



Category: Human Resources
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Revised: 4/15/2015

BACKGROUND

The Family and Medical Leave Act (FMLA) is intended to balance the demands of the workplace with the needs of families. The FMLA became effective on August 5, 1993 and is a federal law that requires certain employers to allow eligible employees to take up to 12 (under some circumstances 26) weeks of unpaid, job-protected leave during a 12-month period for various health and family-related reasons which are described in this policy. Although FMLA leave is unpaid, employees may elect to charge appropriate leave credits in order to continue income during such an absence. FMLA may be taken in consecutive "blocks" of time or intermittently as needed.

Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in a 12 month period for any **qualifying exigency** arising out of the fact that a **covered military member** is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in 12 month period to care for a **covered service member** with a serious injury.

POLICY

Employer Coverage

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year. SUNY Geneseo is a covered employer.

Eligibility

1. Employee must have completed 52 cumulative weeks of State service (does not have to be consecutive), and
2. Employee must have worked a minimum of 1250 hours during the 52 weeks immediately prior to the leave, and
3. Employee works at a location where at least 50 employees are employed by the employer within 75 miles.

Leave Entitlement

1. For the birth and care of a newborn child of the employee;
2. For placement with the employee of a son or daughter for adoption or foster care;
3. To care for a spouse, son, daughter, or parent with a serious health condition;
4. To take medical leave when the employee is unable to work because of a serious health condition; or
5. For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

The final rule, effective January 16, 2009; defines “qualifying exigency” as follows:

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities not encompassed in the other categories, but agreed to by the employer and employee

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a “single 12-month period” to care for a the servicemember.

Definitions

1. A **serious health condition** is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.
2. **Child** - a newborn, a child 18 and under, a child 18 and over unable to care for self due to disability, foster children, wards of the state, stepchildren, , or a minor to whom an employee stands *in loco parentis* (such as a domestic partner’s children).
3. **Parent** - biological or legal guardian since childhood.
4. **Immediate Family Member** – employee’s spouse, sons, daughters (if any), and parents including anyone designated in loco parentis, but not including parents-in-law, or employee’s domestic partner.
 - a. The Department of Labor issued a Final Rule on February 25, 2015 revising the regulatory definition of spouse under the Family and Medical Leave Act of 1993 (FMLA). The Final Rule amends the regulatory definition of spouse under the FMLA so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will give spouses in same-sex marriages the same ability as all spouses to fully exercise their FMLA rights
5. **Covered Military Member** - an employee’s spouse, son, daughter, or parent in the National Guard or Reserves (or certain retired members of the Regular Armed Forces and retired Reserves) who is on active duty or has been notified of an impending call or order to active duty in the armed forces in support of a contingency operation.
6. **Covered Servicemember** – is a current member of the Regular Armed Forces, including a member of the National Guard or Reserves, or a member of the Regular Armed Forces, the National Guard or Reserves, who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy or is otherwise in outpatient status or on the temporary disability retired list.

7. **Next of Kin** – the nearest blood relative other than the covered servicemember's spouse, parent, son or daughter in the following priority: blood relatives who have been granted legal custody, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the servicemember has specifically designated in writing another blood relative for purposes of military caregiver leave under the FMLA.

Medical Documentation

Satisfactory medical documentation **must** accompany all requests for FMLA leave. Acceptable documentation should include the start date of the illness, limitations and restrictions (if any), and anticipated return to work date. *For a personal serious health condition, employees need to complete the Certification of Health Care Provider Form **WH-380E**. For a family member's serious health condition, employees need to complete the Certification of Health Care Provider Form **WH-380F**.*

PROCEDURE

A. Requesting a Planned Family Medical Leave of Absence

Step 1:

Within thirty days of a scheduled leave, employee will request a family medical leave of absence by completing Section I of the FMLA Leave Request Form and route it to their immediate supervisor to communicate the need for FMLA as soon as possible.

Step 2:

Employee completes timesheet(s) for submission to payroll with a clear indication if time accruals are to be used. Supervisor may complete upon verbal verification with employee. Employees must also indicate absences related to an FMLA covered condition by writing '**FMLA**' on the specific day of absence.

Step 3:

The supervisor reviews and signs the FMLA Leave Request Form in conjunction with the Department Head (where applicable). The Supervisor should review the leave request submitted by the employee and assist the employee with indicating if the requested leave will be using accruals at full, partial, or no pay. The FMLA Leave Request Form should be sent with the employee's completed timesheet(s).

Step 4:

Upon review, verification of eligibility and acceptance of medical documentation the employee shall receive a notice of designation from Human Resources. Medical documentation shall be submitted using the following appropriate forms:

- For a personal serious health condition, an employee needs to complete the Certification of Health Care Provider Form **WH-380E**.
- For a family member's serious health condition, an employee needs to complete the Certification of Health Care Provider Form **WH-380F**.

B. Requesting an Unplanned Family Medical Leave of Absence

Step 1:

Employee shall notify his/her supervisor verbally as soon as practical. Employee should include expected dates of absence, usage of accruals for said absence, and reason for absence. If employee is unable to communicate this directly to the supervisor, employee's designee should notify supervisor. Supervisor should note on the FMLA Leave Request Form who the designee is.

Step 2:

Steps two (2) through four (4) of the procedures for Requesting a Planned Family Medical Leave of Absence shall be followed as described above. Where the procedures above call for the employee to complete the FMLA Leave Request Form, the supervisor will complete sections of the form on behalf of his/her employee. Questions related to employee accruals or completion of the appropriate timesheet should be directed to the Human Resources & Payroll Services Office.

Extended Absences

If the healthcare provider extends the employee's absence, the employee must submit additional medical documentation to Human Resources. Employees are required to inform their respective supervisor and Human Resources of changes to a leave status.

Returning to work

At least forty eight (48) hours prior to returning to work (72 hours if the authorization is submitted on a Friday or during peak holiday times), the employee must submit the Return to Work Form: Medical Authorization indicating that they are able to return to work at full, unrestricted duty after being out on an authorized leave (If said leave was for the employee and not an eligible family member). Medical documentation identifying restrictions will be evaluated in coordination with the employee's specific job duties. Employee may not return to work until Human Resources has reviewed the medical documentation and authorized the employee to return to work.

Forms

[FMLA Leave Request Form](#)

[WH-380E](#)

[WH-380F](#)

[Return to Work Form: Medical Authorization](#)

[Essential Responsibilities for FMLA Compliance](#)