

OHIO UNIVERSITY
GUIDELINES FOR MANAGEMENT AND ENFORCEMENT OF
RIGHTS AND RESPONSIBILITIES UNDER
THE FAMILY MEDICAL LEAVE ACT (FMLA)

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ACKNOWLEDGEMENTS AND MANUAL INTRODUCTION

This manual was produced to provide guidance to employees of Ohio University regarding the Family Medical Leave Act (FMLA). It is the University's hope that this manual will be referenced by both management and staff alike.

The within material should answer many of your questions concerning the FMLA. However, the University and its employees may encounter unique situations related to the FMLA. In such instances when you need further clarification or assistance regarding the FMLA, contact University Human Resources.

The Family Medical Leave Act is a relatively recent statute and because of that case law is constantly evolving that further clarifies the FMLA. The University will endeavor to keep its employees informed of relevant changes/clarifications of the FMLA.

Lastly, we would like to give special acknowledgement to the staff of University Human Resources, the Office of Legal Affairs and various departments throughout the University for their input in creating this manual.

INTRODUCTION TO THE FAMILY MEDICAL LEAVE ACT (FMLA)

The FMLA allows employees to balance their work and family life by taking reasonable leaves for certain family and medical reasons. The FMLA seeks to accomplish this balance in a manner that accommodates the legitimate interests of employees and minimizes the potential for employment discrimination on the basis of gender.

The law became effective August 5, 1993. It covers only certain employers; affects only those employees eligible for the protections of the law; involves entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; sets requirements for notice and certification of the need for Family Medical Leave (FML); and protects employees who request or take FML. The law also includes certain employer record keeping requirements.

Ohio University is subject to the requirements of the Family Medical Leave Act. The following is a guideline for supervisors and employees of Ohio University.

I. EMPLOYEE ELIGIBILITY FOR FML

If the FML eligibility requirements are met, the relevant time off will be counted as FML time. Employees at Ohio University are eligible for FML if:

1. The employee has completed 12 months of cumulative service with the University and worked 1250 hours within the preceding 12 months. The 1250 hours calculation is for hours actually worked or on the job. The 1250 hours does not include sick time, holiday time, or other paid non-working time.

(The exception to this at Ohio University is the AFSCME contract which states that working can also mean active pay status. Active pay status for AFSCME bargaining unit employees does include sick time, holiday time and other paid time.)

To determine if an employee has 12 months of service with at least 1250 hours worked within the preceding 12 months, the University calculates the hours of work starting at the date that the leave is requested. For example: employees who have been employed at the University for cumulatively more than one year, must still be determined to have actually worked for at least 1250 hours in the preceding year from the date the leave is requested. Employees will not be eligible for FML if they have not been employed at Ohio University for at least one year. To determine the amount of FML time available to the employee, the University uses a backward view rolling year, for example:

On July 16, 1999, the employee requests FML. The University would look back to July 17, 1998, to first determine if the employee has actually worked 1250 hours during the preceding year. The University will then determine how much of the total allowable 12 weeks is available for the employee to use within the year. In this example, the employee used 4 weeks; therefore, the employee would as of July 16, 1999 have 8 weeks available for FML use. The employee will continue to accumulate FML eligible hours, as long as the employee is actually working (or, in the case of an AFSCME bargaining unit employee, FML eligible hours will continue to accumulate as long as the employee is on active pay status.)

2. Additionally, to be eligible, an employee must comply with the University's leave request requirements. Leave request requirements include:

Notice to the University that the employee is requesting FML, and:

- (a) Thirty days advance notice of the need to take FML when the need is foreseeable;
- (b) Notice as soon as practicable when the need to take FML is not foreseeable (as soon as practicable generally means at least verbal notice to the University within one or two business days of learning of the need to take FML);
- (c) Sufficient information for the University to understand that the employee needs leave for qualifying reasons (the employee need not mention the FMLA when requesting leave to meet this requirement), but must explain why the leave is needed; and
- (d) Where the University was not made aware that an employee was absent for FML reasons and the employee wants the leave counted as FML, timely notice (generally, within two business days of returning to work) that leave was taken for an FML-qualifying reason.

3. Adequate medical certification that the employee has a qualifying event as defined by the FMLA statute.

*Note: employee is required to complete **OU FMLA #.01**-Application for Family or Medical Leave. <http://www.ohio.edu/hr/forms/upload/OUFMLA1.doc>

II. **QUALIFYING FML EVENTS**

A qualifying event includes the following:

1. The employee's own serious health condition;

2. The serious health condition of a spouse, qualifying domestic partner, child*, or parent.
*FMLA defines a “child” as a person under the age of 18; or, an adult 18 or over that is incapable of self care because of a mental or physical disability. (Questions regarding an adult child 18 or over shall be referred to UHR.)
3. To care for or bond with a newborn, newly adopted or placed foster child within 12 months after birth or placement. Leave may begin before the birth or placement if circumstances require. Determination of the qualifying event will be made on a case by case basis by University Human Resources and the Office of Legal Affairs.
4. To cover qualifying exigencies related to a spouse, qualifying domestic partner, child or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces during a war or national emergency. Leave (12 weeks) may be used for any qualifying exigency arising out of the service member’s current tour of active duty or because the service member is notified of an impending call to duty in support of a contingency operation. Examples of qualifying exigencies: to arrange for child care; to see a child off or welcome child home; to attend pre-deployment briefings; to attend family support meetings; to attend reintegration briefings, etc.
5. To provide 26 weeks of leave for a spouse, qualifying domestic partner, child, parent, or nearest blood relative caring for a recovering service member. A recovering service member is defined as a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness suffered while on active duty that may render the person unable to perform the duties of the member’s office, grade, rank or rating. The employee may take up to 26 weeks of leave in a 12 month period. Leave to care for an injured or ill service member, when combined with other FMLA qualifying leave, may not exceed 26 weeks in a single 12 month period.

A. DEFINITION OF “SERIOUS HEALTH CONDITION”

The FMLA defines serious health condition as an illness, injury, impairment or physical or mental condition that involves one of the following:

- Hospital or inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility [CFR □ 825.114(a)(1)].
- Incapacity of more than three calendar days plus medical treatment. [CFR □ 825.114(a)(2)(I)].
- Pregnancy, including prenatal care [CFR □ 825.114(a)(1)(ii), □ 825.114(e)].
- Chronic conditions requiring periodic medical treatment which may cause episodic periods of incapacity [CFR □ 825.114(a)(2)(iii)].
- Permanent/long-term conditions requiring medical supervision, such as Alzheimer’s, a severe stroke, or the terminal stages of disease [CFR □ 825.114(a)(2)(iv)].
- Multiple treatments for non-chronic conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical treatment, such as chemotherapy, radiation, severe arthritis, physical therapy, or dialysis [CFR □ 825.114(a)(2)(v)].

B. DEFINITION OF “CONTINGENCY OPERATION”

“Contingency operation” is defined by Section 101(a)(13) of the United States Code as

- Any military operation or hostilities against an enemy of the United States or
- A broad array of military assignments during a war or national emergency.

III. FML TIME AVAILABLE TO ELIGIBLE EMPLOYEES

Assuming the employee meets the eligibility requirements as listed above, the employee is eligible for up to 12 weeks of either consecutive or intermittent leave within a 12 month period for all qualifying events except #5 above, Care for an Injured Service member, which allows up to 26 weeks. If the FML eligibility requirements are met, the relevant time off will be counted as FML time

A. RULES FOR PAID OR UNPAID FML

The University has chosen the option under FMLA to require employees while on FML, to use accrued sick leave, where appropriate, prior to going on unpaid FML. After the exhaustion of paid sick leave, the employee, may use any other paid leave available, i.e., vacation while on FML, prior to using the balance of FML as unpaid FML.

If the employee is using paid sick leave, and the University designates the leave as FML, then the employee, need only comply with the notice and medical certification requirements of the paid sick leave policy and/or contractual provisions. Once the paid sick leave is exhausted, any further FML whether paid or unpaid leave, will be subject to the notice and certification requirements of the FMLA.

The employee may choose to use compensatory time; however, this time cannot be counted towards the employee's 12 week FML entitlement.

B. SPECIAL CIRCUMSTANCE FOR SPOUSES OR QUALIFYING DOMESTIC PARTNERS BOTH EMPLOYED AT OHIO UNIVERSITY.

A husband and wife both working for the University are eligible for FML for the birth or placement of a child or care of the child after birth or placement; however, the husband and wife together or combined are only entitled to a maximum of 12 weeks FML for the birth or adoption of a child.

Likewise, the total amount of leaves a husband and wife can take for the care of a sick parent is limited to a combined total of 12 weeks.

Example #1: Jay and Brenda, a married couple, both work for Ohio University. Brenda gives birth to a child, and both Brenda and Jay take leaves to care for their child. Each one takes 3 weeks of leave (a total of 6 weeks between them) and then Jay returns to work. Brenda or Jay is entitled to 6 more weeks of family leave to care for the new child (or, together they may each take 3 more weeks).

*However, Brenda or Jay would each have an additional 9 weeks left of FML for a personal serious health condition, to care for his/her spouse's serious health condition, or, the serious health condition of their child.

Example #2: Jay and Brenda, a married couple, both work for Ohio University. Jay's

father develops a serious health condition and Jay is required to care for his father for 4 weeks. Shortly thereafter, Brenda's mother develops a serious health condition and Brenda is needed to care for her mother for 4 weeks. Brenda or Jay is entitled to 4 weeks of remaining FML to care for a sick parent (or, together they may each take 2 more weeks).

*However, Brenda or Jay would still be eligible for 8 weeks for their own serious health condition.

IV. THE FMLA ENTITLES THE EMPLOYEE TO THE FOLLOWING BENEFITS WHILE ON FML:

1. If FML is taken as any paid leave pursuant to Ohio University policy, then all benefits that the employee would be eligible for under the paid leave policy will be available to the affected employee.
2. If an employee is on unpaid FML, the employee will continue to have group health care benefits provided by the University as if actively at work. However, the employee will be responsible for contributing whatever premium or co-pay is normally contributed while actively working. The health care benefit includes any of the insurance benefits that the employee is enrolled in at the time of FML designation. An employee on unpaid FML is not entitled to accrue or build other employment benefits while on unpaid FML. However, once the employee returns from unpaid FML, employment benefits are reinstated. These other employment benefits may include, but are not limited to: sick leave accrual, vacation accrual, FML hours accrual, pension and pension contributions. Pension contributions will not be made while an employee is on unpaid leave, however, there will not be a break in service for the purposes of vesting and eligibility to participate in the pension program.
3. An employee returning from paid or unpaid FML will be reinstated to the same or equivalent position with the same or equivalent pay, and benefits and terms of employment; unless, the position has been eliminated or modified unrelated to the employee's FML.

EXCEPTION:

If upon returning from FML, an employee is unable to perform an essential function of

the job due to a physical or mental condition, the employee may not have a right to return to the same or similar position under the FMLA.

4. Any time taken as designated FML may not be considered by the University against the employee for evaluation purposes, discipline purposes or, when considering other employment decisions or benefits.
5. FML eligible events that are not eligible under university policy for paid sick leave, but are eligible for paid vacation, paid personal leave or unpaid leave are:
 - To bond with a newborn, newly adopted or placed foster child within 12 months after birth or placement.
 - To cover qualifying exigencies related to a spouse, qualifying domestic partner, child or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces during a war or national emergency.
 - Armed Forces Caregiver leave provided by a family member which is outside the scope of current sick leave policies, i.e. aunt, uncle, cousin, etc.

V. EMPLOYEE FML NOTICE REQUIREMENTS

The employee is required to notify the University of their need for FML.

The notice must include:

- thirty (30) day advance notice of the need to take FML when the need is foreseeable;
- notice as soon as practicable when the need to take FML is not foreseeable (as soon as practicable generally means at least verbal notice to the university within **one or two business days** of learning of the need to take FML);
- sufficient information for the University to understand that the employee needs leave for FML-qualifying reasons (the employee need not mention the FMLA when requesting leave to meet this requirement, but is only required to explain why the leave is needed); and, where the University was not made aware that an employee was absent for FML reasons and the employee wants the leave counted as FML, then the employee must give timely notice written, or verbal, (generally within **two business days** of returning to work) that the leave was taken for an FML-qualifying reason.

VI. UNIVERSITY FML NOTICE REQUIREMENTS

A. General Notice

The University has the following general public notice requirements under the FMLA:

1. To display FMLA information poster in conspicuous place on the University's premises;
2. To include a FML policy in the policy and procedure manual.

B. Specific Notice

The University is required to notify employees of their rights and obligations under the FMLA when the University is notified by an employee that the absence or need for leave qualifies under FML. The University's notification must provide the employee with their rights and obligations while on leave, and consequences of failure to meet those obligations. This notice must be put in writing to ensure adequate record keeping and compliance.

*Note: University is required to provide employee with **OU FMLA # .02** – Notice to employees of their rights under the FMLA. <http://www.ohio.edu/hr/forms/upload/FMLA2.doc>

The University has the following specific notice requirements mandated by statute:

1. The University must notify the employee that if leave is designated as FML, it will be counted against the annual FML entitlement,
2. The University must notify the employee that the University will require the employee to furnish medical certification and the consequences of failing to do so;
3. The University must notify the employee that the employee is required to make co-premium payments for maintaining group health insurance and the arrangements for making such payments;
4. The University must notify the employee that the employee is required to present a fitness-for-duty certification before being restored to his/her job;
5. The University must notify the employee of the employee's rights to job restoration upon return from leave.

This notice must be in writing and given, sent, or delivered to the employee

within 2 working days from the time the University is informed of the employee's request for FML, or when the University has sufficient information that FML may be appropriate. If the University is unable to send written notification within 2 business days, oral notification must be given, and a follow up written notification must occur no later than the next regular pay day.

*This can be accomplished by form **#.03 OU FMLA** Response to Employee Request for FMLA.
(<http://www.ohio.edu/hr/forms/upload/FMLA3.doc>)

*All notices shall be on forms provided by the University.

C. PRELIMINARY DESIGNATION OF FML

The FML notice to the employee may include a preliminary designation of FML.

Preliminary designation should be made when the supervisor knows the reason for the leave request but has been unable to confirm that the employee is eligible for FML or is waiting for medical certification (and/or second and third health care provider opinions are being sought). The preliminary designation should be made when the leave begins or as soon as a reason becomes known.

Once the University receives the necessary information, designation of FML will become final as FML eligible leave or will be withdrawn as FML, as appropriate. Notice of this final designation must be provided to the employee in writing.

D. RETROACTIVE DESIGNATION OF FML:

This can be utilized if the University does not learn of the reason for the employee's absence until the employee returns, and either the University or the employee wants to designate the leave as FML.

Once the employee has returned, if the University has not already preliminarily or finally designated the leave as FML due to the fact that the University did not know of the reason for the absence, and the University wants the leave to be designated as FML, then the University must give written notice to the employee, within 2 working days of the employee's return to work that the leave is being designated as FML.

If the employee returns to work and the University did not know the reason for the leave, and did not preliminarily or finally designate the leave as FML, and the employee wants the absence to be designated as FML, the employee must notify the University within 2

working days of the employees return. The University will then preliminarily or finally designate the leave as FML, as appropriate.

In the absence of a timely notification by the employee, the employee may not subsequently assert FML protection for the absence.

VII. DETERMINING ELIGIBILITY FOR FML WHEN THE EMPLOYEE ASSERTS A SERIOUS HEALTH CONDITION AND/OR THE NEED TO CARE FOR AN ILL FAMILY MEMBER.

If an employee requests FML due to their own serious health condition, and the University determines that they are eligible for FML either paid or unpaid, but the University wishes to have medical certification that verifies or clarifies the serious health condition of the employee, it may request that the employee submit the needed medical certification within 15 days of the request for the leave. This means the University must give the employee at least 15 days notice of the University's request for medical certification, unless the circumstances are such that this time period is not practicable.

If an employee's FML is foreseeable, and the employee has provided the University at least 30 days notice of the impending leave, then, the employee should provide medical certification, if requested, before the leave begins.

A. MEDICAL CERTIFICATION FOR A SERIOUS HEALTH CONDITION MUST PROVIDE:

1. A statement by a health care provider indicating which part of the definition of serious health condition applies to the employee;
2. Medical facts supporting the certification which should include a medical statement which meets the criteria of the condition;
3. The certification must include the approximate date the condition started, and its probable duration including the probable length of the present incapacity;
4. Certification must state whether it will be required for the employee to take intermittent or reduced schedule leave and if so, the probable schedule of such leave.

[If the condition is pregnancy related or chronic, the certification must also

indicate whether the patient is currently incapacitated and the likely duration and frequency of the periods of incapacity.]

5. If the condition requires additional treatments, the certification must state an estimate of the probable number of treatments;
6. If the treatment is continuing treatment the employee must provide a general description of the regimen; and
7. The certification must state whether the employee is unable to perform work of any kind, is unable to perform one or more of the jobs essential functions and include a statement specifying the essential functions the patient is unable to perform and if the employee must be absent for treatment:

*Note: Employee is responsible for providing the University with the completed **OU FMLA #.04** – Certification of Physician or Health Care Provider for the Employees Own Serious Illness. <http://www.ohio.edu/hr/forms/upload/FMLA4.doc>

B. MEDICAL CERTIFICATION FOR THE CARE OF A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION.

If an employee requests FMLA to care for a spouse, qualifying domestic partner, child or parent with a serious health condition, the certification must indicate whether the patient requires assistance for basic medical or personal needs, safety or transportation, or whether the employee is needed to provide psychological comfort to the patient or assist in the patient's recovery. If the employee will be needed to provide care only on an intermittent basis, certification must indicate the probable duration of the need.

If medical certification is received and further clarification is required, contact University Human Resources.

*Note – employee is responsible for providing the University with the completed **OU FMLA #.05** – Medical Certification Statement For the Illness of a Family Member. <http://www.ohio.edu/hr/upload/FMLA5.doc>

If there are questions about the verification, qualification or validity of a request for FML to care for a newly adopted or placed foster child, contact the Office of Legal Affairs.

C. CERTIFICATION FOR ADOPTION OR FOSTER CARE

The University may require verification/certification of a newly adopted or placed foster child for purposes of FML.

*Note: If so, the affected employee will be responsible to have **OU FMLA #.06** completed by the appropriate agency. <http://www.ohio.edu/hr/forms/upload/FMLA6.doc>

D. FURTHER MEDICAL CERTIFICATIONS:

The FMLA provides that the University has the right to question or require clarification of the employee's medical certification. The University at its own expense may require the employee to obtain a second certification from a different health care provider chosen by the University. The University will reimburse the employee for reasonable out of pocket travel expenses incurred while obtaining a second opinion. If there is a conflict between the first and second medical opinions, the University may require the employee to obtain a third opinion from a health care provider that is jointly approved by the University and the employee and will be at the University's expense. The third opinion will be final and binding on the University and the employee. If a second and/or third medical certification is necessary to determine if the employee is eligible for FML protection, the supervisor should contact University Human Resources.

If the leave is not found to be FML qualifying, then the FML protections and benefits will not apply for that period of absence. It will be at the discretion of the University to grant other leave if applicable in place of FML, or to initiate discipline if appropriate.

*At any time, the University may contact the employee to clarify the information in the medical certification, or with the employee's permission allow the University's health care representative to contact the employee's Health Care Provider to clarify information in medical certification. However, the inquiry may not seek additional information regarding the employee's health condition or that of a family member – it may only clarify existing information.

E. RE-CERTIFICATION OF EMPLOYEES ELIGIBILITY FOR FML

The University may request recertification of the employee's serious health condition or

the serious health condition of a family member no sooner than 30 days from the date of the last medical certification, unless the circumstances described by the last certification have changed substantially; for example, the severity of the condition has changed or the frequency and duration of the absences have changed. Re-certification may also be required if the employer receives information that casts doubt on the employee's stated reason for the absence.

If the medical certification that the University receives is for more than 30 days, the University may not seek medical certification until the time has passed, unless, the employee requests an extension of the leave or if the above other conditions apply. Re-certification shall be at the employee's expense.

F. INTERMITTENT LEAVE

When medically necessary, intermittent leave or a reduced schedule is available to employees who qualify for FML due to their own serious health condition, or a serious health condition of a family member. However, when intermittent leave is requested for the birth, adoption or foster placement of a child, intermittent leave may be only taken with the agreement of the University.

Reduced schedule leave or intermittent leave may be taken in any size increments that the University's payroll system can account for.

If an employee takes leave on an intermittent or reduced schedule basis, only the amount of leave actually taken may be counted against the employee's 12 week FML entitlement. The amount of leave available to be taken will depend on the employee's normal workweek. For example, if the employee normally works 30 hours per week, they are still entitled to 12 weeks of FML that is calculated on a 30 hour work week, which is equivalent to 360 hours of FML. An employee taking 10 hours per week, would have 36 weeks in which to exhaust all of their FML.

VIII. MISCELLANEOUS

A. MEDICAL CERTIFICATION FOR RETURNING TO WORK

The University may require the employee to certify that they are able to resume working, and may require that the employee receive clearance from Hudson Health Center. The

certification need only be a simple statement from the employee's health care provider that the employee is able to resume work. However, the University may seek clarification from the health care provider regarding the employee's ability to perform the essential functions of the employee's job.

B. SPECIAL CIRCUMSTANCES

This manual is intended to provide guidance concerning the use and management of employees' rights to FML. There will be times when an employee may also be entitled to leave due to a Worker's Compensation claim and/or accommodations made pursuant to the Americans with Disabilities Act or, pursuant to other contractual, policy or statutory leaves. It may be necessary to coordinate the various leave rights and obligations that are available. If you are presented with a situation that involves the coordination of a combination of the various leave entitlements, you are advised to seek the assistance of University Human Resources.

IX. COMPLIANCE

A. PENALTIES FOR NON-COMPLIANCE BY OHIO UNIVERSITY

If an employee believes that the University failed to comply with the requirements of the FMLA, the employee may file an internal grievance and/or pursue legal recourse.

B. PENALTIES FOR NON-COMPLIANCE BY AN EMPLOYEE

If the University believes that an employee has failed to meet the employee's responsibilities under the FMLA, the University may under the appropriate circumstances deny the FML and/or institute discipline for non-compliance with University Policy and Procedures. Prior to any action taken against an employee under this provision, supervisors are advised to contact University Human Resources or the Office of Legal Affairs.