# HRM-026 Family and Medical Leave

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**Policy Type** University

**Contact Office** Benefits and Leave Center

**Oversight Executive**
Vice President and Chief Human Resources Officer

**Applies To** Academic Division and the College at Wise.

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## 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**

**Description**

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

**Description**

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

**Description**

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

**Description**

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

1. Any other person determined by the Secretary of Labor or person designated by the Secretary to be capable of providing healthcare services.
    a. Others capable of providing healthcare services include only:
        i. Podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law.
        ii. Nurse practitioners, nurse midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under state law.
        iii. 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 healthcare provider other than a Christian Science Practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.
        iv. Any healthcare provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to

substantiate a claim for benefits.

v. Healthcare provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

"Authorized to practice in the state" as used here means that the provider must be authorized to diagnose and treat physical or mental health conditions.

## Intermittent Leave

**Description**

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

**Description**

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

**Description**

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

**Description**

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

**Description**

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

**Description**

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

**Description**

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 impatient care; b) continuing treatment by a healthcare 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 healthcare provider, absent extenuating circumstances or treatment at least once by a healthcare 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 healthcare 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 healthcare 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)

**Description**

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

**Description** 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.

For related leave types and associated benefits refer to Leaves of Absence.

1. **Eligibility Criteria:**
   In accordance with federal law, a faculty member, member of the professional research staff, University staff employee, 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 31$^{st}$, 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), counts 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.

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 FMLA leave 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 FMLA leave 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 FMLA leave 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 FMLA leave 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 FMLA leave administrator provides the employee with the opportunity to correct or complete the certification. The employee has seven calendar days to resolve any deficiencies or the FMLA leave request may be denied.

7. **Approval/Denial Notice:**
   Once the University's third-party FMLA leave administrator has received a completed medical certification, they notify the eligible employee and their supervisor whether the FMLA leave is approved or denied.

   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.

8. **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.

9. **Extension of Leave:**
   If the eligible employee's healthcare provider believes the employee requires additional leave beyond the dates outlined on the approval notice, the employee must contact the University's third-party FMLA leave administrator, UVA HR (FMLA leave administrator), and their supervisor immediately. To request

additional leave, the employee is 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.

10. **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 FMLA leave 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 is required to submit a new certification to the University's third-party FMLA leave 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.

11. **Pay Status and Employment Benefits While on Leave:**
The University continues to contribute to the health benefits premiums of benefit-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 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 60 days of a qualifying mid-year event that permits enrollment, or at the next open enrollment.

The University continues to pay life insurance premiums while an eligible employee is on FMLA leave and make retirement contributions for any pay period in which qualifying compensation has been received by the eligible employee.

Holidays occurring during any period of FMLA do not count against the employee's approved FMLA leave.

12. **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.

13. **Failure to Return after FMLA Leave:**
Any eligible employee who exceeds their FMLA leave 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.

14. **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 FMLA leave administrator. The employee must provide the University's third-party FMLA leave 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 healthcare 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.
- Paying health benefit premiums upon return from leave through arrears process or paying timely if billed.
- Providing the required medical certification within 15 calendars days if one is requested by the University third-party FMLA leave 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 the Universities third-party FMLA leave administrator.

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 general questions relating to responsibilities or FMLA.

The ***University*** *contracts with its* ***third-party FMLA leave administrator*** for:

- Informing an employee requesting leave whether they are eligible under FMLA. If they are not eligible, providing the reasons for the ineligibility.
- Advising an employee if leave is designated as FMLA-protected and the amount of leave counted against the employee's approved FMLA leave. The third-party FMLA administrator will notify the employee when FMLA is not approved.
- 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*.

15. **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.

    Direct questions about this policy to the Benefits and Leave Center (UVA HR).

**Procedures**

See Leaves of Absence for information on requesting Family and Medical Leave.

**Related Information**

Family and Medical Leave (FMLA) | U.S. Department of Labor (dol.gov)
HRM-013: Available Leave Types for University Staff Employees
HRM-038: Faculty Leaves
Medical Center Policy: Leaves of Absence

**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** Monday, August 21, 2028

**Revision History**

Revised to address move from in-house to a third-party administrator; 8/21/25; Section 3 12/18/24; Revised 8/26/22; Added Compliance section 7/20/21; Updated 8/21/09.

**Supercedes Policy Text**

Family and Medical Leave.

**Approved By** Policy Review Committee

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