



**The College at Brockport
State University of New York**

Category:

Office of Human Resources

Responsible Office:

Office of Human Resources

Policy Title:

Family and Medical Leave Act

Effective Date: January 16, 2009

Revised: February 23, 2010

Policy:

Background

Employees who meet certain service requirements are entitled, through the federal Family and Medical Leave Act (FMLA), to take leave of up to 12 weeks per year for serious personal or family health conditions. This leave can also be used for the arrival of a new child by birth, adoption, or foster placement.

Although FMLA leave is unpaid, the employee may elect to charge appropriate leave credits in order to continue income during such an absence. FMLA may be taken in consecutive "blocks" of time, or intermittently as needed.

Eligibility

1. Employee has completed a minimum of one year of State Service (months do not need to be consecutive)
2. Employee has at least 1250 working hours for the employer during the 12-month period before the leave begins. (These months are consecutive.)
3. Employee works at a work site that employs at least 50 employees at or within a 75-mile radius of that work site.
4. Absence due to a serious health condition of the employee, the child, parent, or spouse of the employee.

Definitions

1. Serious health condition – 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.
2. Child - a newborn, a child 18 and under, a child 18 and over unable to care for self due to disability, foster children, wards of the state, stepchildren.
3. Parent - biological or legal guardian since childhood.

Medical Documentation

Satisfactory medical documentation must accompany all requests for FMLA leave. Acceptable documentation should include prognosis, start date of the illness, and anticipated return to work date. For a personal serious health condition, employees should ask their health care provider to complete the Certification of Health Care Provider Form WH-380-E. For a family member's serious health condition, employees should ask the health care provider to complete the Certification of Health Care Provider Form WH-380-F.

FMLA and the NDAA

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA). Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for 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."

The NDAA also permits an employee to take FMLA leave for "any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the 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."

The final rule, effective January 16, 2009; defines "qualifying exigency" as follows:

- 1) Short-notice deployment
- 2) Military events and related activities
- 3) Childcare and school activities
- 4) Financial and legal arrangements
- 5) Counseling
- 6) Rest and recuperation
- 7) Post-deployment activities
- 8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee

On October 28, 2009, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act (H.R. 2647), which expands coverage for military exigency leave and military caregiver leave under the FMLA. The FMLA had previously been amended to provide "exigency leave" of up to 12 weeks for urgent needs related to a reservist family member's call to active service but was confined to family members of those in the National Guard or Reserves. The new requirement extends that leave to the family members of a member of any regular component of the Armed Forces during deployment to a foreign country, and removes the requirement that it be in support of a contingency operation. Provisions also expand caregiver leave to assist with treatment for an injury or illness incurred within a five year period before the leave. The changes take effect immediately.

Documentation

Employees requesting leave under this section should ask the health care provider to complete the Certification for Serious Injury of Illness of Covered Service member for Military Family Leave, Form WH-385 or Certification of Qualifying Exigency for Military Family Leave, Form WH-384 as applicable.

Procedures and Responsibilities for Requesting FMLA Leave:

Employee:

1. Employee submits written request to supervisor of need for FMLA as soon as possible (within thirty days for a scheduled surgery or other planned absence). Written request should be accompanied by a Leave Request Form detailing current accruals, the planned charging of accruals while on leave or request for leave without pay, or other type of leave (e.g. Additional Sick or Title F) and the appropriate medical certification. If unsure of accruals the employee should contact the timekeeper at x2744. **Supervisors have a responsibility to keep medical information and documentation confidential. Employees may submit medical documentation directly to Human Resources** (HR will alert supervisor of receipt of documentation, in this instance).
2. Employee completes timesheets for submission to payroll with a clear indication if time accruals are to be used. *Supervisor may complete upon verbal verification with employee.

Supervisor:

1. Alerts the Office of Human Resources immediately upon notification of an employees' possible need for leave. This does not have to be a written notice (may be verbal) from the employee, nor does the employee specifically need to mention the word "leave". Supervisors should be aware of indicators of need for leave. Examples: Employee requests time off for surgery, employee has been/will be absent 10 business days or greater due to illness, a request for time off due to a member of the employee's immediate family suffering a catastrophic injury or illness.
2. The supervisor prepares an *Appointment Form/s* placing the employee on FMLA leave. The supervisor will indicate leave date and expected return to work date. The supervisor will also indicate if the leave is to be taken using accruals at full, partial, or no pay. The *Appointment Form*, Leave Request Form, and the appropriate medical certification (unless submitted directly to HR) should be routed through the chain of command up to the appropriate vice president. Upon approval the vice president will route to the Office of Human Resources for final verification and approval. Partial documentation may be sent back to the supervisor for completion.

Human Resources:

1. Upon request of the supervisor or employee a Human Resources representative will meet with the parties to discuss the leave process and leave alternatives to create an individualized leave plan for the employee. This meeting is not required and is at the discretion of the supervisor or employee.
2. Upon notice of the need for possible FMLA leave, the Office of Human Resources mails the employee the Employee Notice of Eligibility and Rights and Responsibilities, within 2 business days, cc:to supervisor. If the employee is not eligible for FMLA leave, the HR representative will discuss alternatives with the supervisor.

3. If the employee is eligible for FMLA and upon receipt of medical documentation, the Human Resources representative will complete and mail to the employee the Designation Notice of FMLA leave, within five business days, cc: to supervisor. If there is lack of sufficient medical documentation this will be addressed in the letter.
4. Upon receipt of Appointment Form and Leave Request Form the employee will receive a letter detailing their leave plans and the approval for charging accruals. *Please note, the Appointment Form, Leave Request Form, and medical certification should be routed together. The only exception to this is in the instance where medical certification is submitted directly to HR.

Procedure for Requesting Unplanned FMLA

1. Employee should notify supervisor verbally as soon as possible. Employee should include expected dates of absence, usage of accruals for said absence, and reason for absence.
2. Employee should complete and return the Leave Request Form and appropriate medical certification as soon as is practical; FMLA leave protection may be delayed or denied if the employee fails to do so.
3. The supervisor prepares an *Appointment Form/s* placing the employee on FMLA leave. The supervisor will indicate leave date and expected return to work date. The supervisor will also indicate if the leave is to be taken using accruals at full, partial, or no pay. The *Appointment Form*, Leave Request Form, and the appropriate medical certification (unless submitted directly to HR) should be routed through the chain of command to the Office of Human Resources for final verification and approval. Partial documentation may be sent back to the supervisor for completion.
4. HR follows process as detailed above.

Extended Absences

If the medical provider extends the employee's absence, the employee must submit additional medical documentation to Human Resources (HR will notify supervisor).

Returning to work

Employees must submit a Return To Work Authorization Form or acceptable documentation indicating that they are able to perform the full range of duties **prior** to being allowed to return to work after being out on leave for a serious health condition (If said leave was for the employee, not an eligible family member, or approved intermittent leave). The supervisor should e-mail, call, or fax the Office of Human Resources indicating when the employee is returning to work. The supervisor must complete an *Appointment Form* returning the employee from leave on the date the employee returns to work and route the form through the chain of command to the Office of Human Resources.

Forms:

Appointment/Status Change Recommendation Form

Leave Request Form

Certification- Form WH-380-E, WH-380-F, WH384, or WH-385

Return To Work Authorization Form