

# FAMILY AND MEDICAL LEAVE ACT (FMLA) Policy

The purpose of this policy is to provide employees with a general description of their FMLA rights. The University of Louisiana at Monroe will comply with the Family and Medical Leave Act as revised effective January 16, 2009.

ULM posts the mandatory FMLA Notice in the Office of Human Resources and on the ULM web site at <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>.

The University also posts the DOL supplementary information concerning Military Family Leave on the Human Resources website. During orientation, ULM provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

## **A. General Provisions**

Under this policy, ULM will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

## **B. Eligibility**

To qualify for family or medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked for a Louisiana State Agency for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to begin. These hours must be actual work hours, not compensated hours. Therefore, hours using any type of paid time off benefits or holiday time do not count.

## **C. Type of Leave Covered**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1. Birth of an employee's child, including prenatal doctor visits as well as caring for the newborn child, anytime within the first twelve months of the birth of the baby.
2. Placement of a child through adoption or foster care with the employee anytime within the first twelve months of the placement of the child.
3. Care for an employee's spouse, child under 18, or parent (not in-law) with a serious health condition (described below).
4. A serious health condition (described below) that makes the employee unable to perform one or more of the essential functions of his/her job.

5. Qualifying exigency which occurs while the employee's spouse, child, or parent is a military member of the National Guard or Reserves. An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. This type of leave would be counted toward the employee's 12-week maximum FMLA leave in a 12-month period. A son or daughter of a covered service member is the service member's biological, adopted, or foster child, stepchild, legal ward or a child for whom the covered service member stood in loco parentis, and who is of any age.

6. Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member.

The Military Family Leave Act (MFLA) entitles eligible employees of the University to take up to a total of twenty-six (26) weeks of MFLA leave, in a single 12-month period, to care for a service member (spouse, son, daughter, parent or next of kin) due to an illness or injury incurred in the line of duty or on active duty which may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

Next of kin is defined as the closest blood relative of the injured or recovering service member. The highest priority is given to a blood relative whom the service member has designated as the next of kin. When this designation is made, that relative is deemed the only next of kin eligible to take military caregiver leave. If the service member does not designate a next of kin, multiple family members with the same level of relationship may take leave, either consecutively or simultaneously. The department's order of priority, other than the covered service member's spouse, parent, son or daughter, is: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins.

Employees may not take leave under the military caregiver provision to care for former members of the Armed Forces or members who are on the permanent disability retired list.

If all of the 26 weeks of leave are not taken during the 12-month period, the remaining amount is forfeited. Further, the limitation of taking 26 weeks in a 12-month period does not exclude the employee from caring for the service member after the 12 month period ends under traditional FMLA leave for a family member with a serious health condition — if the family relationship and illness or injury qualifies the eligible employee to take traditional FMLA leave.

In addition, the same employee may be eligible to take an additional 26 weeks of military caregiver leave in subsequent 12-month periods as this leave benefit applies on a per-covered-service member, per injury basis.

#### **D. Definition of Serious Health Condition**

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Examples of potential serious health conditions may involve one or more of the following (list is not all inclusive):

1. Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with or consequent to such inpatient care.
2. Continuing treatment by a health care provider, which includes any one or more of the following:
  - A period of incapacity of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves one or more of the following:
    - a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider.
    - b) 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.
3. Any period of incapacity due to pregnancy or for prenatal care.
4. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (for example, asthma, diabetes, epilepsy).
5. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (for example, Alzheimer's, a severe stroke, the terminal stages of disease).
6. Any period of absence to receive multiple treatments either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (for example, severe compound bone fracture, a severe concussion).

Under the provisions of the FMLA, an employee may care for family members (parent, spouse, or child) with a serious health condition if one of the following apply:

- The family member needs assistance for basic medical, hygiene, nutritional needs, safety, or transportation as a result of a serious health condition.
- If the employee's presence would be beneficial or desirable for the care of the family member with a serious health condition, which may include psychological comfort.
- The employee has a child over 18 years of age who is incapable of self-care because of a mental or physical disability. Incapable of self-care means the child must have active supervision or assistance to provide daily self-care in three or more of the following activities:
  - Grooming
  - Dressing
  - Eating
  - Cooking
  - Cleaning
  - Shopping
  - Taking public transportation
  - Maintaining a residence
  - Using telephones
  - Using a post office
  - Paying bills

### **E. Amount of Leave**

The Family and Medical Leave Act entitles eligible employees of the University to take up to a total of twelve (12) weeks of **unpaid** FMLA leave, in any year, for the FMLA circumstances (1) through (5) above. For

purpose of this law and University policy, a year is defined as the twelve month period beginning with the date the employee first uses FMLA designated leave. This shall be referred to as a "first use year."

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the University and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the University and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

#### **F. Employee Status and Benefits During Leave**

While an employee is on leave, the University will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the University will continue payroll deductions to collect the employee's share of the premium.

While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. If the employee does not continue these payments, the University shall discontinue coverage during the leave. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Controller's Office by the 10<sup>th</sup> day of each month. If the payment is more than 30 days late, the employee's health care coverage shall be dropped for the duration of the leave. It is the responsibility of the employee to ensure all appropriate documents are provided to the Controller's Office and that the employee portion of the premiums are submitted to the Controller's Office in the required timeframe to ensure insurance premiums are submitted timely.

#### **G. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a Fitness For Duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions.

The employee may be denied restoration until a fitness for duty certification is submitted and if the employee fails to provide the requested fitness for duty certification or a new medical certification for a serious health condition when the FMLA leave is concluded, the employee may be terminated. However, the University cannot delay the employee's return to work while it is contacting the health care provider for clarification or authentication. Fit for duty certifications cannot be required for each absence taken on an intermittent or reduced leave schedule. However, a certification may be requested once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took leave.

On a basis that does not discriminate against employees on FMLA leave, the University may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

#### **H. Use of Paid and Unpaid Leave**

FMLA leave is **unpaid** leave and as such employees will be required to exhaust annual, sick or compensatory leave, depending on the nature of the absence, before approval will be granted to use leave without pay. Regardless of whether the employee uses annual, sick or compensatory leave during the designated FMLA leave period, such leave will be charged against the employee's FMLA leave entitlement.

The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave and the paid time will run concurrently with an employee's FMLA entitlement.

### **I. Intermittent Leave or a Reduced Work Schedule**

An employee may take FMLA leave for 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year up to 480 hours) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced-hour schedule if medically necessary for his/her own serious health condition or the serious health condition of an immediate family member. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) over a 12-month period.

The University may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the University before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

Intermittent leave is not available for birth, adoption or foster care.

### **J. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave shall provide notice of the need for FMLA leave to the Department of Human Resources. The *Application for Family Medical Leave Act* is available for this purpose at ([www.ulm.edu/hr/forms.html](http://www.ulm.edu/hr/forms.html)). Within five business days after the employee has provided this notice, the Department of Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights (<http://www.dol.gov/whd/forms/WH-381.pdf>).

When the need for the leave is foreseeable, the employee must provide at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the University's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

The 30-day advanced notice requirement for foreseeable leave does not apply to qualifying exigency leave when a covered family member is called to active duty in the Armed Forces.

For recordkeeping purposes, an employee taking Family Medical Leave shall complete a leave form with "FMLA" in the explanation section. A copy of the Leave Request Form indicating FMLA shall be sent to the Department of Human Resources.

Supervisors and/or department heads should not hesitate to seek advice from the Department of Human Resources. The FMLA is a strict liability statute and errors in the application of the FMLA regulations for all employees can result in liability.

### **K. Certification for the Employee's or Family Member's Serious Health Condition**

The University will require certification for the employee's or family member's serious health condition. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition ([www.ulm.edu/hr/policies/forms/fmlacertificationhealthcareprovideremployee.pdf](http://www.ulm.edu/hr/policies/forms/fmlacertificationhealthcareprovideremployee.pdf)) or the DOL Certification of Health Care Provider for Family Member's Serious Health Condition ([www.ulm.edu/hr/policies/forms/fmlacertificationhealthcareproviderfamily.pdf](http://www.ulm.edu/hr/policies/forms/fmlacertificationhealthcareproviderfamily.pdf)).

The employee must respond within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. The University may directly contact the employee's health care provider for verification or clarification purposes. **The University will not use the employee's direct supervisor for this contact.** Before the University makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification.

The University has the right to ask for a second opinion if it has reason to doubt the certification. The University will pay for the employee to get a certification from a second doctor, which the University will select. The University may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the University will require the opinion of a third doctor. The University and the employee will mutually select the third doctor, and the University will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **L. Certification of Qualifying Exigency for Military Family Leave**

Certification of the qualifying exigency for military family leave will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave below.

<http://www.ulm.edu/hr/policies/forms/certificationmilitaryqualifyingexigency.pdf>

The employee must respond within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

#### **M. Certification for Serious Injury or Illness of Covered Service member for Military Family Leave**

Certification for the serious injury or illness of the covered service member will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member ([www.ulm.edu/hr/policies/forms/certificationmilitaryseriousinjuryorillness.pdf](http://www.ulm.edu/hr/policies/forms/certificationmilitaryseriousinjuryorillness.pdf)).

The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

ULM must accept military forms known as "ITOs" (invitational travel orders) and "ITAs (invitational travel authorizations). An employee who submits an ITO or an ITA to support their request for caregiver leave may not be required to provide any additional certification during the time period specified in the ITO/ITA. If the employee seeks leave for the same purpose beyond the time period specified in the ITO/ITA, however, the University may require the employee to support such further leave with the Military Caregiver Form. ITOs/ITAs are subject to authentication and clarification, but not recertification or 2nd/3rd opinions. When an employee requesting leave submits an ITO/ITA, the University may also require the employee to confirm his family relationship to the covered service member.

#### **N. Questionable Certifications**

If an employee submits a medical certification form that appears to be falsified, the Department of Human Resources may contact the employee's or family member's health care provider directly and request verification that the certification form was completed and/or authorized by him or her. **The employee's direct supervisor is not permitted, under any circumstances, to contact an employee's health care provider to clarify or authenticate a certification.**

It is the employee's responsibility to either furnish a completed and sufficient certification or to furnish the health care provider with any necessary authorization to release a complete and sufficient certification directly to the Department of Human Resources. Any employee who submits false information regarding this FMLA/MFLA leave may be subject to disciplinary action.

If the Department of Human Resources later questions the appropriateness of the leave or its duration, it may request certification at that later date. The employee is required to provide that certification within fifteen (15) calendar days after receipt of the request from the Department of Human Resources.

If there is insufficient information on the completed certification form, the Department of Human Resources shall notify the employee, in writing, that the certification is incomplete or insufficient and provide the employee with an explanation of the additional information required. A certification is incomplete if one or more of the applicable entries have not been completed and insufficient if it is complete but the information is vague, ambiguous or non-responsive. In this case, the University must comply with regulations under the Health Insurance Portability and Accountability Act. If the employee declines to participate in this process, the employer may deny the request for FMLA/MFLA leave. The employee has seven (7) calendar days, unless not practicable under the circumstances despite the employee's diligent good faith efforts, to cure any deficiency. If deficiencies are not cured, or the certification is not provided at all, the University may deny FMLA/MFLA leave.

### **O. Recertification**

The Department of Human Resources may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days. If a minimum duration for the period of incapacity is specified, the University may not request recertification until that time period has expired.

Recertification may be requested in less than 30 days if the employee requests an extension of leave, circumstances have changed significantly from the original certification or the University doubts the stated reason for the employee's absence. (For example, when leave results in recurring Monday/Friday absences.) Otherwise, the University may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The University may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

The employee remains responsible for the expense associated with the recertification. If recertification is not provided within fifteen (15) days the University may deny continuation of the FMLA/MFLA leave until the recertification is provided.

### **P. University Call-in Procedures**

Each employee is required to follow the call-in procedures established by his/her supervisor, department head or in accordance with University policy, except under extraordinary circumstances. Failure to comply with established call-in procedures may subject the employee to disciplinary actions and the employer may delay FMLA coverage until the employee complies with the established procedures. Extraordinary circumstances may exist and will be assessed on a case by case basis.

### **Q. Designation of FMLA Leave**

Within five (5) business days after the employee has submitted the appropriate certification form, the Department of Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.  
(<http://www.dol.gov/whd/forms/WH-382.pdf>)

### **R. Complaint Procedure**

It is unlawful for any employer to interfere with, restrain or deny the exercise of any right provided for under FMLA/MFLA. Employees may not be retaliated against for invoking the Family and Medical Leave Act.

If an employee has any questions, concerns, or disputes with this policy, a written request should be submitted to the Department of Human Resources.