

Virginia State University  
Policies Manual

Title: Family and Medical Leave

Policy: 7003

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**PURPOSE**

The purpose of this policy is to provide guidance regarding the application and interaction of the FMLA and the University's policies and practices.

**AUTHORITY, RESPONSIBILITY, AND DUTIES**

This policy applies to all full-time and part-time University employees including faculty, administrators, staff, and wage workers. Any exceptions in the application or enforcement of this policy must be approved by the President or designee. The President has the right to revise or eliminate this policy as necessary. The Associate Vice President for Human Resources is responsible for the official interpretation of this policy. Questions regarding the application of this policy should be directed to the Office of Human Resources.

**POLICY**

It is the policy of the University to fully comply with the FMLA and provide eligible employees with up to 12 weeks of unpaid family and medical leave per leave year because of their own serious health condition or the serious health condition of an eligible family member, birth of a child, the adoption or placement of a child, or up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.

**FAMILY AND MEDICAL LEAVE OF ABSENCE**

If you have worked for the University for a minimum of one year and have worked 1,250 hours or more during the 12 months before requesting leave, you may be eligible for family and medical leave under the Family Medical Leave Act (FMLA). Because FMLA is a designation rather than a separate type of leave, FMLA eligible employees may also use other kinds of leave while on FMLA leave status.

If you are eligible, you will be allowed up to 12 weeks of unpaid leave within any 12-month period for the birth or adoption of a child, to provide either physical or psychological care for a child, spouse (i.e., husband or wife), or parent with a serious health condition, to care for your own serious health condition, or for a "qualified exigency" due to the active duty status of a spouse, parent or child. If you are eligible, you will be allowed up to 26 weeks of unpaid leave within any 12-month period to care for a child, parent, spouse or next of kin to care for a spouse, parent or child who has been injured during active duty military action.

You must conclude leave for the birth or placement of a child for adoption or foster care within 12 months after the event. Leave may begin before birth or placement, as circumstances dictate.

To qualify for medical leave, the health condition or treatment must be such that it requires you to be absent from work on a recurring basis or for more than a few days for treatment or recovery.

### **REQUEST FOR LEAVE**

Failure to comply with the following procedure may result in the delay of leave or denial of leave:

1. You must complete a *Leave Activity Reporting Form* and a *Certification of Health Care Provider for Employee's Serious Health Condition* form (available from the Human Resources Department).
2. These forms must be submitted to the Human Resources Department.

The Human Resources Department will review the request and notify you and your supervisor of approval or denial of leave.

When to request leave

#### *Foreseeable leave*

Where leave is foreseeable, you must make a request for leave at least 30 days in advance.

#### *Unforeseeable leave*

Where advance written notice of the need for leave is not possible (i.e., medical emergency such as a car accident), advance verbal notice (in person or by telephone) is required. Where neither advance written nor verbal notice is possible, then verbal notice must be provided as soon as reasonably practicable with written documentation to follow within three business days.

**IMPORTANT:** If you wish an absence to be counted under family and medical leave, you must give the University sufficient information to do so within five (5) business days after returning to work following your absence.

### **DESIGNATION OF LEAVE**

There may be times when you are absent under circumstances that would qualify as family and medical leave, but you have not specifically applied for such leave. The University has the right to designate such absences as family and medical leave. If an absence is designated as such, the Human Resources Department will notify you of the designation. If you do not receive such notice, you should assume that your absence will not be treated as family and medical leave.

### **INTERMITTENT OR REDUCED LEAVE**

In the case of your own serious health condition or that of a family member, you may take leave intermittently or on a reduced work schedule, if medically necessary. You may also take intermittent leave or work a reduced work schedule for the adoption or birth of a child or military family leave. You may take leave intermittently or on a reduced work schedule only with the approval of the University after you and your supervisor(s) adopt a revised work schedule that is acceptable to you and your supervisor(s). If you request intermittent or reduced leave status, the University may temporarily transfer you to another position of equivalent pay and benefits to better accommodate your leave.

### **USE OF PAID-TIME-OFF BENEFITS**

You may elect to substitute paid-time-off benefits, such as accrued vacation or sick personal leave for the unpaid time off. Using paid-time-off benefits does not add to the total length of the leave.

Unless you substitute paid-time-off benefits, your pay will be reduced for all full days of unpaid leave taken or for all partial days of leave taken. If you are an exempt employee, reducing your pay for partial days off will not affect your exempt status under the Fair Labor Standards Act.

### **LEAVE PROVISIONS FOR SPOUSES BOTH WORKING FOR THE UNIVERSITY**

If leave is taken for the adoption or birth of a healthy child, or to care for a parent with a serious health condition, the maximum combined leave for both spouses is 12 weeks. If the leave is to care for an ill or injured military family member, the maximum combined leave for both spouses is 26 weeks. If leave is taken to care for an ill child or spouse, each spouse is entitled to 12 total weeks of leave.

### **JOB RESTORATION**

Most employees granted leave will be returned to the same position held before the leave or to a position that is reasonably equivalent in pay and benefits. Certain highly compensated salaried employees are eligible for leave but are not guaranteed restoration to their position if they choose to take FMLA leave. See the Associate Vice President for Human Resources for a determination of whether you are guaranteed restoration to your employment position as a highly compensated employee.

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### **STATUS OF BENEFITS DURING FAMILY AND MEDICAL LEAVE**

The University will continue to contribute to the health insurance premiums of salaried employees who are on leave under the Family and Medical Leave Act as discussed below.

When employees are using paid annual or sick leave under the provisions of FMLA, the payroll deductions of their portions of the premiums continue. When employees are on leave without pay under the provisions of FMLA, their premium contributions will be handled as if they were on leave without pay. Employees who are on leave under FMLA will pay the same portion of their health insurance premiums as they would if they were not on leave.

Premiums are due to the University by the first day of each month of coverage. If employees fail to make premium payments, the University will follow the same procedures to terminate coverage as they would if employees failed to pay premiums while on leave without pay.

If employees fail to return to work at the end of leave under FMLA, the University may recover from them the Commonwealth's share of premiums paid during the period of leave. However, there will be no recovery of premiums if employees fail to return to work as a result of:

[t]he onset, recurrence, or continuation of serious health conditions that entitle them to leave to care for themselves or for a family member; or other circumstances beyond the employee's control.

**EXAMPLES:** (1) If an employee fails to return to work secondary to a disabling condition, the University will not seek reimbursement for the Commonwealth's contributions for health insurance coverage during the period of leave. (2) If an employee fails to return to work at the end of FMLA leave because of his or her acceptance of other employment, the University should seek to recover the Commonwealth's contributions for health insurance coverage during the period of leave.

Virginia State University  
Policies Manual

Title: Family and Medical Leave

Policy: 7003

---

**Life insurance**

The University will continue to pay life insurance premiums while employees are on family and medical leave.

**Leave accrual**

Employees will not accrue annual or sick leave hours during any period of leave without pay.

**Retirement**

Retirement contributions (including the component to fund the health credit) will be made for any pay period in which qualifying compensation has been received by the employee. Retirement contributions will not be made for any pay period in which no qualifying compensation has been received by the employee (i.e., the employee was on leave without pay for the entire pay period).

**NOTIFICATION**

As stated previously, the law requires you to provide the University with 30 days advance written notice of your need for leave or, if emergency conditions prevent such notice, you must notify the University as soon as is practicable. You are required to report periodically on your status during the leave period, and your intent to return to work.

**CERTIFICATION**

A certification will be sufficient if it is provided by employees in a timely manner, is written and includes the information described below. When the leave is foreseeable and at least 30 days advance written notice has been provided the employee should provide the medical certification before the leave begins. When this is not possible, the certification must be provided within the time frame requested by the University. The University allows 15 calendar days after it requests the certification.

Certification of the need for leave to care for your illness or injury or that of a family member is required. Medical certification forms may be obtained from Human Resources. The following information requested on the certification form must be provided by a responsible health care provider and you must make it available to the University's Human Resources Department:

- The date on which the serious health condition began
- The duration of the serious health condition

Virginia State University  
Policies Manual

Title: Family and Medical Leave

Policy: 7003

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- A medical statement that you need to care for the ill person and the estimated length of the leave or a medical statement that you cannot perform the functions of your job
- If applicable, the appropriate medical facts within the knowledge of the health care provider verifying the need for intermittent leave or a reduced work schedule, such as scheduled dates for treatments.

### **DISPUTE RESOLUTION**

If the medical opinion provided by your physician is disputed by your supervisor(s) or Human Resources, the University may require a second opinion by a physician of its choice, at the University's expense. If a third opinion is necessary, a third doctor may be selected, also at University expense. The third doctor must be agreed on by both you and the University, and the doctor may not be employed on a regular basis by the University.

### **RETURNING TO WORK**

You will be reinstated to the same job or an equivalent position upon completion of your leave. If you have exhausted all 12 weeks of your leave and are still unable to return to work, you no longer are provided any restoration rights under FMLA. However, each situation will be reviewed on a case-by-case basis to determine whether you may be eligible for rights and protections under other University policies.

#### *Fitness-for-duty*

You will need to provide the Human Resources Department with a *Fitness-for-duty Report* before returning to work if you have taken medical leave of more than five consecutive days as a result of your own serious health condition. This must be signed by a health care provider. You are expected to return to work when released by a health care provider.

If your doctor releases you to return to light-duty work and the University offers that option to you but you refuse, any short-term disability benefits you may be receiving under the University's plan will cease.

### **ACTIONS FOR TERMINATION**

Termination of employment may occur when:

- You, while on approved family and medical leave, accept other gainful employment; or

Virginia State University  
Policies Manual

Title: Family and Medical Leave

Policy: 7003

- You fail to return from family and medical leave at the specified time agreed upon by you and management.
- You fail to provide medical certification as required by law and the University.
- You otherwise violate the requirements imposed upon you by the Family Medical Leave Act.

**PROBLEM RESOLUTION**

It is the policy of the University not to discharge or discriminate against any employee exercising his or her rights under the Family and Medical Leave Act. If you think you have been treated unfairly, contact the Human Resources Department's FMLA coordinator. If for any reason the problem cannot be resolved at that level, contact the Associate Vice President of Human Resources. The Associate Vice President's decision will be final and binding.

**PROCEDURES**

Information on how leave requests are processed under the FMLA is provided in the Appendix.

For more information about family and medical leaves of absence, contact the employee benefits or FMLA coordinator in the human resources department.

Authority: Public Law 103-3, 107 Statutes at Large 6, enacted February 5, 1993 as the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq. The implementing federal regulations, promulgated by the United States Department of Labor, may be found at 29 CFR Part 825.

Approval By: \_\_\_\_\_

  
President

Date: \_\_\_\_\_

10/20/10

## **APPENDIX**

### HOW TO PROCESS A FMLA LEAVE REQUEST

The Family and Medical Leave Act (FMLA) is an intricate law enacted to provide employees with time off from work to care for their own or a family member's serious health condition or to bond with a newborn or adopted child. Effective January 16, 2009, the **FMLA regulations** were expanded to include military caregiver and exigency leave. These regulations placed new expectations on employers for approving and denying employees' FMLA requests.

The FMLA is applicable only to employers with 50 or more employees for at least 20 workweeks in the current or previous calendar year. **Covered employers** must post, physically or electronically, the **FMLA poster**; in addition, the employee must be provided notice of his or her FMLA rights upon hire, either as a separate notice or in university policies.

#### **Step 1: Request Received**

An employee is expected to provide at least 30 days' notice of a need for FMLA leave, unless the need is unforeseen, in which case the employee should notify the employer as soon as possible after becoming aware of a need for leave. According to FMLA regulations, "An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements."

#### **Step 2: Rights and Responsibilities**

The employer is required to respond to the employee within five days of receiving a request for FMLA leave. The employer's response must establish whether the employee is eligible for FMLA leave and notify the employee of his or her rights and responsibilities under the FMLA. The easiest way to comply with this response requirement is to use the FMLA model form **Notice of Eligibility and Rights & Responsibilities (WH-381)**.

#### **Step 3: Determine Eligibility**

An employee is eligible for FMLA leave only if the employee meets all three of the following eligibility requirements:

"(1) Has been employed by the employer for at least 12 months, and (2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and (3) Is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site."

If the employee does not meet these three criteria, it is the employer's responsibility to notify the employee of ineligibility for FMLA leave by specifying at least one criterion the employee does not meet.



**Step 4: Certification**

The Department of Labor (DOL) has published four different model certification forms. When requiring a medical certification, you will want to select the appropriate form below to include with the WH 381 Rights and Responsibilities form. Employees must be allowed up to 15 days to complete and return their certification form.

**Certification of Health Care Provider for Employee's Serious Health Condition (WH-380E)**

**Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380F)**

**Certification of Qualifying Exigency for Military Family Leave (WH-384)**

**Certification for Serious Injury or Illness of Covered Servicemember for Military Family (WH-385)**

**Step 5: Clarification**

On occasion, certification forms are returned to the employer incomplete or with insufficient information. The regulations specifically address these situations:

"A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous or nonresponsive. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave."

**Step 6: Designation**

The DOL published a model **Designation Notice (Form WH-382)** that can be used to notify the employee whether his or her FMLA request has been approved or denied. If you have enough information when the employee initially requests FMLA leave to approve or deny, you may supply the Designation Notice at the same time as the Rights and Responsibilities form. If you are requesting further documentation, such as a medical certification form, you must allow 15 days for return of this documentation prior to designating the time off as an FMLA-related leave. Even though you may not formally designate the leave as approved under the FMLA until several weeks after it starts, in some circumstances, you still track FMLA leave from the start of the leave. After an employee returns the medical certification form, you have five days to approve or deny FMLA leave. If the employee has not returned medical certification within 15 days as stated on the Rights and Responsibilities form and you are not aware of extenuating circumstances, you should notify the employee in writing that the FMLA request has been denied, using the designation notice above or a similar communication.

### **Step 7: Missed Deadline**

The DOL has recognized that employers might occasionally miss a deadline for response to an employee's FMLA request or FMLA designation. According to FMLA regulations, you can retroactively designate FMLA leave as long as you have not negatively affected the employee. If the employee was provided the same leave benefits and job guarantees he or she should receive under the FMLA even though you did not designate FMLA leave in a timely manner, you can later correct your mistake and correctly designate the leave as FMLA-related and track the leave time against the employee's 12 weeks of FMLA leave retroactively. So, if your HR representative is on vacation and no one remembered to send Susie her FMLA paperwork within five days, don't panic—as long as Susie was still able to take leave without any harm or injury, you just need to send the designation form to her as soon as possible.

Here is the relevant regulation: "If an employer does not designate leave as required by Sec. 825.300, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by Sec. 825.300 provided that the employer's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated as FMLA leave."

### **Examples**

In all scenarios below, the University is an FMLA-covered employer and there are at least 50 employees within 75 miles of the employee's work site.

#### **Example 1**

##### *Scenario*

Jessica has worked for the University for six months. She notifies her manager that she is pregnant and due in two months. In addition to the FMLA leave policy, the University has a policy that provides up to six weeks of personal leave for employees who have worked at least 90 days.

##### *Actions*

The employer should provide Jessica with the **Notice of Eligibility and Rights & Responsibilities (WH-381)**. Here is how to complete Section 1 based on this scenario:

**[X]** Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

**[X]** You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately 8 months toward this requirement."

The employer should also include a letter stating that although Jessica is not eligible to use the FMLA for this leave, she may be (or is) eligible for a personal leave of absence. The letter should describe any application or approval process for the personal leave of absence.

Virginia State University  
Policies Manual

Title: Family and Medical Leave

Policy: 7003

---

**Example 2**

*Scenario*

Ed is a full-time employee who has worked for the University for six years. He called in today because his father is in the hospital. Ed stated that he will need time off to care for his dad and may not be back to work for several weeks.

*Actions*

This call is enough information to treat it as a request for FMLA leave. The employer, within five days, sends Ed the **Notice of Eligibility and Rights & Responsibilities (WH-381)** and the **Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380F)**.

Ed returns the certification within 15 days, confirming that he is needed to care for his dad for the next 12 weeks. Within five days of receiving this certification, the employer sends Ed the **Designation Notice (Form WH-382)** to approve Ed's leave under the FMLA.

If the employer forgot to send the designation notice within five days of receiving the certification form, but Ed was able to take leave with no discipline, termination or loss of benefits, the employer can send out the designation form late and still track the entire leave time against Ed's 12 weeks of FMLA leave.

If the employer did not designate the leave as FMLA and consequently Ed's health benefits were dropped at the end of the month, the employer violated Ed's rights under the FMLA.

**Example 3**

*Scenario*

Ingrid, who meets all FMLA eligibility criteria, turns in a doctor's note stating that she will be under her doctor's care all of next week for surgery and follow-up treatment.

*Actions*

This is clearly an FMLA-related and covered absence. The employer should send Ingrid the **Notice of Eligibility and Rights & Responsibilities (WH-381)** and the **Designation Notice (Form WH-382)** approving leave within five days. There is no need to ask for a medical certification since the doctor's note provided sufficient information.