Family and Medical Leave

Effective Date
March 2000

Last Revision Date
January 2009

Responsible Party
Vice President and Chief Financial Officer, (208) 426-1200
Human Resources, (208) 426-1616

Scope and Audience
This policy applies to all University employees.

Additional Authority
Family and Medical Leave Act

1. Policy Purpose
To establish policy and procedures for family and medical leave in accordance with the Family and Medical Leave Act (FMLA).

2. Policy Statement
The purpose of the Family and Medical Leave Act (FMLA) is to assist employees in balancing work life and family matters by providing leave for special health or family related needs. Employees who qualify are entitled to take up to 12 weeks (480 hours) of unpaid, job protected
leave each year. The employee may choose to use appropriate accrued paid leave or leave without pay for absence granted in accordance with the FMLA. In the event an employee does not request FMLA leave for time off work for a qualifying health condition, Boise State University will designate the employee’s absence as FMLA leave (as appropriate).

Amendments to the FMLA by the National Defense Authorization Act for FY2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness.

3. Definitions

3.1 FMLA Leave

Unpaid, job-protected leave authorized under the FMLA.

3.2 Family Member

Includes the employee’s spouse, mother, father, son or daughter under the age 18, or of any age if incapable of self-care because of a mental or physical disability.

3.3 Next of Kin

An individual’s nearest blood relative, other than their spouse, parent, son or daughter.

3.4 Qualifying Exigencies

Issues that arise related to deployment of a military member, and may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

3.5 Serious Health Condition

An illness, injury, impairment or physical or mental condition involving one of the following:
3.5.1 Hospital Care

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

3.5.2 Absence Plus Treatment

A period of incapacity of more than three (3) calendar days that also involves treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3.5.3 Pregnancy

Any period of incapacity due to pregnancy or prenatal care.

3.5.4 Chronic Conditions Requiring Treatments

A chronic condition that:

a. 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;

b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).

3.5.5 Permanent/Long-term Conditions Requiring Supervision

A period of incapacity that 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.

3.5.6 Multiple Treatments (Non-chronic Conditions)

Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).
3.5.7 Serious Injury or Illness for members of the Armed Forces including the National Guard or Reserves

An injury or illness incurred or aggravated by the member in the line of duty while on active 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.

4. Responsibilities and Procedures

4.1 Eligibility for FMLA Leave

An employee may take FMLA leave if s/he meets the following criteria:

a. Employment with the State of Idaho has been in effect for at least twelve (12) months. The twelve months do not have to be continuous employment. Employees who were on the payroll for any part of a week will be credited with a full week toward their total. This includes part-time or temporary workers. If an employee has a break in service of more than seven (7) years, time worked prior to rehire/reinstatement following that break in service does not count towards the twelve-month eligibility requirement (unless the break in service was due to the employee’s National Guard or Reserve military service obligations); and

b. Has worked at least 1,250 hours during the immediately preceding twelve-month period. This 1,250 hours means “actual time” spent working. It does not include paid vacation or sick time, nor periods of unpaid leave during which other benefits (i.e., a group health plan or workers compensation) continue to be provided by the employer.

4.2 Use of Paid Leave

An employee may use accrued vacation, sick or other paid leave they are entitled to concurrent with their FMLA leave. If the employee elects to use accrued paid leave concurrently with FMLA leave, the employee is required to comply with all procedural notice requirements of the university’s paid leave policies. An actual illness or disability must exist to use sick leave concurrently with FMLA leave.

4.3 Manner of Calculating the Year for 12-Week Entitlement

The State of Idaho, for the purposes of calculating the “12-month period”, uses a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the amount of leave the employee has taken under this policy in the past 12 months will be computed and subtracted from the available 12 weeks of leave. The balance remaining is the amount the employee is entitled to take at that time.
4.4 Purposes for FMLA Leave

The FMLA provides leave to employees for the following reasons:

a. Serious Health Condition of the employee

b. Birth of a child

   (i.) FMLA leave to care for or assist in the care of a newborn is available to all employees (male and female) as long as they are the parents or legal guardians of the child.

   (ii.) An expectant mother may take FMLA leave if her pregnancy makes her unable to work before the birth of the baby.

   (iii.) An employee’s opportunity to take leave for the birth and care of a new child concludes within 12 months of the birth.

   (iv.) Employees may use sick leave during the six to eight week recovery period following the birth of a child. Annual leave or unpaid leave is used after the recovery period, unless the mother or child has a Serious Health Condition. For additional use of sick leave to occur, the employee must provide medical certification of the actual illness or injury of the qualifying individual.

   (v.) With employer approval, intermittent FMLA leave is available for the birth of a child. Intermittent leave or a reduced work schedule used for this purpose cannot exceed a period of six (6) months, regardless of the number of FMLA hours used.

c. Adoption of a child or placement of a child in foster care

   (i.) FMLA leave may be taken for events incident to the adoption process such as pre-placement counseling sessions, court appearances, attorney consultations, adoption or foster care placement, and care for adopted or foster child.

   (ii.) FMLA leave may be taken in conjunction with the placement of a child in foster care.

   (iii.) FMLA regulations governing adoptions are complex. Please contact HRS for guidance.

   (iv.) An employee’s right to take leave for placement of a child for adoption or foster care must conclude within 12 months of the placement.
(v.) Sick leave may be taken if the adopted/foster child has a serious health condition, as certified by a health care provider.

d. Serious health condition of a family member

(i.) Employees may take FMLA leave to care for their spouse, child (under 18, or older if incapable of self-care due to mental or physical disability), designated guardian acting in loco parentis, or parent who has serious health condition. (Does not include domestic partners, siblings or in-laws).

(ii.) If employees request FMLA leave to care for family members, the employer will require a doctor's certification stating the need for support or care for the family member’s illness, as well as its expected duration.

e. Qualifying Exigency Leave

Eligible employees with a spouse, son, daughter, or parent on active duty or on call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies.

f. Military Caregiver Leave

(i.) Permits an employee who is the spouse, parent, child, or next of kin to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his/her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

(ii.) Limitations: Military Caregiver Leave shall only be available during a single 12-month period.

4.5 FMLA Procedures

a. Where the employee knows in advance of the need to take FMLA leave:
(i.) An employee who knows in advance that they will take FMLA leave must give 30 days notice prior to taking such leave. Such notice would include the anticipated start date of such leave and the expected duration.

(ii.) In situations where advance notice is not possible, the employee shall notify the employer as soon as feasible. As soon as feasible ordinarily would mean employees giving at least verbal notice one to two days after the employee knows of their need for FMLA leave.

(iii.) Whenever an employee requests or needs FMLA leave, the employee shall complete and submit to HRS the Notice of Eligibility and Rights and Responsibilities. If the employee is not able to fill out this form, the supervisor, acting on the employee’s behalf, may complete it.

b. When it is impossible to provide advance notice:

If the employee is unable to provide notice because of unforeseen circumstances, an employee’s friend or family member, acting on the employee’s behalf, can notify the employer of the employee’s need to take FMLA leave. Such notice can be given by a phone call, fax or by e-mail. However, as soon as such notice is given, the employee’s supervisor shall notify Human Resources.

c. FMLA Employer Notice of Eligibility and Rights and Responsibilities

(i.) When an employee or his/her representative requests FMLA leave, HRS will send to the employee within five (5) business days, a Notice of Eligibility and Rights and Responsibilities for FMLA.

(ii.) An employee will be required to provide a written release to return to work, with any work restrictions noted, from their medical practitioner upon their return from a personal disability.

d. Certification Requirement (Proof of Medical Necessity)

(i.) When an employee requests FMLA leave for their own serious health condition or to care for family members, the university will require the employee to furnish a doctor’s statement certifying the medical information necessary to determine the employee’s eligibility for FMLA leave at the time such leave is requested. The employee must return the completed medical documentation within 15 days from the date s/he makes the
request for leave, unless a request for extension is received and approved. If an employee fails to provide sufficient or complete medical documentation, the university may request additional information from the employee’s health care provider to determine approval or denial of FMLA. The employee has seven (7) calendar days (unless not practicable) to provide the additional information. Failure by the employee to do so may result in denial of FMLA leave.

(ii.) If the requested FMLA leave is unforeseen, the employer will request certification after the leave commences. The employee or their representative must provide the certification within 15 days of the receipt of the request.

(iii.) If the first medical certification reasonably appears to lack validity, to verify an employee’s serious health condition, the university may request a second medical opinion. If the second medical opinion is different from the first, the university may request a third medical opinion. The third medical opinion is binding. If second and third medical opinions are requested, the university will pay the expense.

c. Procedures for FMLA Leave Reporting

(i.) Employees should not code FMLA leave to their timesheet until the employer has verified the employee’s eligibility for such leave. Such verification can be either orally or in writing.

(ii.) Employees/Supervisors must report absence hours each pay period using codes provided by HRS. Supervisors are responsible for ensuring accuracy of employee timesheets, including the use of FMLA leave codes.

(iii.) Employees on FMLA leave who are concurrently using available sick or vacation time will accrue sick and vacation hours at the same rate as if they were not on FMLA. However, once an employee goes on unpaid FMLA leave, they no longer accrue sick or annual leave.

4.6 Employee’s FMLA Rights

While on FMLA leave, the employee’s health benefits will remain unchanged. Thus, the employee will still be responsible for his/her share of the monthly premiums. As long as the employee is using sick or vacation leave balances to receive a full paycheck while on FMLA leave, the employee’s portion of health and dental insurance premiums will be deducted from the paychecks as usual. However, if the employee is not receiving a sufficient paycheck, or is
unpaid through the payroll, s/he must arrange to pay the employee’s portion of the medical insurance premium. If the employee does not return to work after FMLA leave for reasons beyond his/her medical condition, the university can require the employee to reimburse the State’s share of the premiums paid during his/her absence.

a. An employee’s use of FMLA leave cannot result in the loss of any employment benefits that the employee earned or was entitled to before using FMLA leave.

b. Use of FMLA leave cannot be counted against the employee for any disciplinary action regarding attendance.

c. Upon return from FMLA leave, employees are entitled to be restored to the position they held prior to their FMLA leave, or to be restored to a substantially equivalent position with substantially equivalent benefits, pay, or other terms and conditions of employment.

d. Per the university’s non-discrimination policy, and Title II of the Genetic Information Nondiscrimination Act of 2008, those on FMLA leave are protected against discrimination based on their genetic composition.

4.7 Worker’s Compensation

a. If an employee’s serious health condition is caused by a work related injury/disability, any lost time related to the worker’s compensation claim will run concurrent with FMLA.

b. If an employee on worker’s compensation leave is approved for modified or light duty work but remains qualified for FMLA leave, s/he may still choose not to work and to instead use FMLA leave. However, refusal of the modified or light duty work may lead to loss of worker’s compensation benefits.

4.8 Intermittent Leave

a. Examples of allowable intermittent FMLA leave include, but are not limited to, transporting a family member to a medical care facility, filling in for primary caregivers, making arrangements for changes in care, periodic medical treatments, or episodic chronic illnesses. Employees on intermittent leave may be temporarily transferred to another similar position if the transfer helps to accommodate the employee’s intermittent leave until the need for intermittent leave no longer exists.

b. Employees requesting intermittent leave or reduced hours should schedule their leave so as to disrupt the employer’s operations as little as possible. Employees must communicate their
absences to their department/supervisor on a regular basis, or as department procedure requires. Employees taking intermittent leave should, when possible, submit a schedule disclosing their planned leave. Only the amount of leave actually taken may be counted toward the 12 weeks to which employees are entitled.

4.9 Unique Situations

This policy is not all-inclusive. If this policy is silent on a particular situation, consultation with Human Resources or the Office of the General Counsel is recommended. Interpretations of the provisions of FMLA will be determined in accordance with the federal regulations as set forth by the Department of Labor (DOL).

Revision History

March 2000; January 2009; September 2009; March 2013