

# Benefits and Leaves: Family and Medical Leave Act Policy

**Subject:** University Human Resources

**Policy:** Family and Medical Leave Act Policy (FMLA)

**Effective Date:** January 1, 2019

**Revised:**

**Review Date:** Three (3) years from the Effective Date above

**Responsible Parties:** MSU Billings: Human Resources

MSU at Bozeman: University Human Resources

Great Falls College MSU: Human Resources

MSU Northern: Human Resources

**Applicability:** This policy applies to all employees who are eligible under the FMLA

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## SCOPE

This policy applies to the following MSU Campuses:

MSU Bozeman (including MSU Extension, Agricultural Experiment Stations, and Gallatin College)

MSU Billings (including City College)

MSU Northern

Great Falls College MSU

For the purpose of this policy, the term “university” means all campuses listed above.

## 1. INTRODUCTION AND PURPOSE

This policy provides the framework to administer the [Family and Medical Leave Act](#) (herein after referred to as FMLA) at Montana State University (MSU or university). This policy also provides employees with information about FMLA and outlines any obligations employers and employees may have during such leaves. Employees and supervisors may direct questions regarding FMLA leave to their respective University Human Resources office.

The FMLA allows eligible employees to take reasonable, job-protected leave for qualifying family and medical reasons and requires group health benefits to be maintained during the leave.

## **2. INTENT TO COMPLY WITH THE LAW**

The provisions of this policy are intended to comply with the Family and Medical Leave Act of 1993, as amended, and any terms used from the FMLA will be as defined in the Act or [the U.S. Department of Labor regulations](#). To the extent that this policy is incomplete, ambiguous, or contradicts the Act or regulations, the language of the Act or regulations will prevail or supplement the policy. MSU reserves the right to amend this policy from time to time to comply with any changes to the Act or regulations.

## **3. DEFINITIONS**

The following commonly used definitions are summarized for convenience:

### **a. Child**

A biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing in loco parentis who is either under age 18 or is age 18 or older and “incapable of self-care because of a mental or physical disability” at the time the FMLA leave is to commence. The term “child” who is a “covered service member” for purposes of exigency leave or military caregiver leave includes sons and daughters of any age.

### **b. Basic FMLA Year**

The university uses the twelve (12)-month period measured forward from the first date of leave designated as an eligible employee’s FMLA leave. Under this method, an eligible employee is entitled to twelve (12) weeks of leave during the twelve (12)-month period beginning on the first date FMLA leave is taken; the next twelve (12)-month period would begin the first time FMLA leave is taken after the completion of any previous twelve (12)-month period.

### **c. Business Days**

A calendar day in which the university offices responsible for administering FMLA are open for business. This does not include Saturdays, Sundays, or legal holidays.

### **d. Covered Active Duty**

In the case of a member of a regular component of the Armed Forces, this term means duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, this term means duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under [Section 101\(a\)\(13\)\(B\) of title 10](#), United States Code.

### **e. Exigency, Qualifying Exigency**

A need related to the fact the employee’s spouse, son, daughter, or parent is a military member on covered active duty and meets the criteria in [29 CFR §825.126](#).

#### f. Serious Injury or Illness

An injury or illness incurred by the covered service member in the line of duty on covered active duty which may render the service member medically unfit to perform the duties of their office, grade, rank, or rating.

#### g. Condition

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

#### h. Inpatient Care

An overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in [29 CFR §825.113\(b\)](#), or any subsequent treatment in connection with such inpatient care.

#### i. Continuing Treatment

Any one or more of the following: incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, or conditions requiring multiple treatments.

#### j. Spouse

A husband or wife, as defined or recognized under state laws on legal marriage in the State in which the marriage was entered.

### 4. ELIGIBILITY

An employee is eligible to request an FMLA leave if the employee has worked for the university a minimum of twelve (12) months (which need not be consecutive or served just prior to taking leave) and has been in a pay status for at least 1,040 hours during the twelve (12)-month period immediately preceding the leave.

“Key employees,” as defined in FMLA regulations are not excluded from FMLA leave.

### 5. BASIC FMLA 12-WEEK LEAVE

Twelve (12) weeks of FMLA leave is available during a rolling twelve (12)-month period; that is the twelve (12)-month period measured forward from the first date of leave designated as FMLA leave. Under this “rolling” method, an eligible employee is entitled to twelve (12) weeks of leave during the twelve (12)-month period beginning on the first date FMLA leave is taken.

### 6. FMLA EVENTS

Eligible employees may request, and will be granted, up to twelve (12) work weeks of FMLA leave within a twelve (12)-month period for the following events:

- a. The birth of an employee’s child and to care for a newborn child within one (1) year of birth;
- b. The placement of a child for adoption or foster care with an employee and to care for the newly placed child within one (1) year of placement;

- c. To care for the employee's spouse, son, daughter, or parent with a Serious Health Condition;
- d. For an employee's own Serious Health Condition which makes the employee unable to perform the functions of their job; or
- e. For any Qualifying Exigency arising when an employee's spouse, son, daughter, or parent is a military member, including members of the National Guard and Reserves and the Regular Armed Forces, on covered active duty or notified of an impending call or order to covered active duty. Examples of Qualifying Exigencies for such employees are: military events, childcare and school activities, arranging care for military member's parents who are incapable of self-care, financial and legal arrangements, certain types of counseling, rest and recuperation, and post-deployment activities.

Eligible employees may take FMLA leave for the birth or placement of a child within twelve (12) months of the birth or placement. Maternity and parental leave provided under the [Maternity and Parental Leave Policy](#) runs concurrently with FMLA leave. When both parents are MSU employees, each employee is entitled to twelve (12) weeks of FMLA leave.

Eligible part-time employees will receive pro-rated leave based on the average weekly hours in a pay status.

#### **7. MILITARY CAREGIVER 26-WEEK FMLA LEAVE**

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member is entitled to take up to twenty-six (26) weeks of leave in a single twelve (12)-month period to care for the service member with a Serious Injury or Illness.

Military Caregiver FMLA leave may not exceed twenty-six (26) weeks during the single twelve (12)-month period. The twelve (12)-month period begins on the first day the employee takes leave to care for a covered service member, even if basic FMLA leave was taken within the twelve (12) months prior. In no twelve (12)-month period may an employee's total FMLA leave (basic plus caregiver) exceed twenty-six (26) workweeks.

Eligible part-time employees will receive pro-rated leave based on the average weekly hours in a pay status.

#### **8. INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE**

FMLA leave will usually be taken for a period of consecutive days, weeks, or months. However, eligible employees may take FMLA leave intermittently or on a reduced leave schedule when medically necessary because of:

- a. The employee's own Serious Health Condition;
- b. To care for a spouse, parent, or son or daughter with a Serious Health Condition; or
- c. To care for a covered service member with a Serious Injury or Illness.

The employee must provide certification confirming the medical necessity for intermittent leave for a Serious Health Condition.

If an employee needs leave intermittently for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so it does not unduly disrupt university operations.

Eligible employees may request intermittent leave or reduced schedule leave for a Qualifying Exigency or following a birth or adoption, subject to university approval. In this case, the employee will notify their supervisor as soon as the need for leave is known and propose a schedule that minimizes disruption of the workplace. The supervisor and University Human Resources will review the proposal to determine whether the intermittent leave can be taken without significant interruption of the unit's operation.

In all cases of intermittent and reduced schedule leaves, the university reserves the right to transfer an employee to another position that better accommodates the employee's need for leave and the university's operations. This decision is at the discretion of the university. The alternative position must have equivalent pay and benefits.

## **9. UNIVERSITY NOTICE REQUIREMENTS**

### **Eligibility Notice.**

Within five (5) business days of (1) an employee's request for FMLA leave, or (2) the university learning an employee's leave may qualify as FMLA leave, the university will provide written notice of the employee's eligibility for FMLA leave. If the university determines the employee is not eligible for FMLA, the notice will state the reason. If the employee is eligible for FMLA leave, the notice will provide additional information required by the FMLA regulations.

### **Designation Notice.**

Within five (5) business days of the university's acquiring sufficient information to determine whether an employee's leave qualifies as FMLA leave, the university will notify the employee of whether the leave qualifies as FMLA leave. The notice will also advise of any fitness for duty requirements and, if known, the amount of FMLA leave exhausted.

## **10. EMPLOYEE FMLA NOTICE REQUIREMENTS**

An employee requesting FMLA leave must provide:

- a. At least a thirty (30)-day advance oral or written notice of the need to take FMLA leave when the need is foreseeable; or
- b. Timely notice, as soon as possible and practical, when the need for FMLA leave is not foreseeable; and
- c. Sufficient information for the university to understand the leave is for an FMLA-qualifying reason including, if known, the timing and duration of the leave.

If an employee fails to provide enough information to make a determination, the university may deny the FMLA leave.

Employees who are seeking additional leave because of a previously qualified FMLA reason, and who have not exhausted their FMLA leave benefits, must continue to provide sufficient information to University Human Resources to allow proper recording, accounting, and tracking of the use of FMLA leave.

## **11. CERTIFICATIONS**

### **a. Medical Certifications**

Employees may be required to provide medical certification for their own Serious Health Condition, to care for a family member with a Serious Health Condition, or to care for a covered service member with a Serious Injury or Illness. The university may request subsequent re-certifications during the course of the leave in accordance with the limitations set forth in the FMLA regulations.

University Human Resources, not the employee's direct supervisor, may contact an employee's health care provider to authenticate or clarify a completed and sufficient medical certification. University Human Resources may verify with the health care provider completed or authorized information on the certification, clarify handwriting on the form, or clarify the meaning of a response to a question on the form.

The university may deny FMLA leave if certifications are unclear and the employee fails to provide sufficient and complete certification.

Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members will be maintained as confidential medical records in files separate from the usual personnel files, subject only to the limited exceptions set forth in the FMLA regulations.

### **b. Second and Third Medical Opinions**

In cases where there is reason to doubt the validity of a required medical certification, the university may, at its own expense, require second and third opinions in accordance with FMLA regulations to resolve such doubts.

### **c. Certifications for Qualifying Exigency**

Upon request, employees seeking Qualifying Exigency leave may be required to provide:

- i. A copy of the military member's covered active-duty orders or call to covered active-duty status; and
- ii. A certification from the employee setting forth information concerning the nature of the Qualifying Exigency for which the leave is requested.

The university may request the covered active-duty orders only once. Subsequent separate calls to covered active duty may constitute a new request for Qualifying Exigency FMLA leave.

An employee who provides optional Form WH-384 may not be required to provide additional certification.

## **12. SUBSTITUTING PAID LEAVE**

Under federal law, FMLA leave is unpaid. However, an employee may, and in some cases must, take certain accrued leave to run concurrently with an employee's FMLA leave entitlement. The substitution of accrued leave for unpaid FMLA leave time does not extend the length of FMLA leave.

### **Annual Leave.**

As provided in [Sec. 2-18-615, MCA](#), employees may not be required to take accrued annual leave concurrently with FMLA leave if the reason for absence is illness. However, the employee may do so voluntarily.

### **Required Use of Sick Leave.**

Employees taking FMLA leave for purposes that also qualify for use of sick leave will be required to take accrued sick leave concurrently with FMLA leave.

### **Required Use of Compensatory Time.**

Supervisors may require employees to use accrued compensatory time concurrently with all types of FMLA-approved leave.

### **Required Use of Workers Compensation Related Leave.**

Leaves of absence taken in connection with a workers' compensation injury or illness will run concurrently with any FMLA leave entitlement. Once FMLA leave expires, employees will be responsible for self-paying the employer contribution in order to maintain health insurance benefit eligibility.

## **13. HEALTH INSURANCE BENEFITS DURING FMLA LEAVE**

Employees on approved FMLA leave are entitled to continue health insurance benefits. The university will continue to pay the employer contribution towards the employee's health insurance premium while the employee is on approved FMLA leave. If the employee is receiving pay from the university during the FMLA leave, the university will continue to deduct the employee portion of the health insurance premiums from the employee's paycheck. If the FMLA leave is unpaid, the employee must pay the employee portion of any health insurance premium on or before the due date determined by University Human Resources.

If health insurance coverage lapses because an employee has not paid the employee's share of the health insurance premium, upon return to work, the university will restore the employee and their dependents to coverage/benefits equivalent to those the employee would have had if leave had not been taken and payments had not been missed.

If an employee fails to return to work for thirty (30) calendar days after FMLA leave entitlement has been exhausted and has not been approved for any other type of leave, the university may recover the cost of any employee share of health insurance premiums paid by the university during FMLA leave. The employee will not be required to reimburse the university if there is a recurrence or onset of a Serious Health Condition or a change of circumstances beyond the employee's control that justifies waiving the recovery.

#### **14. FMLA LEAVE ON HOLIDAYS**

Employees may be paid holiday pay while on FMLA leave if they meet the requirement of the [Holidays and Holiday Pay Policy](#). If an employee takes intermittent leave during a week a holiday occurs, the holiday is not counted towards the employee's FMLA leave unless the employee was scheduled to work the holiday and takes the day off for an FMLA-qualifying reason. If an employee is using leave for the entire week, the university will count the entire week including the holiday as FMLA leave.

#### **15. RETURN TO WORK OR REINSTATEMENT**

An employee taking FMLA leave will be returned to the employee's same position, or to an equivalent position, unless the employee would have been terminated for reasons unrelated to the FMLA leave. FMLA leave will not result in any loss of benefits or seniority accrued prior to the beginning of the leave period unless the benefit or seniority has been discontinued for other employees without regard to the FMLA leave.

#### **16. ENFORCEMENT**

An employee who believes the university has violated the FMLA may contact the Human Resources Office on their campus or:

University Human Resources

406-994-3651

[humanresources@montana.edu](mailto:humanresources@montana.edu)

University Human Resources representatives will provide the employee with enforcement options, including filing a complaint with the U.S. Department of Labor, Wage and Hour Division 1-866-847-9243, or on line at: [www.wagehour.dol.gov](http://www.wagehour.dol.gov). Complaints should be filed within a reasonable time and may not be filed more than two (2) years after the last action the employee contends was in violation of the FMLA or more than three (3) years if the violation was willful. An employee may also have enforcement options under a [collective bargaining agreement](#). The employee may contact their union representative to inquire about any options under a collective bargaining agreement.

#### **17. REFERENCES**

[HR FMLA forms](#)

The US Department of Labor provides several [resources and forms](#) which may provide helpful information regarding the FMLA.