
TITLE: **Cleveland State University (CSU) Family Medical Leave Act of 1993 (FMLA) Policy.**

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FAMILY AND MEDICAL LEAVE POLICY

Summary of the Family and Medical Leave Act

Employees may be entitled to a leave of absence under the Family and Medical Leave Act (FMLA). This policy provides employees with information concerning their rights and responsibilities during such leaves. If employees have any questions regarding FMLA leave, they should contact the Department of Human Resources.

I. Eligibility

Employees are eligible for FMLA leave if they:

- have worked for CSU for at least 12 months;
- have worked at least 1,250 hours during the 12 months prior to the time FMLA is to begin (“hours” means actual hours worked, and does not include paid or unpaid time off); and
- work at a location with at least 50 employees within 75 miles of the worksite.

II. Covered Reasons for FMLA Leave

A. Basic FMLA Leave

The Family and Medical Leave Act provides eligible employees with up to 12 weeks of unpaid leave for certain family and medical reasons. The 12-month period is determined based on a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Leave may be taken for any one, or for a combination, of the following reasons:

- For the birth of the employee’s son or daughter, or the son or daughter of the employee’s registered same-sex domestic partner,¹ and to care for the newborn child;

¹ A same-sex domestic partner is considered “Registered” upon completion and filing with the Department of Human Resources, an Affidavit of Domestic Partnership”.

- The placement of a son or daughter with the employee or the employee's registered same-sex domestic partner through adoption or foster care, and to care for the newly placed child;
- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's spouse, registered same-sex domestic partner, son, daughter, or parent (but not in-law) with a "serious health condition";
- Because of a "serious health condition" that makes the employee unable to perform one or more of the essential functions of his or her job;
- Because of a "qualifying exigency" arising out of the fact that an employee's spouse, registered same-sex domestic partner, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty status in the National Guard or Reserves in support of contingency operation.

For purposes of this policy, 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 (1) prevents the employee from performing the functions of the employee's job, or (2) prevents family members 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 also meet the definition of continuing treatment.

For purposes of this policy, a "qualifying exigency" arises out of the fact that an employee's spouse, registered same-sex domestic partner, parent, or child is on active duty, or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation as a member of the National Guard or Reserves. A "qualifying exigency" 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 other activities associated with the family member's call or order to service. An employee whose spouse, parent, or child is a member of the Regular Armed Forces is not eligible for FMLA leave based upon a "qualifying exigency."

B. "Injured Service member" Military Family Leave

In addition to the basic types of FMLA leave discussed above, an eligible employee who is the parent, child, spouse, registered same-sex domestic partner, or next of kin (nearest blood relative other than the service member's parent, spouse or child) of a "covered service member" is entitled to take up to 26 weeks of leave during a single 12-month period to care for the service member with a serious injury or illness. Leave to care for a covered service member shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the covered service member.

A "covered service member" means a *current* member of the Armed Forces, including the National Guard and Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary disability retired list, for a serious illness or injury. A member of the Armed Forces has a serious illness or injury if he or she has incurred an illness or injury in the line of duty while on active duty in the Armed Forces, provided that the injury or illness renders the military member medically unfit to perform the duties of the member's office, grade, rank or rating.

C. Spouses

Spouses and registered same sex domestic partners who are both employed by CSU are eligible for a combined total of 12 workweeks of FMLA leave for birth, placement or to care for a single sick parent, which they can split between them. However, each spouse or same sex domestic partner is entitled to 12 full workweeks of FMLA leave for his/her own illness or to care for a sick child or spouse.

The combined FMLA leave for spouses and same sex domestic partners employed by CSU is limited to twenty six (26) weeks when FMLA leave is taken to care for an injured or ill Covered Service Member, or such FMLA leave is taken in combination with FMLA leave for either birth, care and/or placement of a child or to care for the employee's parent in a single 12 month period.

III. Intermittent Leave and Reduced Leave Schedule

FMLA leave usually will be taken for a period of consecutive days, weeks, or months. However, under certain circumstances, employee may take FMLA leave intermittently or on a reduce leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a covered service member. Intermittent leave is taken in separate blocks of time due to a *single* qualifying reason. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

If an employee needs leave intermittently or on a reduced leave schedule for a planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt CSU's operations. When calling off from work for a FMLA related absence or tardy, employees are expected to follow CSU's call-in procedures.

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered service member (including during the period of recovery), CSU may transfer the employee to an alternative position for which the employee is qualified and which better accommodates the recurring periods of leave than does the employee's regular position. Following the conclusion of the intermittent leave or reduced leave schedule, employees will be moved back to the same or equivalent job.

IV. Coordination of Leave

CSU requires employees to substitute any available accrued sick leave, accrued vacation or compensatory time (comp time) in this stated order of priority as applicable, for any unpaid

FMLA leave. The substitution of paid leave for unpaid FMLA leave does not extend the length of FMLA leave. The paid leave will run concurrently with the employee's FMLA entitlement.

- Accrued sick leave will be used when the FMLA Leave is for the employee's own serious medical condition or to care for the employee's spouse, registered same-sex domestic partner, son, daughter, or parent (but not in-law) with a "serious health condition";
- Accrued vacation time will be used for all other FMLA Leaves and after accrued Sick Leave is exhausted.
- Comp time (if applicable) will be paid when accrued Sick Leave and Vacation are exhausted.

Leaves of absence taken in connection with workers' compensation injury/illness shall run concurrently with any FMLA leave entitlement.

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.

For additional information about leave entitlements and obligations that might arise when FMLA is not available or is exhausted, please consult the leave policies applicable to your job classification or contact the Department of Human Resources.

V. No Moonlighting While on Leave

Taking or working at another job during FMLA leave or any other authorized leave of absence may be grounds for disciplinary action, up to and including discharge, to the extent permitted by law.

VI. Misrepresentation of Facts to Take Leave

Employees who misrepresent facts in order to take FMLA leave will be subject to discipline, up to and including termination.

VII. Procedures for Requesting Leave

Employees who take FMLA leave must timely notify CSU of their need for FMLA leave.

A. Timing of Employee Notice

Employees must provide 30 days advance notice of the need to take FMLA if the need for leave is foreseeable. When scheduling planned medical treatment, the employee must consult with CSU and must make reasonable efforts to schedule the treatment so as not to disrupt unduly the company's operations, subject to the health care provider's approval.

When the need for leave is not foreseeable, employees must provide notice as soon as practicable and must generally comply with CSU's normal call-in procedures. The employee must also explain the inability to provide the notice within 30 days of the leave.

B. Content of Employee Notice

To trigger FMLA protections, employees must inform their supervisor or the Department of Human Resources of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do so by specifically referring to FMLA leave or explaining the reasons for leave so as to allow CSU to determine that the leave is FMLA-qualifying. For example, employees might explain that:

- a medical condition renders the employee unable to perform the functions of their job;
- they are pregnant;
- they are hospitalized overnight;
- they are or a family member is under the continuing care of a health care provider;
- the leave is due to a qualifying exigency caused by a covered military member being on active duty or called to active duty status; or
- if the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a covered service member with a serious injury or illness.

When calling off from work, the employee must provide sufficient information to the employee's supervisor or the Department of Human Resources to reasonably determine that the absence is FMLA related. Calling in sick, without providing more information, will not be considered sufficient notice to trigger CSU's obligations under this policy. Employees must respond to CSU's questions to determine if absences are potentially FMLA-qualifying. If employee fails to explain the reasons for FMLA leave, the leave may be denied.

When employees seek leave due to FMLA-qualifying reasons for which CSU has already approved FMLA-protected leave, the employee must specifically reference the qualifying reason for the leave or the need for FMLA leave.

VIII. Cooperation in Scheduling of Planned Medical Treatment

When planning medical treatment, employees must consult with CSU and make a reasonable effort to schedule treatment so as not to unduly disrupt CSU's operations, subject to the approval of an employee's health care provider. Employees must consult with CSU prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both CSU and the employees, subject to the approval of an employee's health care provider. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to fulfill this obligation, CSU may require the employee to attempt to make

such arrangements, subject to the approval of the employee's health care provider.

IX. Notification of Eligibility for, and Designation of, FMLA Leave

CSU will notify employees who request FMLA whether they are eligible. If an employee is eligible for FMLA, CSU will notify the employee of any rights and responsibilities with regard to taking FMLA and whether the employee will be required to provide any additional information. Depending upon the type of FMLA that the employee is taking, CSU may require employees to submit documentation in support of their request. If an employee has already begun leave, CSU may mail a copy of this notice to the employee's address. Employees are responsible for ensuring that the Department of Human is aware of the employee's current address.

CSU will also state whether the leave will be designated as FMLA and the total amount of leave that will be counted against the employee's FMLA entitlement. Under certain circumstances and to the extent permitted by law, CSU may retroactively designate leave as FMLA with appropriate written notice to employees.

X. Submission of Documentation and Certifications Supporting Need for FMLA Leave

Depending upon the nature of FMLA leave sought, employees may be required to submit documentation or certification supporting their need for FMLA-qualifying leave.

A. Documentation for Active Duty or Call to Active Duty

Employees requesting this type of service member FMLA must provide proof of the qualifying member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

B. Documentation of the Need for Leave to Care for an Injured or Ill Service Member

Employees requesting this type of leave must provide documentation of the family member's or the next of kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment or other official Armed Forces communication pertaining to the service member's injury or illness, incurred on active military duty that renders the member medically unfit to perform his or her military duties.

C. Medical Certification

1. Initial Medical Certification

If the leave request is for the employee's own serious health condition or to care for a family member's serious health condition, the employee must also provide a *Certification of Health Care Provider* form signed by the employee's health care provider within 15 calendar days.

When the Certification provided by the employee is incomplete or insufficient, CSU will inform the employee of what is missing or insufficient and allow the employee seven (7) calendar days

to correct the documentation. Additional time may be allowed in extenuating circumstances. If the employee fails to provide Certification at all, or if the employee fails to provide a complete and sufficient Certification despite the opportunity to do so, the employee may be denied FMLA leave.

2. Second and Third Opinions

CSU may request a second opinion if the Certification is confusing, provides conflicting information, etc. Employees may be required to authorize release of their FMLA-related medical information from their health care provider if requested by the health care provider selected by CSU. The second opinion is conducted at CSU's expense. While waiting on the outcome of the second opinion, employees will provisionally remain on FMLA. If the second opinion does not ultimately establish that the leave qualifies for FMLA, then the leave shall not be designated as FMLA, and the absences will be treated in accordance with CSU's attendance policy.

If there is a difference between the original Certification and the second opinion, CSU can request a third opinion, at its own expense. The health care provider will be jointly chosen by CSU and the employee. Again, employees may be required to authorize release of their FMLA-related medical information to the third opinion provider, and employees will provisionally remain on FMLA. This third opinion will be binding. If the third opinion does not ultimately establish that the leave qualifies for FMLA, then the leave shall not be designated as FMLA, and the absences will be treated in accordance with CSU's attendance policy.

Upon written request from the employee, CSU will provide the employee with copies of the second and third opinions.

Except in unusual circumstances, employees will not be asked to travel outside a normal commuting distance for a second or third opinion. For both the second and third opinions, CSU will reimburse the employee for "out of pocket" travel expense upon receipt of appropriate documentation.

3. Recertification

For an employee's own serious health condition or the serious health condition of a family member, CSU may require a recertification after the duration of the original leave request expires.

CSU may also require recertification within thirty (30) days of a previous certification if the employee's circumstances change significantly, the employee asks for an extension of leave, or CSU learns of information that casts doubt on the validity of the certification.

In all cases, CSU may request a recertification of a medical condition every six (6) months in connection with a FMLA related work absence. Once CSU has requested the recertification, the employee will have fifteen (15) days to provide the recertification, at the employee's own expense.

XI. Group Health and Other Benefits During FMLA

CSU will maintain group health care and other benefits according to the associated plan documents or plan certificates of coverage while an employee is on FMLA, but the employee is responsible for paying the required normal monthly contribution.

Unless CSU notifies an employee of other arrangements, whenever an employee is receiving pay from CSU during FMLA, the employee's portion of the group health plan premium will be deducted from the employee's paycheck.

If FMLA is unpaid, an employee must pay his/her portion of the group health premium through a method determined by CSU upon leave. CSU's obligation to maintain health care coverage cease of an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, CSU will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received.

If the employee does not return to work within 30 calendar days at the end of the leave period (unless the employee cannot do so because of a serious health condition or other circumstances beyond the employee's control), the employee will be required to reimburse CSU for the cost of the premiums CSU paid for maintaining coverage during their unpaid FMLA. CSU will not seek reimbursement of health insurance premiums if the employee fails to return because of a continuation, recurrence, or onset of a serious health condition, *and* the employee is still eligible for FMLA under this policy. If the employee is unable to return to work because of the employee's own or a covered family member's serious health condition, the employee will be required to provide medical certification. If the employee fails to provide the certification within 30 days, CSU may recover 100% of the premiums.

All other benefits, including Sick Leave and Vacation, cease to accrue during the unpaid portion of the leave. Employees will be entitled to any employment benefit that accrued prior to the start of their FMLA.

XII. Restoration of Employment and Fitness for Duty

Subject to some exceptions, including situations where job restoration of "key employees" who are among the highest paid 10% of employees at a worksite or within 75 miles of that worksite will cause CSU substantial and grievous economic injury, employees generally have the right to return to the same position or to any equivalent position with equivalent pay, benefits, and other employment terms. CSU will notify employees if they qualify as "key employee," if CSU intends to deny reinstatement, and of the employee's rights in such instances.

If a CSU employee's employment with the University would otherwise have been terminated during the period of an FMLA leave, there is no more entitlement to restoration than if the employee had been working at the time of the termination of employment.

A. Timing of Return to Work

CSU will assume that employees will return from work on the date indicated on the approved FMLA request. If the employee decides to return on a different date, the employee must first

notify CSU as soon as practicable. If the employee wishes to take additional FMLA, the employee must file another FMLA request. If the employee's FMLA entitlement is exhausted, but the employee is unable to return to work, the employee may request an Extended Medical leave.

B. Submit Fitness for Duty Certification

Employees returning from FMLA for their own serious health condition must present a fitness for duty document signed by a health care provider. CSU may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.

XIII. Prohibition Against Discrimination and Retaliation

Discrimination or retaliation against an employee for taking FMLA, for exercising his or her rights under the Family and Medical Leave Act, for filing a complaint, or for participating in an investigation or legal proceedings relating to FMLA is unlawful and will not be tolerated. If an employee feels that he or she has been subjected to any such form of harassment, discrimination, or retaliation, the employee should report the matter to his or her immediate supervisor or the Department of Human Resources.

XIV. Questions or Complaints

If you have questions regarding this FMLA policy, please contact the Department of Human Resources. CSU is committed to complying with the FMLA and, whenever necessary, shall interpret and apply this policy consistent with the FMLA.

The Family and Medical Leave Act makes it unlawful for any employer to: (1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; or (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA. If employees believe their FMLA rights have been violated, they should contact their supervisor or CSU's Department of Human Resources. CSU will investigate any FMLA complaints and take prompt remedial action to address and/or remedy any FMLA violation. An employee may file a complaint with the Wage & Hour Division of the U.S. Department of Labor or may bring a private lawsuit alleging FMLA violations.