

# ***Policies and Procedures***

<b>SECTION:</b> <b>Administration</b>	<b>NO.</b> <b>2.2.27.</b>		
<b>CHAPTER:</b> <b>Human Resources</b>	<b>ISSUED:</b> 11/20/13	<b>REV. A</b>	<b>REV. B</b>
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## **PURPOSE**

It is the policy of Creighton University to grant family military leave under the Family and Medical Leave Act ("FMLA") or, for those individuals employed in Nebraska, under the Nebraska Family Military Leave Act ("NFMLA"), which entitles an eligible employee to take a leave of absence when (1) certain family members in the National Guard or Reserves are on (or have been called) to active duty, or active duty service members who are on duty in a foreign country (or called to active duty) and there is a qualifying exigency; (2) certain family members in the armed forces, National Guard, or Reserves, suffer a serious injury or illness in the line of duty and the employee wants to care for them; or (3) in Nebraska, when the employee's spouse or child has been called to military service scheduled to last 179 days or longer. Such leave is referred to, for purposes of this policy, as "Family Military Leave."

## **SCOPE/ELIGIBILITY**

This policy defines the terms and conditions of Family Military Leave. The Act and the Department of Labor's regulations shall be referred to for any questions not addressed by this policy. The University shall determine in each case whether an absence qualifies as Family Military Leave.

All leave under this policy runs concurrently with any other leave provided for under federal, state or local law. Employees using Family Military Leave must concurrently use available paid time off.

To be eligible for Family Military Leave under this policy, an employee must have been employed by the University for at least twelve (12) months in the last seven (7) years, and must have worked at least 1,250 hours for the University during the twelve (12) months preceding the commencement of the leave and work at a location where at least 50 employees are employed in a 75-mile radius (except NFMLA).

## **POLICY**

Family Military Leave under the FMLA provides an unpaid leave of absence for the following reasons:

1. Because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of an eligible employee is on active duty (or has been notified of an impending call or order to active duty) in the National Guard or Reserves in support of a "contingency operation" (as defined by federal law) or is an active duty member of the armed forces in a foreign country (or has been notified of an impending call or order to duty in a foreign country); and

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2. An eligible employee is the spouse, son, daughter, parent, or next-of-kin of a "covered servicemember" who has suffered a "serious injury or illness" and wants to care for the servicemember.
3. Under the NFMLA, when an eligible employee's spouse or child has been called to military service scheduled to last 179 days or longer.

## Qualifying Exigency Leave

Employees who have a spouse, son, daughter, or parent called to active duty with the National Guard or Reserves or is an active duty member of the armed forces in a foreign country (or has been notified of an impending call or order to duty in a foreign country) may be entitled to up to 12 weeks of leave for a "qualifying exigency."

The 12-month period will be measured on a rolling 12-month period from the date an employee uses any FMLA or Family Military leave.

Qualifying exigency leave may be taken only for the following non-medical, non-routine activities:

1. Short-Notice Deployment Activities: If a military member receives seven (7) or less calendar days' notice prior to the date of deployment, the employee may take up to seven (7) calendar days of Family Military Leave to address any issue arising from the impending call or order to active duty. The seven (7) days begin on the date the military member receives the call or order to active duty.
2. Military Events and Related Activities: An employee may take Family Military Leave to attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of the military member. The employee may also use qualifying exigency leave to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or Red Cross that are related to the active duty or call to active duty status of the military member.
3. Childcare and School Activities: The employee may take Family Military Leave for any of the following activities necessitated by the military member's active duty or call to active duty status, or circumstances arising from it:
  - To make alternative childcare arrangements for a military member's child;
  - To provide childcare for a military member's child on an urgent, immediate need basis but not on a routine, regular, or everyday basis;
  - To enroll in or transfer a military member's child in a new school or daycare facility; and/or
  - To attend meetings with staff at a school or daycare facility.

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4. **Financial and Legal Arrangements:** The employee may take Family Military Leave to make or update financial or legal arrangements to address the military member's absence while on active duty or call to active duty status. Leave may also be granted for the employee to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on active duty or call to active duty status, up to a period of ninety (90) days following the termination of the military member's active duty status.
5. **Counseling Activities:** An employee may take leave to attend non-medical counseling, provided that (1) the need for counseling arises from the military member's active duty or call to active duty status; (2) such counseling is provided by someone other than a health care provider; and (3) the counseling is for the employee, the military member, and/or the military member's child. In the event medical counseling is needed, the employee may be able to take regular FMLA leave due to the "serious health condition" of the employee or of a military member who is the employee's spouse, parent, or son or daughter as defined in the FMLA.
6. **Rest and Recuperation Activities:** If a military member is granted short-term, temporary rest and recuperation leave during the period of deployment, an employee may take Family Military Leave of up to five (5) days to spend time with the military member.
7. **Post-Deployment Activities:** An employee may take Family Military Leave to attend arrival ceremonies, reintegration briefings and events, and other official ceremony or programs sponsored by the military for a period of ninety (90) days following termination of the military member's active duty status. The employee may also take leave to address issues that arise from the death of a military member while on active duty status.
8. **Additional Activities Approved by the University:** An employee may only take Family Military Leave for other exigencies if the exigency arises out of the military member's active duty/call to active duty, and the employer agrees as to the leave's qualification, timing, and duration.

If an employee uses up his or her twelve (12) weeks of FMLA leave for reasons other than Family Military Leave, the employee may be eligible for additional leave under the NFMLA.

## **Military Caregiver Leave**

A spouse, son, daughter, parent, or next-of-kin of a "covered servicemember" who has suffered a "serious injury or illness" and wants to care for the servicemember, is eligible for up to 26 weeks of Family Military Leave in a "single 12-month period." For purposes of military caregiver leave, the single 12-month period applies per servicemember, and per injury/illness. An eligible employee may *not* take military caregiver leave for an injury or illness that manifests itself *after* the military discharge; however, the employee may be eligible for leave under the traditional FMLA if the servicemember is a parent, spouse or child, and the ailment qualifies as a "serious health condition."

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During the single, 12-month period, caregiver leave is combined with regular FMLA leave and the total cannot exceed 26 weeks. If leave qualifies as both military caregiver leave and FMLA medical leave to care for a family member with a serious health condition, it will be counted as caregiver leave first.

## **Intermittent/Reduced Schedule**

Family Military Leave taken due to a qualifying exigency may be taken intermittently or on a reduced schedule basis. Family Military Leave taken to care for a covered servicemember with a serious injury or illness may be taken intermittently or on a reduced schedule basis only when 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 the University's operations. 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 Family Military Leave, employees must keep the Human Resources Department 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 upon 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.

## **Compensation During Family Military Leave**

Family Military Leave is unpaid, except that employees who have earned paid time off must use such leave concurrently with their Family Military Leave until such paid leave is exhausted. If the University's paid time off policies impose lesser notice requirements than this policy, the lesser requirements will apply during the period of paid time off.

## **Benefits**

The employee's group health, life and other insurance (if participating) will remain in effect throughout the Family Military Leave period on the same basis as if the employee were not on leave. During any paid portion of the leave, the employee's premiums will continue to be deducted from payroll. To the extent that payroll does not cover the employee's share of premiums; payments must be delivered to the Human Resources Department. Failure to make premium payments may cause the employee (and covered dependents) to be uninsured during a portion of the leave period. Sick, vacation, holiday and other benefits will be earned during the Family Military Leave; however, if the employee is concurrently using vacation or personal leave, then the University's policy for employees using vacation will apply.

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## DEFINITIONS

All definitions contained in the FMLA apply to Family Military Leave (excluding the definitions of "son" or "daughter"). Additionally, the following definitions apply to Family Military Leave under the FMLA:

**Active Duty:** The term "active duty" means 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.

**Contingency Operation:** The term "contingency operation" has the same meaning given such term in section 101(a) (13) of title 10, United States Code.

**Covered Servicemember:** The term "covered servicemember," for purposes of military caregiver leave, means a member of the Armed Forces, including a member of the National Guard or Reserves, who is on the temporary disability retired list or a veteran who was in active duty in the previous five years, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, or who is otherwise in outpatient status. A "veteran" is defined as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

**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.

**Serious Injury or Illness:** The term "serious injury or illness," for purposes of military caregiver leave, means an injury or illness incurred by the member in the line of duty or on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the armed forces) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. With regard to veterans, because they do not have a current "office, grade, rank, or rating," the serious injury or illness must be one that manifested itself before or after the member became a veteran.

**Son or Daughter of a Covered Servicemember:** This term means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

**Parent of a Covered Servicemember:** A "parent of a covered servicemember" means the servicemember's biological, adopted, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

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Next-of-Kin of a Covered Servicemember: This term means the nearest blood relative, other than the servicemember's spouse, parent, son, or daughter in the following order: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated, in writing, another blood relative for purposes of military caregiver leave. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the servicemember's next-of-kin for these purposes.

## **PROCEDURE**

### **Notice of Leave**

An employee requesting a leave of absence must notify the Human Resources Department as far in advance as practicable or within the same timeframe required for other absences. The employee should make reasonable efforts to schedule leave so as to not disrupt University operations. The employee must provide sufficient information as to the reason for the leave, to enable the University to determine eligibility for Family Military Leave, and must provide information as to the expected duration of the leave. When requesting subsequent leave for the same particular exigency related to the same military member, or the same injury/illness for the covered servicemember, the employee must specifically reference the qualifying reason or state "FMLA leave."

The University will notify an employee within five (5) business days whether he or she is eligible for Family Military Leave. If eligible, the University will also notify the eligible employee of their rights and responsibilities with regard to Family Military Leave.

### **Certification**

An employee requesting any form of Family Military Leave must provide written proof of the military member's military status, and call to duty or deployment information, on a form adopted by the University to determine whether the leave is FMLA-qualifying. For qualifying exigency leave, the employee must also provide a signed statement and description of facts for each particular exigency. For military caregiver leave, the employee must provide certification of the covered servicemember's serious injury/illness. These requirements may be waived by the Human Resources Department in cases of emergency or where both the need and the timing of the leave are obvious. These certifications 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 required certification, absent unusual circumstances, will cause the University to deny the Family Military Leave.

A certification of active duty will remain in effect for the dates of the military member's active duty status for the contingency operation. A certification of a particular exigency will remain in effect for the duration of that exigency.

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The University shall notify the employee within five (5) days of receipt of a complete and sufficient certification as to whether the leave is FMLA-qualifying. If the University is unable to determine whether the leave is FMLA-qualifying because the certification is incomplete or insufficient, the University shall notify the employee in writing, and state the information needed to cure the deficiency. The employee shall have seven (7) calendar days to cure the deficiencies, or Family Military Leave may be denied.

## **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 or NFMLA.

## **Return to Work**

Upon return to work, the employee will be restored to his or her prior job, or an equivalent position with equivalent pay, benefits and other terms and conditions, 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).

## **Unable/Decline to Return**

An employee who is unable or declines to fully return to work upon expiration of Family Military Leave will be considered to have resigned.

## **ADMINISTRATION AND INTERPRETATIONS**

The University will not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the FMLA, NFMLA, or this policy.

## **AMENDMENTS OR TERMINATION OF POLICY**

The University reserves the right to modify, amend or terminate this policy at any time.