

Subject: **Family Medical Leave**

Applies to: Faculty and staff who have been employed by the University for at least 12 months and who have worked a minimum of 1,250 hours during the immediately preceding 12 months. Leaves of Absence for individuals represented by a collective bargaining unit will be granted in accordance with the applicable agreement.

I. Policy: This Policy establishes family, medical, and servicemember family leaves of absence in accordance with the Family and Medical Leave Act of 1993 (FMLA), as amended. Pursuant to the FMLA, the University will grant eligible employees up to 12 weeks of guaranteed family and/or medical leave without pay during a qualifying 12-month period for one or more of the following reasons:

- a. The birth or care of a newborn child.
- b. Placement of a child for adoption or foster care and care for the newly placed child.
- c. To care for a spouse, domestic partner, child, or parent with a serious health condition.
- d. The employee's own "serious health condition."

There are also two types of Military Family Leave available to eligible employees under the FMLA:

- a. Qualifying Exigency Leave. This leave provides 12 weeks of "qualifying exigency" leave to eligible employees who have a covered servicemember (a spouse, domestic partner, son, daughter, or parent) in the National Guard or Reserves who is on active duty or who has been notified of an impending call or order to active duty in the U.S. Armed Forces in support of a contingency operation.
- b. Military Caregiver Leave. This leave provides eligible employees (a spouse, domestic partner, son, daughter, parent, or next of kin) for up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember recovering from a serious injury or illness sustained in the line of active duty. The single 12-month period for purposes of Caregiver Leave is measured from the date the employee first takes Military Caregiver Leave.

The University will not interfere with, restrain or deny an employee's FMLA rights and will not otherwise discharge or discriminate against any person who opposes any practice believed by that person to be unlawful under the FMLA.

II. Definitions

"Child" for purposes of medical leave, means a biological, adopted, foster son or daughter, stepchild, legal ward, child of domestic partner, or a child of a person acting in the capacity of a parent, including a child 18 year or older who is incapable of self-care due to a qualifying mental or physical disability.

“Covered servicemember” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

“Eligible” employee means staff and faculty who have one year of service who have worked at least 1,250 hours (including on-call time, but excluding vacation, holiday, and sick time) during the “rolling year” (defined below) immediately preceding the commencement of leave.

“Equivalent position” means a position having the same pay, benefits, working conditions, and substantially similar duties and responsibilities and entails substantially equivalent skill, effort, responsibility, and authority.

“Family members” include parents, children (defined above), and spouse or domestic partner.

“Foster care” is defined to require State action, rather than an informal arrangement to take care of another person’s child.

“Intermittent leave” means leave which is taken in separate blocks of time for a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

“Parent” refers to a biological, foster or adoptive parent, a stepparent, and a person who acted in the capacity of a parent toward the employee, but not an in-law.

“Qualifying exigency” for purposes of Military Family Leave is broadly defined to cover things such as short-notice deployment, military events and related activities, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities as agreed upon with the employer.

“Reduced leave” means a change in the employee’s normal work schedule (such as from full-time to part-time or by working the usual number of hours worked in a week or in a day).

“Rolling year” means the 12-month period measured backward from the date that leave is requested.

“Serious health condition” is defined as an injury, illness, impairment, or physical or mental condition that involves either inpatient care or a “period of incapacity” that includes “continuing treatment” or a “regimen of continuing treatment” by a healthcare provider. (See complete definition attached at end of policy).

III. Scope, Guidelines, Conditions, and Limitations

- A. For purposes of determining eligibility, an employee’s employment for at least 12 months is determined by total time employed (i.e., the 12 months need not be consecutive in time) over a several year period.

- B. Medical certification is required for all leaves approved under this Policy.
- C. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period, but out of those 26 weeks, to no more than 12 weeks of leave for one or more of the following: the birth or care of a newborn son or daughter; placement of a son or daughter with the employee for adoption or foster care; to care for the spouse, domestic partner, son, daughter or parent with a serious health condition; or because of a qualifying exigency.
- D. If spouses or domestic partners are both employed by the University and both eligible for leave, they are limited to a combined total of up to 12 weeks of leave during any 12-month period if the leave is taken for: (1) the birth of their son or daughter or to care for the child after birth; (2) placement of a son or daughter with them for adoption or foster care or to care for the child after placement; or (3) to care for the employee's parent with a serious health condition.
- E. Leave taken for the birth, adoption, or care of a newborn child or placement of a foster child with the staff member cannot be taken intermittently and must be taken within one year of the birth or placement.
- F. Intermittent leaves or reduced leave schedules:
 - 1. Employees may take intermittent leave or reduced leave to care for one's own serious health condition or a family member's serious health condition, or for a serious injury or illness of a covered servicemember. Also see Sick Leave Plan for Short- Term Disability, Policy #339.
 - 2. Exempt and non-exempt staff are to record actual hours taken in reporting absences due to intermittent or reduced leave.
 - 3. Staff on intermittent or reduced leave may be transferred to available equivalent alternative positions on a temporary basis to better accommodate the recurring leave.
 - 4. Staff needing intermittent FMLA leave or leave on a reduced schedule must attempt to schedule their leave so as not to disrupt University operations.
 - 5. Staff using intermittent leave must follow normal call-in/call-off policies and procedures, and, must also leave sufficient information at the time of the call so as to allow the University to determine whether the need for leave at that time in fact qualifies under the FMLA.
- G. An employee must be restored to his/her position or an equivalent one upon expiration of and return from leave taken under this Policy. Consequently, the department must retain the employee's position or an equivalent one, but is permitted to temporarily fill the position during an employee's absence. However, the FMLA contemplates that there may be situations when an employee cannot return to

employment during or after leave. Termination of employment may occur, for example, while an employee is on leave if there is a layoff or reduction in force, or cause that would otherwise support dismissal, if the employee's job would have been lost if he/she was actively working. Similarly, termination of employment may occur if the employee is unable to perform one or more of the essential functions of the position, with or without reasonable accommodation, after the leave is over.

- H. A staff member's disability leave for a serious health condition (work-related or non-work-related, and including disability due to pregnancy and childbirth) may be covered under the University's Sick Leave Plan and will count toward the 12-week annual entitlement under the FMLA. Medical certification is required. Also see Sick Leave Plan for Short-Term Disability, Policy #339.
- I. The University may request a fitness for duty certification indicating an employee's ability to perform the essential functions of his/her job before return from leave.
- J. The University may, when appropriate, retroactively designate leave as FMLA with appropriate notice to the employee.
- K. An employee who requests a leave under the FMLA and whose request is denied may elect to resign; if subsequently rehired, he/she may have service time reinstated if criteria set forth in Policy #134 are met.

IV. Benefits

- A. Benefits during Paid Portion of Leave: For regular full-time and regular part-time staff and faculty, during a **paid** portion of a Leave under the FMLA benefits will continue subject to any payroll deductions.
- B. Benefits during Unpaid Portion of Leave: An **unpaid** Leave will have the following effect on an individual's benefits:
 - 1. University-paid single or family Dental Assistance premiums will be continued.
 - 2. Medical Plan coverage will be continued unless the staff member signs a form canceling this coverage. Staff members who do not cancel this insurance during a Leave will be billed for their normal share of the premium.
 - 3. Medical/Dental Flexible Spending Accounts (FSAs) through the University of Rochester Plan may be continued. Staff members on Leaves who choose to continue Medical/Dental FSAs will be billed for their premiums on an after-tax basis. Since Dependent Care FSAs are established to allow the employee to work, they will be suspended during a Leave.
 - 4. University-paid Basic Term Life and University-paid Basic AD&D Insurance will be continued. Group Universal Life (GUL)/Group Optional

Term Life (GOTL) and Dependent Term Life insurance with Securian Life also will be continued unless the faculty or staff member cancels the coverage by written consent. Faculty and staff members who do not cancel their GUL/GOTL or Dependent Term Life insurance during a Leave will be billed by Securian Life and will need to pay their normal premiums.

5. Tuition benefits for a staff member are continued.

V. Procedures:

- A. Generally, an employee must notify his/her supervisor of the need for a leave under the FMLA and this Policy at least thirty (30) days in advance of the beginning date of the desired leave. If the need for FMLA leave is unforeseeable, notice should be given as soon as practicable and must follow usual and customary call-in procedures for reporting an absence, absent unusual circumstances.
- B. The supervisor must immediately inform Leave Administration of the request for leave, indicating the employee name, address, phone number, and whether the request was for the employee or another qualifying individual.

Leave Administration can be informed via phone at 267-4080 or 267-4081 OR via website www.rochester.edu/working/hr/leave, (How to report an FMLA).

- C. Within five (5) business days of notification, Leave Administration will send the employee notice of initial eligibility, along with a notice of rights and responsibilities (Form WH-381) and the pertinent health care provider's or other applicable certification for completion and return to Leave Administration.
- D. The fully completed health care provider's certificate must be returned to Leave Administration within 15 days of receiving the request for completion of certification. If the certificate is incomplete or fails to sufficiently demonstrate the need for leave, and Leave Administration is not otherwise able to obtain adequate information for completion from the health care provider, the employee will be notified in writing of any remaining deficiencies and the employee will have seven (7) calendar days to provide the necessary information. Failure to provide sufficient information may result in delay or denial of FMLA leave.
- E. If FMLA is approved by Leave Administration, within five (5) business days after such determination, an approval letter containing a Designation Notice will be sent to both the employee and the department informing them whether the leave is designated as FMLA leave.
- F. Departments must maintain a record of the staff member's time out under the FMLA in the department. Time reporting in the Human Resources Management System (HRMS) should be PTO (if applicable), sick time (if an employee is absent for his/her own serious illness) or vacation time. All PTO, if applicable, and vacation accruals will be paid out during regular pay period cycles for the first 12 weeks of the Leave or until exhausted.
- G. Staff members whose illnesses result in their absence from work for more than seven (7) calendar days also must complete disability documentation. See Policy #339.

See also Policies: #134 Reinstatement of Previous Service Time When Rehired
 #271 Workers' Compensation Benefits
 #339 Sick Leave Plan for Short-Term Disability

Serious Health Condition

A “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity¹ or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence Plus Treatment:
 - a) A period of incapacity¹ of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity¹ relating to the same condition), that also involves:
 - 1) **Treatment² 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 (e.g., physical therapist) under orders of, or on referral by, a health care provider;
or
 - 2) Treatment by a health care provider on at least one occasion which results in a **regimen of continuing treatment³** under the supervision of the health care provider.
3. Pregnancy: Any period of incapacity due to **pregnancy or prenatal care**. Does not require an absence of more than three days, or treatment by a health care provider.
4. Chronic Conditions Requiring Treatments:

A chronic condition which:

 - 1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
 - 2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
 - 3) May cause **episodic** rather than a continuing period of incapacity¹ (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent/Long-term Conditions Requiring Supervision: A period of incapacity¹ which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be**

receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a **condition that would likely result in a period of incapacity¹ of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

1 Unable to attend work or school or to perform other regular daily activities for more than three consecutive days because of a serious health condition (including treatment and recovery).

2 Treatment includes examinations to determine if a serious health condition exist and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

3 A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. Includes being advised to call health care provider if condition does not improve. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.