



POLICY MANUAL

BENEFITS

Number 351

Subject: Family and Medical Leave

Covered Employees: University Employees

Date of Origin: January 24, 1997; revised March 26, 2010

351.1 POLICY

In compliance with federal regulations, Utah State University has established a policy regarding time off work which qualifies under the Family and Medical Leave Act (FMLA) as revised effective January 16, 2009. The function of this policy is to provide employees with a general description of their FMLA rights and responsibilities. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

When an FMLA eligible employee is off work for an FMLA qualifying event for more than three (3) consecutive working days, this policy will be in effect. Employees may not work another job while on FMLA leave.

This policy operates in conjunction with the University's annual leave, sick leave, organ donor leave, military leave, workers compensation leave, short-term disability leave and leave without pay policies. Questions regarding how these policies work to the mutual benefit of the employee and the University should be directed to the Office of Human Resources.

351.2 DEFINITIONS (Specifically For Use With This Policy)

2.1 Eligible Employee

All University employees with appointments of (1) 50% time or more in their regular assignments, (2) who have worked for USU for 12 months or 52 weeks over the past seven (7) years, and (3) who have worked 1,250 hours or more over the previous 12-month period.

2.2 Family Members

Family members include the employee's spouse, dependent child (birth, adopted, step, or foster), parent, and parent-in-law. For the purposes of this policy a dependent child is under the age of 18 years, or over the age of 18 years and incapable of self-care because of a mental or physical disability.

2.3 Serious Health Condition

A serious health condition is (1) a condition which requires in-patient stay in a hospital, hospice, or residential medical facility; (2) a condition requiring absence from work, school or other regular daily activities for more than three consecutive working days, and which requires continuing treatment by, or under the supervision of, a health care provider; or (3) a condition requiring continuing treatment for a chronic or long-term health condition which, if not treated, would result in an absence of more than three consecutive working days. The University will require the employee to provide medical certification of the serious health condition of either the employee or the family member.

2.4 Continuing Treatment

Continuing treatment is defined as (1) treatment on two or more occasions by a health care provider or by a paraprofessional under the supervision of a health care provider; (2) treatment on at least one occasion by a health care provider who thereafter supervises a regimen of continuing treatment (e.g., a course of medication or therapy); or (3) treatment in the course of a long-term or chronic condition or disability requiring continuing supervision, but not active treatment, by a health care provider.

351.3 PROVISIONS

An eligible employee may use paid leave (if available) and/or unpaid leave up to a maximum of 12 weeks during a rolling 12-month period, for the following qualifying events:

- (1) The serious health condition of the employee, including continuing treatment.
- (2) The birth of a child or the placement of a child for adoption or foster care. The 12-week FMLA leave period must be completed within 12 months of the birth, adoption, or foster care placement of the child.
- (3) The care of the employee's family member due to a serious health condition.
- (4) Eligible employees with a spouse, son, daughter, or parent on covered active duty or call to covered active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal

arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

(5) Military caregiver leave that permits eligible employees to take up to 26 weeks of leave to care for a spouse, son, daughter, parent or next of kin of a covered service member during a single 12-month period. The term “covered service member” means:

(a) 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; or

(b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

See Policy 359 Military Leave for other applicable definitions.

The University will require the employee to provide medical certification of the serious health condition of the service member.

The rolling 12-month period begins on the first day of an FMLA qualifying leave. Even if an employee experiences more than one of these events in a rolling 12-month period, only a total of 12 weeks of FMLA leave will be granted unless one of the qualifying events is the military caregiver leave

The 26 workweeks of military caregiver leave run on a separate FMLA year that commences with the first day leave is taken and can run forward until the end of that 12-month period. Any combination of FMLA leave may not exceed the maximum limit of 26 work weeks in that single 12-month period. Unused military caregiver leave is forfeited at the end of that 12-month period. If both the husband and wife work for the University, a husband’s and wife’s leave is limited to a combined total of 26 workweeks in that single 12-month period.

Additional leave (paid or unpaid) may be granted according to the provisions of the University's annual, sick, short-term disability, workers compensation, and leave without pay policies.

3.1 Intermittent Leave

FMLA leave may be taken on an intermittent or reduced hour basis if medically necessary for an employee's or family member's serious health condition. Leave due to military qualifying exigencies may also be taken on an intermittent basis. Employees should make all reasonable efforts to schedule such leave in advance.

3.2 Paid Leave During FMLA Leave

(1) Paid sick/annual leave.

The employee must use accumulated sick and/or annual leave during an FMLA leave according to the provisions of the University's sick and annual leave policies before leave without pay will apply. The employee may retain one week of annual leave and one week of sick leave if he/she so chooses. Sick and annual leave will accumulate on a pro-rata basis when the employee is on intermittent leave.

(2) Short-term disability usage during FMLA leave.

An employee who is enrolled in the short-term disability program may receive short-term disability benefits during the FMLA leave according to the provisions of the short-term disability policy.

(3) Worker's compensation leave.

An absence from work due to an on-the-job injury or illness which qualifies as a worker's compensation absence may also qualify as an FMLA absence.

In cases in which short-term disability or workers compensation also qualifies as FMLA leave, the FMLA leave will run concurrently with the short-term disability leave or workers compensation leave.

3.3 Benefit Continuation During FMLA Leave

The University will continue health benefits (medical and dental insurance coverage) for benefit-eligible employees during any paid or unpaid FMLA leave on the same basis as for active employees.

The employee's regularly deducted premiums due for medical and dental coverage during periods of unpaid FMLA leave will be collected according to existing procedures for premium payment during an approved leave without pay. Employees will be contacted by the Office of Human Resources regarding provisions for payments.

The University's obligation to maintain healthcare coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the University will send a letter notifying the employee that coverage will be dropped on a specified date unless the premium is received before that date.

The University will retroactively charge the employee for the University's portion of the benefit premiums during an unpaid FMLA leave if the employee does not return to work

after the FMLA leave for reasons other than the continuation of a serious health condition or for other reasons beyond the control of the employee.

The flexible spending account (FSA) program is governed by specifications of the FSA plan.

Employer retirement contributions will be discontinued while the employee is on unpaid FMLA leave.

3.4 Reinstatement of Position and Benefits

The University will restore the employee to the previous position, or a position of equivalent status, seniority, benefits and pay, after the FMLA leave. Upon return to work, no proof of insurability or pre-existing condition clause will apply to the employee to return to the same level of benefit coverage in which he/she was enrolled before the FMLA leave. This provision will apply even if the employee waived the coverage during the period of an unpaid FMLA leave.

Employees who may need an accommodation in order to return to work may consult with the University's Americans with Disabilities (ADA) Coordinator.

3.5 Medical Certification

The University will require an employee to have a health care provider certify his/her need for medical leave, or the need for the medical care of a spouse, dependent child, or parent within 15 days of the request for FMLA leave. The employee will be notified of the need for this certification when the employee requests FMLA leave.

With the employee's permission, the designated HR representative may contact the employee's health care provider to authenticate or clarify the certification form.

The University may require employees to obtain a second opinion at the University's expense. If the opinions of the initial and second healthcare providers differ, the University may at its expense, require employees to obtain a third, final and binding certification from a healthcare provider.

An employee may be requested to recertify a serious health condition every 30 days (if the employee is absent during that period) for chronic/long-term illness.

3.6 Fitness for Duty Requirement

The University will require the employee to provide a Fitness for Duty certification before the employee returns to work, if the leave was for his/her own serious medical condition. The employee will be notified of this requirement when the FMLA leave is requested (or immediately after the FMLA leave begins). Fitness for duty examinations must be job-related and paid for by the employee's department.

3.7 Pre-tenure Probationary Period

When a tenure-eligible faculty member is on FMLA leave in an academic year, the faculty member's department head or supervisor and dean, director, or vice president may recommend a hiatus from the faculty member's pre-tenure probationary period, equal to the duration of the FMLA leave. All requests must be submitted to the Provost's Office. [See Policy 405.1.4(3) & (4)]

351.4 RESPONSIBILITY

4.1 Department Heads and Supervisors

Responsible for managing job vacancies, and coordinating information with the Office of Human Resources when an employee is on leave.

4.2 Office of Human Resources

Responsible for determining and notifying employee of FMLA eligibility, determining qualifying events, assisting with the implementation and administration of this policy, and for maintaining required employee documentation necessary for requesting and processing leaves. Also responsible for decisions about medical opinions, ensuring all employees are aware of the Family and Medical Leave Policy and its amendments, and posting the federal notice of the Family and Medical Leave Act of 1993 and its amendments.

4.3 Employees

Responsible for providing as much notice as possible when requesting leave (30 days, if practicable), complying with requests for documentation, maintaining contact with supervisors, and returning to work as scheduled.

When planning medical treatment, employees must consult with the University's FMLA Coordinator and make a reasonable effort to schedule treatment so as not to unduly disrupt University operations. Employees must consult with the University prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both the University and the employee, subject to the approval of an employee's healthcare provider.

The employee must comply with the usual and customary notice provisions for absence.