



Policy 4.73 Family & Medical (FMLA)

Responsible Official: VP for Human Resources

Administering Division/Department: Leaves of Absence

Effective Date: March 30, 2007

Last Revision: December 21, 2017

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Overview

FMLA allows eligible employees to take up to 12 workweeks of unpaid, job-protected leave under the Family and Medical Leave Act ("FMLA") in a rolling 12-month period for specified family and medical reasons. In addition, eligible employees may qualify for up to 26 workweeks of unpaid job-protected leave under the FMLA in certain situations related to a covered family member's service in the Armed Forces. Employees cannot waive their rights under FMLA.

Applicability

To be eligible for FMLA leave, an employee must:

- Have worked at least 12 months for Emory (need not be consecutive);
- Have worked at least 1,250 hours for Emory over the preceding 12 months (these hours must be actual hours worked, not to include holidays, sick leave and vacation leave); and
- Work at a location where there are at least 50 Emory employees within 75 miles.

Policy Details

REASONS FOR LEAVE

FMLA leave should be requested for the following reasons:

- Birth of the employee's child, or to care for the employee's newborn child;
- Placement of a child with the employee for adoption or foster care;
- To care for a Care Recipient (employee's spouse, parents-in-law, child, adult child without other care support, or parent) with a serious health condition;
 - **NOTE:** Definition of a child is 18 years or younger, or a child over the age of 18 with a physical or mental disability that renders them incapable of self-care.
- Because of the employee's own serious health condition resulting in a period of medical incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity related to the same condition.
- To care for a U.S. service member or veteran with a serious injury or illness incurred or aggravated in the line of duty while on active military duty if the employee is the spouse, son, daughter, parent or next of kin of the service member or veteran. (Note: This type of FMLA leave is referred to in this policy as "military caregiver leave".);

- **NOTE:** Eligible employees are entitled to up to 26 work weeks of unpaid FMLA leave in a single 12-month period to care for a current member of the Armed Forces, the National Guard or Reserves who has a serious injury or illness incurred or aggravated in the line of duty on active duty for which he/she is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list, or to care for a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness (as that term is defined by the Secretary of Labor) incurred or aggravated in the line of duty on active duty, provided the veteran was a member of the U.S. Armed Forces (including the National Guard or Reserves) during the five-year period preceding that medical treatment, recuperation, or therapy. However, any leave for the care of a veteran with a serious injury or illness taken by an employee during the period from October 28, 2009 to March 8, 2013 will be counted against a caregiver's FMLA leave entitlement, and the period from October, 28, 2008 to March 8, 2013 will not be counted in determining whether a veteran receiving treatment or undergoing recuperation or therapy for a serious injury or illness was released from the military no more than five years before the treatment recuperation or therapy.
- A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a member of a regular component of the U.S. Armed Forces who is deployed on active duty to a foreign country or to international waters, or is a member of the National Guard or Reserves who is deployed to a foreign country or international waters on active duty pursuant to Section 101(a)(13)(B) of Title 10 of the United States Code. Qualifying exigencies include the following:
 - Short-notice deployment
 - Military events and related activities
 - Childcare and school activities of the service member's child
 - Care of the parent of a service member when the parent is incapable of self-care
 - Financial and legal arrangements for the service member
 - Counseling
 - Rest and recuperation of the service member (leave taken by an employee in connection with any rest and recuperation leave of a service member is limited to a maximum of 15 days).
 - Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member.
 - Additional activities that the employer and employee shall agree qualify as an exigency and as to which both the timing and duration of such leave are agreed to by the employer and the employee.

If the employee is on FMLA leave to care for a Care Recipient with a serious health condition or a serious injury or illness and the family member dies during the FMLA leave, the FMLA leave ends at that time.

DURATION OF LEAVE

Eligible employees may receive up to 12 workweeks of unpaid leave during any "rolling" 12-month period, measured backward from the date that any FMLA leave is to be used. FMLA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the birth or placement.

When leave is to care for a service member or veteran with a serious injury or illness, an eligible employee may take up to 26 work weeks of leave during a single 12-month period to care for that service member or veteran. Leave to care for an injured or ill service member or veteran, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in the single 12-month period during which the 26 weeks of military caregiver leave is available. A single 12-month period for purposes of military caregiver leave begins on the first day that an employee takes military caregiver leave and ends twelve months after that date, regardless of the rolling 12-month period that Emory University utilizes for determining available leave for other FMLA-qualifying reasons.

EXAMPLE FOR 12-MONTH ROLLING PERIOD

Assuming an employee takes no military caregiver leave, if an employee used 4 weeks of FMLA leave beginning February 1, 2010, 4 weeks beginning June 1, 2010, and 4 weeks beginning December 1, 2010, the employee would not be entitled to any additional leave until February 1, 2011. However, beginning on February 1, 2011, the employee would be entitled to 4 weeks of leave, on June 1, 2011, the employee would be entitled to an additional 4 weeks, etc.

If the employee and his/her spouse are employed at Emory, they are limited to a combined total of 12 workweeks of FMLA leave if the reason for the request is for the birth and care of a newborn child, foster care placement, adoption of a child, or the care of a parent with a serious health condition. However, for other qualifying reasons under FMLA (other than military caregiver leave), each eligible spouse is entitled to 12 workweeks. If the employee and his/her spouse are employed by Emory University, they are limited to a combined total of 26 workweeks of FMLA leave during a single 12-month period for the care of a service member or veteran with a serious injury or illness (military caregiver leave).

INTERMITTENT AND REDUCED SCHEDULE LEAVE

Eligible employees may take FMLA leave intermittently (in brief blocks of time), or by reducing their normal weekly or daily work schedule, when medically necessary for their own or an immediate family member's serious health condition or for the serious injury or illness of a service member or veteran. Intermittent FMLA is also available for leaves due to a qualifying exigency. With supervisory approval, a parent may use reduced schedule and intermittent FMLA leave to care for a newborn child or newly adopted child during the first year following the birth or adoption. Employees who require intermittent leave or reduced-schedule leave must try to schedule their leave so that it will not disrupt the department's operations.

USE OF ACCRUED LEAVE

Employees who are granted FMLA leave must use, during unpaid FMLA leave, any applicable paid leave in accordance with Emory's sick and vacation leave policies. For FMLA leaves other than those taken to care for a service member or veteran with a serious injury or illness, the combination of paid and unpaid FMLA leave will not exceed 12 workweeks in any 12-month period. For FMLA military caregiver leaves, the combination of paid and unpaid FMLA leave will not exceed 26 weeks in a single 12-month period. If the employee is taking FMLA leave because of his or her own serious health condition and continues to be medically unable to work beyond the 12 weeks allowed by FMLA, the employee may request and may be approved for medical leave and allowed to continue using accrued leave. However this extension will not be counted as FMLA leave. Employees do not accrue paid leave while in an unpaid status.

USE OF SHORT TERM DISABILITY WHILE ON FMLA LEAVE

Employees must use any accrued, unused sick leave to satisfy their Short Term Disability waiting period. Employees have the option to use accrued, unused vacation and floating holiday leave following exhaustion of their sick leave to satisfy the STD waiting period. Approved STD benefits will begin the later of,

- the end of the employee's STD waiting period
- the date the employee's accrued sick leave and optional use of paid vacation or floating holiday leave end

However, concurrent payment of STD benefits and accrued, unused leave is not allowed.

EXEMPT EMPLOYEE

If an exempt employee is on Family and Medical Leave of Absence (FMLA), , hours not worked due to FMLA will be charged against an employee's paid leave balance or will be leave without pay. Thus, employers can 'dock' the pay of otherwise-exempt, salaried employees for FMLA leave taken for partial day as well as full day absences.

STAFF AND PRINCIPAL EMPLOYEES

Employees on leave for the care of a child, adult child without other care support, spouse, parent, in-law, or for the care of a service member or veteran with a serious injury or illness, or for their own serious health condition must use unused sick leave at the commencement of otherwise unpaid FMLA leave. The amount of sick leave allowed will be based on the period of time the employee is needed to care for the family member or is medically unable to work as indicated on the health care provider's certification. Employees are given the choice to use accrued vacation or holiday leave or go into an unpaid status after sick leave is exhausted.

FACULTY

Following the birth recovery period, typically 6-8 weeks as certified by their care provider, Faculty birth mothers who remain on leave for the care of the newborn child should consult with their respective Dean and Chair regarding use of the Parental Leave Policy. Final decision is at the discretion of the School's Dean.

Faculty may qualify to use FMLA to care for the birth mother (their adult child without other care support) during the birth recovery period, as certified by the care provider.

Faculty should consult with their respective Dean and Chair regarding use of the Parental Leave Policy.

CHILDBIRTH AND ADOPTIONS

Employees on leave for the care of a newborn child or adoption or placement of a foster child must use applicable paid leave in accordance with Emory's sick and vacation leave policies. Intermittent leave may be used prior to the birth, placement or adoption of a child. With supervisory approval, a parent may use reduced schedule and intermittent FMLA leave to care for a newborn child or newly adopted child during the first year following the birth or adoption. Employees who require intermittent leave or a reduced work

schedule must try to schedule the leave so that it will not disrupt the department's operation.

FACULTY

Faculty requesting FMLA leave must refer to the dean of their school or college for guidelines and processing.

MAINTENANCE OF HEALTH, DENTAL AND LIFE INSURANCE BENEFITS

While on paid leave, benefits premiums will be deducted from an employee's paycheck.

While on an unpaid leave, the employee will be responsible for submitting payment for premiums before or on the date specified by Human Resources. If an employee does not pay the required contributions, coverage will be canceled. However, the employee will be given 15 days notice before coverage is canceled. For those employees who return from FMLA leave, Emory may elect to recover any employee share of contributions paid by Emory for maintaining coverage(s) for the employee while on FMLA leave to the extent permitted by law.

Employees who elect not to continue participation while on FMLA leave must notify Human Resources to cancel the coverage. If employee elects not to continue coverage during leave, the employee may elect to be reinstated to health, dental, and life insurance benefits upon returning to work.

An employee on family leave may elect to continue participation in optional health, dental, and life insurance plans for the duration of the FMLA leave and the employee will be responsible for paying his/her share of the contribution.

RETIREMENT PLAN/DISABILITY

In accordance with Emory's written retirement policy for employees on leave without pay, eligibility for both Emory and the employee retirement contributions will cease during the FMLA leave without pay. Eligibility for disability insurance will continue; however, the employee must pay the COLA portion of the Long-Term Disability coverage. Paying the required premiums will continue Short-Term Disability.

COURTESY SCHOLARSHIP/TUITION REIMBURSEMENT

Eligibility for participation in the Courtesy Scholarship or Tuition Reimbursement programs will continue during the FMLA leave.

JOB RESTORATION

Upon returning from FMLA leave, eligible employees normally will be restored to their original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

Exceptions are permitted when the original position is abolished during the FMLA leave due to reduction in force, reorganization, or if the employee would not otherwise have been employed even if leave had not been taken.

NOTICE AND MEDICAL CERTIFICATION

When seeking FMLA leave, employees may be required to provide:

1. Thirty (30) days advance notice of the need to take FMLA leave, if the need is foreseeable, or notice as soon as practicable in the case of leave that is not foreseeable 30 days in advance;
2. Medical, military exigency or other certification supporting the need for leave must be returned before the employee's leave begins, or if not possible, within 15 days of the department's request to provide the certification. If the employee fails to do so, Emory University may delay the commencement of the employee's leave or withdraw any designation of FMLA leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including dismissal.
3. Second or third medical opinions and periodic re-certifications may also be required;
4. Periodic reports as deemed appropriate during the leave regarding the employee's status and intent to return to work;
5. Additional medical documentation to support extensions of leave beyond the original certification period; and;
6. Medical documentation of fitness for duty before returning to work, if the leave was due to the employee's serious health condition.

Failure to comply with the foregoing requirements may result in delay or denial of leave or reinstatement from leave.

FAILURE TO RETURN AFTER FMLA LEAVE

Any employee who fails to return to work as scheduled after FMLA leave may be subject to dismissal from employment. Employees who exceed their FMLA entitlement without extension(s) of their leave approved under other appropriate leave provisions, may be subject to dismissal from employment.

LIMITED NATURE OF THIS POLICY

To the extent applicable, this policy will be interpreted in accordance with the FMLA and administrative and judicial interpretations of the FMLA.

ADMINISTRATIVE PROCEDURES

An electronic Human Resources Action Form (HRAF) must be submitted to Human Resources when an employee is on paid and unpaid FMLA. A HRAF does not need to be submitted for employees on intermittent leave however, the time must be recorded and monitored by the department. An online FMLA leave request must be completed and submitted by the employee, manager or departmental Human Resources Representative prior to submitting the electronic HRAF. The online FMLA Leave Request may be found at: <https://apps.hr.emory.edu:8443/FMLA/>

FMLA ELIGIBILITY NOTICE

Supervisors should consult with Human Resources, Employee Relations immediately upon learning of the employee's request (verbal or written) for FMLA leave or of an absence that may qualify for FMLA leave. Either the supervisor or designated Human Resources Representative is responsible for completing and sending the eligibility notice to the employee within 5 days.

FMLA DESIGNATION NOTICE

If an employee meets the FMLA eligibility requirements, he/she will be notified by Human Resources, Employee Relations whether or not the leave is designated as FMLA leave within 5 days of receipt of the health care provider, exigency or other certification. Leaves will be designated as "approved", "not approved", or "additional information needed"

Related Links

- Current Version of This Policy: <http://policies.emory.edu/4.73>
- [HRAF Form](https://apps.hr.emory.edu:8443/FMLA/) (https://apps.hr.emory.edu:8443/FMLA/)

Contact Information

Subject	Contact	Phone	Email
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Revision History

- Version Published on: Oct 11, 2017
- Version Published on: Oct 11, 2017
- Version Published on: Dec 09, 2014
- Version Published on: Dec 09, 2014
- Version Published on: Mar 13, 2014
- Version Published on: May 31, 2013
- Version Published on: Apr 16, 2013
- Version Published on: Sep 26, 2012
- Version Published on: Jun 22, 2012
- Version Published on: Jun 09, 2011
- Version Published on: Jan 19, 2011
- Version Published on: Nov 08, 2010
- Version Published on: Jan 19, 2010
- Version Published on: May 20, 2009
- Version Published on: Apr 21, 2008
- Version Published on: Jul 03, 2007 (*Original Publication*)

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