

Policies and Procedures

<i>SECTION:</i> Administration	<i>NO.</i> 2.2.14.				
<i>CHAPTER:</i> Human Resources	<i>ISSUED:</i> 8/5/93	<i>REV. A</i> 3/3/95	<i>REV. B</i> 1/30/01	<i>REV. C</i> 6/28/06	<i>REV. D.</i> 8/21/13
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PURPOSE

The Family and Medical Leave Act of 1993 (FMLA) requires employers with 50 or more employees to allow eligible employees to take up to 12 workweeks of unpaid, protected leave in a 12-month period for specified family and medical reasons. During the leave, an employee is entitled to job protection and the retention of health benefits as if active employment were continuous. Upon return from the leave, an employee must be reinstated to his/her former or an equivalent position. As a Roman Catholic institution in the Jesuit tradition, Creighton University strives to protect the dignity of all persons. The University will provide a total of 12 workweeks in a "rolling" 12-month period of job protected unpaid leave to employees as mandated by Federal and State Law.

SCOPE/ELIGIBILITY

This policy defines the terms and conditions of FMLA leave. The Act and the regulations of the Department of Labor shall be referred to for any questions not addressed by this policy. The University shall determine in each case whether an absence qualifies as an FMLA leave. The University has chosen to require the use of paid time off while taking FMLA leave.

Employees are eligible if they have worked for the University for at least twelve (12) months in the last seven (7) years and worked at least 1,250 hours for the University during the twelve (12) months preceding the commencement of the leave.

POLICY

The Family and Medical Leave Act requires covered employers to provide up to twelve (12) weeks of unpaid, job protected leave to eligible employees for the following reasons:

- For a serious health condition that makes the employee unable to perform the employee's job;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;
- For incapacity due to pregnancy, prenatal medical care or childbirth; or,
- To care for the employee's child after birth, or placement for adoption or foster care

Such a leave is referred to in this policy as "FMLA leave."

Duration

An employee's cumulative total of all leaves of absence under this policy may not exceed twelve (12) weeks in any twelve- (12) month period. The twelve- (12) month period will be measured on a rolling twelve- (12) month period from the date an employee uses any FMLA leave. A husband and wife who are eligible for FMLA leave and are employed by the University are entitled to twelve (12) weeks of leave each during any twelve- (12) month period if the leave is taken for the birth of a child or to care for the child after the birth, or for placement of a child with the employee for adoption or foster care or to care for the child after placement. FMLA leave for the birth of a child, or placement of a child for foster care or adoption, must be completed

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within one (1) year after the birth or placement.

Intermittent/Reduced Schedule

An employee does not need to use this leave in one block. Leave may be taken on an intermittent or reduced schedule basis only when the leave is because of a serious health condition, and the intermittent leave or reduced schedule is shown to be medically necessary. Medical certification of this need will be required. Where the intermittent leave or reduced schedule is foreseeable, the employee must try to schedule the leave so as not to unduly disrupt University operations, and if the employee needs to be absent due to planned medical treatments, the employee may be temporarily transferred to an alternative position with equal pay and benefits for which the employee is qualified and which better accommodates the intermittent or reduced schedule leave.

Regular Reporting

While on FMLA leave, employees must keep the University informed of their plans to return to work. As a general rule, the employee must contact the Human Resources Department at least once every two (2) weeks; other reporting schedules may be agreed on between the employee and the Human Resources Department based on the employee's individual circumstances. Reasonable notice (at least two business days, and more if possible) is required prior to returning to work on any date other than the originally scheduled return date.

Salary/Wages

FMLA leave shall be unpaid, except as follows:

- a. If the employee has earned, but has not used, paid time off for which the employee is eligible, that time off must be applied concurrently until it is exhausted.
- b. If the absence is due to a job-related injury, the employee may be covered by worker's compensation. If worker's compensation benefits apply, the employee will not be required to apply any accrued time off, but may elect to do so to the extent that the worker's compensation is less than the employee's regular salary.

Benefits

During any period of FMLA leave, the University must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work, provided the employee makes timely payment of the employee's share of the premiums.

Upon return to work, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms, unless the employment would have ended even if the employee had not been on leave (for example, if the job has been eliminated due to a staff reduction or reorganization). Use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave.

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During any paid portion of the leave, the employee's premiums will continue to be deducted from payroll; otherwise, payments must be delivered to Human Resources by the normal pay date on which the premiums would have been deducted. Failure to make premium payments may cause the employee (and covered dependents) to be uninsured during a portion of the leave. Coverage terminated due to non-payment of premiums while on leave is not a COBRA qualifying event. Sick, vacation, and holiday will accrue during the FMLA leave.

If the employee fails to return to work for at least thirty (30) days at the end of the approved leave, the employee will be obligated to repay to the University 100% of all benefit premiums paid by the University during the unpaid portion of the leave. The only exception is where the non-return to work is due to a continued serious health condition (medical certification is required) or other circumstances beyond the employee's control.

Unable/Decline to Return

An employee who is unable or declines to fully return to work upon expiration of FMLA leave and has exhausted all other leave will be considered to have resigned, unless the inability to return is due to a disability under the Americans with Disabilities Act and the employee requests, and can reasonably be granted, some additional accommodation.

DEFINITIONS

"Foster care" is defined as 24-hour care for children in substitution for, and away from, their parents or guardian, in accordance with a placement made by the State or in agreement with the State.

"Spouse" is defined as a husband or wife as recognized under state law.

"Parent" is defined as a biological parent, or an individual who stood in loco parentis (had day-to-day responsibilities to care for the employee) when the employee was a child. A parent "in-law" is not considered a "parent" for purposes of family and/or medical leave.

"Son" or "daughter" or "child" is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (has day-to-day responsibilities to care for and financially support the child). The "son" or "daughter" or "child" must be either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

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 the employee's 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 (3) full consecutive calendar days combined with at least two (2) 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. Absent complications or inpatient care,

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"serious health condition" generally does not include the cosmetic treatments, minor conditions such as the common cold, earaches, headaches, the flu, and so forth, routine doctor's appointments, or treatment with over-the-counter medicines.

A **"health care provider"** for purposes of medical certification shall include doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, state-authorized nurse practitioners, nurse-midwives, clinical social workers, state-authorized physician assistants, and Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

A certification that an employee is **"needed to care for"** a sick family member includes both physical and psychological care. It includes situations where the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, and where providing psychological comfort will be beneficial to a seriously ill family member.

Intermittent or reduced schedule leave is **"medically necessary"** when the medical need can be best accommodated through an intermittent or reduced leave schedule. The term "medically necessary" does not include voluntary treatments or procedures.

An **"equivalent position"** is defined as a position which has the same pay, benefits and working conditions; involves the same or substantially similar duties and responsibilities which entail equivalent skill, effort, responsibility and authority; is available at the same or a geographically proximate worksite where the employee had previously been employed; and is on the same or an equivalent work schedule.

Leave for the birth of a child may include necessary prenatal care, or may begin before the actual date of birth of a child if the expectant mother's condition makes her unable to work. Leave for placement of a child may begin before actual placement if an absence from work is required for the placement to proceed.

PROCEDURE

Notice of Leave

Employees must provide at least thirty (30) days' advance notice of the need to take FMLA leave, when the need is foreseeable, to the appropriate University representative. When thirty (30) days' notice is not possible, the employee must provide notice as soon as practicable and must comply with the University's normal call-in procedures required for other absences. If less than thirty (30) days' notice is given, the employee must explain why providing timely notice was not practicable.

Notice must be provided either in writing (for foreseeable leave only) or by calling (for either foreseeable or unforeseeable leave). When requesting leave for the first time for a particular FMLA-qualifying reason, the employee must provide sufficient information for the University to determine if the leave may qualify for FMLA protection, and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform essential job functions; the family member is unable to perform daily activities, the need for hospitalization, or continuing treatment by a health care provider. Calling in "sick" is not enough.

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Employees must also inform the appropriate University representative if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

The University must inform employees requesting leave whether they are eligible under the FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities with regard to FMLA leave. If an employee is not eligible, the University must provide a reason for the ineligibility. The University will generally notify an employee within five (5) business days whether he/she is eligible for FMLA leave.

Medical Certification

An employee on leave due to a serious health condition of the employee or a family member must provide a written medical certification on a form adopted by the University. This requirement may be waived by the Human Resources Department in cases of pregnancy or other situations where both the medical need and the timing of the leave are obvious. The certification must be provided prior to commencement of the leave when the need for leave is foreseeable; in any case, it must be provided within fifteen (15) days after it is requested. Failure to return the medical certification, absent unusual circumstances, will cause the University to deny the FMLA leave. Where the leave is due to the employee's own serious health condition, the employee must provide a copy of his or her current job description to the health care provider before obtaining the certification. A copy of the job description may be provided to the employee. The University may require a second and third opinion at its expense, in accordance with the Act.

The University shall notify the employee within five (5) days of receipt of a complete and sufficient medical certification whether the leave is FMLA-qualifying. If the University is unable to determine whether the leave is FMLA-qualifying because (a) the medical certification is incomplete or insufficient, or (b) the University requires a second or third opinion, it will notify the employee. The University shall notify the employee, in writing, if the medical certification is incomplete or insufficient, and state the information needed to cure the deficiency. The employee shall have seven (7) calendar days to cure the deficiencies, or FMLA leave will be denied.

Re-certification

Medical recertification must be provided within fifteen (15) days after requested by the University during the leave. For intermittent leave for continuing, open ended conditions, recertification may be requested every six (6) months. In addition, recertification may be requested when (1) there is a significant change in condition, (2) an extension of the leave is requested, or (3) the University receives information which casts doubt on the continuing validity of the certification.

Failure to Provide Notice/Certification

Failure to provide required notices or certifications may result in a delay in the leave of absence, or loss of the protections provided by the Family and Medical Leave Act.

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Fitness for Duty Certification (release to return to work)

The University requires an employee to provide a sufficient fitness for duty certification at the time the employee returns to work. The certification must state that the employee can return to work and is able to perform all essential functions of the position. If the fitness-for-duty certification is insufficient or incomplete, the employee will not be permitted to return to work and will have seven (7) calendar days to cure the deficiencies. Failure to present a sufficient fitness-for-duty certification may cause the return to work to be denied.

For intermittent leave, the University may require a fitness-for-duty certification as often as every thirty (30) days if the health condition involves a contagious disease, or could reasonably affect the employee's, a co-worker's, or a third party's safety.

ADMINISTRATION AND INTERPRETATIONS

The FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under the FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer for enforcement. FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

AMENDMENTS OR TERMINATION OF POLICY

This policy supersedes any previous written or unwritten University policy/procedure pertaining to the Family and Medical Leave Act. Creighton University reserves the right to modify, amend, or terminate this policy at any time, especially to comply with changes in state or federal law related to the provisions of family and medical leave.