

#### 4.49 FMLA Leave—Interim Policy

##### **Purpose:**

This policy provides employees with the university's practice for administering the federal Family and Medical Leave Act of 1993 (FMLA).

##### **Policy Statement:**

In compliance with the FMLA, the university provides eligible employees with up to 12 weeks of unpaid, job-protected leave during a 12-month period for qualifying family, medical, and military reasons. The university uses a rolling 12-month period to track FMLA leave. The rolling 12-month period calculates leave measuring backward from the date an employee first uses FMLA leave for a qualifying reason. Each time an employee takes FMLA leave, they will only be eligible for the remaining balance of the 12-week period not already used in the previous 12 months.

The university does not consider the FMLA and its amendments to be a separate or additional type of paid leave. Rather, it is mandated job protection for eligible employees while on an approved leave of absence for certain reasons that qualify for FMLA job-protected leave entitlement. Eligible employees should know that use of FMLA job protection is not discretionary for the university or for the employee. If the reason for leave qualifies for FMLA protection, neither the university nor the employee may decline the protection.

##### **Employee Eligibility**

Employees are eligible for FMLA leave if they have worked for UNI for at least 12 months and have at least 1,250 work hours over the previous 12 months immediately before the date FMLA leave begins. The 12 months of employment need not be consecutive but must have occurred within the prior seven years. Paid and unpaid time off is not included in the calculation of the 1,250 hours.

##### **Leave Entitlement**

An eligible employee is entitled to up to 12 weeks of FMLA leave per full-time equivalent (FTE) within a 12 month period for any one, or more, of the following reasons:

- **Birth of a child** and to bond with the newborn child during the 12 months following the date of birth. Employees who are pregnant may take medical leave for prenatal care, incapacity related to pregnancy, and for their own serious health condition following the birth of a child.
- **Adoption or foster care** of a child placed with the employee and to bond with the newly placed child within 12 months following the date of placement. Leave may be taken before the actual placement of a child in their home if an absence from work is required in order for the placement to proceed.

- **Employee's own serious health condition** that causes an inability to perform any one or more essential functions of their position and/or requires absences from work to receive ongoing treatment. Serious health conditions include inpatient care; periods of incapacity for more than three consecutive days and subsequent treatment; (e .g. multiple healthcare appointments or a single appointment with follow-up care) in capacity or absences due to pregnancy, prenatal care or childbirth; chronic health conditions; permanent or long-term health conditions; and conditions requiring multiple treatments.
- **Care of a family member** (spouse, parent, or child under 18 years of age unless incapable of self-care) with a serious health condition. Care for parents-in-law is not covered under FMLA.
- **Qualifying exigency leave** for reasons arising from notice of an impending call or order to active duty if a military service member is the employee's spouse, son, daughter, or parent.
- **Military caregiver leave** is provided to eligible employees for up to a total of up to 26 weeks in a single 12-month period to care for a covered service member with a serious injury or illness. The service member must be the employee's spouse, son, daughter, parent, or next of kin.

~~Spouses employed by UNI are limited to a combined total of up to 12 weeks of leave in a 12-month period for the birth of their child and bonding with the newborn child; the placement of a child with the employee for adoption or foster care and bonding with the newly placed child; and the care of their own parent with a serious health condition. Eligible spouses are also limited to a combined total of up to 26 weeks for military caregiver leave.~~

### **Leave Use**

FMLA leave may be taken on a continuous, intermittent, or reduced schedule basis as indicated by the treating healthcare provider. Continuous leave is taken in one block of time. Intermittent leave is taken in separate blocks of time. Reduced schedule leave is a reduction in an employee's work schedule by a certain number of hours each day or a certain number of days per week.

Employees must make reasonable efforts to schedule any leave for planned medical treatment for themselves or their family members so as not to unduly disrupt their department's operations. The university may temporarily transfer the employee to an alternative position with equivalent pay and benefits when it will accommodate periods of leave better than the employee's regular position.

## **Notification Requirements**

Employees should provide 30 days' advance notice of their need to take leave that would qualify for FMLA entitlement when the need is foreseeable. When 30 days' notice is not possible, **the employee shall notify their manager or Human Resource Services (HRS) as soon as they are aware leave is needed, but no later than the next business day from the day the need for leave is discovered.** ~~employees must provide notice either the same day the need for leave is discovered or the next business day. When the need for FMLA-qualifying leave is not foreseeable, the employee shall notify their supervisor or Human Resource Services (HRS) as soon as they are aware that leave is needed.~~

~~Employees must provide sufficient information for HRS to determine if the leave reason qualifies for FMLA entitlement along with the anticipated timing and duration of the leave.~~

Human Resource Services will inform employees whether they are eligible for FMLA leave within five business days after being made aware of the employee's leave situation. If an employee is eligible, the notice will specify any additional information required, including necessary medical or military certification, as well as the employee's rights and responsibilities. If an employee is not eligible, HRS will provide a reason for ineligibility.

## **Certification Process**

Employees must provide complete and sufficient medical or military documentation to support their request for FMLA leave. HRS will provide eligible employees with the appropriate certification using the Department of Labor (DOL) forms; however, other sufficient medical or military documentation may be accepted in lieu of the certification form if the necessary information required for leave approval is provided.

Employees must return documentation to HRS within 15 days of receiving the request for information or provide a reasonable explanation for the delay. Failure to provide certification may result in delay or denial of FMLA leave designation.

Within five business days of receiving the medical or military documentation regarding the employee's leave situation, HRS will inform employees if their leave is designated as FMLA- approved and the amount of leave counted toward the employee's job protection 12-week entitlement. If HRS determines that the leave reason does not qualify under the FMLA, the employee will be notified of the reason for the denial.

HRS may request a second medical opinion when there is reason to doubt the validity of the certification. The university may choose the provider and will pay for the second opinion. If the first and second opinions are not in agreement, a third medical opinion may be requested. The selection of the health care provider for the third opinion must be agreeable to both the employee and the university. The third opinion will be final and binding.

Retroactive designation of FMLA leave may occur if HRS provides appropriate notice to the employee and the retroactive designation does not cause the employee harm or injury. In cases where leave would qualify for FMLA, HRS and the employee can mutually agree that leave be retroactively designated as FMLA leave.

### **Recertification**

HRS may request an employee submit recertification for themselves or their family member as frequently as every 30 days or sooner in connection with an employee's absence when:

- Circumstances described in the original certification have changed significantly; or
- Information is received that casts doubt on the reason given for the absence; or
- An employee asks for an extension of their leave.

The employee must provide the recertification to HRS within 15 days after the request is made unless it is not practicable under the particular circumstances. Any recertification will be at the employee's expense.

### **Paid FMLA Leave Usage**

Employees must use **available** accrued paid time off **in order to remain in paid status** while **when** taking **a** any leave **of absence**. ~~where paid time off is available, regardless of whether the leave is FMLA approved or not.~~ **Use of** Paid time off is to run concurrently with approved FMLA leave and all applicable **paid time accruals** must be exhausted prior to taking ~~unpaid~~ FMLA leave **without pay**. It is important to note that regardless of whether ~~a~~ **or not the paid leave of absence** is protected under the FMLA, employees must follow the university's ~~normal paid time off~~ **established absence** policies and procedures.

When **FMLA-eligible** employees **are** on **medical** leave for work-related injuries ~~are eligible for FMLA leave~~, their absence will be concurrently designated as FMLA leave and counted toward their 12-week entitlement. The university cannot require employees to use their accrued paid time off during a workers' compensation leave. However, state law permits employees to supplement any workers' compensation payments received with accrued paid time off not to exceed their regular monthly income.

### **Paid Parental Leave**

**FMLA-eligible employees shall be entitled to paid parental leave for the birth of a child or placement of a child with the employee for adoption if the leave is taken within 12 months following the date of birth or placement.**

- **A new parent employee who gives birth to a child or has a child placed with them for adoption will be granted up to four weeks (160 hours maximum) of paid leave.**

- A new parent employee who did not give birth shall be entitled to up to one week (40 hours maximum) of paid leave.
- Less than full-time employees who are eligible for FMLA leave will also be eligible for pro-rated paid parental leave based on their position appointment.

Paid parental leave does not require use of accrued time off and may be used on a continuous or intermittent basis. This paid leave will run concurrently with an employee's FMLA leave entitlement but is not to be used during any period during which compensation is not normally paid or the employee would not be expected to report to work.

Unused paid parental leave hours are not subject to payout and expire 12 months after the date of birth or placement with the employee, or at the time FMLA leave entitlement is exhausted, whichever occurs first.

### **Benefits and Protections**

During any approved FMLA leave, the university must maintain the employee's health and dental insurance coverage on the same terms as if the employee had continued to work. While the employee is in paid status, the employee's share of the premiums (if applicable) will continue to be deducted from their monthly paycheck.

Employees on ~~unpaid~~ FMLA leave ~~without pay who will not receive one or more of their regularly scheduled monthly paychecks during their absence for a full calendar month~~ must make arrangements to pay the employee share of insurance premiums owed. The university's obligation to provide insurance coverage ends if the employee's premium payment is more than 30 days late. HRS must notify the employee in writing at least 15 days before benefit coverage will end.

If an employee does not return to work at the expiration of FMLA leave, the university may require the repayment of health and dental insurance premiums that were paid on the employee's behalf during their leave period. Reimbursement will not be required if the employee does not return from leave because of the continuance, recurrence, or onset of a serious health condition that prevents the employee from performing their job or because of further circumstances that are beyond the employee's control.

An employee returning from FMLA leave will be reinstated to all benefits, with no change in coverage, even if coverage has lapsed during the leave period due to the employee's failure to pay a required premium. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that occurred prior to the start of an employee's leave. An employee on FMLA leave is entitled to any unconditional pay increases that may have occurred during the FMLA leave period. Pay increases based on periodic performance reviews and seniority may be delayed by the amount of unpaid FMLA leave taken by the employee.

The university will not use an employee's FMLA leave as a punitive factor in any employment action, including promotions, or otherwise discriminate against any individual for exercising their rights to such leave.

### **Reinstatement**

Upon return from continuous or intermittent leave, the employee will be reinstated to their same or an equivalent position. While on FMLA leave, the employee is not protected from actions that would have affected them if they were not on FMLA leave. Examples would include shift elimination, reduction in overtime hours, appointment reduction or termination, and layoff.

An employee is not entitled to reinstatement under the FMLA if they are medically unable to return to work after exhausting their 12 weeks of leave entitlement or if they are no longer able to perform their essential job functions. In these circumstances, UNI will assess whether the employee may be entitled to a reasonable accommodation under the Americans with Disabilities Act.

An employee who fraudulently obtains FMLA leave is not protected by the FMLA's job restoration or maintenance of health benefits provisions. In addition, the university will take appropriate disciplinary action against an employee in the case of such fraud.

### **Return to Work**

The university may require an employee on FMLA leave to report periodically on their status and intent to return to work, depending on the circumstances related to the employee's leave situation. Employees will be notified by HRS if periodic status reports will be requested during their leave. If circumstances of an employee's leave change and they are able to return to work earlier than expected, they will be required to notify the university at least two work days prior to the date they intend to return to work.

Return to work requirements will be identified with the designation notice. Employees returning from medical leave for their own health condition must present a release from their healthcare provider prior to their anticipated return date. The work release or fitness for duty certification should only address the particular serious health condition that caused the need for FMLA leave and their ability to perform their essential job functions.

An employee's return to work date may be delayed so their ~~supervisor~~ **manager** can evaluate whether work restrictions identified by their healthcare provider may be accommodated. Restrictions that cannot be accommodated may require an employee to remain on medical leave until the restrictions are modified or they are fully released back to work.

When an employee cannot return to work due to their own serious health condition after exhausting 12 weeks of FMLA leave, the university may grant additional unpaid leave

as a reasonable accommodation under the Americans with Disabilities Act. These situations are evaluated on a case-by-case basis through an interactive process.

### **Compliance**

The university is committed to complying with all rules and regulations as established by the FMLA, including prohibiting interference or discrimination or retaliation against an employee who has requested or taken FMLA leave. Concerns regarding the application of this policy should be reported to the HRS Director or designee. If UNI policy [13.19 Retaliation and Misconduct Reporting](#) applies, the reporting procedures in that policy should be followed.

### **Definitions**

**Spouse** - means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law marriage or same-sex marriage.

**Parent** - biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents-in-law.

**In Loco Parentis** - a person who provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand in loco parentis to that child, and are entitled to FMLA leave. Also, an eligible employee is entitled to FMLA leave to care for a person who stood in loco parentis to that employee when the employee was a child.

**Child** - biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.

**Incapable of self-care** means that the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs).

**Physical or mental disability** - a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

**Next of kin** - the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.



**Serious health condition** - illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

**Inpatient care** - an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.

**Incapacity** - inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

**Continuing treatment by a healthcare provider** means any one of the following:

- A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30 days, or treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
- Any period of incapacity due to pregnancy or prenatal care.
- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a healthcare provider, which continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
- Permanent or long-term conditions.
- Conditions requiring multiple treatments.

**Qualifying exigency** - short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperations, post-deployment activities, parental care, additional activities agreed upon by the employer and employee.

### **Additional Resources**

[Department of Labor Employee Rights and Responsibilities Poster](#)

[FMLA Forms and Resources](#)

[FMLA Employee Guide](#)

[UNI FMLA Leave Process](#)

[Workplace Accommodation Services](#)

Human Resource Services, approved January 10, 2024

University Council, approved, April 8, 2024 President, approved April 10, 2024

[Last reviewed and/or updated 4/2024, 9/2023, 4/2018, 6/2025]