

# Family Medical Leave

LAST REVISED ON 04/2021

**This policy applies to:** Faculty and staff who have been employed by the University for at least 12 months and who have worked a minimum of 1,250 hours during the immediately preceding 12 months. Leaves of Absence for individuals represented by a collective bargaining unit will be granted in accordance with the applicable agreement.

## I. Policy

This Policy establishes family, medical, and servicemember family leaves of absence in accordance with the Family and Medical Leave Act of 1993 (FMLA) (<https://www.dol.gov/agencies/whd/laws-and-regulations/laws/fmla>), as amended. Pursuant to the FMLA, the University will grant eligible employees up to 12 weeks of guaranteed family and/or medical leave without pay during a qualifying 12-month period for one or more of the following reasons:

- a. The birth or care of a newborn child.
- b. Placement of a child for adoption or foster care and care for the newly placed child.
- c. To care for a spouse, domestic partner, child, or parent with a serious health condition.
- d. The employee's own "serious health condition."

There are also two types of Military Family Leave entitlements available to eligible employees under the FMLA:

- a. **Qualifying Exigency Leave.** This leave provides 12 weeks of "qualifying exigency" leave to eligible employees who have a service/military member (a spouse, domestic partner, son, daughter, or parent) who is a current member of the Armed Forces, including the National Guard or Reserves, and who is on covered active duty deployed to a foreign country or who has been notified of an impending call to covered active duty involving deployment to a foreign country. Note: The 12 weeks of qualifying exigency leave is not in addition to the regular 12 weeks of leave available for other FMLA purposes.

b. Military Caregiver Leave. This leave provides eligible employees (a spouse, domestic partner, son, daughter, parent, or next of kin) for up to 26 weeks of unpaid leave once during a single 12-month period to care for a covered servicemember (either a current member of the Armed Forces or a military veteran who was released under conditions other than a dishonorable discharge) recovering from a “serious injury or illness” sustained or aggravated in the line of active duty. The single 12- month period for purposes of Caregiver Leave is measured from the date the employee first takes Military Caregiver Leave. Military Caregiver Leave may be taken within five years after the servicemember leaves the military under conditions other than a dishonorable discharge. Note: The 26 weeks is inclusive of the 12 weeks of leave already provided under regular FMLA or qualifying exigency leave.

The University will not interfere with, restrain or deny an employee’s FMLA rights and will not otherwise discharge or discriminate against any person who opposes any practice believed by that person to be unlawful under the FMLA.

## II. Definitions

“**Child**” for purposes of medical leave, means a biological, adopted, foster son or daughter, stepchild, legal ward, child of domestic partner, or a child of a person acting in the capacity of a parent (i.e., *in loco parentis*), including a child 18 year or older who is incapable of selfcare due to a qualifying mental or physical disability.

“**Covered servicemember**” means a member of the Armed Forces, including (1) a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

“**Eligible**” employee means staff and faculty who have one year of service who have worked at least 1,250 hours (including on-call time, but excluding vacation, holiday, and sick time) during the “rolling year” (defined below) immediately preceding the commencement of leave.

**“Equivalent position”** means a position having the same pay, benefits, working conditions, and substantially similar duties and responsibilities and entails substantially equivalent skill, effort, responsibility, and authority.

**“Family members”** include parents, children (defined above), and spouse or domestic partner.

**“Foster care”** is defined to require State action, rather than an informal arrangement to take care of another person’s child.

**“Intermittent leave”** means leave which is taken in separate blocks of time for a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

**“Parent”** refers to a biological, foster or adoptive parent, a stepparent, and a person who acted in the capacity of a parent (i.e., *in loco parentis*) toward the employee, but not an in-law.

**“Qualifying exigency”** for purposes of Military Family Leave is broadly defined to cover things such as attending certain military events, arranging for alternative childcare and school activities, addressing certain financial and legal arrangements, attending certain counseling sessions, rest and recuperation, attending post-deployment reintegration briefings, and for parental care for the military member’s parent (including for persons acting “in loco parentis”) when the parent is incapable of self-care (which care includes arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility). Note: The amount of time an eligible employee may take for Rest and Recuperation qualifying exigency leave is a maximum of 15 calendar days for each instance of Rest and Recuperation.

**“Reduced leave”** means a change in the employee’s normal work schedule (such as from fulltime to part-time or by working the usual number of hours worked in a week or in a day).

**“Rolling year”** means the 12-month period measured backward from the date that leave is requested.

**“Serious health condition”** is defined as an injury, illness, impairment, or physical or mental condition that involves either inpatient care or a “period of incapacity” that includes “continuing treatment” or a “regimen of continuing treatment” by a healthcare provider. (See complete definition attached at end of policy).

**“Serious injury and illness”** (relating to current servicemembers) means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

1. a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or
2. a physical and mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
3. a physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
4. an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veteran Affairs Program of Comprehensive Assistance for Family Caregivers (<https://www.va.gov/family-member-benefits/comprehensive-assistance-for-family-caregivers/>).

### **III. Scope, Guidelines, Conditions, and Limitations**

A. For purposes of determining eligibility, an employee’s employment for at least 12 months is determined by total time employed (i.e., the 12 months need not be consecutive in time) over a several year period.

B. Medical certification is required for all leaves approved under this Policy.

C. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period, but out of those 26 weeks, to no more than 12 weeks of leave for one or more of the following: the birth or care of a newborn son or daughter; placement of a son or daughter with the employee for adoption or foster care; to care for the spouse, domestic partner, son, daughter or parent with a serious health condition; or because of a qualifying exigency.

D. If spouses are both employed by the University and both eligible for leave, they are limited to a combined total of up to 12 weeks of leave during any 12-month period if the leave is taken for: (1) the birth of their son or daughter or to care for the child after birth; (2) placement of a son or daughter with them for adoption or foster care or to care for the child after placement; or (3) to care for the employee's parent with a serious health condition.

E. Leave taken for the birth, adoption, or care of a newborn child or placement of a foster child with the staff member cannot be taken intermittently or on a reduced schedule unless the University otherwise agrees and must be taken within one year of the birth or placement.

F. Intermittent leaves or reduced leave schedules:

1. Employees may take intermittent leave or reduced leave to care for one's own serious health condition or a family member's serious health condition, or for a serious injury or illness of a covered servicemember. Also see Short-Term Disability, Policy #339 (<https://www.rochester.edu/policies/policy/short-term-disability/>).
2. Exempt and non-exempt employees are to record actual hours taken in reporting absences due to intermittent or reduced leave.
3. Employees on intermittent or reduced leave may be transferred to available equivalent alternative positions on a temporary basis to better accommodate the recurring leave.
4. Employees needing intermittent FMLA leave or leave on a reduced schedule must attempt to schedule their leave so as not to disrupt University operations.
5. Employees using intermittent leave must follow normal call-in/call-off policies and procedures, and, must indicate if the time is counted towards FMLA.

G. An employee must be restored to his/her position or an equivalent one upon expiration of and return from leave taken under this Policy. Consequently, the department must retain the employee's position or an equivalent one, but is permitted to temporarily fill the position during an employee's absence. However, the FMLA contemplates that there may be situations when an employee cannot return to employment during or after leave. Termination of employment may occur, for example, while an employee is on leave if there is a layoff or reduction in force, or cause that would otherwise support dismissal, if the employee's job would have been lost if he/she was actively working. Similarly, termination of employment may occur if the employee is unable to perform one or more of the essential functions of the position, with or without reasonable accommodation, after the leave is over.

H. An employee's disability leave for a serious health condition (work-related or nonwork-related, and including disability due to pregnancy and childbirth) may be covered under the University's short-term disability plan and will count toward the 12-week annual entitlement under the FMLA. Medical certification is required. Also see Short-Term Disability, Policy #339 (<https://www.rochester.edu/policies/policy/short-term-disability/>).

I. An employee's leave under Paid Family Leave may count towards the 12-week annual entitlement under FMLA where the leave meets the criteria for FMLA. Also see Paid Family Leave Policy #267. (<https://www.rochester.edu/policies/policy/paid-family-leave/>)

J. The University may request a fitness for duty certification indicating an employee's ability to perform the essential functions of his/her job before return from leave.

K. The University may, when appropriate, retroactively designate leave as FMLA with appropriate notice to the employee.

L. An employee who requests a leave under the FMLA and whose request is denied may elect to resign; if subsequently rehired, he/she may have service time reinstated if criteria set forth in Policy #134: Reinstatement of Previous Service Time When Rehired (<https://www.rochester.edu/policies/policy/rehire-service-time/>) are met.

## IV. Benefits

**A. Benefits during Paid Portion of Leave:** For regular full-time and regular part-time staff and faculty, during a **paid** portion of a Leave under the FMLA benefits will continue subject to any payroll deductions.

**B. Benefits during Unpaid Portion of Leave:** An **unpaid** Leave will have the following effect on an individual's benefits:

1. Dental Plan coverage will be continued unless the employee signs a form canceling this coverage. Employees who do not cancel this insurance during a Leave will be billed for their normal share of the premium.
2. Medical Plan coverage will be continued unless the staff member signs a form canceling this coverage. Staff members who do not cancel this insurance during a Leave will be billed for their normal share of the premium.
3. Medical/Dental Flexible Spending Accounts (FSAs) through the University of Rochester Plan may be continued. Staff members on Leaves who choose to continue Medical/Dental FSAs will be billed for their contributions on an after-tax basis. Since Dependent Care FSAs are established to allow the employee to work, they will be suspended during a Leave.
4. Health Savings Account (HSA) payroll contributions stop during the unpaid portion of the Leave. To continue contributions on an after-tax basis, please contact the appropriate third-party administrator for details: Payflex (Aetna members) [\(888\) 678-8242 \(tel:8886788242\)](tel:8886788242) or HSA Bank (Excellus members) [\(866\) 471-5940 \(tel:8664715940\)](tel:8664715940).
5. University-paid Basic Term Life and University-paid Basic Accidental Death and & Dismemberment (AD&D) insurance will be continued. Any Group Universal Life (GUL), Optional Accidental Death & Dismemberment (AD&D), and/or Dependent Group Term Life insurance coverage that a faculty or staff member has elected may also be continued unless the faculty or staff member signs a form canceling this coverage. Faculty and staff members who do not cancel their GUL Optional AD&D and/or Dependent Term Life insurance during a Leave will be billed by Securian Financial and will need to pay their normal premiums.
6. Tuition benefits for employees or dependent children are not interrupted.

7. YOUR Benefits Extras (VSP Vision Care, Hyatt Legal Plans, and Group Auto & Home Insurance): Coverage for VSP Vision Care and Hyatt Legal Plans will be suspended during an unpaid Leave. Any Auto & Home insurance will be continued. Faculty or staff members who do not cancel their Auto & Home insurance coverage will be billed directly by Liberty Mutual, MetLife or Travelers.
8. University Home Ownership Incentive Program: Employees remain eligible for the University Home Ownership Incentive Program.
9. Retirement Program: The University's Direct Contribution to the Retirement Program is suspended during a Leave. Any Voluntary Contributions would be suspended during a Leave since contributions to these portions of the University Retirement Program are made through salary deductions.

## V. Procedures

A. Generally, an employee (or a member of the employee's family) must notify the employee's supervisor of the need for a leave under the FMLA and this Policy at least thirty (30) days in advance of the beginning date of the desired leave. If the need for FMLA leave is unforeseeable, notice should be given as soon as practicable and must follow usual and customary call-in procedures for reporting an absence, absent unusual circumstances. In its discretion, the University may retroactively grant FMLA leave status when the University receives information which suggests that an employee's time off has been FMLA qualifying, so long as it is not too remote in time and/or the need for leave was not otherwise foreseeable. The University will not, however, retroactively designate leave as FML if the designation would otherwise harm the employee. Absent extraordinary circumstances, retroactivity will not be permitted as a means for an employee to avoid discipline for infraction of a workplace rule or misconduct.

B. The supervisor must alert employees who may be eligible for FMLA. The employee should print the medical certification form and once completed return it to Leave Administration. If the employee is unable to print the certification form, Leave Administration can be informed by completing the unable to print a request form found online (<https://www.rochester.edu/human-resources/benefits/leave-disability/family-medical-leave-fmla/request-form/>).



C. Within five (5) business days of notification, Leave Administration will send the employee notice of initial eligibility, along with a notice of rights and responsibilities (Form WH-381) and the pertinent health care provider's or other applicable certification for completion and return to Leave Administration.

D. The fully completed health care provider's certificate must be returned to Leave Administration within 15 days of receiving the request for completion of certification. If the certificate is incomplete or fails to sufficiently demonstrate the need for leave, and Leave Administration is not otherwise able to obtain adequate information for completion from the health care provider, the employee will be notified in writing of any remaining deficiencies and the employee will have seven (7) calendar days to provide the necessary information. Failure to provide sufficient information may result in delay or denial of FMLA leave.

E. If FMLA is approved by Leave Administration, within five (5) business days after such determination, an approval letter containing a Designation Notice will be sent to both the employee and the department informing them whether the leave is designated as FMLA leave.

F. Departments must maintain a record in HRMS (Human Resources Management System) of the employee's time out under the FMLA. Time reporting in HRMS should be PTO or sick time, if applicable, or vacation time. All vacation accruals (if available) will be paid out during regular pay period cycles for the first 12 weeks of the Leave or until exhausted. Sick leave or PTO balances will be maintained and will be available when the employee returns from leave. To track FMLA time out, departments must also add a row in the Time Entry/Elapsed Time screens in HRMS and enter the code "FML". Specific instructions regarding entering "FML" or other codes can be found in HRMS under Helpful Information>User Manual>Time and Labor User's Guide.

G. Employees whose illnesses result in their absence from work for more than seven (7) calendar days also must complete disability documentation. See Policy #339: Short-Term Disability (<https://www.rochester.edu/policies/policy/short-term-disability/>).

Also see:

- #134 Reinstatement of Previous Service Time When Rehired (<https://www.rochester.edu/policies/policy/rehire-service-time/>)
- #271 Workers' Compensation Benefits (<https://www.rochester.edu/policies/policy/workers->

compensation/)

- [#339 Short-Term Disability \(https://www.rochester.edu/policies/policy/short-term-disability/\)](https://www.rochester.edu/policies/policy/short-term-disability/)
- [#336 Military Leave \(https://www.rochester.edu/policies/policy/military-leave/\)](https://www.rochester.edu/policies/policy/military-leave/)
- [#267 Paid Family Leave \(https://www.rochester.edu/policies/policy/paid-family-leave/\)](https://www.rochester.edu/policies/policy/paid-family-leave/)

## Serious Health Condition

A “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

### 1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity<sup>1</sup> or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence Plus Treatment

a) A period of incapacity<sup>1</sup> of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity<sup>1</sup> relating to the same condition), that also involves:

1. **Treatment<sup>2</sup> two or more times** by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; **or**
2. Treatment by a health care provider on at least one occasion which results in a **regimen of continuing treatment<sup>3</sup>** under the supervision of the health care provider.

### 3. Pregnancy

Any period of incapacity due to **pregnancy or prenatal care**. Does not require an absence of more than three days, or treatment by a health care provider.

### 4. Chronic Conditions Requiring Treatments

A chronic condition which:

1. Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
2. Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
3. May cause **episodic** rather than a continuing period of incapacity<sup>1</sup> (e.g., asthma, diabetes, epilepsy, etc.).

### 5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity<sup>1</sup> which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

### 6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a **condition that would likely result in a period of incapacity<sup>1</sup> of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

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(1) Unable to attend work or school or to perform other regular daily activities for more than three consecutive days because of a serious health condition (including treatment and recovery).

(2) Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

(3) A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. Includes being advised to call health care provider if condition does not improve. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

## **ABOUT THIS POLICY**

### **Policy Number**

358

### **Policy Group**

Human Resources

### **Issuing Authority**

Human Resources

### **Responsible Officer**

Kathy Miner

### **Contact Information**

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## **ADDITIONAL RESOURCES**

**[Human Resources website: Family Medical Leave \(https://www.rochester.edu/human-resources/benefits/leave-disability/family-medical-leave-fmla/\)](https://www.rochester.edu/human-resources/benefits/leave-disability/family-medical-leave-fmla/)**

**[Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act \(WH-385\) \(https://www.dol.gov/whd/forms/WH-385.pdf\)](https://www.dol.gov/whd/forms/WH-385.pdf)**

**[Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave \(Family and](#)**

**Medical Leave Act (WH-385V) (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh-385-V.pdf>)**

**Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act (WH-380E) (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>)**

**Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act (WH-380F) (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf>)**

**Certification for Military Family Leave for Qualifying Exigency under the Family and Medical Leave Act (WH-384) (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-384.pdf>)**

**Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act (WH-381) (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>)**

#### **RELATED POLICIES**

**Hiring Replacements for Staff Members on an Approved Work-Related or Non-Work-Related Illness or Injury Absence (<https://www.rochester.edu/policies/policy/replacements/>)**

**Reinstatement of Previous Service Time When Rehired (<https://www.rochester.edu/policies/policy/rehire-service-time/>)**

**Short-Term Disability Plan (<https://www.rochester.edu/policies/policy/short-term-disability/>)**

**Workers' Compensation Insurance (<https://www.rochester.edu/policies/policy/workers-compensation/>)**

**Paid Family Leave (PFL) (<https://www.rochester.edu/policies/policy/paid-family-leave/>)**

#### **POLICY KEYWORDS**

**FMLA (<https://www.rochester.edu/policies/all/?filter%5Btopics%5D=426>)**

**Payroll (<https://www.rochester.edu/policies/all/?filter%5Btopics%5D=506>)**