

# Family and Medical Leave Act (FMLA)

Personnel – Holidays and Leave

**EWU Policy 403-03**

**Authority: EWU Board of Trustees**

**Effective: June 26, 2015**

**Proponent: Human Resources, Rights and Risk**

**Purpose:** This policy describes eligibility requirements and procedures for administration of the Family and Medical Leave Act (FMLA) at Eastern Washington University.

**History:** This policy revises and supersedes the previous version dated October 23, 2012. It was adopted by the board of trustees on June 26, 2015.

**Applicability:** This policy applies to all employees of Eastern Washington University.

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incapable of self care due to a disability) with a serious health condition;

4) Due to the employee's own serious health condition; or

### Military Exigency Leave Entitlement

5) Due to a qualifying exigency arising from the fact that spouse, child of any age, or parent of an eligible employee is on covered active duty or has been notified of pending call to covered active duty in the Armed Forces. See definition of "covered active duty" below.

- Exigency leave may be taken for one or more of the following reasons and as defined in the FMLA regulations:

1) Short-notice deployment – notified 7 days or less before deployment

--Leave for this purpose can be used for up to 7 days beginning on the date of the notice of deployment.

2) Military events and related activities.

-- To attend official ceremonies or events related to active duty; to attend family support assistance programs, briefings, etc.

3) Childcare and school activities

4) Financial and legal arrangements

5) Counseling

6) Rest and Recuperation.

-- To spend time with covered military member

-- Eligible Employees can take up to 5 days for each instance of R&R

7) Post-deployment activities

8) Additional activities

--Anything that the Employer and Employee agree upon relating to the exigency

## I – GENERAL PROVISIONS

➤ Human Resources will designate, if qualified, up to 12 weeks of FMLA leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 and its amendments, for one or more of the following reasons: (1) – (5)

### Basic Leave Entitlement

1) The birth and care of a newborn child;

2) The placement for adoption or foster care of a child with the eligible employee and to care for that child;

- Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement of the foster or adopted child.

3) To care for an employee's spouse, parent or child (child must be under the age of 18 or over 18 and

Military Caregiver Leave Entitlement

➤ Human Resources will grant leave as follows: to an eligible employee who is spouse, child, parent of a child of any age, or next of kin of a covered service member who is undergoing treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness (see definition below):

6) Up to 26 weeks of service member caregiver leave in a single 12-month period to care for the covered service member.

- During the single 12-month period, an eligible employee is limited to a combined total of 26 weeks of leave for service member caregiver leave and FMLA leave for other qualifying reasons.
- Caregiver leave applies to care for members of the Armed Forces, National Guard or Reserves or Veterans who were members of the Armed Forces, National Guard or Reserves at any time during the five years preceding the treatment, recuperation or therapy.

**II. DEFINITIONS**

**Family Member** includes children, spouse, and parents, but not son-in-law, daughter-in-law, parents-in-law or sibling.

**Spouse** means a husband or wife. "Husband or wife" means the person with whom an individual entered into marriage as defined or recognized under state law in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. Same-sex or common law marriages if the marriage was either entered into in a state recognizing such marriages or, if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state. i

**Parent** means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter.

**Son or daughter** for purposes of FMLA used for care of a family member with a serious health condition that is not military caregiver leave, means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*. *The child must be either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."*

**Son or daughter** for purposes of FMLA used for military family leave for an exigency or for military caregiver leave for a covered service member, means a biological, adopted, or foster child of any age, a

stepchild of any age, a legal ward of any age, or a child of any age of a person standing *in loco parentis*.

***In loco parentis*** – Persons who are *In loco parentis* include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

**Covered Active Duty** – (A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign county under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 USC.

**Covered Service Member** – (A) a member of the Armed Forces, including 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

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including the National Guard or Reserves, at any time during the 5 year period preceding the date on which the veteran undergoes the medical treatment, recuperation or therapy.

**Next of kin** – Used with respect to an individual means the nearest blood relative of that individual other than spouse, parent or child, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member;
- brothers and sisters;
- grandparents;
- aunts and uncles;
- cousins.

- If the covered service member designates another blood relative as their nearest blood relative that designation takes precedent over the above list. That person would be the only next of kin.

**Serious Injury or Illness** – (A) in the case of a member of the Armed Forces, including the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating, and

(B) in the case of a veteran who was a member of the Armed Forces, including National Guard or Reserves, at any time during the 5 year period preceding the medical treatment, recuperation or therapy, a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in Armed Forces) and manifested itself before or after the member became a veteran.

**"Serious health condition"** means an illness, injury, impairment, or physical or mental condition that involves either:

- 1) Inpatient care including period of incapacity or subsequent treatment; or
- 2) Continuing treatment by a health care provider. This includes any one or more of the following:
  - a) Period of incapacity of more than 3 consecutive full calendar days and any subsequent treatment or incapacity that relates to the same condition that also involves:
    - 1) Treatment 2 or more times within 30 days of the first day of incapacity (absent extenuating circumstances) by health care provider etc, or
    - 2) Treatment by health care provider at least once and continuing treatment under the supervision of health care provider.

This requirement means an in person visit to a health care provider.

The first (or only) visit must occur within 7 days of the first day of incapacity.
  - b) Incapacity due to pregnancy or prenatal care.
  - c) Incapacity due to chronic serious health condition. Chronic serious health condition is one which:
    - A) Requires periodic visits (at least twice per year) to health care provider etc;
    - B) Continues over extended period; and
    - C) May cause episodic rather than continuing incapacity (asthma, diabetes, epilepsy, etc).
  - d) Incapacity which is permanent or long term where treatment may not be effective. (Alzheimer's, severe stroke, terminal stages of a disease, etc.)
  - e) Absence to receive multiple treatments for restorative surgery after accident, or for a condition that would result in incapacity for 3 consecutive full calendar days or more absent medical intervention (cancer, kidney disease, etc.)

**"Health care provider"** means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- Nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

### III. ELIGIBILITY

An eligible employee must meet all of the following conditions:

- 1) The employee must have worked for Eastern Washington University or another Washington state agency or institution of higher education for at least 12 months (need not be consecutive) prior to the commencement of the leave; (periods of service prior to a break in service of 7 years or longer will generally not be counted toward the 12 months).
- 2) The employee must have worked for at least 1,250 hours of service which does not include paid time off, in the previous twelve month period immediately preceding the commencement of the leave. For the purposes of determining eligibility for FMLA leave, the University will count all hours worked by the employee, including overtime hours. Hours worked do not include paid leave.

### IV. LEAVE COVERAGE AND 12-MONTH PERIOD

#### Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of leave during a 12-month period. Human Resources will measure the 12-month period forward from the date the requesting employee's first FMLA leave begins. The employee's next FMLA leave year would begin the first time FMLA leave is taken after completion of the previous 12-month period. For example, if an eligible employee's first request for FMLA leave is on October 1, 2012, for leave to begin on November 1, 2012, the 12-month period begins on November 1, 2012. That employee would be entitled to use 12 weeks of FMLA

leave between November 1, 2012, and October 31, 2013. If that employee uses 12 weeks between November 1, 2012, and February 1, 2013, they would not be eligible again until November 1, 2013. If they next use FMLA beginning April 1, 2014, their next 12-month period would run from April 1, 2014, through March 31, 2015.

The 12-month period for Caregiver leave for a covered service member will always begin on the first day leave is taken.

#### Both Spouses Employed by Eastern Washington University

If both spouses work for Eastern Washington University, they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of taking leave for the birth of the employee's child or to care for the child after birth, for placement of a child with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. If either spouse uses a portion of the 12-week entitlement for the above reasons, they would still have their remaining entitlement for other FMLA purposes. For example, if a husband and wife each use six weeks of FMLA to care for a newborn child, they would each have an additional six weeks available for their own serious health condition or to care for a sick child or spouse with a serious health condition.

Both spouses working for EWU may take 12 weeks of FMLA leave each if needed to care for their newborn, adopted, or foster child with a serious health condition.

If both spouses work for Eastern Washington University they may be limited to a combined total of 26 weeks of leave, during the single 12 month period described, for service member caregiver leave if the leave is taken for the birth and care of employee's child, employee's adoption and care of a child, placement and care of employee's child in foster care, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury or illness.

#### Accounting for Leave

Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

For employees who normally work less than a full-time schedule, the amount of leave will be determined on a pro rata basis and will be determined based on the employee's status at the time of the request for leave. For example, an employee working on a .75 FTE basis will be entitled to 12 weeks or 360 hours of FMLA leave in each 12-month period.

#### Leave Accrual

Employees accrue paid leave according to rules established in applicable collective bargaining agreements, contracts, and/or university policies. Accrual of paid leave is not affected by FMLA designation.

#### FMLA Leave for Expectant Mother's Incapacity Due to Pregnancy, Prenatal Care, and Birth

An expectant mother may take FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of a child. The expectant mother may take FMLA leave for incapacity due to pregnancy even if she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. A spouse may take FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition.

#### Additional Leave for Disability Related to Pregnancy and Child Care

Pursuant to the Washington Family Leave Act, RCW 49.78.390, leave provided for the birth and care of a child or for placement for adoption or foster care shall be in addition to any leave used by the mother for sickness or temporary disability because of pregnancy or childbirth.

Therefore if the mother has a disability relating to her pregnancy or childbirth and takes time off due to that disability, she is still entitled to the full 12 weeks to be used for other Washington Family Leave Act and FMLA qualifying purposes assuming she is eligible and has not already used those 12 weeks. Leave taken under the Washington Family Leave Act runs concurrently with any leave taken under FMLA.

### **V. EMPLOYEE REQUEST FOR LEAVE AND EMPLOYER DESIGNATION**

FMLA designation is the responsibility of Human Resources, and is not contingent on an employee requesting a FMLA leave of absence. Human Resources will determine eligibility and notify the employee of the employees' rights and responsibilities within five business days, absent extenuating circumstances, of the date Human Resources receives knowledge that the leave is being requested or has been taken for a FMLA qualifying reason. Human Resources may request appropriate certification to support the request for leave, including for military exigency leave. After receipt of complete and sufficient information to allow the Human Resources to determine that the leave is FMLA qualifying, Human Resources

will notify the employee within 5 business days (absent extenuating circumstances) that the leave is being designated as FMLA leave. After Human Resources has designated the leave as qualifying FMLA leave, an employee may decline to use the FMLA designated leave by contacting Human Resources and filling out the required documentation.

FMLA can also be designated retroactively unless the employee suffers injury or harm as a result of the retroactive designation, or if the employee and the employer agree.

It is the employee's responsibility to notify their supervisor of the need for leave and to provide reasons for the leave to allow the employer to determine if the leave qualifies for FMLA leave. The employee should also provide the anticipated timing and duration of the leave. The employee should notify their supervisor at least 30 days in advance of the need for leave if the need for leave is foreseeable. If the need for leave is not foreseeable, notice must be given as soon as possible.

Human Resources may inquire further regarding the need for leave if the employee does not initially provide enough information to determine if the leave request qualifies for FMLA designation.

Human Resource Services will provide the employee with a Notice of Rights and Responsibilities and a Medical Certification form to be completed by the appropriate health care provider.

The employee requesting military family leave will be provided with certification forms to be completed and a request for a copy of the Active Duty Orders of the military member.

The employee will be required to return any medical certification forms within 15 calendar days (absent extenuating circumstances) after the employee receives them.

## VI. INTERMITTENT LEAVE

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition, to care for a family member with a serious health condition or to care for a covered service member with a serious injury or illness. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

Intermittent leave may also be taken for military exigency leave.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment, must work with their department and make reasonable efforts to schedule the leave, subject to the approval of

the health care provider, so as not to unduly disrupt the department's or Eastern Washington University's operations.

Human Resources may choose to grant leave on an intermittent basis for bonding with a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and the Human Resources must mutually agree to the schedule to be worked before the employee may take the intermittent leave.

Human Resources may temporarily transfer an employee using intermittent leave for planned medical treatment, including during a period of recovery from one's own serious health condition, to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

## VII. SUBSTITUTION OF PAID LEAVE/CONCURRENT LEAVE

Eastern Washington University will not require an employee to substitute paid leave for otherwise unpaid FMLA leave. Eastern Washington University employees may use any combination of paid or unpaid leave to which they are entitled to toward the FMLA entitlement. The types of leave that can be substituted for otherwise unpaid FMLA leave include vacation leave, sick leave, shared leave, compensatory time off, and/or personal holidays. Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed for pursuant to state laws or Eastern Washington University policy, as applicable. Sick leave may not be used solely for the purpose of bonding with a newborn, adoptive, or foster child.

The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Absences covered by worker's compensation will also run concurrently with FMLA, assuming they are qualifying conditions, except for classified staff as per the CBA.

## VIII. CERTIFICATION

Medical certification will be required, absent extenuating circumstances, for any request for use of leave for more than three days for an employee's own serious health condition, to care for a family member with a serious health condition, or to care for a covered service member with a serious injury or illness. Certification may be required for any request for military exigency leave. The employee will be asked to respond to the request for a complete certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial or

discontinuation of leave, or the loss of FMLA protection for the leave. Certification should be provided by using the appropriate certification form. All applicable information should be included. Absence of certification does not preclude Human Resources from designating an employee's absence due to a serious health condition as a FMLA absence.

If Human Resources has questions regarding the initial medical certification they may, with a release from the employee, contact the employee's health care professional to clarify the original certificate. Human Resources may also contact the employee's health care professional to authenticate the certificate. The University will follow applicable regulations regarding any contacts with an employee's healthcare provider(s).

If Human Resources has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at Eastern Washington University's expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at Eastern Washington University's expense from a health care provider mutually chosen by the employee and the university. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

Human Resources may ask for re-certification under the provisions of the FMLA. Re-certifications are provided at the employee's expense.

Human Resources may ask for fitness for duty certifications under the provisions of the FMLA. Fitness for duty certifications are at the employee's expense.

## **IX. CONFIDENTIALITY**

All information requested and provided regarding FMLA applications or designations shall be kept in separate, confidential files.

## **X. CONTINUATION OF BENEFITS**

During approved FMLA leave, Eastern Washington University will continue an eligible employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA absence.

During paid leave, Eastern Washington University will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave, the employee must make these premium payments to EWU. Payment arrangements must be made with the payroll office. If the employee on unpaid leave does not pay their share of the premiums, Eastern Washington University may elect to continue

the employee's benefits and collect the amounts due from the employee upon their return to work.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, Eastern Washington University may require the employee to reimburse the university for the amount of health care benefit premiums paid for the employee during the unpaid FMLA leave period.

## **XI. RETURNING TO WORK**

Upon returning to work after the employee's own FMLA qualifying illness, the employee will be required to provide a fitness for duty certificate from a health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage unless there are safety concerns regarding the employee's ability to perform their duties based on the serious health condition.

Following absence granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence.

An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

## **XII. MISCELLANEOUS**

Employees should seek assistance from Human Resource Services to determine if they are eligible for other types of leave in addition to the leave covered by this policy; e.g. disability leave, parental leave, family care leave, Washington Family leave for domestic partners,, shared leave, etc.

## **XIII. INTERACTION WITH LAWS AND REGULATIONS**

This policy will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy or are, or become, inconsistent with this policy, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.

**XIV. PROCEDURE FOR REQUESTING LEAVE**

**Employee:** Notifies supervisor of the need, reason and duration of leave within 30 days of the need for leave if the need is foreseeable, otherwise, as soon as possible after discovering the need for leave.

Contacts Human Resource Services for Notice of Eligibility and Rights & Responsibilities and Medical Certification forms. Provides the anticipated timing and duration of the needed leave.

Returns completed Medical Certification form to Human Resource Services within 15 days of receiving the form.

During the leave period, provides supervisor/manager with periodic reports on status and intent to return to work as requested.

Provides medical re-certification as requested.

During FMLA leave, paper time sheets need to be completed by the employee and supervisor and taken to Human Resource Services for input. Online time sheets are not necessary.

Provides a fitness for duty certification at the completion of the leave as requested if leave is taken for the employee's own serious health condition. Consults with Human Resource Services to determine if any other leave entitlements are available.

**Supervisor/Manager :** Receives request from employee for leave and informs Human Resource Services immediately about the leave request.

Ensures employee provides medical forms to supervisor for a leave request for more than three days.

Communicates with employee periodically to request reports on status and intent to return to work.

Requests assistance from Human Resource Services as needed.

**Human Resource Services:** Within 5 business days of receipt of the request, notifies the employee of their eligibility and provides to the employee the Notice of Rights and Responsibilities, Medical Certification form, essential functions form, if applicable, and written notice to the employee of their rights and responsibilities, including need to provide certification. (Eligibility Notice and Rights and Responsibilities Notice) (Appropriate Certification Form)

Upon receipt of the medical certification forms, Human Resources reviews and determines whether the leave is qualified as FMLA.

Human Resources notifies the employee whether the leave is designated as FMLA leave or not within 5 business days. (Designation Notice)

Maintains the FMLA file and keeps track of status and usage.

Provides advice and assistance as needed.

**REFERENCES**

29 U.S.C. § 2601 et seq.  
29 CFR 825  
RCW 49.78

## APPENDIX A – EMPLOYEE RIGHTS AND RESPONSIBILITIES

## EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

### Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

### Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) 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 (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

### Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

### Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

### Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

### Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

### Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

### Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



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