

Procedure: Family Medical Leave

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References: Family and Medical Leave Act of 1993; P.L. 103/3; Title 1, Americans with Disabilities Act of 1990; M.O.M. 3-0300; Leave Administration: Personnel Policy 10.0, 240.0, 241.0; HRS Policies

The University of Montana administers Family Medical Leave in accordance with the Family Medical Leave Act of 1993 and Montana University System policy.

COVERED LEAVE

The University will grant an eligible employee unpaid leave for up to 12 work weeks during a 12-month period, if all procedures are followed and leave is approved for any of the following reasons:

- A. The birth or adoption of a child, or the foster care placement of a child;
- B. To care for the spouse, child, or parent of the employee if that individual has a serious health condition requiring the employee's attendance; or
- C. A serious health condition of the employee that renders the employee unable to perform their job functions.
 1. Employees are limited to a maximum of 12 weeks of FMLA leave for any of the purposes; an employee cannot take 12 weeks' parental leave and 12 weeks' sick leave during the same 12-month period. If the leave is for birth, adoption, or foster care placement, the leave must be completed within 12 months of the date of birth or placement.
 2. An employee's FMLA balance will be reduced when an approved absence is due to an FMLA qualifying condition.
- D. Qualifying exigency because the employee's spouse, son, daughter, or parent is on covered active duty or has been notified of or called to covered active duty; or to care for a spouse, son, daughter, parent, or next of kin who is a covered service member with a qualifying injury. See §§825.122 and 825.127
 1. Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Spousal Exception

If both employees work at the University and are eligible for leave, they are each entitled to 12 work weeks of FMLA leave.

State Law

FMLA does not supersede any state law or collective bargaining agreement that provides greater family or medical leave rights. Such leave will run concurrently with leave under this policy.

Intermittent Leave

An employee taking leave for their personal health condition or to care for an ill family member may take leave on an intermittent basis, or by reducing their scheduled work hours, if the employee provides certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner.

Part-Time After Birth, Adoption, or Foster Care Placement

Requests for intermittent or reduced schedule leave after the birth, adoption, or foster care placement of a child will be considered on a case-by-case basis. The request must be made in writing to the employee's supervisor. A copy of the written agreement, outlining the employee's intermittent or reduced work schedule and start/ending date, should be retained by the employee and the employee's supervisor. A copy of the agreement must be sent to Human Resource Services. As a general rule, part-time arrangements or intermittent leave will be granted:

- A. for a maximum of twelve months after birth, adoption, or foster care;
 - 1. subject to the ability of the employee's supervisor to ensure that work is completed through scheduling changes or job-sharing; and
 - 2. subject to the employee's consent to alter schedules or work longer hours on an emergency basis, such as when other employees are absent.

The University reserves the right to refuse leave, to cancel any such arrangement, or to alter the agreement if the supervisor concludes that the needs of the work unit require the employee's presence.

Definitions

A. "Family Member"

"Family member" is defined in FMLA and this policy to include the employee's spouse, son, daughter, or parent (but not a parent "in-law"). A "son" or "daughter" is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible. A "son" or "daughter" is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day-to-day and financial responsibility for the employee when the employee was a child.

B. "Serious Health Condition"

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three days' absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated, would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable; or pre-natal care.

C. "Health Care Provider"

A "health care provider" is any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social workers and physician assistants who are performing within the scope of their practice as defined under state law. Christian Science practitioners listed with the First Church of Christ Scientist may also be considered health care providers as defined under FMLA.

D. “Serious injury or illness”

- i. “Serious injury or illness” is defined as a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- ii. a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- iii. a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- iv. an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

E. “Covered Servicemember”

“Covered Servicemember” is defined as a current 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, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

ELIGIBILITY

A. Minimum Eligibility Requirements

1. An eligible employee is an employee who has accrued at least 12 months or 52 weeks of University or State of Montana service and who has worked at least 1,040 hours during the 12 months preceding the start of the leave. The 12 months of service need not be continuous.
2. Hours are calculated based upon actual hours that the employee worked.

B. Leave for Serious Health Conditions

1. FMLA is intended to cover serious health conditions. Employees who wish to take leave to care for family members with non-serious health conditions are not covered by this policy. Employees may take accrued sick leave for their non-serious illnesses under the provisions of Sick Leave Policy and collective bargaining agreements.

PROCEDURES FOR REQUESTING LEAVE

A. Requests For Leave

1. Procedure

- a. An employee requesting FMLA must complete a "Request for Family and Medical Leave" form and submit the form to their immediate supervisor. This form can be obtained at the Human Resource Services web site.

2. Foreseeable Leaves

- a. If the need for FMLA leave is foreseeable (e.g., birth or placement of a child for adoption or foster care, or for planned medical treatment), the employee must provide 30 days' advance notice to the employee's supervisor. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may request leave to start 30 days after notice is given.

3. Scheduling

- a. If the leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.

4. Unforeseeable Leaves

- a. Employees are expected to promptly notify their supervisor as soon as they learn of the need for FMLA leave. If the need for FMLA leave is not foreseeable, an employee must give notice as soon as possible and practicable, given the circumstances of the particular case. Such notice must be given within two working days, except in extraordinary circumstances such as a medical emergency.
- b. In emergencies, the employee or a family member should contact the employee's supervisor or, if the employee's supervisor is not available, leave a message and a number where they can be reached. Requests for leave should then be submitted in writing as soon as practicable. Absent good cause or medical emergencies, written requests for leave should be submitted within two business days after oral request is made.

5. Additional Information

- a. After receiving a request for leave, the employee's supervisor will provide additional information regarding the procedures for obtaining leave, including any additional documents that may be required.
- b. An employee's time on paid or unpaid leave for reasons described in this procedure will be counted as FMLA leave regardless of whether the employee has specifically requested Family Medical Leave.

B. PROOF

1. Medical Certification

- a. Medical certification from a health care provider may be required to support FMLA leave requests either to care for an employee's seriously-ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job.
- b. If the leave request is due to the employee's family member receiving continuing treatment by a health care provider, certification must be obtained from the provider stating that such leave is medically necessary, the employee is needed by the family member, and the expected duration of the leave.
- c. If the leave request is due to the employee's serious health condition, certification that the employee is unable to perform the functions of the employee's job is required.
- d. The "Medical Certification" form can be obtained at the Human Resource Services web site. Employees must submit certification to Human Resource Services within 15 days of the date requested.

2. Second Opinions

- a. The University has the right to request, at the expense of the University, a second or third opinion. The University has the option of requiring the employee to obtain a second opinion from an independent medical provider selected by the University. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider, agreed to by the University and the employee, which shall be considered final and binding.

Leave is Contingent on Eligibility

All employee requests for FMLA leave are contingent upon a determination by the University that the employee is eligible for FMLA leave. This includes a determination of eligibility and provision of medical certification. Leave is also contingent on any second or third opinion that may be required.

Transfer to Alternative Position

In all cases of intermittent and reduced scheduled leaves, the University reserves the right to transfer an employee to another position that better accommodates the employee's need for leave and/or the employer's operations.

Confidentiality

The University will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to the Human Resources Department and should not retain any copies in their files. The University will follow the confidentiality procedures of its ADA policy for all FMLA-related information.

Substitution of Sick Leave, Direct Sick Leave and Sick Leave Fund Grants, Compensatory Time and Vacation Time

A. Substitution Options

1. Employees are required to use any accrued sick leave for any part of leave taken under this policy.
2. Employees may elect to substitute paid accrued annual leave or comp time for any leave under this policy but are not required to do so. However, if an employee elects to receive a direct sick leave grant or a sick leave fund grant, the employee must comply with the eligibility criteria necessary to receive the donation.
3. The period of paid leave will be deducted from the amount of leave time available under this policy.

B. Unpaid Leave

1. Unless an employee substitutes paid leave, leave will be unpaid, except as provided under subsection A.

C. Insurance Benefits

1. During the leave, the University will maintain the employee's coverage for health benefits. The employee is required to continue to pay the employee's portion of any health insurance premiums normally deducted from employee's paycheck and shall pay such amounts at the time contributions are normally deducted by tendering a check payable to The University of Montana - Missoula to Human Resource Services.

2. If an employee fails to make the required payments, the University may decide in its sole discretion to continue coverage. If this is done, under most circumstances the University will have a right to recover these amounts.
3. All amounts due the University because of unreimbursed health benefits provided during leave will be recovered from the employee upon the employee's return to work.

D. Other Benefits

1. Other benefits normally provided to an employee shall be provided to the employee only if permitted by the plan document governing the provision of benefits, in accordance with the provisions of the written document, and if the employee makes any required co-payments. In accordance with existing University policies on unpaid leave, employees will not earn any annual or sick leave while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will earn vacation or other leave on a pro-rated basis according to number of hours worked.

E. Seniority

1. The employee shall not accrue any seniority during unpaid leave provided under this policy.

REINSTATEMENT

The University has the right, upon the employee's return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for University employees.

A. General

1. An employee taking leave under this policy will be returned to the employee's same position or to an equivalent position, at the election of the University, unless the employee would have been terminated in the absence of any leave (e.g., layoff, downsizing, or termination of a temporary job). Taking leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

B. Fitness-For-Duty Examinations

2. The University will require a fitness-for-duty certification prior to the employee's return to work.
3. The University reserves the right to make additional medical inquiries to ensure that employee can safely perform all the functions of the job.

C. Periodic Reporting

1. Employees on leave are required to report to their supervisor, on a regular basis determined by the supervisor, on their status and intent to return to work. During leave, the University also may require that an employee recertify the medical condition that caused the employee to take leave (e.g., when the employee requests an extension of leave or when circumstances have changed).

D. COBRA (Consolidated Omnibus Budget Reconciliation Act)

1. When an employee notifies the University that they are not returning from leave, the University shall terminate the employee's employment and health benefits and the employee shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and the provisions of the health plan, provided that any period of continued health benefits shall commence from the day FMLA leave ends.

E. Failure to Return to Work

1. Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment.

Once HRS receives notification of a possible need for FMLA, we are required by law to send information to an employee, if they are eligible for this benefit. If you are aware of an employee using sick leave for an extended period of time, or are aware that they are not working due to a possible FMLA leave scenario, please notify HRS. Thank you.

For assistance with the FMLA process, please contact Rita Garland, HRS Benefits Specialist.

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