

OKLAHOMA CITY UNIVERSITY
POLICY
THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

Oklahoma City University provides leaves of absence under the Family and Medical Leave Act of 1993, as amended, to eligible regular full-time and regular part-time employees who are temporarily unable to work.

The purpose of this Policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this Policy and the applicable law, employees will be afforded all rights required by law.

A. General Provisions

Under this Policy, the University will grant up to 12 weeks of leave during a 12-month period to eligible employees for the arrival of a new child through birth, adoption, or foster care, to care for a family member who is suffering from a serious health condition, a qualified call to duty event for a covered family member, or to deal with the employee's own serious health condition. In accordance with 2008 amendments to the FMLA, the University will also grant up to 26 weeks of leave to employees in order to care for a covered service member with a serious injury or illness. Leaves provided pursuant to the FMLA are unpaid leaves by federal statutory definition, but FMLA leaves may be taken concurrently with other types of leave provided by the University (e.g., vacation leave and sick leave). Thus, a leave that qualifies as FMLA leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in Section G of this Policy.

B. Eligibility

To qualify to take family or medical leave under this Policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the University for at least 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive, but time worked prior to a break in service of 7 years or longer will not be counted toward FMLA eligibility. Otherwise, separate periods of employment will be counted toward FMLA eligibility. Furthermore, separate periods of employment will be counted toward FMLA eligibility if the break in service exceeds 7 years because of National Guard or Reserve military service obligations. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the twelve-month period immediately prior to the date when the leave is requested to commence.

The principles established under the Fair Labor Standards Act (FLSA) determine the calculation of the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

- 3) The employee must work in a worksite where 50 or more employees are employed by the University within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

C. Type of Leave Covered

To qualify as FMLA leave under this Policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.
- 3) To care for a spouse, qualified domestic partner, child, or parent with a *serious health condition* (defined below).

If the child is an adult child (i.e., one who is 18 years of age or older), the child must have a mental or physical disability and be incapable of self-care because of that disability. A parent will be entitled to take FMLA leave to care for a son or daughter 18 years of age or older, if the adult son or daughter:

- (1) has a disability as defined by the ADA;
- (2) is incapable of self-care due to that disability;
- (3) has a serious health condition; and
- (4) is in need of care due to the serious health condition.

It is only when all four requirements are met that an eligible employee is entitled to FMLA-protected leave to care for his or her adult son or daughter.

- 4) For work-related injuries, for the period of disability in accordance with all applicable laws regarding occupational disabilities.
- 5) The *serious health condition* (defined below) of the employee.
An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A **serious health condition** is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

This Policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of 3 consecutive days of incapacity with the first visit to the health care provider within 7 days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about whether a specific illness would be covered under this FMLA Policy or under the University's sick leave policy are encouraged to consult with Human Resources.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this Policy, the University may designate all or some portion of related leave taken as leave under this Policy, to the extent that the earlier leave meets the necessary qualifications.

- 6) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces, when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, qualified domestic partner, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- (1) short-notice deployment;
- (2) military events and activities;
- (3) child care and school activities;
- (4) financial and legal arrangements;
- (5) counseling;
- (6) rest and recuperation;
- (7) post-deployment activities; or
- (8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The term “**Covered active duty**” means:

- (a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- (b) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12 week maximum of FMLA leave in a 12-month period.

- 7) Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.

An employee whose son, daughter, parent, or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

The term “**covered servicemember**” 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 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “**serious injury or illness**” means:

- (a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may

- render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- (b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

D. Amount of Leave

An eligible employee may take leave of up to 12 weeks for the FMLA circumstances (1) through (6) above under this Policy during any 12-month period. The University will measure the "12-month period" as a 12-month period measured backward from the date an employee uses any leave under this Policy. Each time an employee takes leave, the University will compute the amount of leave the employee has taken under this Policy during the immediately-preceding 12 months and subtract that amount of leave from the 12 weeks of available FMLA leave, and the balance remaining is the amount the employee is entitled to take as FMLA leave at that time.

An eligible employee may take up to 26 weeks for the FMLA circumstance (7) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the University will measure the "12-month period" as a 12-month period measured backward from the date an employee uses any leave under this Policy. Each time an employee takes leave, the University will compute the amount of leave the employee has taken under this Policy during the immediately-preceding 12 months and subtract that amount of leave from the 26 weeks of available FMLA leave, and the balance remaining is the amount the employee is entitled to take as FMLA leave at that time. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available for FMLA leave.

If both spouses or qualified domestic partners work for the University and each wishes to take leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (but not a "parent in-law") with a serious health condition, the spouses or qualified domestic partners may only take a combined total of 12 weeks of FMLA leave. If both spouses or qualified domestic partners work for the University and each wishes to take leave to care for a covered injured or ill servicemember, the spouses or qualified domestic partners may only take a combined total of 26 weeks of FMLA leave.

E. Employee Status and Benefits during Leave

While an employee is on leave, the University will continue the employee's health benefits during the leave period at the same level and under the same conditions as if

the employee had continued to work. An employee may not work at the University or anywhere else while on FMLA leave.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the University will require the employee to reimburse the University the amount it paid for the employee's health insurance premium during the leave period.

Under current University policy, the employee pays a portion of the health care premium. While an employee is on paid leave, the University will continue to make payroll deductions to collect the employee's share of the premium. While an employee is on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in Human Resources by the 10th day of each month for health care coverage in the following month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a voluntary life insurance or disability plan, the University will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. The payment must be received in Human Resources by the 10th day of each month in order for the voluntary benefits to continue in the following month. If the payment is more than 30 days late, the employee's voluntary benefits coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage. If the employee does not continue these payments, the employer may discontinue the voluntary benefits coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums from any payments due to the employee, whether or not the employee returns to work.

Benefit accruals, such as vacation, sick leave, or holiday benefits, will be suspended during unpaid FMLA leave and will resume upon return to active employment (or upon use of paid FMLA leave, if any paid leave is available). If an employee is using unpaid FMLA leave on an intermittent basis, leave accruals will only be calculated on any paid portion of the pay period.

F. Employee Status after Leave

An employee who takes leave under this Policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. The position will be the

same or one which is virtually identical in terms of pay, benefits, and working conditions. The University may choose to exempt certain key employees from this requirement and in such cases will not be required to return those key employees to the same or similar position.

G. Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid sick and vacation leave prior to being eligible for unpaid leave. Sick leave may be used concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

For employees that qualify for paid medical leaves, including workers' compensation, the leave will be designated as FMLA leave. An employee who is taking leave for the adoption or foster care of a child must use all paid sick and vacation leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid sick and vacation leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid sick and vacation leave (as long as the reason for the absence is covered by the University's sick leave policy) prior to being eligible for unpaid leave.

H. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (e.g., take a day periodically when needed), or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember) over a 12-month period.

The University may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, the University and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach

agreement with the University before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must provide substantiation that the timing of the leave is medically necessary.

I. Certification for the Employee's or Family Member's Serious Health Condition

The University will require certification for the employee's or family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the Department of Labor ("DOL") Certification of Health Care Provider for Employee's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf>) or the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf>). The employee is responsible for any fee the medical care provider may charge for completing the necessary certification.

The University may directly contact the employee's or family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, a leave administrator, or a management official. The employee's direct supervisor will not make this contact. Before the University makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the University will obtain the employee's or the family member's permission for clarification of individually identifiable health information.

The University has the right to ask for a second opinion if it has reason to doubt the certification provided by the employee's health care professional. The University will pay for the employee or the employee's family member to get a certification from a second doctor, whom the University will select. The University may deny FMLA leave to an employee who refuses to release, or whose family member refuses to release, relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the University will require the opinion of a third doctor. The University and the employee will mutually select the third doctor, and the University will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

K. Certification of Qualifying Exigency for Military Family Leave

The University will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the

DOL Certification of Qualifying Exigency for Military Family Leave (<http://www.dol.gov/esa/whd/forms/WH-384.pdf>). The employee is responsible for any fee the medical care provider may charge for completing the necessary certification.

L. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

The University will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember (<http://www.dol.gov/esa/whd/forms/WH-385.pdf>). The employee is responsible for any fee the medical care provider may charge for completing the necessary certification.

M. Recertification

The University may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the University may request recertification for the serious health condition of the employee or the employee's family member every 6 months in connection with an FMLA absence. The University may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

N. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to Human Resources. Within 5 business days after the employee has provided this notice, the Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights (<http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf>).

When the need for the leave is foreseeable, the employee must provide the Human Resources with at least 30-days' advance notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the employee becomes aware of the need for the leave or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the University's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

O. Designation of FMLA Leave

Within 5 business days after the employee has submitted the appropriate certification form, Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice (<http://www.dol.gov/esa/whd/forms/WH-382.pdf>).

P. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the University may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

So that an employee's return to work can be properly scheduled, an employee on medical leave is requested to give the University at least 2-weeks' advance notice of the date the employee intends to return to work. When a medical leave ends, the employee will be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified.

If an employee fails to return to work on the agreed upon return date, the University will assume that the employee has resigned.

Unless the employee is in the highest paid 10 percent of all University employees who are employed within 75 miles of the facility, the employee will be granted his or her job, or an equivalent one, upon his or her return. "*Equivalent*" applies to salary, benefits, and terms of employment. The highest-paid 10 percent of employees will be granted FMLA leave, but will not be guaranteed the ability to return to the same or equivalent position upon return. Furthermore, if an employee is in the highest paid 10 percent of University employees, the employee may be denied reinstatement if the employee's absence causes "substantial and grievous economic injury" to University operations.