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## Policy Information

**Effective Date:**

August 1, 1993

**Last Revised Date:**

October, 2014

**Policy Number:**

HR-303

**Reference:**

Classified Staff Human Resources Policy Manual 216.0

University Handbook for Appointed Personnel 8.04.06

Student Employment Manual 118.0

**Responsible Unit:**

Division of Human Resources

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## Purpose and Summary

It is the policy of the University of Arizona to comply with the federal Family and Medical Leave Act (FMLA) of 1993, as amended; the National Defense Authorization Act, as amended; and all implementing regulations. All references to the FMLA include these laws and regulations.

## Scope

This policy applies to all University employees, including Appointed Personnel, Classified Staff, Student Employees, or Graduate Assistants/Associates, who meet the definition of "eligible employee."

# Definitions

**"Eligible Employee"** is a University employee (Appointed Personnel, Classified Staff, Student Employee, or Graduate Assistant/Associate) who

- Has been employed by the University for at least 12 months; and
- Has worked at least 1,250 hours during the 12-month period immediately preceding the start of the FMLA leave.

The calculation of the 12 months of University employment is cumulative and encompasses all employment categories (Appointed Personnel, Classified Staff, Student Employee, and/or Graduate Assistant/Associate). Separate periods of employment will be counted cumulatively, provided that the break in service does not exceed 7 years, unless such break in service was due to a National Guard or Reserve military service obligation.

Only those hours actually worked will be counted toward the determination of whether the employee has worked 1,250 hours during the 12-month period; paid and unpaid absences are not counted. An employee returning from fulfilling a National Guard or Reserve military obligation will be credited with the hours of work that would have been performed during the period of military service had the employee worked for the University during this time.

**"Genetic information,"** as defined by the Genetic Information and Nondiscrimination Act of 2008 (GINA), includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

# Policy

Eligible employees are entitled to either the Basic Leave Entitlement or the Military Family Leave Entitlement, as described below.

1. **Basic Leave Entitlement:** The University provides up to 12 work weeks of unpaid, job-protected leave in a "leave year" to eligible employees for one or more of the following qualifying basic leave reasons:
  - The birth of the employee's child and/or to bond with the newborn child within one year of birth;
  - The placement of a child with the employee for adoption or foster care and/or to bond with the newly placed child within one year of placement;
  - A serious health condition of the employee;
  - To care for the employee's spouse, child, or parent who has a serious health condition; or
  - To address any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on covered active duty.

For purposes of the basic leave entitlement, a "leave year" is a rolling 12-month period measured backward from the date the proposed FMLA leave is to begin.

2. **Military Family Leave Entitlement:** The University provides up to 26 work weeks of unpaid,

job-protected FMLA leave during a "single 12-month period" to eligible employees for the following qualifying military family leave reason:

- To care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.

For purposes of the military family leave entitlement, the "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for the covered servicemember and ends 12 months after that date. FMLA leave for this reason is applied on a per-covered-servicemember, per-injury basis; however, no more than 26 work weeks of FMLA leave may be taken within a single 12-month period.

### **Requests for Leave and Responding to the Request**

An employee must make a request for FMLA leave to his or her supervisor following established University FMLA leave procedures [2]. The supervisor will promptly coordinate with the designated leave coordinator to ensure University FMLA procedures and timelines are followed for notifying the employee of eligibility, certification requirements, and whether the leave will be designated and counted as FMLA leave.

### **Use of Paid Time During FMLA Leave**

FMLA leave runs concurrently with the use of the eligible employee's accrued paid time benefits, as applicable (i.e., sick time, vacation time, paid parental leave, and, for non-exempt employees, compensatory time), approved use of compassionate transfer of leave, and during the receipt of any disability/insurance plan payments (i.e., short-term disability, long-term disability, or worker's compensation). A period of FMLA leave will be unpaid if the employee is not eligible for accrued paid time or exhausts his or her balance of accrued paid time.

### **Recordkeeping**

The supervisor or designated leave coordinator will promptly provide copies of the employee's completed Employee Request for Family and Medical Leave form, the supervisor's completed Notice of Eligibility and Rights & Responsibilities and Designation Notice forms, and all certification forms to the Division of Human Resources. These forms will be kept in the employee's department and University records; however all medical certifications or related FMLA leave documentation will be maintained as confidential medical records in separate files, apart from employee personnel files.

### **Reinstatement/Return to Work**

An employee must either return to work on the first scheduled workday after the last day of approved FMLA leave or request additional leave on or before the last day of approved FMLA leave. When an employee returns to work on or before the expiration of FMLA leave, the employee's department will reinstate the employee either to the same position the employee held when the leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

If the FMLA leave was due to the employee's own serious health condition and the supervisor required a fitness-for-duty certification in the Designation Notice, then the employee must provide such certification from his or her health-care provider on or before the date the employee is scheduled to return to work. If the employee fails to provide the fitness-for-duty certification by that time, then the supervisor may delay the employee's restoration to employment until the employee submits the required certification.

If the employee's position or appointment is identified for layoff (classified staff) or nonrenewal (appointed personnel) to be effective prior to the expiration of FMLA leave, then the employee will not be entitled to reinstatement so long as the employee's position or appointment would have terminated irrespective of the employee's use of the FMLA leave.

If an employee requires additional leave from work beyond the basic leave entitlement or military family leave entitlement, the employee may request to use any remaining accrued paid time benefits or request an unpaid leave, subject to approval by the supervisor or responsible administrator.

An employee who requires reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) (as amended), including any extension of leave following an FMLA leave, should make a request for reasonable accommodation through the University's Disability Resource Center [3] as soon as he or she believes that such an accommodation may be required.

## **Effect on Benefits**

Information on health-care, life, disability, and other insurance coverage is available on the University FMLA leave procedures [2] web page.

**Continuous Service:** University continuous service will accrue during the period of an FMLA leave. However, FMLA leave may not count toward the completion of any applicable probationary period for a Regular Classified Staff employee.

## **Voluntary Termination**

An employee on FMLA leave will be considered to have voluntarily terminated employment if he or she

- Advises the University of his or her intention not to return to work, either after the expiration of approved FMLA leave or during any approved FMLA leave; or
- Fails to return to work upon the expiration of FMLA leave, unless the employee has requested and been granted: (a) the use of any remaining accrued paid leave; (b) an unpaid leave; or (c) a leave as a reasonable accommodation under the ADA.

If an employee does not return to work for at least 30 calendar days after the employee's FMLA leave entitlement has been exhausted or expires, then the employee may be required to repay the University the full health and dental insurance premiums the University paid on the employee's behalf during the period of unpaid FMLA leave. An employee will not be required to repay the premiums when the reason the employee does not return to work is due to a serious health condition of the employee or the employee's family member; the serious injury or illness of a covered servicemember; official University retirement; or circumstances beyond the employee's control. The University may require the employee to provide certification of the reason for failure to return to work.

## **Frequently Asked Questions\***

**If I believe my supervisor or department is interfering with my right to take FML, or is retaliating against me because I used FML, what should I do?**

Contact the Division of Human Resources at 520-621-3660 or [hresolutions@email.arizona.edu](mailto:hresolutions@email.arizona.edu) [4].

**Is FML paid?**

FML itself is unpaid leave. UA policy is that you must use any appropriate paid leave time you have available. After you have used all available paid time, the remainder of FML leave is unpaid.

**Am I required to use my accrued paid time off during FML?**

Yes, you must use all accrued paid time you have available, which may include vacation, sick, compensatory, parental leave, and compassionate transfer of leave hours, before you take unpaid leave. It is at your discretion to elect which types of paid time you use in which order.

**Can I take a combination of paid and unpaid leave simultaneously during FML?**

No. You must use all paid leave, which may include vacation, sick, compensatory, parental leave, and compassionate transfer of leave hours, at your full FTE before you take any unpaid leave time.

**My spouse and I both are employees at the University. We will be having a baby; do we both get 12 weeks off under FML?**

As employees of the same employer, you may not use more than 12 weeks of FML in total between both of you. You may each take up to 6 weeks of Paid Parental Leave on the birth or adoption of a child. If one spouse takes Paid Parental Leave without FML, the other spouse may use a total of 12 weeks of time off. Paid Parental Leave runs concurrently with FML. Contact Human Resources Solutions at (520) 621-3660 for more information.

**Does the University closure count against my FML balance if I am out during this time?**

If you are not normally scheduled to be at work, then no, the closure does not count against your FML balance. The same guideline applies for academic staff who work an academic-year schedule.

**What happens if I exhaust all FML and am still unable to return to work?**

You need to inform your department promptly that you are unable to return to work as scheduled. You should discuss your situation with your supervisor or designated leave coordinator for the unit. Although FML lasts only 12 weeks, departments have the discretion to approve or deny another type of leave to extend your time away from work.

**What is the procedure for requesting FML?**

You must initiate the process by submitting an [Employee Request for Family and Medical Leave](#) [5] form to your immediate supervisor or the designated leave coordinator for that unit. If the need for the leave is foreseeable (e.g., expecting a baby), please give 30 days' notice to allow for the necessary processing and temporary coverage of work responsibilities.

You should provide sufficient information to the supervisor/designated leave coordinator to show the need for FML; the anticipated timing; and the specific duration of the continuous, intermittent, or reduced-work-schedule leave.

Within five business days, your supervisor or designated leave coordinator will determine if you meet eligibility requirements and will advise whether a completed Certification form is needed.

**What happens to my benefits while I am on FML?**

You are responsible for arranging the continuation of your benefits during FML. While you are receiving paychecks, benefit deductions continue as normal. When you go into unpaid status contact

Human Resources Solutions at (520) 621-3660 to receive additional guidance and information.

### **Is a doctor's note required to return to work?**

If you request FML due to your own medical condition, your supervisor or designated leave coordinator will advise you on the FMLA Designation Notice whether a fitness-for-duty certification from a physician is required. If it is, you must submit this form on or before your first scheduled workday. Your return to work may be delayed until you provide this certification.

### **Should supervisors and employees contact each other during FML or prior to return to work?**

Yes. If the circumstances or anticipated duration of your leave change, you are asked to contact your supervisor and designated leave coordinator immediately. It is also wise to contact the supervisor/designated leave coordinator to make sure all documentation has been received to allow a return to work.

Your supervisors should contact you if needed to ensure that all the necessary documentation is received; to confirm the anticipated return-to-work date; and if applicable, to make a referral to the [Disability Resource Center](#) [6] for evaluation of reasonable accommodations.

### **If my supervisor/designated leave coordinator refers me to the Disability Resource Center (DRC), am I required to go?**

It is highly recommended but not mandatory that you participate in the DRC interactive process. DRC is responsible for determining if reasonable accommodations are required to enable you to perform your job. DRC can work with you and your department to implement identified accommodations.

## **Related Information\***

[Family & Medical Leave: Employee Information](#) [7]

[Family & Medical Leave: Guidance for Supervisors](#) [8]

[FMLA Leave Forms](#) [9]

[Family and Medical Leave Act Poster](#) [10]

**For compliance questions or concerns:** Division of Human Resources, 520-621-3660, [hrsolutions@email.arizona.edu](mailto:hrsolutions@email.arizona.edu) [4]

## **Revision History\***

Revised October 2014

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**Source URL:** <http://policy.web.arizona.edu/human-resources/federal-family-and-medical-leave>

### **Links**

[1] <mailto:hradmin@email.arizona.edu>

[2]  
<http://hr.arizona.edu/employees-affiliates/leaves/family-and-medical-leave/fmla-procedures-and-resources>

- [3] <http://drc.arizona.edu/>
- [4] <mailto:hrrsolutions@email.arizona.edu>
- [5] <http://hr.arizona.edu/sites/default/files/hr/forms/fmla/FML-EMPREQ-1014-rev100514.pdf>
- [6] <http://drc.arizona.edu/workplace-access/information-employees>
- [7] <https://hr.arizona.edu/employees-affiliates/leaves/family-and-medical-leave>
- [8] <https://hr.arizona.edu/supervisors/leaves/family-and-medical>
- [9] <http://hr.arizona.edu/forms#hdr-5>
- [10] <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>