



# Eastern Kentucky University

## Policy and Regulation Library

University Policy: 8.2.14POL

Responsible Office(s): Office of Human Resources

Effective: February 18, 2010

Next Review Date: February 18, 2015

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### Family and Medical Leave; Covered Service Member Family Leave; and Qualifying Exigency Leave

#### Statement

The Family and Medical Leave Act of 1993, amended by the National Defense Authorization Act, January 28, 2008, and the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647) (collectively referred to as FMLA) provides Eligible Employees with up to 12 workweeks of unpaid job-protected leave during a rolling 12-month period in the event of a family or personal medical conditions or Qualifying Exigency related to Active Military Duty; or up to 26 weeks during a single 12 month period for certain circumstances related to care for Covered Servicemembers and Veterans.

#### Entities Affected

FMLA Eligible Employees and supervisors

#### Background

See Statement Section.

#### Definitions

- **Active Duty (Active Military Duty):** Duty under a call or order to Active Duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.
- **Child:** Biological, adopted, foster child, step child, legal ward or a child of a person standing in loco parentis who is under 18 years of age, or 18 years of age or older and incapable of self care because of a mental or physical disability. For Covered Servicemember Leave and Qualifying Exigency Leave, the child can be of adult age.

- **Contingency Operation:** The term “Contingency Operation” means a military operation that :

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section [688](#), [12301 \(a\)](#), [12302](#), [12304](#), [12305](#), or [12406](#) of section 101(a)(13) of Title 10 United States Code, chapter [15](#) of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

- **Covered Servicemember:** A member of the Armed Forces, including 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. A serious injury or illness is one that was incurred by a Servicemember in the line of duty on Active Duty or existed before the beginning of the member’s Active Duty and was aggravated by service in line of duty on Active Duty in the Armed Forces that may render the Servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A Covered Servicemember also includes veterans who were members of the Armed Forces, including the National Guard or Reserves, at any point in time within five (5) years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy. In the case of veteran Covered Servicemembers, a “serious health condition” includes any injury or illness that was incurred by the member in the line of duty on Active Duty in the Armed Forces (or existed before the beginning of the member’s Active Duty and was aggravated by service in line of duty on Active Duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

- **Covered Servicemember Family Leave (Caregiver Leave):** An Eligible Employee who is a spouse, son, daughter, parent, or Next of Kin of a Covered Servicemember with a serious injury or illness must be granted up to a total of 26 workweeks of unpaid leave during a single 12-month period to care for the Covered Servicemember. The single 12-month period for leave to care for a Covered Servicemember with a serious injury or illness begins on the first day the Eligible Employee takes leave for this reason and ends 12 months later, regardless of the 12 month period establish by the employer for other types of FMLA leave. An Eligible Employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA qualifying reason other than to care for a Covered Servicemember.)

- **Eligible Employee (for all leaves described herein):** Any University employee who has at least 12 months of service with the University and who has worked at least 1250 hours (in any paid capacity) in the previous 12 month period.
- **FMLA Gatekeeper:** EKU's Human Resources Benefits Office will serve as the administrator of the FMLA program and is designated as the FMLA Gatekeeper.
- **Health Care Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or

Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law;

(2) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A Health Care Provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

The phrase "authorized to practice in the state" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

- **Intermittent Leave or Reduced Work Schedule (for all leaves described herein):** Intermittent Leave is leave taken in separate blocks of time rather than one continuous period of leave. This includes periods of time from fifteen (15) minutes to several weeks.

A Reduced Leave Schedule is a leave schedule that reduces an Eligible Employee's usual number of working days per workweek or hours per workday.

- **Military Member:** One who is on Active Duty or has been notified of an impending call or order to Active Duty in support of a Contingency Operation.
- **National Defense Authorization Act and National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647) (NDAA):** Signed into law on January 28, 2008 and October 28, 2009 amends the FMLA. As it pertains to this regulation, the NDAA provides Eligible Employees additional FMLA leave rights related to military service.
- **Next to Kin:** The term "Next of Kin", used with respect to an individual, means the nearest blood relative of that individual.
- **Outpatient Status:** The term "Outpatient Status," with respect to a Covered Servicemember, means the status of a member of the Armed Forces assigned to

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- **Parent:** Biological parent of an Eligible Employee or an individual who stood in "loco parentis" to an Eligible Employee when the Eligible Employee was a child, i.e., and individual who was charged with parental rights and responsibilities for the Eligible Employee.
- **Qualifying Exigency:** Qualifying Exigency Include:
  - A. Issues arising from a Military Member's short notice deployment\_(i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
  - B. Military events and related activities,\_such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross

that are related to the active duty or call to active duty status of a Military Member;

- C. Certain childcare and related activities arising from the Active Duty or call to Active Duty status of a Military Member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the Active Duty or call to Active Duty of the Military Member;
- D. Making or updating financial and legal arrangements to address a Military Member's absence;
- E. Attending counseling provided by someone other than a Health Care Provider for oneself, the Military Member, or the child of the Military Member, the need for which arises from the Active Duty or call to Active Duty status of the Military Member;
- F. Taking up to five days of leave to spend time with a Covered Military Member who is on short-term temporary, rest and recuperation leave during deployment;

- **Qualifying Events For Leave:**

- A. For Family and Medical Leave:

- i. The birth and care of an Eligible Employee's child or placement of a child for adoption or foster care with the employee. Entitlement to a birth, adoption, or foster care leave must be completed within 12 months of birth, adoption, or foster care placement
- ii. To care of immediate family member (spouse, child, parent) who has a serious health condition; or
- iii. To care for the Eligible Employee's own Serious Health Condition.

- B. For Covered Servicemember Family Leave:

- i. To care for a Covered Servicemember by an Eligible Employee who is the spouse, son, daughter, parent or Next of Kin of the Covered Servicemember

- C. For Qualifying Exigency Leave:

- i. Because of any Qualifying Exigency arising out of the fact that the spouse, son, daughter, or parent of the Eligible Employee 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.

- **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, or hospice or residential medical care facility, or continuing treatment by Health Care Provider. (See Covered Servicemember definition for serious illness or injury or serious health condition related to Covered Servicemembers.)
- **Veteran:** With regard to this regulation, a veteran is someone who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the person undergoes that medical treatment, recuperation, or therapy.

## Procedures

### Notification By Employee of Necessity of Leave

- The Eligible Employee must notify his/her immediate supervisor or Human Resources when the Eligible Employee has a Qualifying Event
- When notification has been received by the Human Resources FMLA Gatekeeper, and verified as a Qualifying Event, the necessary paper work will be sent to the Eligible Employee.
- When the need for leave is foreseeable, an Eligible Employee must give the supervisor or Human Resources at least 30 days notice, or as much notice as practicable.
- When the leave is not foreseeable, the Eligible Employee must provide such notice as soon as possible.
- In any case in which the necessity for FMLA leave is foreseeable, whether because the spouse, or a son, daughter, or parent, of the Eligible Employee who is on Active Duty, or because of notification of an impending call or order to Active Duty in support of a Contingency Operation, the Eligible Employee shall provide such notice to the supervisor or Human Resources as is reasonable and practicable.

### Amount of Leave Available

For Family and Medical Leave:

- 12 workweeks during a rolling 12-month period. The entitlement of 12 workweeks for birth or placement of a son or daughter for adoption or foster care expires at the end of the 12 month period beginning on the date of such birth or placement.

For Covered Servicemember Family Leave (Caregiver Leave):

- 26 Workweeks of leave during a single rolling 12 month period

For Qualifying Exigency Leave:

- 12 workweeks during a rolling 12 month period.

During a single rolling 12 month period for Covered Servicemember Leave, Eligible Employees will be entitled to a combined total of 26 workweeks for FMLA related leaves.

For eligible married employees of the University:

- When both husband and wife are employed by the University, the aggregate number of work weeks is limited to 12 weeks for “bonding” over a single rolling 12-month period if the leave is for the birth, adoption or foster care placement of a child. For other types of leaves under FMLA (i.e., serious illness of the employee or the employee’s spouse or child), each Eligible Employee retains the right to take up to 12 workweeks of leave.
- The aggregate number of workweeks of leave to which both that husband and wife may be entitled is limited to 26 workweeks during a single rolling 12-month period for Covered Servicemember Family Leave if the leave is:
  - i. for Covered Servicemember Family Leave; or
  - ii. a combination of Family Medical Leave, Qualifying Exigency leave and Servicemember Family Leave

**Remaining in a Paid Status While on Leave**

- Eligible Employees must use any accumulated sick or vacation leave to remain in a paid status during the leave. Paid time shall be used before the employee is placed into a non-pay status.
- In cases where paid leave ends prior to the end of the leave, the balance of the leave will be unpaid.
- Paid time awarded through any of the University's leave benefit programs (e.g. sick bank, workers compensation, etc.) does not extend any leave under this regulation.

### **Health/Dental/Life Insurance Protection While on Leave-Other Benefits While on Leave**

- Eligible Employees, who participate in the University's insurance plans, may continue group health, dental and life insurance coverage's during a leave under the same conditions he/she would have received had the leave not occurred.
- For Eligible Employees who participate in the University insurance plans, the University shall maintain its contributions to the group health, dental and life insurance coverage's in accordance with the specific benefit plan(s) provisions.
- If an Eligible Employee is in an unpaid status during the leave, it is the Eligible Employee's responsibility to make arrangements with the Human Resources Benefits Office for payment of the required benefit premiums. Failure to do so may result in the termination of such insurance coverage's.
- Eligible Employees will be eligible to receive salary for University holiday(s) that occurs while he/she is on an approved leave.
- Eligible Employees will continue to accumulate vacation and sick time for as long as they remain in a paid status while on leave.

### **Certification Requirements for Employees Requesting Leave**

#### **Health Care Provider Certification:**

Eligible Employees must provide certification from a Health Care Provider for:



- i. a Serious Health Condition of the employee, or
- ii. the employee's need to care for a child, spouse or parent of the employee who has a Serious Health Condition; or
- iii. Covered Servicemember's Leave\* to care for a Covered Servicemember with a serious injury or illness must be supported by a certification completed by a Health Care Provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the Covered Servicemember's family.

#### Active Duty Certification\*:

Leave for a Qualifying Exigency must be supported by a copy of the covered Military Member's Active Duty orders and certification providing the appropriate facts related to the particular Qualifying Exigency for which leave is sought, including contact information if the leave involves meeting with a third party;

#### Other Certifications:

The University may also require periodic reports during the period of leave of the Eligible Employee's status and intent to return to work as well as "fitness-for-duty" certification before returning to work.

\* Second and third opinions and recertification are not permitted for certification of a Covered Servicemember's serious injury or illness or of a Qualifying Exigency. An employer may use a Health Care Provider, a human resource professional, a leave administrator, or a designated management official – but not the Eligible Employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, an employer may contact the individual or entity named in a certification of leave for a Qualifying Exigency for purposes of verifying the existence and nature of the meeting.

#### **Eligible Employees Returning to Work from Leave**

- If an Eligible Employee desires to return to work before his/her approved leave ends, he/she is to contact the FMLA Gatekeeper.
- In the event of an Eligible Employees own Serious Health Condition, the employee must provide certification from an appropriate Health Care Provider indicating the he/she is able to resume work.

#### **Employees Failure to Return to Work-Voluntary Resignation**

If an Eligible Employee does not return to work following the conclusion of any leave under this regulation for any other reason than:

- i. the continuation, reoccurrence or onset of a Serious Health Condition which would entitle an Eligible Employee to FMLA leave; or
- ii. other circumstance beyond the Eligible Employee's control, including but not limited to, caring for a relative, such as a newborn infant, or individual (other than a covered relation) who has a Serious Health Condition; or
- iii. caring for a Covered Servicemember;

the Eligible Employee will be considered to have voluntarily resigned and the University will be entitled to reimbursement of the University paid portion of health insurance premiums paid on the Eligible Employee's behalf during the leave.

An Eligible Employee will be required to provide an appropriate certification if the failure to return is due to one of the conditions above.

Note: Electing to remain home to care for children is not a circumstance beyond the Eligible Employee's control.

### **Returning to the Same or Equivalent Position**

- An Eligible Employee will be reinstated to the same or an equivalent position with the same pay and benefits that he/she received and under the same terms and conditions of employment as when the leave began.
- Salaried Eligible Employees who are among the highest paid 10 percent employed within 75 miles of the facility where such Eligible Employee is employed may be denied job restoration under certain circumstances as defined by the FMLA.

### **Intermittent and Reduced Schedule Leave**

An Eligible Employee has an absolute right to take leave under this regulation on an "Intermittently or on a Reduced Leave Schedule " if:

1. The leave is due to the Eligible Employee's Serious Health Condition or the Serious Health Condition of a member of the Eligible Employee's immediate parent or child.
2. A physician determines that it is medically necessary to do so.
3. An Eligible Employee is caring for a Covered Servicemembers and for Active Duty Qualifying Exigency Leave.

If Intermittent or Reduced Schedule Leave is provided, this leave must be scheduled in a manner that does not disrupt work operations. The University may transfer an employee needing Intermittent or Reduce Schedule leave to alternative positions that better accommodate such leave.

## Responsibilities

- Employee's Responsibilities for Leave
  - Must notify supervisor or FMLA Gatekeeper of Qualifying Event
  - Must give supervisor and FMLA Gatekeeper thirty (30) days notice of foreseeable leave
  - When leave is not foreseeable, must notify supervisor and FMLA Gatekeeper as soon as practicable
  - Must appropriately complete all forms provided by FMLA Gatekeeper to be eligible for leave
  - Must provide all appropriate certifications
  - Must return to work at stated end of FMLA leave
  - Must use accumulated paid time (such as vacation or sick leave) to receive pay during FMLA leave
  - Must make arrangements with FMLA Gatekeeper for payment of insurance benefits if leave will be unpaid.
  - Must pay employee's portion of any insurance premium or other benefit during leave.
  
- FMLA Gatekeeper
  - EKU's Human Resources Benefits office will serve as the administrator of the FMLA program and is designated as the FMLA Gatekeeper.
  - Determines employee eligibility
  - Provides necessary paperwork to Eligible Employees
  - Review's employee's status from time to time including return to work.
  - Ensures continuation of benefits if appropriate
  
- Supervisor
  - An administrative employee (official) in charge of a business unit or sub-unit.
  - Relays notification of leave from Eligible Employee to FMLA Gatekeeper
  
- University

- Must maintain group health, dental and life insurance for Eligible Employee on leave who participate in these University plans, except when Eligible Employee's leave is unpaid.
- Must reinstate Eligible Employee to same or equivalent position upon employees return from leave

## Violations of the Policy

Violations of this regulation will be handled through normal University processes.

## Statutory or Regulatory References

Family Medical Leave Act of 1993

National Defense Authorization Act and National Defense Authorization Act for FY 2008 and FY2010

## Relevant Links

[fmlaposter.pdf](#)

## Policy Adoption Review and Approval

Approved by the Board of Regents on 10/9/99

Revisions to include the provisions of the NDAA approved as Interim Policy by President on 2/18 /10

### Policy Issued

Date

Entity

Action