



## **POLICY & PROCEDURE DOCUMENT**

NUMBER: 4.6302

DIVISION: Finance and Administration

TITLE: Family and Medical Leave

DATE: January 3, 2000

REVISED: July 1, 2010; January 1, 2012

Policy for: All Eligible Full-Time Employees

Authorized by: Director, Human Resources

### **I. Purpose and Scope**

This policy has been established to comply with the *Federal Family and Medical Leave Act of 1993 (FMLA)* and related Department of Labor regulations. The policy prescribes the leave benefits available to eligible employees under these laws; it applies to all faculty and staff employees who meet the eligibility requirements as defined in this policy.

### **II. Policy**

#### **A. General**

1. Family and medical leave is provided to eligible employees for any of the events or conditions listed below. Leave taken for these events must be reported as family and medical leave.
  - a. The birth of a child and the care of the newborn.
  - b. The placement of a child with an employee in connection with the adoption or state-approved foster care of a child.
  - c. The serious health condition of a child, parent, spouse or Other Qualified Dependent (OQD) of the employee or OQD's dependent child.
  - d. A serious health condition of the employee.

2. An eligible employee is entitled to a maximum of 12 weeks of approved family and medical leave in a twelve month period, as defined in this document. (The employee may request a leave of less than 12 weeks or intermittent leave.)

## B. Eligibility and Qualified Leave

### 1. Qualifying Exigency Leave

- a. Applicable to an employee whose spouse or OQD, son, daughter or parent who are on active duty or have been notified of an impending call to active duty. May be used for notice of deployment or return; any official ceremony, program or event sponsored by the military; to attend family support and assistance programs and informational briefings sponsored by the military, military service organizations, or the American Red Cross; to arrange child care or attend certain school functions of the son or daughter of a covered military family member; to make or update financial or legal arrangements to address the covered military family members absence while on active duty or call to active duty; to attend counseling by a non-health care provider; to spend time with a covered military family member on rest and recuperation leave during a period of deployment; to address issues arising from the death of a covered military family member.
2. For an employee to qualify for family and medical leave for a serious health condition, the employee or family member must be under continuing supervision of, but not necessarily receiving active treatment by, a health care provider, who must certify to one of the following:
  - a. In the case of leave requested to care for a family member, the employee is needed to care for the family member.
  - b. In the case of leave requested for the serious health condition of the employee, the employee is unable to perform the essential functions of the position.
3. A serious health condition involving continuing treatment by a health care provider includes any of the following conditions as defined by the *Family Medical Leave Act of 1993* Title 1, Section 101 (6)

*(11) SERIOUS HEALTH CONDITION. The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves*

*(A) inpatient care in a hospital, hospice, or residential medical care facility; or*

*(B) continuing treatment by a health care provider. (U.S. Department of Labor)*

4. Incapacity and treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - a. Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct

supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

- b. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under supervision of the health care provider.
  - c. The requirement in paragraphs (a) and (b) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
  - d. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
5. Any period of incapacity due to pregnancy or prenatal care;
  6. Any period of incapacity due to a chronic serious health condition;
  7. A period of incapacity that is permanent or long-term for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease);
  8. Any period of absence to receive multiple treatments either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three or more days in the absence of medical treatment (e.g., cancer, severe arthritis);
  9. Allergies or mental illness resulting from stress, but only if they meet all of the other criteria of a serious health condition;
  10. Substance abuse, but only if the employee is taking leave for treatment by a health care provider.
  11. Service Member Family Leave
    - a. An eligible employee who is the spouse or OQD, son, daughter, parent or next of kin of a covered service member shall be entitled to a total of 26 work weeks of leave during a single 12 month period to care for the service member.
    - b. Covered Service Member
      - i. 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 health injury or illness.
    - c. Outpatient Status: a member of the Armed Forces assigned to:
      - i. A military medical treatment facility as an outpatient; or

- ii. A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

d. Service Member Serious Injury or Illness:

- i. An injury or illness incurred by the service member in the line of duty or on active duty in the Armed Forces that renders the service member medically unfit to perform the duties of the service member's office, rank, or rating.

C. Non-Qualified

1. Specific conditions for which treatment does not qualify for FMLA leave include: cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental, or orthodontia problems and periodontal disease. Cosmetic treatments are not considered a serious health condition unless medically required or unless complications arise.

D. Definitions

1. Active Duty - Limited to a member of the Reserve components, the National Guard, certain retired members of the Regular Armed Forces and retired Reserve while serving on active duty status. Only available where the Federal call to active duty is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
2. Child - A biological, adopted, or foster child; a stepchild; a legal ward; OQD's dependent child; or a person for whom the employee has (or had during the person's youth) daily responsibility to care and financially support and who is either under 18 years of age or is incapable of self-care because of physical or mental disability.
3. Continuing treatment - Under "serious health condition."
4. Chronic health condition - One that meets all the following requirements:
  - a. Requires periodic visits for treatment by a health care provider,
  - b. Continues over an extended period of time, and
  - c. May cause episodic rather than continuing incapacity (E.g., asthma, diabetes, epilepsy).
5. Eligible employee - Any employee who has been employed by the University for at least 12 months, and who has worked for the University at least 1250 hours during the last 12 months immediately preceding the requested leave.
6. Healthcare provider - who is performing within the scope of that practice as defined by the *Family Medical Leave Act of 1993* Title 1, Section 101 (6)

(6) HEALTH CARE PROVIDER.--The term "health care provider" means--

- a. *(A) 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*
  - b. *(B) any other person determined by the Secretary to be capable of providing health care services. (U.S. Department of Labor)*
7. Incapacity - For the purposes of FMLA, the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment therefore, or recovery there from.
8. Intermittent leave or reduced leave schedule - A leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee. Intermittent leave is calculated on an hourly basis, as a proportion of the employee's normal workweek.
9. Next of Kin - the nearest blood relative of that individual or someone who stood in the place of a parent of such individual.
10. Parent - A biological, foster, or adoptive parent; a stepparent; a legal guardian; or a person who has (or had during the employee's childhood) daily responsibility to care for and financially support the employee. Parents-in-law are not included in this definition.
11. Regimen of continuing treatment - Includes a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.
12. Serious health condition - An illness, injury, impairment, or physical or mental condition that involves either or both of the following:
  - a. In-patient care in a hospital, hospice, or residential care facility.
  - b. Continuing treatment by a health care provider.
13. Spouse or OQD - A husband or wife, as recognized under the laws of the Commonwealth of Kentucky; or an OQD being financially interdependent and sharing primary residence with the employee, and has done so for the past twelve (12) months (for complete OQD eligibility requirements see [Other Qualified Dependent \(OQD\) Guidelines](#) which may be obtained through the WKU Department of Human Resources).
14. Treatment - For the purpose of FMLA, includes, but is not limited to, examinations to determine if a serious health condition exists. Treatment does not include routine physical, eye, or dental exams.
15. Year - The 12-month period measured forward from the date an employee's first FMLA leave begins. An employee is entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FLMA leave is taken after completion of any previous 12-month period.

### III. Procedure

1. An eligible employee must use all applicable accrued sick/medical and vacation leave balances while taking family and medical leave. Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious or chronic health conditions must be counted as family and medical leave. When there is any question about whether a condition qualifies as family and medical leave, the employing department should contact the Department of Human Resources. Employee requests for family and medical leave must be supported by the Certification of Health Care Provider form for either the Employee's Serious Health Condition or a Family Member's Serious Health Care Condition. If it is determined that the leave qualifies as family and medical leave, the procedures for reporting family and medical leave must be initiated.
2. FMLA leave will run concurrent with leave taken because of a job-related illness or injury (workers' compensation) for any period extending beyond 3 days.
3. The method for determining the 12 weeks FMLA leave entitlement is the 12-month period measured forward from the date any employee's first FMLA leave begins. An employee is entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FLMA leave is taken after completion of any previous 12-month period.
4. For purposes of determining the amount of leave used by an employee, the fact that a recognized University holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if the University is recognized as officially closed for a period of five (5) or more business days, such days do not count against the employee's FMLA leave entitlement.
5. Employees whose employment status is other than 12 months (i.e., 9, 10, or 11 months) are not charged FLMA leave during any period which is outside their official work period.
6. If both spouses or spouse and OQD are employed at Western Kentucky University, they are entitled to a combined 12 weeks of leave during any 12-month period (rather than 12 weeks each) for the birth or placement of a child. A jointly filed request form is required from spouses or spouse and OQD who are both requesting leaves for the birth or placement of a child. Spouses or spouse and OQD who are eligible employees are entitled to 12 weeks for other qualifying events or conditions.
7. Leave for birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption. Leave for birth or placement of a child is available equally to both parents.
8. An intermittent or reduced leave schedule is available under the Family and Medical Leave Act for the serious health condition of the employee, employee's spouse or OQD, child, OQD's dependent child or parent.
9. For any period of the family and medical leave that is without pay, the employee may continue insurance benefits and other benefit programs and will receive the customary premium sharing from the University toward the cost of applicable insurance coverage. The employee is responsible for self-paying that part of his/her insurance cost that would otherwise be deducted from the employee's paycheck.

10. For any period of the family and medical leave that is without pay, the employee on family and medical leave will continue to accrue institutional service credit but will not accrue vacation and sick leave (refer to retirement system regulation for retirement service credit).
11. Except under the conditions outlined in section 15 below, employees returning from approved family and medical leave must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
12. An employee offered an equivalent position who chooses to decline the position waives any rights to reinstatement.
13. The University may decline to restore an employee on family and medical leave to his/her original or equivalent position under the conditions listed below.
14. If an employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan, the employee's family and medical leave rights (including rights to restoration of employment) end on the scheduled termination date.
15. If misconduct by the employee which constitutes grounds for termination occurs or is discovered, the employee is subject to termination, even if the employee is on Family and Medical Leave at the time of the misconduct or discovery of misconduct.
  - a. In such cases, the employee maintains only those rights provided by such regulations as COBRA.
16. If an employee elects not to return to work upon completion of an approved unpaid family and medical leave, the employee is obligated to reimburse the university for the amount of the university's contribution of his/her health insurance premium during any complete months of unpaid leave. The employee is not required to reimburse the University if the failure to return to work was for reasons beyond the employee's control, or if the employee retires directly from leave or within 30 days of returning from leave.
17. Faculty members have the right to invoke the provisions of the Family Medical Leave Act (FMLA) for personal or family medical emergencies or other qualified reasons as defined by University policy.

#### **IV. Exclusions**

#### **V. Related Policies**

See also: Federal and Family Medical Leave Act of 1993; U.S. Department of Labor Regulations; University Policy; Explanation of Academic Administrative Procedures for Sick/Medical leave for regular, full-time faculty members

#### **VI. Reason for Revision**

Benefits extended to OQDs and OQD's Dependent Children effective January 1, 2012.

Appendices: