

## LEAVES OF ABSENCE POLICY

---

Occasionally, an employee may need to be absent from work for an extended period because of illness, disability, or other compelling reasons. To request a leave of absence, an employee should complete a Leave of Absence Request form and submit the form to the Human Resources Department. (Sabbatical leave requests should be handled as outlined in the Faculty Section, III.55)

### A. Sick Leave

Employees who are absent from work due to illness or disability for more than five consecutive working days will be placed on a Medical Leave of Absence. The employee must submit to Human Resources a medical certification from a health care provider within the designated timeframe (either under Family and Medical Leave Act requirements below or under the University's Personal Leave of Absence described in section F of this policy). If an employee is hospitalized in-patient for any length of time or if the employee is absent due to illness or injury for five or more consecutive days, the employee must also, before returning to work, submit a medical release (also called fitness-for-duty certificate) from a medical provider to the Human Resources Department. Refer to Section D.6, Sick Time Policy for additional information; refer to part B below in this policy for information regarding medically related illnesses covered under the Family and Medical Leave Act or as a Personal Leave of Absence.

### B. Family and Medical Leave

The Family and Medical Leave Act (FMLA) of 1993 as amended through 2008 provides up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family, medical, and military reasons. For all FMLA leaves except for military caregiver leaves (see 2.d below), the leave is up to 12 weeks during any rolling 12-month period measured backwards from when the employee uses leave under this policy.

The 12-week leave period begins the first day FMLA leave begins. Under the "rolling" 12-month look-back measurement method, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken.

Additionally, please note that the FMLA leave period includes paid and unpaid leave time, as FMLA leaves of absence run concurrently with other applicable time off policies.

#### 1. Eligibility

Faculty, administrators, and staff are eligible for FMLA leave if employed by the University for at least 12 months and if they have worked at least 1,250 hours during the 12-month period before the leave commences.

Part-time, temporary, and seasonal employees who have been employed at least 12 months and who have worked at least 1,250 hours during the past 12 months also are eligible to take FMLA leave. FMLA leave may only be claimed during active assignments (i.e., unpaid sabbatical leaves and summer, for those on academic year assignments, are not included).

The 12 months or 52 weeks of employment do not need to be consecutive (i.e., a rehired employee's prior service may be included). Military service, including National Guard or Reserve obligations, covered under USERRA will count toward the service and hours of work requirements to be eligible for FMLA leave.

#### 2. Family and/or Medical Leave Qualifying Provisions

- a. **For the birth of the employee's child or to care for the newborn child or child placed with the employee for adoption or foster care.**

**c. For the serious health condition of a spouse, child, or parent (but not parent-in-law) of the employee.**

In order to be eligible for FMLA under this provision, an employee need only show that he can provide physical care or “psychological comfort and reassurance which would be beneficial” to the family member suffering from a “serious health condition,” even if the family member is receiving professional, in-patient care. 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 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.

The certification of Health Care Provider form, available from Human Resources, must be completed and submitted to Human Resources within 15 calendar days of the beginning of the FMLA leave, unless it is not practical to do so under the circumstances. A new Certification Form may be required after 30 calendar days as a means of updating USI on the status of the employee’s leave.

When an employee is on a paid leave to care for an ill family member, and a death of a family member occurs during the approved leave, the employee may be granted normal time off for funeral/bereavement as described in the paid time off policy of the University.

When a husband and wife both work for the University and both are eligible for FMLA leave, they are limited to a combined total of 12 weeks of leave during any 12-month period, if the leave is to care for the employee’s parent with a serious health condition.

Intermittent or reduced schedule leave may be permitted with the approval of the Human Resources Department and must be recorded on an hour for hour basis regardless of the employee’s status. Please note that this includes salaried employees.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to schedule the treatment so as to create minimum disruption of the office or department. USI reserves the right to move an employee who is on intermittent or reduced schedule leave to an alternate position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the employee’s supervisor and the Human Resources Department.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the employee’s supervisor and the Human Resources Department.

The National Defense Authorization Act for Fiscal Year 2008 (NDAA) provides additional leave protections to employees with family members in the armed services.

**d. For qualifying exigencies arising from a covered family member’s active duty or call to active duty as a member of the National Guard or Reserves.**

An employee with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include

FMLA leave for a newborn child or for the adoption or foster care placement of a child must be completed within 12 months of the birth, adoption, or placement.

Intermittent or reduced schedule leave may be permitted with the approval of the Human Resources Department and must be recorded on an hour for hour basis regardless of the employee's status. Please note that this includes salaried employees.

The employee must first use all applicable sick time, compensatory time, and earned vacation, in that order, prior to being placed in a non-pay status. For information regarding the University Parental Leave Policy, please refer to Handbook Section D.13.

When both mother and father of the newborn or newly placed child are employed by the University, they are entitled to a combined total of 12 weeks of FMLA leave.

When the leave is for a newborn child of a female employee, a portion of the leave may be used toward the "employee's own serious medical condition" as indicated in item b.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the director of Human Resources.

**b. For the employee's own serious medical 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 his or her 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.

In order to be eligible for FMLA under this provision, medical certification from the employee's health care provider will be required within 15 calendar days, unless it is not practical to do so under the circumstances. The appropriate certification form, available from Human Resources, must be completed and submitted to Human Resources. At Human Resources' request and expense, a second or third opinion may be required. A new Certification Form may be required after 30 calendar days as a means of updating the University on the status of the employee's FMLA leave.

For the employee's own serious health condition, the employee must first use all accumulated sick leave, compensatory time, and earned vacation prior to being placed in a non-pay status.

Intermittent or reduced schedule leave may be permitted and must be recorded on an hour for hour basis regardless of the employee's status. Please note that this includes salaried employees.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to make a reasonable effort to schedule the treatment so as to create minimum disruption of the employing department. The University reserves the right to move an employee who is on intermittent or reduced schedule leave for planned medical treatment to an alternative position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the director of Human Resources.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the director of Human Resources.

short-notice deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, rest and recuperation, and attending post-deployment reintegration briefings. The leave may commence as soon as the individual receives the call-up notice. This type of leave would count toward the employee's 12-week maximum of FMLA leave in a 12-month period.

Employees requesting this type of FMLA leave must provide certification of the qualifying reason for the leave and proof of the qualifying family member's call-up or active military service. 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.

**e. For military caregiver leave, to care for a covered service member with a serious injury or illness.**

Military caregiver leave is for employees who are the spouse, son, daughter, parent, or next-of-kin of a covered service member. Military caregiver leave provides a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period that begins with the first day of the leave. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Employees requesting this type of FMLA leave must provide certification of the covered service member's serious injury or illness. Leave to care for an injured or ill service member, when combined with other FMLA qualifying leave, may not exceed 26 weeks in a single 12-month period. Military family leave runs concurrent with other leave entitlements provided under federal, state, and local law.

When a husband and wife both work for the University, are eligible for FMLA, and each wishes to take leave to care for a covered injured or ill service member, they may only take a combined total of 26 weeks of leave during a single 12-month period.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to schedule the treatment so as to create minimum disruption of the office or department. USI reserves the right to move an employee who is on intermittent or reduced schedule leave to an alternate position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the employee's supervisor and the Human Resources Department.

**3. Requesting a Leave under FMLA**

Employees requesting a foreseeable FMLA leave are expected to provide verbal (or written) notice to their immediate supervisor at least 30 days prior to the requested leave or as soon as practicable after the need for leave is known. In emergency situations/leaves, supervisors or employees should contact Human Resources immediately to initiate the FMLA process. Failure of the employee to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave. Leave request forms and certification forms are available from a benefits representative in the Human Resources Department. Leave request documentation is subject to approval by the executive director of Human Resources or designee.

The University will provide within five business days an individualized Notice of Eligibility and Rights and Responsibilities to each employee requesting FMLA leave and will respond with requests for further information or a designation of leave approval within five business days of receiving other requested leave documentation. For employees on intermittent or recurring leave for the same incident, such notice will be provided every six months.

If an employee fails to provide 30-days' notice for foreseeable leave with no reasonable excuse for the delay, except for military leaves, the leave request may be denied until at least 30 days from the date the University receives notice. For military leaves, the leave may commence as soon as the individual receives the call-up notice; however, failure to give advance notice when such notice was possible for such a leave, may affect reemployment and benefit continuation rights.

While on leave, an employee is requested to report periodically to the University regarding the status of the medical condition and his or her intent to return to work.

#### **4. Continuation of Benefits during FMLA Leave**

An employee who is a current participant in an existing insurance plan and who is placed on FMLA leave will be entitled to continue insurance benefits during the leave. During an FMLA leave the University will continue to pay its portion of the premium for insurance coverage, and the employee will be responsible for his or her employee contribution.

For insurance benefits during any paid portion of an FMLA leave, up to the maximum of 26 weeks, employee contributions will be collected in the same way as if actively at work (e.g., through payroll deductions). During an unpaid leave, the employee will be billed in monthly increments for the employee's share of the premium and must make timely payments to maintain insurance coverage.

Participation in a health care flexible spending account will continue during a leave unless the employee notifies a benefits representative that he or she wishes to discontinue contributions. IRS regulations require that dependent care flexible spending account contributions cease when the employee is not actively at work due to a leave of absence, and that no dependent care claims with a date of service that falls during the leave can be reimbursed. Upon return to work, the employee may re-elect participation in either type of flexible spending account.

When feasible, the employee may choose to prepay insurance premiums (e.g., through increased payroll deductions or other arrangements) when the need for unpaid FMLA leave is foreseeable. Failure to pay the employee portion of the premiums normally deducted while on leave may result in cancellation of insurance coverages.

Under normal circumstances, benefits will be fully reinstated when the employee returns to work. If the employee does not return to work after the FMLA leave for reasons other than health conditions or some other reason beyond the employee's control (if the decision not to return to work is essentially voluntary), the University may charge the employee retroactively for the University's portion of the health care premium paid during the unpaid portion of the FMLA leave. In addition, the employee's notification of his or her intent not to return will be the COBRA qualifying event for continuation of health insurance. The employee is considered to have returned to work after FMLA leave once he or she has been actively working for at least 30 calendar days. Contributions to TIAA-CREF, PERF and STRF retirement plans will be adjusted for any unpaid leave time.

#### **5. Employment and Benefits Protection**

Upon return to active employment from an FMLA leave, the employee will be returned to the same or an equivalent position and employment benefits as long as he or she is able to perform the essential functions of the position. Sick time and vacation will accrue while the employee is on University-paid leave. Unpaid leave time will not count as time accrued for the purpose of eligibility for the TIAA-CREF retirement plan and the long-term disability plan.