

UNIVERSITY OF UTAH EMPLOYEES ON LEAVES OF ABSENCE UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 ("FMLA") FREQUENTLY ASKED QUESTIONS

What protections are provided by FMLA? During an approved FMLA leave, the law requires:

- Covered absences cannot be the basis for adverse employment action
- Employees can maintain health coverage under the same conditions as if the employee were actively at work (the University allows employees to maintain certain other benefits, as well)
- With a timely, full medical release to return to work, if applicable, the employee must be restored to the same or an equivalent position with equivalent pay, benefits and terms and conditions of employment

What are the qualified reasons for FMLA Leave? There are six qualified reasons:

1. Birth of a son or daughter¹ and to care for the newborn child.
2. Placement of a son or daughter¹ with the employee for adoption or foster care.
3. Employee's Serious Health Condition that makes the employee unable to perform the functions of the employee's job.
4. To care for employee's spouse, parent, son or daughter¹ with a Serious Health Condition.
5. A "Qualifying Exigency" (as defined by the US Department of Labor) arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on active military duty or has been notified of an impending call or order to active military duty in support of a contingency operation.
6. To care for a covered servicemember with a serious injury or illness incurred in the line of active military duty if the employee is the parent, spouse, son, daughter or next of kin (closest living relative) of the covered servicemember. This is referred to as Military Caregiver Leave.

How long can I take FMLA Leave?

An eligible employee may take up to 12 workweeks of FMLA leave during a rolling 12-month period. A workweek is based on the average number of hours an employee is expected to work in a week. For example, full-time employees receive 480 hours and employees in a position with an FTE of 75% are expected to work 30 hours per week and would have twelve 30-hour workweeks of FMLA leave (or 360 hours).

Employees who take Military Caregiver Leave may take up to 26 weeks in a single 12-month period. The 26 weeks includes any FMLA time taken for any of the other qualified reasons. Military Caregiver Leave is available on a per covered servicemember, per injury basis.

What is a "Serious Health Condition"? A Health Care Provider Certification will be required to determine if you have a condition that qualifies as a Serious Health Condition under the FMLA. Your Health Care Provider must certify the approximate date on which the condition commenced and its probable duration. The Certification must also include medical facts sufficient to support the need for leave qualifies as a Serious Health Condition. The FMLA defines a Serious Health Condition as an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Inpatient Care – an overnight stay in a hospital, hospice, or residential medical facility (includes any period of Incapacity² or subsequent treatment in connection with or consequent to such inpatient care)
2. Incapacity and Treatment - A period of Incapacity¹ of more than three consecutive, full calendar days (and any subsequent treatment or period of incapacity) that also involves:

¹ "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence. For Qualifying Exigency Leave and Servicemember Family Leave, a son or daughter may be age 18 or older.

² "Incapacity" for purposes of FMLA is defined as the inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, and recovery therefrom.

(a) treatment two or more times by a Health Care Provider (within 30 days of the first day of Incapacity); or (b) treatment one time which results in a regimen of continuing treatment under the supervision of the health care provider

3. Pregnancy or Prenatal Care
4. Chronic Conditions – must require periodic visits to a health care provider (at least twice per year)
5. Permanent/Long-Term Conditions – must be under the continuing supervision of a health care provider
6. Conditions Requiring Multiple Treatments

Can I take FMLA for my family member who is in the military? Yes, you can take FMLA for a family member in the military. There are two types of leave that apply to an employee whose family member is in the military, the National Guard, or the Reserves. These types of leave are a qualifying exigency leave or a military caregiver leave.

When can I take leave for a Qualifying Exigency? Leave for a Qualifying Exigency applies to employees whose spouse, child, or parent is on covered active military duty or under an impending call to covered active duty (including servicemembers in the National Guard and Reserves). Covered active duty is considered duty during deployment to a foreign country. For members of the Reserves and the National Guard, an order to active duty in a contingency operation is also considered covered active duty. Eligible employees may use up to 12 workweeks of FMLA for a Qualifying Exigency. A Qualifying Exigency may include short notice deployment (7 or fewer days), military events and related activities (official ceremony, family support or assistance programs, and briefings), financial and legal arrangements, rest and recuperation, childcare and related activities, etc.

When can I take Military Caregiver Leave? Military Caregiver Leave applies to an employee whose spouse, child, parent, or next of kin is a military servicemember and has sustained a serious injury or illness. Eligible employee may take up to 26 workweeks of leave during a 12-month period for Military Caregiver Leave.

Current servicemembers - A serious injury or illness is an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces (including National Guard and Reserves) or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may cause the servicemember to be medically unfit to perform their military duties.

Veterans - For a veteran, a serious injury or illness is an injury or illness incurred in the line of duty when the veteran was on active duty in the Armed Forces (including National Guard and Reserves), including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty. Additionally, the injury or illness must have made the veteran medically unfit to perform their military duties, or it must be an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work.

Does FMLA leave need to be taken all at once or can I take it as needed over a period of time? The FMLA provides for four different types of leave: continuous leave (from one date to a set end date), intermittent leave (leave taken as needed for periods of Incapacity caused by the Serious Health Condition), reduced work schedule (e.g., a set amount of FMLA time to be taken each day), and medical appointments only. Your Health Care Provider's Certification will provide information on the type of leave needed.

If my spouse/partner also works for the University, do we have to share FMLA time? No, you do not have to share time with your spouse/partner. The FMLA states that employers can require employees who work for the same employer share their FMLA time in certain situations. However, the University has adopted a policy that allows employees to each use their own FMLA hours. If both parents work for the University, they may each take up to 12 workweeks for the birth or placement of a son or daughter for adoption or foster care. Employees can also each take up to 12 workweeks to care for a parent with a serious health condition, and they can each take up to 26 workweeks for the care of a military servicemember with a serious health condition.

Can I choose to take leave on an intermittent or reduced work schedule basis? Your Health Care Provider must certify that you need to take leave on an intermittent or reduced work schedule basis. If you are taking leave after the birth or adoption of a child, you should take your leave continuously following the birth or adoption; however, your supervisor may authorize intermittent FMLA leave, based on the needs of your department.

I am planning a needed medical treatment in advance. How much notice do I need to give my department? If your need for FMLA leave is foreseeable, you must give at least 30 days advance notice. The FMLA states, "When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider."

My doctor certified that I need to take leave for medical appointments. What is required of me? Medical appointments should be scheduled outside your regular working hours if at all possible. If you are unable to schedule appointments outside your regular working hours, you may take FMLA leave for your Serious Health Condition for medical appointments with your Health Care Provider, including travel time to and from the appointment. You need to work with your supervisor prior to scheduling any medical treatments. The FMLA states that employees are ordinarily expected to "work out a treatment schedule which best suits the needs of both the employer and the employee."

I have been approved for intermittent FMLA leave for Chronic Condition. What notice am I required to give when I am Incapacitated by my Serious Health Condition and unable to go to work? When you take leave for a condition that has been approved for FMLA leave, you must comply with your department's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. You also have an obligation to specifically reference the qualifying reason for leave and to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. If do not comply with the usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

What is the University's policy regarding use of sick and vacation accruals during an FMLA leave?

You must use your sick and vacation accruals at your regular work schedule (if you are scheduled to work 40 hours per week and take FMLA for the entire week, you must use 40 hours of accruals). However, you may save up to 10 days of vacation by request. The Request for Leave Under the Family and Medical Leave Act form has a box to check if you wish to retain vacation leave. It is recommended that you use your sick leave accruals first, but not required. You may also choose to use your personal preference leave. Once you use all accruals, the balance of your FMLA leave is unpaid/excused.

Can I use my sick and vacation accruals first and then request FMLA leave?

If your leave is going to last less than three (3) days, you can use your sick or vacation time to cover those absences. If the leave is three (3) days or more, you should apply for FMLA. The FMLA allows employers to require employees to use their sick and vacation accruals to cover their absences while on leave. The University has opted to apply this practice to our own FMLA policy, and it coincides with our own accrual use policy. Employees should not be using accrued time in place of FMLA time if they have a medical need for leave and they are eligible to take leave. They should be using their accrued time while on leave.

Will I continue to accrue sick and vacation time while I am on FMLA leave?

When an employee begins an unpaid leave of absence, their status will be changed to unpaid effective the first day of the following pay period. When they return to work, their status will be returned to paid status. Employees who are in a paid status in PeopleSoft on the 15th of the month will receive accruals on the 16th; however, if the employee is in an unpaid status as of the 16th, they will not be able to use the accruals (and will not accrue any additional sick or vacation) until they return to work and we return them to a paid status.

I elected to save 10 days of vacation when I applied for FMLA leave. Can I use those hours at any time?

If you are taking continuous FMLA leave, you may use the vacation hours when your FMLA leave has been completed. If you have been approved for intermittent FMLA leave, you may use the vacation hours for non-FMLA time off. University Policy states that use of vacation, other than during an approved FMLA absence, must be arranged in advance with your supervisor to prevent disruption of departmental operations and avoid compromising the efficiency of the organizational unit.

Will I receive pay for Holidays and University Closure Days while I'm out on FMLA Leave?

University Policy provides that if an employee works or receives payment for time (including use of accruals) during the week of a holiday, the employee receives pay for the holiday. However, if the employee is on unpaid leave all week, the holiday is not paid.

Are Holidays and University Closure Days counted as part of my FMLA leave time taken?

The FMLA provides that if an employee works any time during the week of a holiday, the holiday is not counted as FMLA time taken. If, however, an employee takes the full week off, the employee is considered as having taken one full workweek of FMLA leave. If the University (including just the employee's department) closes and employees are not expected to report for work for one full week or more, the days the department is closed do not count against the employee's FMLA entitlement.

If I'm on intermittent leave, do I still have to track FMLA time if I work extra during the week to make up the hours I missed?

Yes, under the FMLA, we are required to track all absences due to an employee's FMLA covered condition. FMLA provides you job protection for the times you are not at work because of your serious health condition. Tracking this time allows us to provide the proper protection provided under FMLA. However, you wouldn't have to use sick or vacation time to cover the time that was missed as long as you worked enough hours to cover the absence(s). In addition, an employer cannot force an employee to work overtime to cover their FMLA absences.

What happens to my University benefits while I'm on an approved FMLA Leave? While you are using sick and vacation leave, your benefits will continue as if you were actively at work. Once your leave accruals are exhausted and you are taking unpaid leave, your benefits may be continued by paying the employee cost of the benefits each month. Contact the Benefits Department at (801) 581-7447 for information on continuing your benefits during an unpaid leave of absence or dropping coverage.

How often can the University ask me to obtain a new Certification of Health Care Provider?

If your Health Care Provider did not fill in a specific date that your leave would end, we may request recertification of your Serious Health Condition no more often than every 30 days (only in connection with an absence). Otherwise, the University may require you to obtain recertification of the Serious Health Condition every six months, if you request an extension of the leave, if circumstances described in the Certification have changed significantly, or if we receive information that casts doubt upon the continuing validity of the Certification.

Can my supervisor transfer me to an alternate position during my reduced work schedule FMLA leave? While you are taking a reduced work schedule FMLA leave, your supervisor may transfer you to an alternate position where the supervisor is better able to handle your intermittent or reduced schedule. The only requirement is that your pay and benefits not change. The job duties and

responsibilities may be completely different from the job you originally held. When you return to regular work at the end of your FMLA leave, you will be returned to the same or an equivalent position as the original position you held before the FMLA leave.

Can my supervisor transfer me to an alternate position during my intermittent FMLA leave?

While you are taking an intermittent FMLA leave, your supervisor **may ask** you to transfer to an alternate position where the supervisor is better able to handle your intermittent schedule. The only requirement is that your pay and benefits not change. The job duties and responsibilities may be completely different from the job you originally held. You have the right to refuse the transfer. If you accept the transfer, when you return to regular work at the end of your FMLA leave, you will be returned to the same or an equivalent position as the original position you held before the FMLA leave.

When do I need to submit tracking forms? If you have been approved for intermittent or reduced work schedule leave, you must submit a completed tracking form to the Absence Management Team *each pay period*, even if you did not take any FMLA leave. You should complete the tracking form and sign it, certifying that the information is correct. After you sign it and your supervisor has reviewed and approved it, send it to the Absence Management Team. If you do not submit a tracking form, all leave taken during that pay period may be designated as FMLA leave.

I want to return to work, but am unable to perform all the functions of my job and am taking medication that may impair my judgment. Does the FMLA protect me from adverse employment action for unsatisfactory performance while I am at work? No. The FMLA protects employees who must be absent from work. The FMLA does not require any modified working conditions or protect your job if your performance is unsatisfactory while working. If you are able to work, you will be held to the same performance standards, whether you are covered by FMLA or otherwise. If you return to work and are unable to perform the work, your supervisor may take corrective action. If you believe you may need an accommodation in order to allow you to return to work, contact the Office of Equal Opportunity at 581-8365 for information on an accommodation under the Americans with Disabilities Act.

What do I do when I am ready to return to work? If your leave was for your own Serious Health Condition (other than pregnancy), you must provide a full medical release to return to work signed by your Health Care Provider prior to or upon return to work. If you are ready to return to work prior to your scheduled return to work date, please contact your supervisor and give at least two days' notice.