



HRM-026 Family, Medical, and Military Leave

Effective Date Tuesday, April 14, 2009

Status Final

Last Revised Friday, August 26, 2022

Policy Type [University](#)

Contact Office

[Benefits and Leave Center](#)

Oversight Executive

[Vice President and Chief Human Resources Officer](#)

Applies To

Academic Division The College at Wise

Table of Contents

[Policy Statement](#)

1. [Eligibility Criteria](#)
2. [Qualifying Reasons for FMLA](#)
3. [FMLA Restrictions](#)
4. [Intermittent Leave or Leave on Reduced Schedule](#)
5. [Request for FMLA Leave](#)
6. [Medical Certification](#)
7. [Second and Third Opinions](#)
8. [Approval/Denial Notice](#)
9. [Military Caregiver Leave](#)
10. [Extension of Leave](#)
11. [Intermittent Leave Recertification](#)
12. [Pay Status and Employment Benefits While on Leave](#)
13. [Reinstatement](#)
14. [Failure to Return after FMLA Leave](#)
15. [Responsibilities](#)
16. [Compliance with Policy](#)

[Procedures](#)

Reason for Policy

The University provides family and medical leave to assist employees in their efforts to balance the operational demands and needs of the workplace with their individual needs and the needs of their families. The University is committed to compliance with the *Family Medical Leave Act of 1993* (FMLA). This policy provides an employee with a basic understanding of their rights and obligations under FMLA.

Definition of Terms

[Covered Servicemember](#)

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](#). Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Employment Benefits

Any benefit, other than salary or wages, provided or made available to an employee by the University including, but not limited to, group life insurance, health insurance, disability insurance, sick and annual leave, educational benefits, and retirement contributions.

Family and Medical Leave

Provides an eligible employee with up to 12 workweeks of unpaid, job-protected leave without pay (or up to 26 weeks for qualified Military Leave) during a Leave Plan Year for the specified FMLA reasons set forth in this policy in compliance with the Family and Medical Leave Act (FMLA) of 1993.

Healthcare Provider

A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices or any other person determined by the Secretary of Labor or person designated by the Secretary to be capable of providing health care services. Others capable of providing health care services include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law. This includes Christian Scientist Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science Practitioner, such employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science Practitioner except as otherwise provided under applicable state or local law.

Intermittent Leave

Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period, and may include leave of periods from an hour or more to several weeks. Examples of [Intermittent Leave](#) include leave taken on an occasional basis for medical appointments or leave taken several days at a time, spread over a period of six months, such as for chemotherapy.

Key Employee

A salaried employee, eligible under the provisions of the *Family Medical Leave Act of 1993*, who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

Leave Plan Year

Begins with the first day of the pay period which includes January 1 (known as pay period 1) and ends on the last day of the pay period preceding pay period 1 of the following year.

Parent

Biological, adoptive, step, or foster parent or an individual who stood *loco parentis* to the employee when the employee was a child. (Note: *loco parentis* refers to a relationship in which a person puts themselves in the situation of a parent by assuming and discharging the obligation of a parent to a child.)

Qualified Exigency Leave

Military leave which may be used for such pressing or urgent situations as:

- Short-notice deployment (defined as notice of an impending call or order to active duty within seven days of the date of deployment).
- Military events and related activities, such as informational briefings, family assistance programs, or official ceremonies and events).
- Childcare and school activities, including arranging alternative childcare, caring for children on an immediate, urgent basis, and attending school meetings).
- Making financial and legal arrangements, such as executing powers of attorney, obtaining military identification cards, or preparing a will or trust).
- Counseling.
- Rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave).
- Post-deployment activities, including arrival ceremonies, reintegration events, and issues relating to the death of a military family member.
- Other events arising out of a family member's service may qualify, if the employer and employee agree that it qualifies and agree on the timing and duration of the leave.

Rolling 12-Month Period

The 12-month period measured backward from the date an employee uses any Family and Medical Leave (FMLA). Under the **rolling** 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Serious Health Condition

An illness, injury, impairment, or physical/mental condition that meets any one of the following: a) inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; b) continuing treatment by a health care provider which includes a period of incapacity for more than three full consecutive days and also involves treatment two or more times within a 30 day period by a health care provider, absent extenuating circumstances or treatment at least once by a health care provider which results in a regimen of continuing treatment. An employee eligible under the provisions of the *Family Medical Leave Act of 1993*, must have an in person visit to the health care provider within seven days of the first day of incapacity; c) periods of incapacity due to pregnancy and childbirth, including prenatal care; d) chronic conditions which require visits for treatment by a health care provider at least twice a year, continues over an extended period of time (including recurring episodes of a condition), and may cause episodic periods of incapacity (e.g. diabetes, epilepsy), permanent/long-term conditions (e.g. Alzheimer's, terminal cancer), or multiple treatments (e.g. chemotherapy, dialysis).

Serious Injury or Illness (to a Servicemember)

An injury or illness that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of their office, grade, rank, or rating. An injury or illness 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.

Spouse

Husband or wife as recognized under the laws of the Commonwealth for the purpose of marriage.

Policy Statement

It is the policy of the University to grant unpaid family and temporary medical leave according to the *Family Medical Leave Act of 1993* (FMLA) under certain circumstances. FMLA reporting in this policy applies only to employees covered by the University. This policy does not cover provisions or requirements for FMLA reporting to affiliated entities with which a University employee may also be employed.

1. Eligibility Criteria:

In accordance with federal law, a faculty member, member of the professional research staff, classified salaried employee, University staff employee, salaried research assistant, and wage employee is eligible for FMLA leave if they meet **both** of the following conditions:

- The employee has been employed at the University for at least 12 months immediately preceding the commencement (the first day) of FMLA leave. The 12 months must have been worked subsequent to any seven-year break in service. The 12 months of employment need not be consecutive to satisfy this eligibility requirement.
- The employee must have worked at least 1,250 hours for the University during the 12 months immediately preceding the commencement (the first day) of FMLA leave. These hours must be actual work hours, not compensated hours. Hours using any type of paid time off benefits or holiday time do not count. Employment did not have to be continuous, and the employee must incur a qualified event.

[Note: Herewith referred to as an eligible employee throughout.]

The 1,250 work hours requirement also exists when an eligible employee is reapplying for FMLA leave in a new calendar year. When the need for FMLA leave extends past December 31st, the employee must have worked at least 1,250 actual work hours in the 12 months immediately preceding the request for FMLA leave from the first date of leave.

The eligible employee must not have already received 12 weeks of FMLA leave from the first date of leave.

Time in the military service covered under the *Uniformed Services Employment and Reemployment Rights Act* (USERRA), will count towards fulfilling the length of employment and hours of work requirements to be eligible for FMLA leave.

Leave for a qualifying exigency is only available to an employee who has a spouse, child, or parent who is a member of the Armed Forces (including the National Guard and Reserves), and who is on covered active duty or has been notified of an impending call or order to covered active duty.

An eligible part-time and hourly (wage) employee may take FMLA on a prorated basis corresponding to the percentage of time (% FTE) worked during the 365-day period prior to the date FMLA leave is scheduled to begin.

An employee who is not eligible for FMLA leave at the beginning of a period of approved leave may become eligible during this period and begin FMLA leave once they meet the eligibility requirements.

2. Qualifying Reasons for FMLA:

The University provides an eligible employee with up to 12 weeks of unpaid family and temporary medical leave during a rolling-12 month period for any one of the following reasons:

- Birth of a child and to care for the newborn child within one year of birth.
- Placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.
- To care for an immediate family member (child, spouse, or parent) with a serious health condition.
- Serious health condition that makes the employee unable to perform the essential functions of their job.
- Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty."
- To care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, child, parent, or next of kin (military caregiver leave), in which case, 26 workweeks of leave during a single 12-month period is provided.

3. FMLA Restrictions:

FMLA may not be used for short-term (period of incapacity requiring absence of less than three calendar days) conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. FMLA does not provide leave for the intermittent care of a child for such commonplace illnesses as colds and flu.

When both parents of a child work for the University, the full amount of FMLA leave is limited to a combined total of 12 workweeks in a 12-month period when the leave is for the birth, adoption, or foster care placement of a child with the eligible employee, or for the care of a child within 12 months after the birth or placement. This limitation does not apply if FMLA leave is taken because of the employee's own serious health condition or to care for an immediate family member with a serious health condition.

4. Intermittent Leave or Leave on Reduced Schedule:

When medically necessary, an eligible employee may take FMLA leave on an intermittent basis or a reduced schedule. The employee may be transferred temporarily to another position that better accommodates the intermittent leave or reduced schedule provided the new position carries equivalent pay and benefits.

If a reduced schedule is requested to care for a newborn child or because of the placement of a child through adoption or foster care, UVA HR must approve the reduced schedule prior to the FMLA leave.

An eligible employee may take FMLA leave intermittently in separate blocks of time for a single qualifying reason, or on a reduced leave schedule, reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the school/department/unit's operation. The eligible employee may be required to provide medical certification that intermittent FMLA leave is necessary.

Leave to care for, bond with a newborn child, or for a newly placed adopted or foster child may only be taken intermittently with approval by the University's third-party leave benefits administrator and must conclude within 12 months after the birth or placement.

When an eligible employee takes FMLA leave on an intermittent or reduced leave schedule basis, they are permitted to use available leave balances as permitted by the specific leave policy.

5. Requests for FMLA Leave:

When the need for FMLA leave is foreseeable, the eligible employee must inform their supervisor as far in advance as possible of the request for leave and time away from job, following school/department/unit procedures. Employees should inform their supervisor of any change of plans that affect the leave request. When the need for FMLA leave is not foreseeable, the employee must comply with both their school/department/unit's customary call-in procedures and the process for requesting FMLA leave herein.

An eligible employee requesting FMLA leave is required to contact the University's third-party leave benefits administrator regarding matters related to FMLA leave requests.

FMLA leave requests and all requested/required supporting documents, which are not submitted in accordance with the provisions of this policy and as soon as practicable, may be delayed or denied based on individual facts and circumstances.

Eligible employees requiring intermittent leave must follow school/department/unit procedures to notify their manager of time needed as far in advance as possible. Employees must notify the University's third-party leave benefits administrator within seven days of using this time off to report their hours. Failure to do so may result in FMLA leave being denied.

6. Medical Certification:

The University requires medical certification for the eligible employee's serious health condition or for a family member's serious health condition. Supporting documentation may be required to approve leave for other FMLA qualifying reasons. All certifications and supporting documentation are to be submitted directly to the University's third-party leave benefits administrator. If applicable, the Notice of Eligibility will outline what documentation is required. The employee must respond with the required documentation within 15 calendar days of the Notice of Eligibility. Failure to comply may result in delay or denial of leave, potentially subjecting the employee to corrective action up to and including termination.

If the certification is incomplete, the University's third-party leave benefits administrator will provide the employee with the opportunity to correct or complete the certification. The employee will have seven calendar days to resolve any deficiencies or the FMLA leave request may be denied.

7. Second and Third Opinions:

The University's third-party leave benefits administrator may request recertification and/or a second opinion for the serious health condition of the eligible employee or the employee's family member in accordance with FMLA regulations. If a second opinion is required, the University's third-party leave benefits administrator will choose a healthcare provider to give the second opinion and will pay the cost. If the first and second opinions differ, the University's third-party leave benefits administrator may require a third opinion. The healthcare provider giving the third opinion will be jointly approved by the University's third-party leave benefits administrator and the employee. The third opinion will be binding. The University's third-party leave benefits administrator will pay the cost of the third opinion.

8. Approval/Denial Notice:

Once the University's third-party leave benefits administrator has received a completed medical certification, the University's third-party leave benefits administrator will notify the eligible employee whether the leave is approved or denied and whether the leave will be designated as FMLA leave.

If an eligible employee is absent from work for a serious health condition or a condition that progresses into a serious health condition, the University may designate all or some portion of the absence as FMLA leave to the extent that the absence meets the necessary qualifications.

9. Military Caregiver Leave:

An eligible employee may take up to 26 workweeks of leave during a single calendar year to care for a servicemember or veteran with a serious injury or illness. Leave to care for an injured or ill servicemember or veteran, when combined with other FMLA qualifying leave, may not exceed 26 workweeks in a leave plan year.

10. Extension of Leave:

If the eligible employee's healthcare provider believes the employee will need additional leave beyond the dates outlined on the approval notice, the employee must contact the University's third-party leave benefits administrator, UVA HR (Benefits and Leave Center), and their supervisor immediately. To request additional leave, the employee will be required to submit an extension request such as a Leave Extension Request form no later than seven days before their scheduled return to work date. Failure to comply may result in delay or denial of additional leave, potentially subjecting the employee to corrective action for their unexcused absence(s) up to and including termination.

Once FMLA leave is exhausted, additional paid and unpaid leave may be available under the applicable leave policies.

11. Intermittent Leave Recertification:

Eligible employees who are on an intermittent leave may be required to periodically recertify in accordance with U.S. Department of Labor guidelines. Recertification is required at least every six months for ongoing medical conditions. Recertification may also be required if the circumstances described in the previous certification have changed significantly or if the University's third-party benefits administrator receives information that casts doubt on the employee's stated reason for the absence or the continuing validity of the certification.

To recertify, the eligible employee will be required to submit a new certification to the University's third-party leave benefits administrator.

Failure to comply may result in delay or denial of leave, potentially subjecting the employee to corrective action for their unexcused absence(s) up to and including termination.

12. Pay Status and Employment Benefits While on Leave:

The University will continue to contribute to the health benefits premiums of salaried eligible employees who are on approved FMLA leave. When using paid leave under the provisions of this policy, the payroll deductions of the employee's portion of the premium continues. When employees are on leave without pay under FMLA, they are responsible for making their premium contributions.

If the eligible employee's portion of premiums is fully paid for the duration of FMLA leave, the employee's health benefits will continue with no change in coverage upon return from leave.

If the eligible employee's portion of premiums is not fully paid for the duration of FMLA leave, the employee's health benefits are subject to termination and the employee may reenroll in coverage within 60 days of returning from leave, within 30 days of a qualifying mid-year event that permits enrollment, or at the next open enrollment.

The University will continue to pay life insurance premiums while an eligible employee is on FMLA leave.

The University will continue to make retirement contributions for any pay period in which qualifying compensation has been received by the eligible employee.

An eligible employee accrues annual leave (paid time off or PTO) when on leave without pay status during FMLA leave. An employee stops accruing annual leave (PTO) after they have been on FMLA-covered leave for four full pay periods.

For those instances where holidays occur during weeks when the eligible employee is on FMLA leave, the entire work week shall be designated as part of the total time on FMLA-covered leave.

13. Reinstatement:

At the end of FMLA leave, an eligible employee is reinstated to the same position held when the FMLA leave began (unless the employee held a key employee position which needed to be filled during the absence) or to one with equivalent pay, employment benefits, and other terms and conditions of employment. The University may require certification from a healthcare provider that the employee is able to return to work. If requested, the employee must provide the fitness to return-to-work certification no later than three business days before the scheduled return to work date.

The University may deny restoration if it can be shown that the eligible employee would not have been employed at the time reinstatement is requested (i.e., the employee would have been laid off).

If a position is determined to be a key employee position, the University may deny restoration when necessary to prevent substantial and grievous economic injury to the institution's operation. The University must notify the eligible employee that restoration will be denied and provide the employee with a reasonable opportunity to discontinue FMLA leave and return to work.

14. **Failure to Return after FMLA Leave:**

If an eligible employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to the *Consolidated Omnibus Budget Reconciliation Act* (COBRA) requirements) and to restore the employee cease.

Any eligible employee who exceeds their FMLA leave entitlement without extension or fails to return to work as scheduled after FMLA leave may be subject to termination of employment, unless the employee is on other approved job protected leave.

15. **Responsibilities:**

The *eligible employee* is responsible for:

- Providing sufficient information for the manager and timely filing for FMLA leave with the University's third-party leave benefits administrator. The employee must provide the University's third-party leave benefits administrator with medical information so that a determination can be made whether the employee's request for FMLA leave is for a qualifying condition. This information should include the anticipated duration of leave needed, whether the employee can perform their job duties, and if the employee intends to visit a certified health care provider for their medical condition.
- Providing at least 30 days advance written notice before FMLA leave is to begin, if the need for leave is foreseeable, such as for an expected birth, adoption, or planned medical treatment. If emergencies or unforeseen events preclude such advance notice, the employee must give notice in accordance with school/department/unit call-in procedures. School/department/unit call-in policies regarding unscheduled leave notification are still applicable while the employee's request for FMLA leave is pending designation and approval.
- Remitting monthly health benefits coverage premiums by the first of each month to continue coverage for any month in which the employee on unpaid FMLA leave does not return to work for at least half the working days in that month.
- Paying health benefit premiums upon return from leave through arrears process or paying timely if billed.
- Providing the required medical certification within 15 calendar days if one is requested by the University third-party leave benefits administrator.
- Providing the Benefits and Leave Center with the fitness to return-to-work certification no later than three business days before the scheduled return-to-work date.

Note: For VSDP covered illnesses and injuries, an employee, including one who is covered by the Virginia Sickness and Disability Program for short-term disability, should apply for FMLA with Unum.

The *supervisor* is responsible for:

- Understanding and complying with FMLA, related state laws, and University leave policies.
- Recognizing when an employee's absence may fall under FMLA and immediately inform UVA Human Resources (Benefits and Leave Center) within 24 hours of learning/acquiring knowledge that an employee's leave may be for a FMLA qualifying reason.
- Assessing and responding to an employee's leave request.
- Planning for coverage of the employee's job duties while the employee is absent.

- Contacting the Benefits and Leave Center with questions relating to responsibilities or FMLA in general.

The ***Benefits and Leave Center*** is responsible for:

- Informing an employee requesting leave whether they are eligible under FMLA. If they are not eligible, provide the reasons for the ineligibility. The University complies with these responsibilities through its third-party leave benefits administrator.
- Advising an employee if leave will be designated as FMLA-protected and the amount of leave counted against the employee's FMLA leave entitlement. If the University determines that the leave is not FMLA-protected, the employer must notify the staff member. The University complies with these responsibilities through its third-party leave benefits administrator.
- Providing the eligible employee with a summary of their rights under FMLA in the form of an *Eligibility and Rights and Responsibilities Notice* within five business days of receipt of the *Request for Family and Medical Leave*. (The University complies with these responsibilities through its third-party leave benefits administrator.)

16. **Compliance with Policy:**

Failure to comply with the requirements of this policy (including but not limited to the fitness for duty treatment, accommodation, authorized evaluation, and specific requirements set out above) may result in disciplinary action up to and including termination in accordance with relevant University policies.

Questions about this policy should be directed to the [Benefits and Leave Center \(UVA HR\)](#).

Procedures

[Guidelines for Requesting Family, Medical, or Military Leave](#)

Related Information

[Family and Medical Leave \(FMLA\) | U.S. Department of Labor \(dol.gov\)](#)

Medical Center Policy [600: Leaves of Absence, Section D, Family Medical Leave](#)

Policy Background

In 2010 the U.S. Department of Labor (DOL) amended the *Family and Medical Leave Act* (FMLA), expanding the military-related leave provisions to entitle an eligible employee to take leave to care for certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty, and to allow military caregiver leave for current servicemembers with a serious injury or illness that existed prior to service and that was aggravated by service in the line of duty on active duty.

Effective January 16, 2009, the U.S. Department of Labor issued its new rules for interpreting the *Family and Medical Leave Act* (FMLA). The new rules serve two primary purposes: 1) to provide greater clarity on several regulatory provisions; and 2) to implement new FMLA leave providing employees with family members serving in the Armed Forces, National Guard and Reserves with FMLA leave for reasons related to their family members' military service.

Major Category [Human Resource Management](#)

Next Scheduled Review Tuesday, August 26, 2025

Revision History

Revised 8/26/22; Added Compliance section 7/20/21; Updated 8/21/09.

Applies To Text

Academic Division and the College at Wise.

Supersedes Policy Text

Family and Medical Leave.

Last modified March 4, 2024 - 12:30pm

Approved By Policy Review Committee

Approved Date April 14, 2009 - 12:00pm