

## Family And Medical Leave Act

Employees who have worked for the University for at least twelve (12) months and at least one thousand two hundred and fifty (1250) hours during the twelve (12) month period preceding the commencement of leave are eligible for unpaid, job protected family or medical leave under the Family and Medical Leave Act of 1993 (“FMLA”) as amended, under the terms described in the following policy. Employees who are not eligible for FMLA or who have exhausted their FMLA entitlement may be eligible for non-FMLA leave needed for their own disability pursuant to the [Disability Accommodations policy and procedure](#).

### Leave Entitlement

1. Eligible employees may take up to twelve (12) workweeks of unpaid, job-protected leave during a rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave for one or more of the following reasons:
  - (i) the birth of a child;
  - (ii) the placement of a child for adoption or foster care;
  - (iii) to care for the employee’s spouse, child, or parent who has a serious health condition;
  - (iv) a serious health condition that makes the employee unable to work; or
  - (v) any qualifying exigency arising out of the fact that an immediate family member (spouse, child, or parent) is on active duty (or has been notified of an impending call or order to active duty) in the National Guard or Reserves in support of a contingency operation, or if the individual is called to active duty and is a retired member of the Regular Armed Forces or Reserves.

An employee whose immediate family member is on active duty or called to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.

Leave for birth of a child, or placement of a child for adoption or foster care, must conclude within twelve (12) months of the birth or placement of the child.

In the event that both spouses are employed by the University and are eligible for FMLA leave, they are limited in the amount of leave they may take for the birth of a child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of twelve (12) weeks.

2. Eligible employees may take up to twenty-six (26) workweeks of unpaid, job protected leave to care for an immediate family member (spouse/domestic partner, child, parent, sibling, step-parent, step-grandparent, step-children and step-sibling) or next of kin (nearest blood relative) who is a covered service member. For purposes of this policy, a "covered service member" is 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. As used in this paragraph only, a "serious injury or illness" is one suffered while on active duty that may render a member medically unfit to perform the duties of the member's office, grade, rank or rating. The leave described in this paragraph shall only be available during a single twelve (12) month period.
3. During the single twelve (12) month period described in Paragraph 2 above, an eligible employee shall be entitled to a combined total of twenty-six (26) workweeks of leave under Paragraphs 1 and 2 above. Nothing in this paragraph shall be construed to limit the availability of leave under Paragraph 1 during any other twelve (12) month period.

In the event that both spouses are employed by the University and are eligible for FMLA leave, they are limited in the amount of leave to a combined total of twenty-six (26) weeks of leave during the single twelve (12) month period described in Paragraph 2 if:

- A. the leave is taken to care for a covered service member with a serious injury or illness; or

B. if a combination of leave is taken to care for a covered service member and for the birth of a child, placement of a child for adoption or foster care or to care for a parent who has a serious health condition.

4. For purposes of this policy, "serious health condition" is an illness, injury, impairment or physical or mental condition that involves:

A. any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay in a hospital, hospice or residential medical care facility);

B. any period of incapacity requiring absence from work, school or other regular daily activities of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) treatment two (2) or more times by a health care provider within thirty (30) days of the first day of incapacity (unless extenuating circumstances exist); or

(2) treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first treatment visit must take place within seven (7) days of the first day of incapacity.

C. any period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits for treatment by a health care provider (at least two (2) visits per year), continues over an extended period of time, and may cause episodic incapacity.

D. any period of incapacity due to pregnancy or prenatal care.

E. any period of permanent or long term incapacity due to a condition for which treatment may not be effective, and requiring the continuing supervision of a health care provider.

F. any period of absence to receive multiple treatments for:

(1) restorative surgery after an accident or injury; or

(2) an injury or condition which would result in incapacity of more than three (3) consecutive calendar days if left untreated.

Ordinarily, unless complications arise, the common cold, flu, ear aches, upset stomach, ulcers, headaches other than migraines, routine dental problems, etc. do not qualify as serious health conditions. In addition, routine medical examinations are not considered serious health conditions, and neither are voluntary cosmetic treatments, unless inpatient care is required or complications develop.

5. For purposes of this policy, a qualifying exigency may include:

- Short-notice deployment (of up to seven (7) days of leave) for a period of seven (7) calendar days from the date of notification.
- Attending certain military events and related activities.
- Arranging for alternative childcare and attending certain school meetings.
- Addressing certain financial and legal arrangements.
- Spending time with a covered service member who is on short-term rest and recuperation leave (up to five (5) days of leave).
- Attending certain counseling sessions.
- Attending post-deployment activities that occur up to ninety (90) days after the termination of the covered service member's active duty status; and addressing issues arising from the death of a covered military member
- Other activities arising out of the service member's active duty or call to active duty status which is agreed upon by the University and the employee.

## Procedures

The University contracts with a third party, New York Life, to administer its FMLA program for all eligible employees.

Eligible employees may apply for FMLA and/or Short-Term Disability by calling New York Life's toll-free number at 1(888) 842-4462. For Spanish speaking customers, call 1(866) 568-8421.

When an eligible employee contacts New York Life to apply for FMLA or Short-Term Disability, a New

York Life Intake Specialist will request the necessary information, instruct the employee on follow-up and grant provisional approval (in writing) of the FMLA leave. New York Life will also send the medical certification form to the employee for completion by their health care provider (please see Medical Certification below for additional details).

## **Advance Notice**

For foreseeable FMLA leaves based on prearranged medical treatment, the employee must consult with their supervisor and make a reasonable effort to schedule the leave so as not to disrupt their department's operations. Respectfully, the University requires the employee to give their supervisor at least 30 days written notice of the need for a leave unless emergency circumstances warrant shorter notice. The University recognizes that unexpected emergencies can arise where it is not possible to provide thirty (30) days' notice of the intended leave. In such situations, employees are expected to provide as much advance notice as is practicable. If no advance notice is possible, notice is required as early as practicable. If an employee fails to give thirty (30) days' notice for foreseeable leaves with no reasonable excuse for delay, the University may delay the taking of the FMLA leave until thirty (30) days after the date the employee provides notice to the University of the need for the leave.

Failure to provide the University with requested information and necessary paperwork may result in delay or denial of FMLA leave.

## **Medical Certification**

In cases where an employee is requesting a medical leave because of the employee's own serious health condition or that of a spouse, child or parent, appropriate medical certification as requested by the University must be provided to New York Life in a timely manner. The University, at its own expense, may require the employee to receive a second opinion from a health care provider designated and approved by the University. If this opinion conflicts with the first opinion, the University, again at its own expense, may request a third opinion from a health care provider mutually agreed upon by both the University and the employee. The third opinion will be binding on both parties.

When the employee requests leave, a New York Life Intake Specialist will request the necessary information, instruct the employee on follow-up and grant provisional approval (in writing) of the FMLA leave. New York Life will also send the certification form to the employee for completion by their health care provider (please see Medical Certification below for additional details). The University will notify the employee of the requirement for certification which is due no later than five (5) business days after the employee requests leave. Failure to provide requested certification within fifteen (15) days, unless it is not practicable to do so despite the employee's diligent, good faith efforts, may result in the delay of further leave until it is provided.

Failure to provide requested certification in a timely manner may result in denial of leave until it is provided.

It is the employee's responsibility to provide complete, sufficient and timely certification when requested. In the event that the certification is deficient, the University shall advise the employee in writing what additional information is necessary to make the certification complete and sufficient and give the employee seven (7) calendar days (unless not practicable despite the employee's diligent, good faith efforts) to cure any such deficiency. If the deficiencies are not cured in the resubmitted certification, the University may deny the taking of FMLA leave.

#### A. Employee's Own Medical Condition:

For the employee's own medical leave, the certification must include the following information from the employee's attending physician:

- the date on which the serious health condition began;
- the probable duration of the serious health condition;
- a description of the medical facts regarding and treatment of the serious health condition; and
- a statement that the employee is unable to perform the essential functions of their position.

#### B. Medical Leave to Care for Family Member:

If the leave is being requested to care for a spouse, child, or parent with a serious health condition, the written certification must include the following information from the family member's attending physician:

- the date on which the serious health condition began;
- the probable duration of the serious health condition;
- the appropriate medical facts regarding the condition; and
- a statement that the employee is needed to care for the spouse, child, or parent, with an estimate of the amount of time that the care will require.

## **Certification for Military Family Leave**

If an employee is requesting leave because of a Qualifying Exigency or to care for a Covered Service Member, the employee must contact New York Life by calling their toll-free number at 1(888) 842-4462. For Spanish speaking customers, call 1(866) 568-8421.

When an eligible employee contacts New York Life to apply for Military FMLA, a New York Life Intake Specialist will request the necessary information, instruct the employee on follow-up and grant provisional approval (in writing) of the FMLA leave. New York Life will also send the necessary certification forms to the employee for completion by the designated military health care provider.

When the employee requests leave, the University will notify the employee of the requirement for certification and that it is due no later than five (5) business days after the employee requests leave. Failure to provide requested certification within fifteen (15) days, unless it is not practicable to do so despite the employee's diligent, good faith efforts, may result in the delay of further leave until it is provided.

Failure to provide requested certification in a timely manner may result in denial of leave until it is provided.

It is the employee's responsibility to provide complete, sufficient and timely certification when requested. In the event that the certification is deficient, the University shall advise the employee in writing what additional information is necessary to make the certification complete and sufficient and give the employee seven (7) calendar days (unless not practicable despite the employee's diligent, good faith efforts) to cure any such deficiency. If the deficiencies are not cured in the resubmitted certification, the University may deny the taking of FMLA leave.

## **Medical Recertification**

Employees who are on a leave because of their own serious health condition or to take care of a spouse, child or parent with a serious health condition may be required to submit to the University a medical recertification of the need to remain on the leave when the University, in its discretion, deems recertification is warranted and where permissible. The University may request medical recertification as every 30 days, and sooner in connection with an employee's absence when:

- Circumstances in the original certification have changed significantly (e.g. the employee is absent more frequently than certification indicated);
- The University receives information that casts doubt about the continuing validity of the certification; or
- An employee asks for an extension of their leave during the leave period that was expected to last a specific length of time.

The employee is financially responsible for the cost of all re-certifications not covered by the employee's insurance. Failure to provide requested certification within fifteen (15) days, unless it is not practicable to do so despite the employee's diligent, good faith efforts, may result in the delay of further leave until it is provided.

## **Substitution of Paid Leave**

An employee taking leave pursuant to the FMLA for which they are not entitled to be paid by the University, may elect to use any accrued paid leave (e.g., vacation days) as appropriate for the particular type of leave concurrently during the FMLA leave. Such paid leave time shall count toward the maximum of twelve (12) work weeks, or twenty-six (26) work weeks of leave as described in Paragraph 2 above under Leave Entitlement, of leave permitted by this Policy. Substitution of accrued vacation time during the leave period may be used in increments of 2 hours. The remainder of the leave, if any, will be unpaid. The employee will be notified in writing of any leave days that will be counted towards the maximum twelve (12) weeks (or twenty-six (26) work weeks of leave as described in Paragraph 2 above under Leave Entitlement) of FMLA leave.



Employees who are on a leave of absence that is covered by payments such as disability benefits, Workers' Compensation benefits, or NY Paid Family Leave benefits will not be required to substitute accrued paid leave while receiving these benefit payments. However, the University and the employee may agree to have accrued paid leave supplement disability benefits, Workers' Compensation benefits, or NY Paid Family Leave benefits, to the extent permitted by state law. Any leave of absence taken pursuant to an applicable disability law, Workers' Compensation law, or NY Paid Family Leave legislation shall run concurrently with FMLA leave.

Any unpaid leave available under other University policies must also be used concurrently and will be counted towards an employee's FMLA entitlement.

## **Intermittent and Reduced Schedule Leave**

FMLA leave time may be taken intermittently (or on a reduced schedule basis in one hour increments in conformance with University Time Off Policy) whenever the leave is medically necessary due to the serious health condition of a covered family member or the employee, or the serious injury or illness of a covered service member. FMLA leave time may also be taken intermittently (or on a reduced schedule basis) by an employee when necessary for a qualifying exigency. Leave may not be taken on an intermittent basis or on a reduced work schedule for the birth or placement of a child without the University's approval.

If the need for intermittent leave is foreseeable, based on planned medical treatment, the employee is responsible for scheduling the treatment in a manner that does not unduly disrupt the University's operations, subject only to the approval of the health care provider.

When an employee requests intermittent leave or reduced schedule leave, the University reserves the right to transfer the employee temporarily to an alternative position which better accommodates recurring periods of absence. The position to which the employee is transferred will be equivalent in pay and benefits to the one that the employee held prior to the transfer.

## **Status of Benefits While on Leave**

While an employee is on medical or family leave pursuant to this Policy, they will continue to be covered under the University's insurance plans in effect at the time and so chosen by the employee, so long as the employee continues to pay whatever employee portion of the premium costs is required under University policy. If paid leave is used for any portion of the family or medical leave, employee premiums will be deducted from the leave payments in accordance with the practice applicable to an employee not on leave. Therefore, those employees using vacation or other paid days toward their FMLA entitlement will maintain the benefit coverage in place for those employees using such days for a non-FMLA purpose.

At the time an employee begins unpaid family or medical leave, they shall receive written instructions detailing the time and manner in which the employee premiums, if any, are to be paid. Failure to pay any required premiums by the end of the grace period stated in the written instructions shall result in the loss of insurance coverage.

An employee who fails to return to work for at least thirty (30) calendar days following the expiration of the family or medical leave shall be required to reimburse the University for the portion of the health care premiums paid by the University during the leave unless the employee can establish that the failure to return was due to the continuation, recurrence or onset of a serious health condition, or a serious injury or illness of a covered service member, which meets the criteria for leave under this Policy or was due to other circumstances beyond the employee's control.

## **Restoration of Position and Benefits**

The employee on family or medical leave is not entitled to the accrual of any seniority or employment benefits during any period of unpaid FMLA leave except as expressly stated herein or by law. Prior to the exhaustion of FMLA leave, employees will be responsible for notifying the Human Resources Department, in writing, of their intention to return to work. At the conclusion of an employee's medical or family leave, the employee will be returned to the position that the employee held prior to taking the leave. If that position is not available, the employee will be placed in a position that is equivalent in pay,

conditions and other terms of employment to the employee's prior position. When the employee returns to active work following the family or medical leave, any benefits that have lapsed during the leave shall be reinstated as if the employee had remained actively employed during the leave, except that the employee shall not accrue any additional benefits or seniority during the time of the unpaid FMLA leave.

## **Key Employees**

Under certain circumstances the University may deny job restoration to key employees. A key employee is a salaried employee eligible to take leave under this Policy who is among the highest paid ten percent (10%) of all the employees (both salaried and non-salaried, eligible and ineligible under this Policy) who are employed by the University. Unless otherwise prohibited by applicable law, the University may refuse to reinstate key employees after using FMLA leave if it determines that substantial and grievous economic injury would result from reinstatement. If this determination is made, the employee will be notified in writing and given an opportunity to end the leave and return to work. If the employee remains on leave, they will not have a right to be restored to employment.

## **Reservation of Rights**

The University will comply with all legal requirements for providing family and medical leave to eligible employees. To the extent the law permits employer discretion, the University hereby expressly reserves the right to modify, change or eliminate any provision of this policy subject to applicable law with respect to any employee or group of employees and does not intend to create a contractual commitment to any employee by issuing this policy.

## **FMLA Posting**

In accordance with federal law, the University shall post a notice summarizing the [main provisions of the FMLA \(PDF\)](#) including enforcement of the law.