation and Family and Medical Leave

Employees who are out of work due to a work-related accident or injury and are receiving wages due to a Workers' Compensation injury will be automatically placed on approved Family and Medical Leave. This Family and Medical Leave will run concurrent with the Workers' Compensation leave.

8. Return to Work

An employee on an approved Family and Medical Leave will be required to provide the University with appropriate advance notice of his/her potential return to work date. Where circumstances have changed and an employee's original return to work date changes, the employee shall provide the University with notice within two business days of the change in circumstances, wherever foreseeable. A return from an approved Family and Medical Leave is accomplished through an appropriate Personnel Action Form (PAF). If a Family and Medical Leave is due to an employee's own serious health condition, medical certification of return to work is required including, where applicable, determination of the employee's ability to perform the essential functions of her/his position. Failure to provide required return to work certification may result in the employee's reinstatement at work to be delayed or in termination of employment.

An employee on an approved Family and Medical Leave may return to work in a transitional duty capacity with appropriate medical certification if he/she has the ability to perform the essential functions and physical effort required of the position. If an employee accepts transitional duty work after the commencement of an approved Family and Medical Leave, the time spent performing such work will not count against the employee's FMLA leave entitlement. With appropriate medical certification, the employee has the right to use the remainder of his/her FMLA leave entitlement.

An employee who provides the necessary return to work certification and returns to work from Family and Medical Leave within or on the business day following the expiration of FMLA

entitlement is eligible to return to his/her same job or an equivalent position without loss of pay, benefits or other conditions of employment, except where the employee is medically certified as unable to perform the essential functions of his/her original job. In that case, the University must transfer the employee to suitable work if available, unless the employee would have been terminated in the absence of any leave (i.e., layoff or downsizing). Merit increases do not become effective until the first day of return to work if an employee is on any type of leave of absence.

Employees who utilize Family and Medical Leave have no greater rights in all other regards than employees who do not utilize Family and Medical Leave. The University is not precluded from applying the normal standards of performance and behavior to any employee, regardless of the use of Family and Medical Leave, or from taking legitimate performance or behavior-related personnel actions including, without limitation, termination of employment where appropriate. Failure to report to work without approval on the first working day following any leave of absence is considered a voluntary resignation.

9. Definitions (as they relate to the Family and Medical Leave Act)

- a. Family member – Employee’s spouse, child, parent or parent-in-law.
 - spouse - husband, wife or same-sex partner
 - child - biological, adopted or foster child, stepchild or legal ward who is either (1) under 18 years of age, or (2) age 18 or older and "incapable of self-care because of mental or physical disability"
 - parent - biological parent of the employee and/or employee's spouse or same-sex partner, or an individual who acted as a surrogate parent (i.e., the adoptive parent). In the absence of a biological or legal relationship to a surrogate parent, the University reserves the right to request reasonable documentation of the relationship.
- b. Serious health condition – An illness, injury, impairment, or physical or mental condition that involves (1) inpatient care involving an overnight stay in a hospital, hospice or residential medical care facility or any subsequent treatment in connection with the inpatient care, or (2) continuing treatment by a health care provider.
- c. Continuing treatment – Any 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 (i) treatment by a health care provider or provider of health care services under orders of or on referral by a health care provider for two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, or (ii) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. In either case, the first treatment must be in person and within seven days of the first day of incapacity.
 - (2) a period of incapacity due to pregnancy or for prenatal care;
 - (3) a period of incapacity due to a chronic serious health condition;
 - (4) qualifying permanent or long-term conditions, such as Alzheimer’s or a severe stroke for which treatment may not be effective, where the individual is under the continuing supervision of a health care provider; or
 - (5) conditions requiring multiple treatments by a health care provider or provider of health care services under orders of or on referral by a health care provider for (i) restorative surgery after an accident or other injury, or (ii) a condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer or kidney disease.

- d. Incapacity – Inability to work, attend school or perform other regular daily activities due to a serious health condition or treatment of or recovery from a serious health condition.
- e. Chronic serious health condition – A serious health condition in which the individual requires periodic visits, at least two times per year, for treatment by a health care provider, where the condition continues over an extended period of time.
- f. Caregiver – Acting in the capacity of providing physical and/or psychological care to a qualified family member. The employee does not need to be the only individual or family member available to provide such care nor is the employee required to provide the actual care (e.g., someone else is providing in-patient or home care) as long as the employee is providing at least some psychological comfort and reassurance.
- g. Health Care Provider - (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, (2) any health care provider from whom an employer's group medical plan will accept certification of a serious health condition, or (3) any other person determined by the federal government to be capable of providing health care services, including podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors (for certain treatments), Christian Science practitioners, nurse practitioners, physicians assistants and nurse midwives performing within the scope of their practice as defined under state and federal regulations.

10. Nondiscrimination

Discrimination or retaliation against an employee for exercising or attempting to exercise her or his Family and Medical Leave rights is prohibited by law as well as University policy. Further, federal law and University policy prohibit discharging or otherwise discriminating against any person who opposes or complains about any unlawful practice under the Federal or Connecticut FMLA.

11. Implementation

This policy does not address every circumstance under which the federal FMLA and Connecticut FMLA might be applied. Where a particular situation is not covered by this policy, HRD will look to the relevant statutes and regulations to ensure that any decisions are consistent with applicable law. Questions regarding this policy should be directed to HRD.

The University reserves the right to change and/or amend the Family and Medical Leave Policy, consistent with law, as it deems necessary.