Managing Employees with Health Conditions

Greg Rowe
Principal Human Resources Consultant

Doug Kasyon
Americans with Disabilities Act Coordinator

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Topics…

- Sick Leave
- Medical Certification
- Family Medical Leave (FML)
- Returning to Work after FML
- ADA/Reasonable Accommodation
- Special Topic: Short-term Disability
Sick Leave - One of most commonly used leaves

**Classified**
- Health reasons; care for self, spouse, child, parent, or person in household or *in-locus-parentis*

**Faculty/Professional Exempt**
- Care for immediate family members *serious* health conditions, see FMLA
- Limited to 40 hours (fiscal) year for care of immediate family members.
# Annual and Sick Leave Accruals

## State Classified

### Annual Leave

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Hourly Accrual Per Month</th>
<th>Maximum Accrual Hours/Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 5</td>
<td>8</td>
<td>192/ 24</td>
</tr>
<tr>
<td>6 – 10</td>
<td>10</td>
<td>240/ 30</td>
</tr>
<tr>
<td>11 – 15</td>
<td>12</td>
<td>288/ 36</td>
</tr>
<tr>
<td>16 +</td>
<td>14</td>
<td>336/ 42</td>
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### Sick Leave

<table>
<thead>
<tr>
<th>Hourly Rate of Accrual Per Month</th>
<th>Maximum Accrual Hours/Days</th>
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</thead>
<tbody>
<tr>
<td>6.66</td>
<td>360/ 45</td>
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## Faculty and University Staff

### Annual Leave

<table>
<thead>
<tr>
<th>Hourly Rate of Accrual Per Month</th>
<th>Maximum Accrual Hours/Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.667</td>
<td>352 /44</td>
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</table>

### Sick Leave

<table>
<thead>
<tr>
<th>Hourly Rate of Accrual Per Month</th>
<th>Maximum Accrual Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>N/A</td>
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</table>
# Post Doctoral Fellows Leave Accruals

## Annual Leave

<table>
<thead>
<tr>
<th>Days of Accrual Per Year</th>
<th>Maximum Accrual Days</th>
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</thead>
<tbody>
<tr>
<td>12</td>
<td>Combined 44</td>
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## Sick Leave

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Family Medical Leave (FML) Overview

- Federal law
  - Only job protection, **NO** pay
    - Pay component comes from any sick and annual leave accrued
  - **Serious** medical condition
Family Medical Leave (FML) Overview

- Employee must have 1 yr service AND 1250 hours in last yr
- Classified: 520 hours (13 weeks) in a rolling calendar year (effective July 01, 2015)
- Faculty: 480 hours (12 weeks) in a rolling calendar year
- If intermittent, count 480/520 hours
- May run concurrent with first 90 days of Workers Comp
- Can get a 2nd or 3rd opinion but the department pays the fees
Rolling Calendar Year

- 12-month period measured backward from the date an employee uses any FMLA leave.
- Under the “rolling” calendar year, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.
Rolling Calendar Year

Example 1

- Michael requests three weeks of FMLA leave to begin on July 31st. The employer looks back 12 months (from July 31st back to the previous August 1st) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.
Rolling Calendar Year
Rolling Calendar Year

Example 1

- Patricia requests two weeks of FMLA leave to begin on November 1.
- The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that Patricia had taken four weeks of FMLA leave beginning January 1, four weeks beginning March 1, and three weeks beginning June 1.
- Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1 as the days of her previous January leave “roll off” the leave year.
Rolling Calendar Year

![Diagram showing a 12-month look back with specific dates and FMLA leave periods.]

- November 2: 4 Weeks FMLA Leave
- 12/1: 4 Weeks FMLA Leave
- 1/1: 3 Weeks FMLA Leave
- 11/1: 1 Week FMLA Leave

DATE TIMELINE
Family Medical Leave – Helpful hints

- Leave is a CU process. FMLA is federal law
- You can get FMLA even if you are on LWOP from CU
- Certain conditions do not qualify as FMLA:
  - Flu
  - Physicals
  - Elective surgery (e.g. – cosmetic procedures)
  - Abusing substances at work
Medical Certification – What is it?

- Your employee’s medical provider (MD, RN, Therapist) statement of diagnosis, prognosis and duration of care

Forms

- Faculty & University Staff: “Attachment A”
- Classified Staff: State Personnel form
- US DOL (parent of FMLA): Federal form
Medical Certification –
What it is & When to Request it

- Do not accept an MD script pad note saying patient under their care with no additional info
- Have employee give MD the form appropriate to their employee group to fill out
- Having the form is generally a prerequisite to awarding FML
Medical Certification – When to Request it

- Request anytime employee provides notice or indication of qualifying condition
- Must provide form within 5 days
FML Process – Going Out

- Employee notifies supervisor of need
  - Employee turns in leave slip and medical certification within 15 days
  - Department sends Individual Notice of FML to the employee
- Copy Dept & HR, original goes to the employee
FML Process – Returning

- Employee has Medical Provider complete Fitness to Return to Work Form
- Guarantee of same or equal job when they return
- Must be able to perform essential job functions as documented in the job description
FML Process – Returning

Fitness to Return Forms

- Faculty & University Staff: Found on the HR website
- Classified Staff: Found on the HR website

Fitness to Return – Mental Health

- A narrative from the medical provider identifying they can perform essential functions of job as documented in job description
Essential Job Functions

- Essential job functions are the actual functions performed in position (not just what’s on paper)
  - Time spent
  - Consequences if not performed
  - Specialized knowledge
  - Number of employees available to perform the function
Fitness to Return - Temporary Restriction/Temporary Alternative duty

- When an employee cannot perform the essential job functions temporarily, you have two options:
  - Deny the return to work
  - As a courtesy, honor them for a short time period (1-4 weeks). Be clear it is a courtesy & extension will require use of remaining FML leave
Permanent Restriction - Employee Cannot Perform Essential Job Functions

- When an employee cannot perform the essential job functions on a permanent basis, the employee should be informed of reasonable accommodation under the Americans with Disabilities Act

- It is up to the employee to request reasonable accommodation – they are not required to do so.
Reasonable Accommodation – What is it?

- Reasonable accommodation is any change in the work environment or in the way things are usually done that would allow an employee to perform the functions of their job...
  - (work stations, approach to work, etc.)
- ...Unless the accommodation would cause an undue hardship on the operation of its business
Reasonable Accommodation – What is it?

- An employer must make a reasonable accommodation to the known physical or mental limitations of a qualified employee with a disability.

- Qualified
  - meets the skill, experience, education, and other job-related requirements of a position held, and who, with or without reasonable accommodation, can perform the essential functions of a job.

- Disability
  - physical or mental impairment that substantially limits one or more of his/her major life activities, including bodily functions; or
  - has a record of such an impairment.
Reasonable Accommodation – What is an Undue Hardship?

- An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business
Reasonable Accommodation – Process

- Process begins when employee submits Reasonable Accommodation Form to ADA Coordinator (ADAC)
- ADAC determines if employee meets definition of disability
- With input from medical professional and employee, ADAC determines essential job functions needing accommodation
- With input from employee and possible assessment, ADAC identifies reasonable accommodations
Reasonable Accommodation – Process

- ADAC informs supervisor of accommodations and seeks input regarding undue burden
- Supervisor implements reasonable accommodations.
- Supervisor need not know the disability
  - That’s in your best interest – avoid specific discrimination allegations
What if the Employee Cannot Perform Job Function with Accommodation?

- Employee is not qualified for the position
- Accommodation of last resort = reassignment
  - Open position
  - Do not create a position for employee
  - Avoid taking away essential job functions to keep person in position
Reasonable Accommodation – Helpful Hints

- Whenever an employee needs something because of a health condition, it is a request for reasonable accommodation
  - No magic words needed!

- Do not accommodate without the involvement of the ADA Coordinator
  - Why? To ensure consistency, fairness, to process allows us to receive documentation that condition exists, and centralized documentation needed for Dept of Labor audits
Reasonable Accommodation – Service Animals

- Very specifically limited to a dog or a miniature horse
- Trained to perform a specific function for the individual with a disability
- “Comfort Animal” – not covered
Family Medical Leave – Intermittent Use

- Not continuous time off
- Can be a day or hours at a time
- Example: Kidney dialysis
Family Medical Leave – Exhausting FML

- An employee has exhausted the 480 or 520 hours of leave.
- At end of leave, expected to return & able to perform essential job functions.
The Employee is Out of Leave and is Requesting More Time

- If employee is out of FML leave, they can use remaining accrual and seek additional leave under the ADA
- Goal of leave must be to complete treatment, rehabilitate, etc. so employee will return to work
- Leave must be for defined timeframe that is *reasonable* (case-by-case basis)
- Undue burden consideration applies
When Can I Terminate the Employee?

- Employee is out of FMLA leave and does not return to work
- Employee is out of sick and vacation leave and medical professional says employee cannot return to work
- Employee cannot perform essential job functions even with reasonable accommodation, and no reassignment available or
- If employee is seeking ADA leave, but no definitive time is conveyed
Helpful Hints

- Obtain medical certification with 15 days of employee requesting FMLA
- If we do not have a medical certification, FMLA is not granted
- Employee requests medical provider for additional information, not Department
Scenarios
Scenario #1 – I have the Flu!

- Employee (5 Yr - F/T) calls in on Wednesday evening and says I have the flu and I will be out Thursday and Friday.
- Employee calls back on Monday morning and says I’m still sick and I will be out today and probably tomorrow.
- Brings Med Certification in on Wednesday.
Scenario #1 – Qualify?

- Svc 5 yr is > 1 yr for FMLA, F/T is > 2150 Hr
- 4 > 3 days off, Med Cert

- FMLA – NO, this is a flu, not a serious health condition and not a pandemic like H1N1.
Scenario #2 – Treated in the ER

- Employee (3 Yr – F/T) calls in on Wednesday, went to emergency room on Monday and was admitted to the Hospital. Has to go back today for follow up care and will see a specialist on Friday.
Scenario #2 – Qualify?

- Svc 3 yr > 1 yr FMLA, F/T > 1250 Hr
- 4 > 3 days off, No Med Certf, ER visit

- Serious Health condition - Probably, get info to employee to get a med certification today or visit with Specialist.
Scenario #3

- Asst. Professor with only 9-months on the job, tells you that every second Wednesday of each month he has been going to kidney dialysis since January and will have to continue this indefinitely.
Scenario #3 – Qualify?

- 9 mos Asst Prof has the 1250 Hrs grandfathered, but not the year to qualify for FMLA, recheck HR records and insure no other service with CU.

- Make him 14 months with other CU svc, this is an intermittent FMLA case (kidney dialysis) and may be a 9-month employee with S/L only. Need more info.

- ADA – employee can request reasonable accommodation for flexible schedule.
Scenario #4

- Employee (18 Yr – F/T) discloses a mental health condition and says she needs to be able to meet with his psychiatrist on an as-needed basis.
Scenario #4 – Qualify?

- Svc 18 yr > 1 yr FMLA, F/T > 1250 Hr
- Intermittent FMLA case, no Med Cert, continuing care
- ADA – this also requires an ADA outreach
  - I have Y condition. I need X related to work.
  - Provide employee’s name to ADA Coordinator for outreach.
- FMLA & ADA can operate at the same time.
  - FMLA is tracking the time away from work & accruals can cover the time, but if employee out of paid leave, ADA can provide the flexible schedule to make up the time.
Scenario #5

- Two years ago an employee disclosed that he was diagnosed with Multiple Sclerosis. Early on, he was out 2 days a month due to the condition, however, at this point absences have become frequent. You notice his file does not have a current medical certification and that he will be out of FML leave next month. What should you do?
Scenario #5 – What do you have?

- Get a new med cert with current medical info
- Start to evaluate job performance
- If condition appears to be impacting performance, contact ADA Coordinator for outreach.
A few words on Short-Term Disability

- In these scenarios STD can last six months, the waiting period of one month and five months paid.
- Faculty and University staff have to purchase STD.
- All sick leave must be exhausted before any payments commence.
- This is private insurance through Standard Ins Co.
Questions?

Greg Rowe
Principal Human Resources Consultant
303.724.9691 | greg.rowe@ucdenver.edu

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