

The University of Mississippi

Family and Medical Leave and National Defense Authorization Act Guidelines

Summary/Purpose: This policy provides information for employees who are absent from work for an extended period of time for specified medical, family, and military related reasons. Included are qualifying events, definitions, and specific guidelines and instructions for requesting such leave.

The University provides leave benefits as mandated by the Family and Medical Leave Act of 1993, as amended (FMLA) and the National Authorization Defense Act (H.R. 4986), as amended (H.R. 2647).

University employees employed one-half time or more, for at least twelve (12) non-consecutive months and who worked at least 1,250 hours during the twelve (12) month immediately preceding the leave may be granted Family and Medical Leave or leave under the National Defense Authorization Act.

The qualifying employee shall be entitled to Family and Medical Leave for up to twelve weeks in a 12-month period for one or more of the following reasons:

- Birth of a child
- Placement of a child with the employee for adoption or foster care
- To care for a spouse, child, or parent with a serious health condition
- Due to an employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her job

A son or daughter is defined to be a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis (in place of a parent). The child must be under 18 years of age; or 18 or older and incapable of self-care because of a mental illness or physical disability. Parent means a biological parent or an individual who stands or stood in loco parentis to an employee.

The following policies/definitions apply to this leave:

- A serious health condition is defined as: (a) inpatient care in a hospital, hospice, or residential medical facility, including any period of incapacity or subsequent treatment; (b) a period of incapacity of more than three (3) consecutive days that also includes treatment two (2) or more times by a health care provider or such treatment on at least one occasion resulting in a regimen of continuing treatment; (c) incapacity due to pregnancy or for prenatal care; (d) chronic conditions requiring treatments; (e) permanent long-term conditions requiring treatment; or (f) multiple treatment for non-chronic conditions.

- Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc. are examples of conditions that do not meet the definition of a serious health condition and do not qualify for Family and Medical Leave. A regimen of continuing treatment that includes 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, is not, by itself, sufficient to constitute a regimen of continuing treatment for the purposes of Family and Medical Leave.

The National Defense Authorization Act (H.R. 4986), as amended (H.R. 2647) is an expansion of the Family and Medical Leave Act of 1993, as amended, and provides FMLA entitlement to employees for the following reasons:

- An employee whose spouse, son, daughter, or parent of the employee on covered active duty, notified of an impending call to covered active duty, or receives an order to covered active duty in the Armed Forces as defined by H.R. 4986, as amended H.R. 2647, is entitled to twelve (12) weeks of leave. When leave is foreseeable the employee must provide reasonable and practicable notice.
- An employee caring for a spouse, son, daughter, parent, or next of kin (defined as nearest blood relative) with a serious illness or injury incurred as a covered service member, as defined by H.R. 4986, as amended H.R. 2647, is allotted twenty-six (26) weeks of leave during a single 12-month period. In aggregate, the maximum number of weeks taken by both husband and wife is 26-weeks during the 12-month period.

Certification from a health care provider may be required by the University to approve Family and Medical Leave or entitlement under the National Defense Authorization Act. A certificate of birth or legal adoption or documentation of foster parent status may be required for Family and Medical Leave when deemed appropriate.

Family and Medical Leave and leave taken under the National Defense Authorization Act will be granted once the University learns an employee has a qualifying event. Leave shall be taken concurrently with paid or unpaid leave status and a HR Form 3 must be processed.

The employee is to request Family and Medical Leave or leave taken under the National Defense Authorization Act under this policy in writing stating the purpose of the leave and the period of leave requested. If the leave is requested to be taken as an intermittent or on a reduced-time basis, a description of the schedule is to be provided. A certificate from a physician or practitioner may be required for any leave but is required beyond four days.

When possible, employees are to make a reasonable effort to schedule medical treatment for minimum disruption to the University.

The employee must provide the University at least 30 days advanced notice before the use of Family and Medical Leave if the need for the leave is foreseeable based upon expected birth, adoption, or foster care placement or planned medical treatment of the employee or family member. If 30 days is not practicable, notice must be given as soon as practicable. The University may delay leave for 30 days if prior approval request is not submitted timely.

The employee is responsible for providing the University with sufficient information for determining if the requested leave is covered by Family and Medical Leave. Preliminary designation under Family and Medical Leave will be assigned until certification by a medical care provider is received. Failure to provide adequate medical certification to determine Family and Medical Leave entitlement will result in withdrawal of preliminary designation. Notice may be oral or in writing; if oral, it shall be confirmed in writing within 5 business days.

Once the University has acquired knowledge that the leave is being taken for a reason covered by Family and Medical Leave, the University must promptly (within 2 business days, absent extenuating circumstances) notify the employee that leave is designated as Family and Medical Leave. The notice may be oral or in writing; if oral, it shall be confirmed in writing no later than the following payroll date (unless that date is less than one week after the oral notice, in which case, the notice must be no later than the subsequent payroll date).

Family and Medical Leave and leave under the National Defense Authorization Act may be taken intermittently or on a reduced leave schedule under certain circumstances; e.g., by working fewer days in a week or fewer hours in a day. Intermittent leave may be taken when medically necessary for planned, unanticipated or periodic medical treatment, or to care for a family member injured in service or called to active duty. Such intermittent leave for birth, adoption, or foster care is possible only if the University agrees.

The University may not designate leave that has already been taken as Family and Medical Leave after the employee returns to work, with two exceptions: (1) if an employee is out for an FMLA-qualifying reason and the University does not learn of the reason for the leave until the employee returns, the University may designate the leave as Family and Medical Leave promptly within 2 business days; or (2) if the University has provisionally designated the leave as Family and Medical Leave and is awaiting receipt from the employee of medical certification or obtaining a second opinion. Similarly, the employee is not entitled to the protection of Family and Medical Leave if the employee gives notice of the reason for the leave later than 2 days after returning to work.

The University reserves the right to request information updating the employee's condition and at least a tentative "return to work" date. Employees may be required to provide a medical statement from an attending physician confirming the right to return to work.

The University will continue to pay the employee's portion (employee only; not dependents) of the University's health insurance during the Leave. If the employee does not return to work after the Leave for reasons other than health or some other reason beyond the employee's control, the University reserves the right to charge the employee for the full premium cost of the health coverage provided.

If both spouses are employed by the University, both are eligible for this Leave. However, for the birth or placement of a child or the care of a sick parent, the husband/wife together are limited to only one 12-week period during the 12-month period.

Upon return from Leave, the employee will be restored to his/her original or equivalent position with equivalent pay, benefits, and other terms of employment.

If any nine-month faculty member has a covered event to occur that would call for the use of this policy between the end of one academic year and the beginning of another, the employee is not eligible for paid-leave status.

The 12-month period for this policy is defined as a "rolling 12-month period" which is measured backward from the date an employee uses Family and Medical Leave.