

FAMILY AND MEDICAL LEAVE**Introduction**

The Family and Medical Leave Act (FMLA)¹ is a federal law that provides eligible employees with unpaid, job-protected leave for specified family and medical reasons. Each campus, division or unit (“campus”) of the University of Arkansas System (“University”) complies with the Act and shall provide FMLA leave to its eligible employees. The FMLA includes a lengthy set of rules; this policy covers only the highlights of the FMLA.² Additional questions should be directed to the human resources specialist for the employee’s campus.

Eligibility

To be eligible for FMLA leave an employee must have been employed by a campus of the University for at least 12 months and must have worked at least 1,250 hours during the 12 months immediately before the FMLA leave begins. Only time actually worked is counted for the purposes of the FMLA. Sick leave, annual leave, catastrophic leave (if applicable), holiday time, and any other time not actually worked does not count toward FMLA eligibility.

Reasons for Leave

An eligible employee may take FMLA leave for one or more of the following reasons:

- The birth of the employee’s son or daughter or placement of a child with the employee for adoption or foster care, and to bond with the newborn or newly placed child;
- To care for the employee’s spouse, son, daughter, or parent who has a serious health condition;
- When a serious health condition renders the employee unable to perform the essential functions of his or her job;
- For certain events, called “qualifying exigencies,” related to covered active duty, or a call to covered active duty, of the employee’s spouse, son, daughter, or parents; or

¹ On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was enacted to provide relief to American workers in response to the coronavirus pandemic. Pursuant to that Act, certain employers are required to provide emergency paid sick leave and expanded family and medical leave under the FMLA and Emergency Paid Sick Leave Act during the period from the effective date of April 2, 2020, through the expiration date of December 31, 2020. This policy does not address the particulars of those temporary leave requirements, which were communicated to the campuses, divisions and units upon enactment. Any employee seeking information concerning coronavirus specific leave should contact the campus, division and unit human resources department.

² In the event of a conflict between this policy and the provisions of the FMLA or its implementing regulations, the statute and regulations shall take precedence.

³ “Qualifying exigency” includes, among other things, certain short-notice deployments, attendance at certain military events and related activities, and for certain school and childcare related activities. A covered service member is a current member of the Armed Forces (including the National Guard and Reserves) who is receiving medical treatment or therapy, is recuperating, in outpatient status, or on the temporary disability list for a serious injury or illness.

- To care for a covered service member with a service-related serious injury or illness and who is the employee's spouse, son, daughter, parent, or next of kin.

The terms "serious health condition," "qualifying exigency" and "covered service member" are defined at length in the FMLA. Generally speaking, a serious health condition is an illness, injury or chronic condition that involves treatment or supervision by a medical professional. It also includes incapacity or treatment related to pregnancy.

Duration of Leave

An eligible employee is entitled to up to 12 work weeks of FMLA leave during a 12-month period. Effective July 1, 2020, the 12-month period for calculating FMLA leave use for all employees will be measured forward from the date that the employee's first FMLA leave for any of the above reasons begins. The next 12-month period would begin the first time the employee takes FMLA leave after the completion of the prior 12-month period.

A total of 26 weeks in a 12-month period is available to care for a covered service member with a serious service-related injury or illness. Regardless of the method applied for other FMLA leave, the 12-month period for calculating use of leave to care for a covered service member begins on the first day the employee takes leave for this reason.

When an employee and spouse are both employed by the University, leave for the serious health condition of a parent, or for the birth or adoption of a child, is limited to a combined total of 12 weeks for both employees.

Leave may be taken as continuous leave, intermittent leave or through a reduced work schedule based on medical necessity.

Type of Leave

FMLA leave is unpaid leave and runs concurrently with paid leave provided by the University including sick leave, annual leave, compensatory time and, where applicable, any available catastrophic leave. Accordingly, an employee will receive pay pursuant to the University's applicable paid leave policies during the period of otherwise unpaid FMLA leave. In addition, catastrophic leave for parental purposes (if applicable) shall run concurrently with FMLA leave. However, an employee taking maternity-related leave or leave for an illness or injury for which the employee is receiving worker's compensation benefits may elect to take this FMLA leave as unpaid leave.

Requesting FMLA Leave; Employee Obligation to Provide Notice for Foreseeable Absence

Each campus, division, and unit shall establish procedures for requesting FMLA leave. An employee shall provide at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered service member. If 30 days' notice is not practicable for reasons such as a lack of knowledge of approximately when

leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

When information provided by an employee informs the campus of an FMLA qualifying event, the campus may designate the leave taken as FMLA leave, whether or not the employee requests FMLA leave.

An employee taking FMLA leave for the serious health condition of the employee or of a child, spouse or parent may be required to submit a healthcare provider's certification addressing the serious health condition. An employee taking leave because of a "qualifying exigency" or to care for a covered service member may also be required to provide a certification. The campus human resources office will provide the employee with certification forms after receiving notice of a request for FMLA leave.

When an employee's FMLA leave is the result of a serious health condition that caused the employee to be unable to perform the employee's job, the campus may, as a condition of returning to work, require the employee to present a certification from the employee's health care provider that the employee is able to resume work.

Benefits during FMLA Leave

The University will continue health benefits for an employee on FMLA designated leave, but the employee must continue to pay the employee's share of the health benefit premium. An employee on unpaid FMLA leave must make arrangements to pay the employee's share of the premium. The University does not pay for voluntary employee benefits while an employee is on leave without pay, regardless of whether the leave qualifies as FMLA leave. Employees should consult their campus human resources specialist to arrange for continuation of any voluntary benefits.

June 4, 2020