



Authority Office of State Personnel, Board of Governors
Title Family and Medical Leave and Military Family and Medical Leave Policy
Responsible Office Human Resources
Subject Leave
Applies to Faculty, EPA Non-faculty and SPA Permanent Employees

History: First issued: 1993 Last revised: January 28, 2008

Additional References: Family and Medical Leave Act, Office of State Personnel Family and Medical Leave Act Policy

Related Policies: Family Illness Leave Policy, Sick Leave Policy, Voluntary Shared Leave Policy, Faculty Serious Illness and Disability Policy

1. POLICY STATEMENT

The Family and Medical Leave Act was adopted by Congress in 1993 to balance the demands of the workplace with the needs of employees and their families. This policy provides a mechanism for employees to access and the University to administer the benefits made available by this legislation.

Under this policy, eligible employees are entitled to up to twelve weeks of leave during any year for childbirth, adoption, or a serious health condition of an employee or an employee's spouse, child or parent. The policy protects the employee's job and benefits during periods of family and medical leave.

On January 28, 2008, President Bush signed the National Defense Authorization Act for FY 2008 (NDAA), which among other things, amends FMLA to permit a "spouse, son daughter, parent, or next of kin" to take up to 26 work weeks of FMLA leave to care for a 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.

The employee may use vacation/bonus or sick leave, or leave without pay, or donated voluntary shared leave (for approved recipients only) for qualifying absences. A physician's certification is required if a serious health condition is involved.

2. DEFINITIONS

A **"Parent"** is a biological or adoptive parent or an individual who was in the position or place of a parent when an employee was a child.

A **"Child"** is a son or daughter who is under 18 years old or is 18 years old or older and is incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act and who is:

- A biological child, or
- An adopted child, or
- A foster child (a child for whom an employee performs the duties of a parent), or
- A step-child (a child of an employee's spouse from a former marriage), or
- A legal ward (a minor child placed by the court under the care of an employee as guardian), or
- A child of an employee to whom an employee is in the position or place of a parent.

A **"Spouse"** is a husband or wife.

"Next of Kin" is a person's closest living blood relative. Relatives by marriage are not considered "next of kin". Examples of "next of kin" are brother, sister, first cousin, aunt, uncle or grandparent.

A **"Serious Health Condition"** is an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential medical care facility, or that involves continuing treatment by a health care provider. If inpatient care is not required, absence from work (or school, in the case of a child), or incapacity from normal activities is part of the definition of "serious health condition." The period of actual physical disability associated with childbirth (parental/maternal leave) is considered a serious health condition and **qualifies for** family and medical leave, whether as paid or unpaid leave.

Also included in the definition of "serious health condition" are chronic conditions which require periodic treatments, or conditions that may cause episodes of symptoms preventing the employee from reporting for work. Examples of such conditions include: most cancers, back conditions requiring extensive therapy or surgery, severe arthritis, severe nervous disorders, Alzheimer's disease, and kidney disease.

A **"Reduced Work Schedule"** is a work schedule involving fewer hours than an employee is normally scheduled to work. For example: A full-time employee requests a schedule of 30 hours a week, rather than 40 hours a week.

An “**Intermittent Work Schedule**” is a work schedule in which an employee is not at work every scheduled work day, but works on an irregular basis, usually to accommodate some form of regularly scheduled medical treatment.

A “**Work Week**” is the number of hours an employee is regularly scheduled to work each week. For example, a full-time employee is scheduled to work a 40-hour work week.

3. ELIGIBILITY

Employees who have worked with the University or State government in a permanent or temporary capacity for at least twelve (12) months and who have worked at least 1040 hours during the previous 12-month period are eligible for up to twelve (12) work weeks of leave under this policy in any 12-month period. The 12-month period is computed by counting back twelve (12) months from the date the leave begins. Faculty with 9-month appointments are considered to be eligible after completion of a full academic year.

Temporary employees are generally not eligible for family and medical leave. However, if by exception to the temporary employment policy a temporary employee has been employed for more than one year, and, if the employee has been employed for at least 1250 hours during the previous 12-month period, the employee is eligible to take leave under this policy.

Students are not eligible for family and medical leave.

For eligible employees, leave can be taken for the following reasons:

- The birth of a child and to care for the child following birth, so long as the leave is taken within 12 months of the birth of the child,
- To care for a child placed with an employee for adoption, so long as the leave is taken within 12 months of the placement,
- To care for an employee’s child, spouse or parent, where that child, spouse or parent has a serious health condition, or
- Because an employee has a serious health condition that makes the employee unable to perform the essential function of his/her position.

4. LEAVE CHARGES

It is the responsibility of the University to designate leave (either paid or unpaid) as family and medical leave based on information provided by the employee. The University will exercise this responsibility by designating the date requested by the employee as the beginning of the period of family and medical leave.

An employee has several options on how leave is taken under this policy, including vacation leave, sick leave, donations of voluntary shared leave, and leave without pay. In some cases, the specific situation will limit the options that are available.

Note: If an SPA employee is scheduled for a period of leave (voluntary shared leave, family and medical leave, leave without pay, etc.), and will not be able to use earned comptime off during the 52-week period, all such comptime owed must either be taken or paid out prior to coding vacation leave, sick leave or voluntary shared leave for the absence.

Medical Reasons for an Employee

Before going on sick leave without pay for medical reasons concerning the employee, an employee first must exhaust all available sick leave. The employee then may choose to exhaust available vacation leave or use any portion of it before going on leave without pay.

If an employee's illness extends beyond the required 60-day waiting period for short-term disability, the employee may choose to exhaust the balance of available vacation leave or to begin drawing short-term disability benefits, if the employee has been approved for the Disability Income Plan.

Medical Reasons for a Family Member other Than Birth of a Child

For the illness or injury of an employee's child, spouse or parent, an employee may choose to exhaust available sick and/or vacation leave, or any portion, or go on leave without pay.

Birth of a Child

For the birth of a child, an employee may choose to exhaust available vacation and/or sick leave, or use any portion of it, or go on leave without pay. These options are available to both parents. However, sick leave may be used by the parent(s) only during the period of the mother's physical disability prior to and following the birth of a child.

Adoption

For the adoption of a child, an employee may choose to exhaust available vacation leave, or any portion, or go on leave without pay.

Counting the 12-Week Period

After a request for family and medical leave is approved, periods covered by paid leave, leave without pay, and voluntary shared leave may be counted toward the twelve (12) work weeks to which an employee is entitled under this policy.

5. REDUCED OR INTERMITTENT WORK SCHEDULES

Management must approve an employee's request for a reduced or intermittent work schedule when medically necessary due to his or her own serious health condition, or to care for a spouse, child or parent who has a serious health condition. Approval is optional in cases of childbirth or adoption.

Reduced or intermittent work schedules are possible under this policy for child birth or for adoption only when the employee and supervisor agree to such a schedule. If a reduced or intermittent work schedule is not agreed to, the employee's absence must be accounted for by coding either paid or unpaid leave.

If a reduced or intermittent work schedule is foreseeable based on planned medical treatment, the supervisor may temporarily reassign an employee to a vacant position with the same pay and benefits, and which better accommodates the reduced or intermittent work schedule. The employee is entitled to be reinstated to his/her former position once the reduced or intermittent work schedule and/or temporary reassignment has ended.

Length of Leave

An employee is entitled to twelve (12) work weeks of leave in a 12-month period. Since a work week consists of the number of hours an employee is regularly scheduled to work each week, a reduced or intermittent work schedule may result in an employee being on Family and Medical Leave for more than twelve (12) calendar weeks.

The employee's department and the Benefits Manager jointly monitor the length of family and medical leave.

Documentation

If an employee works a temporarily reduced or intermittent work schedule and does not use paid leave to bring the number of paid hours up to the normal schedule, the department must submit a Form PD-105 showing the effective date of the change in the number of hours the employee is scheduled to work.

The department must inform the employee that a reduced or intermittent work schedule in which paid leave does not bring the employee up to his/her regular schedule of hours worked will result in the employee earning leave at a reduced rate. The Comments section of the PD-105 must indicate that this reduction is being processed under the family and medical leave policy and, if applicable, that the employee is to remain on the health plan.

6. EMPLOYEE RESPONSIBILITY

To apply for leave under this policy, an employee must complete “Family and Medical Leave Application.” In all cases except adoption and caring for a newborn child, the employee also must submit a completed “Medical Certification Statement for Family and Medical Leave.” Completed forms are to be submitted to the Benefits Office.

Medical Reasons

For planned medical treatment necessitated by the serious health condition of an employee or an employee’s spouse, child or parent, the employee must make a reasonable effort to schedule treatment in the least disruptive way possible. If practicable, an employee should give at least thirty (30) days advance notice of the need for leave.

Birth or Adoption

For birth or adoption an employee shall, if at all possible, give the supervisor at least thirty (30) days advance notice of the need for leave, subject to the actual date of birth or adoption. If thirty (30) days notice is not possible, an employee should give written notice of the need for leave as soon as practical.

Reporting Medical Status

During the period of leave, the department may require reports from the employee at reasonable intervals on his/her status and intentions to return to work. Before returning from leave for medical reasons, a physician or other health care provider must certify that the employee is able to return to work and perform the essential functions of the position.

Failure to Return from Leave

An employee should notify the supervisor in writing if he/she will not be returning from leave as planned. Failure to report back to work at the end of the scheduled leave may be considered as a voluntary resignation.

7. CERTIFICATION

Serious Health Condition

A “Family and Medical Leave Application” must be used to request leave due to a serious health condition of an employee or of an employee’s child, spouse or parent. The request must be supported by a physician’s certification (“Medical Certification Statement for Family and Medical Leave”) which includes:

- The date the serious health condition began or was diagnosed,
- The probable duration of the condition,

- Appropriate medical facts regarding the conditions, and
- In the case of leave to care for the child, spouse or parent, a statement that leave is needed for this purpose and an estimate of the amount of time that care will likely require.

Where a reduced or intermittent work schedule is requested due to planned medical treatment, the tentative date(s) on which treatment is to be given and the approximate duration of treatment and its possible effects on the employee must be included in the physician's certification.

Subsequent Physician's Certification

In the event the supervisor needs additional information or has reason to doubt the validity of the first certification, the department head may require an employee to submit to a second medical examination. The second physician shall be designated and paid by the department.

If the second opinion is different from the first certification, the department head shall require an employee to be available for a third medical examination. The third physician shall be designated by both the employee and the department, and will be at the department's expense. The third physician's opinion is final and binding on the department and the employee.

The department may require, on a reasonable basis, subsequent re-certifications, at its expense, during the period of leave.

Adoption

For purpose of adoption, a request for leave under this policy must be supported by reasonable proof of the adoption. Reasonable proof includes documentation from the licensed adoption agency or court documents.

Location of Medical Certifications

All medical documentation, along with a copy of the employee's application for Family and Medical Leave under this policy is kept in Human Resources. Medical documentation under this policy is kept separate from employee personnel files and is confidential.

8. EMPLOYMENT AND BENEFITS PROTECTION

An employee's job and benefits are protected during the period of family and medical leave, whether taken as vacation leave, sick leave, voluntary shared leave, leave without pay or any combination.

Return to Employment

An employee must be reinstated to the same position held when the leave began, or one of similar salary grade, pay, benefits and other conditions of employment. During the period of leave, the department may require reports from the employee at reasonable intervals on his/her status and intention to return. Before returning from leave for medical reasons, the employee must have a physician or other health care providers' certification that he/she is able to return to work and perform the essential functions of the position.

Reduction in Force During Family and Medical Leave

If a permanent employee's position has been abolished during the period of family and medical leave due to a reduction in force, the employee is not entitled to reinstatement. However, an employee is eligible for severance pay and layoff priority. Supervisors must contact an employee as soon as it is known that an employee's position is being eliminated.

Health Benefits

The department shall maintain coverage for an employee under the State of North Carolina's group health insurance plan or health maintenance organizations for the duration of family and medical leave at the level and under the conditions coverage would have been provided had an employee not taken leave. Coverage is maintained even if the employee uses leave without pay for some or all of the leave period.

If an employee fails to return at the end of the period of leave, the department may recover its portion of the health insurance premiums paid on the employee's behalf unless the failure to return is due to the continuation, recurrence or onset of a serious health condition, or other circumstances beyond the employee's control.

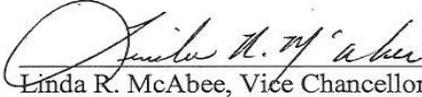
If an employee returns to work and remains at work for a least thirty (30) calendar days following the end of the period of family and medical leave, the employee is not required to repay the health insurance premiums.

Other Benefits

All benefits (e.g., leave earnings, retirement service credit) will continue to accrue during any period of paid leave. However, no benefits will accrue during any period of leave without pay.

An employee must be reinstated without loss of benefits that had accrued when the leave began. Employees who go on family and medical leave with more than 240 hours of vacation leave, and who do not choose to use vacation leave, will have all vacation leave over 240 hours automatically converted to their sick leave balance if they return to work in the new calendar year.

Approved:



Linda R. McAbee, Vice Chancellor for Human Resources

Date: February 27, 2008



Stanley F. Battle, Chancellor

Date: 2/28/08