



# UNIVERSITY OF NORTH ALABAMA

## Employee Policy Manual and Handbook

### **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

#### **Eligibility**

An employee will be eligible to seek unpaid leave under the Family and Medical Leave Act (FMLA) if (1) the employee has worked for the University for at least 12 months, (2) the employee has worked for the University for at least 1,250 hours during the 12 months before the leave and (3) at least 50 employees work at the same worksite or otherwise work within a 75-mile traveling distance from the employer's worksite. In certain circumstances, separate periods of employment are aggregated for purposes of the 12 month requirement. Additionally, any time that the employee would have worked for the University but for his/her National Guard or Reserve obligations is counted toward the 1,250 hour requirement for FLMA Leave.

#### **Types of Family and Medical Leaves**

For purposes of this policy, the term "FMLA leave" refers to the leaves of absence under the Family and Medical Leave Act. Employees may qualify for various types of FLMA leave. Throughout this policy, the term "FMLA leave" refers to any of the following types of leaves:

*Pregnancy Leave* - An employee may take a Pregnancy Leave due to incapacity due to pregnancy, prenatal medical care or childbirth.

*Birth, Adoption, and Bonding Leave* - An employee may take leave for the birth, adoption and bonding for his/her child after birth, or for placement with the employee of a child for adoption or foster care. The leave must be completed within 12 months of the child's birth, adoption or foster care placement.

*Family Illness Leave* - An employee may take leave for a family illness to care for a seriously ill or injured spouse, parent or child. The illness or injury must be a "serious health condition" within the definition of the FMLA, a term which is defined below. If the leave is for care of a child, the child must either be under age 18 or unable to care for himself/herself due to a mental or physical disability.

*Employee Illness Leave* - An employee may take leave because of his/her own serious health condition that makes the employee unable to perform his/her job.

*Qualifying Exigency Leave* - An employee may take a qualifying exigency leave for certain "qualifying exigencies" arising out of the fact that the employee's spouse, child of any age, or parent is on active duty (or has been notified of an impending call to active duty) in support of certain types of military operations, known as "contingency operations." The family member must be a member of the National Guard or one of the military's reserve units or a retired member of the regular armed forces or the Reserves. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, attending post-deployment reintegration briefings and any other circumstance that the University and the employee agree should be a qualifying exigency and as to which they agree about the timing of the leave for that event.

*Military Caregiver Leave* - An employee may take a military caregiver leave to care for a spouse, child of any age, parent or next of kin who is a current member of the Armed Forces (including a member of the National Guard or the Reserves) and incurs a serious illness or injury in the line of duty or active duty that may render the service member medically unable to perform his or her duties, if the illness or

injury is one for which the service member (1) is undergoing medical treatment, recuperation or therapy, (2) is in outpatient status, or (3) is on the temporary disability retired list. If a military caregiver leave also qualifies as a leave for family illness, the leave will be designated as a military caregiver leave.

### **Serious Health Condition**

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 three 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.

### **Notice and Scheduling of Leave and Related Employee Responsibilities**

Required Information - Employees who seek FMLA leave must provide sufficient information for the University to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider or circumstances supporting the need for a leave for a qualifying exigency or to serve as a military caregiver. Employees must also inform the University if the requested leave is for a reason for which a FMLA leave was previously taken or certified. Employees may also be required to provide a certification and periodic recertification supporting the need for leave. Unless a longer period is specified, a medical certification or recertification must be completed and returned to the University within 15 days of the University’s request. Moreover, employees on leave may be contacted periodically for updates concerning their status and intent to return. Employees are expected to be fully responsive to such requests for updates.

Advance Notice of Foreseeable Leave - Except as otherwise provided below, employees must provide 30 days’ advance notice of the need to take FLMA leave when the need for the leave is foreseeable. When 30 days’ notice is not possible, the employee must provide notice as soon as practicable.

Scheduling of Foreseeable Leaves - If an employee plans to take FMLA leave for his/her own illness, a family illness, or to serve as a military caregiver because of planned medical treatment, the employee must make an effort to schedule the treatment to reduce the disruption to the University, subject to the health care provider’s approval. An employee should generally consult with his/her supervisor to explore alternatives to reduce the disruption to the University.

Notice of Unforeseeable Leave - When a Family and Medical Leave for employee illness, a family illness, as a military caregiver, or for a qualifying exigency is needed due to a reason that was not foreseeable, an employee should give his/her supervisor and the Office of Human Resources verbal or written notice as soon as he/she reasonably can do so.

Effect of Insufficient Notice - An employee’s failure to give adequate notice may delay, or may result in the denial of, the employee’s right to receive the protection of FMLA leave.

Confirmation of Leave - The University shall inform employees who request FMLA leave whether they are eligible for a leave that is covered by the FMLA. If the employee is eligible, the notice shall specify any additional information that the University requires as well as the employee's rights and responsibilities. If the employee is not eligible, the University shall provide at least one reason of the ineligibility determination. The University shall determine if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the University determines that the leave is not FMLA-protected, the University shall inform the employee.

## **Length of Leave and Restoration Rights**

General - In general, except for those employees taking leave to serve as a military caregiver, an employee will be entitled to a maximum of 12 weeks of FMLA leave (for any type of FMLA leave or a combination thereof) during any 12-month period. The 12-month period is a rolling period measured backward from the date an employee uses any leave under this policy. Each time an employee takes any FMLA leave, the remaining leave entitlement will be any balance of the 12 weeks that has not been used during the immediately preceding 12 months.

In the case of a military caregiver leave, an employee is entitled to a maximum of 26 weeks of leave in the 12-month period beginning on the first day that the employee takes this form of leave and ending 12 months later.

Nature of the Leave - FMLA leave for the birth, adoption and bonding must be taken at one time and before the end of the 12-month period beginning on the date of the child's birth or placement.

Other types of FMLA leave may be taken through either a reduced working schedule or intermittently if such an arrangement is medically necessary (or if the University approves such an arrangement in its discretion). If an employee is entitled to FMLA leave for his/her own illness, a family illness, or to serve as a military caregiver leave, or if the employee is permitted to work on a reduced work schedule or intermittent basis, the University may transfer the employee temporarily to a position for which he/she is qualified and which has equivalent pay and benefits if the alternative position would better accommodate the recurring leaves than the employee's regular position. Use of intermittent or reduced schedule leave is measured in increments of one hour. Leave for a qualifying exigency may also be taken on an intermittent basis.

Special Rule Applicable to Spouses who are Both Employed by the University - If the University employs both spouses, the combined total Family and Medical Leave to which they will be entitled together will be 12 weeks in any 12-month period if the leave is taken for birth, adoption and bonding.

## **Restoration Rights**

General - At the end of FMLA leave, an employee will generally have the right to return to his/her last position before the leave or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. In returning from any of these leaves, the employee will not lose any benefit rights, such as sick or annual leave, to the extent that those benefit rights accrued before the leave period.

Certification Before Return - Before an employee may return from FLMA leave for his/her own illness that has continued for at least 5 calendar days, the employee's health care provider may be required to certify that the employee is able to resume his/her job. The employee will be required to bear the out-of-pocket costs of such a certification, if any.

## **Pay and Benefits**

Pay - FMLA leaves are not paid leaves. However, an employee may substitute a paid leave for which the employee is eligible for otherwise unpaid leave. In this case, the FMLA leave and the paid leave would run concurrently and would remain subject to all protections that would apply if the leave were taken on an unpaid basis. Employees who seek paid leave will need to meet the notice and qualification requirements under the respective leave policies.

Other Benefits - During FMLA leave, the University will continue the employee's health/vision and dental insurance coverage. Likewise, the employee is entitled to continue said coverage for his/her family provided that he/she pays the regular premium on a timely basis. In addition, employees may elect to continue any supplemental insurance policies by timely payment of premiums. During any paid leave, the employee's share of the premiums will be deducted from the employee's pay.

Group life insurance and long-term disability insurance will also be maintained during FMLA leave as if the employee was actively employed.

## **Medical Records**

Documents relating to medical certifications, recertifications or medical histories of employees or employees' family members will be maintained separately and treated as confidential medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors and managers, first aid and safety personnel, or government officials.

## **FMLA Violations and Enforcement**

### **Unlawful Actions by Employers - The FMLA makes it unlawful for any employer to:**

- Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or related to the FMLA.

Enforcement - An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

*Approved by the Executive Council, 08/22/2011*