



# University of Colorado Denver

---

## Administrative Policy

<b>Guideline Title:</b>	<b>Family Medical Leave for Faculty and Exempt Professional Staff</b>
Source:	Human Resources
Prepared by:	Assistant Vice Chancellor for Human Resources
Approved by:	Teresa Berryman, Vice Chancellor for Administration and Finance
Effective Date:	September 1, 2005
Replaces:	Faculty and Unclassified Staff FML Rules and Procedures (Anschutz Medical Campus and Downtown Campus)
Referral:	Family Medical Leave Act 1993
Applies:	All campuses

---

### A. Introduction

The University of Colorado Denver (UCD) recognizes that its faculty and staff strive to balance their work and personal lives. This Family Medical Leave (FML) guideline for faculty and exempt professional staff ("staff") is designed to support these efforts and to meet the provisions of the Family Medical Leave Act (FMLA). Generally, the FMLA requires employers to provide up to 12 weeks of unpaid leave during a 12-month period for certain family and medical reasons.

The provisions of this guideline are intended to be consistent with the FMLA implementing regulations. The Human Resources (HR) Department has designated an [FML Coordinator](#).

The rules of the State Personnel System provide classified staff with FML opportunities. Those State personnel rules, along with FML requirements incorporated by campus guidelines, are to be consulted for leaves applicable to classified staff.

### B. Table of Contents

- A. Introduction
- B. Table of Contents
- C. Definitions
- D. Provisions
- E. Process
- F. Insurance Benefits
- G. Return from FML
- H. Coordination with University Parental Leave Policy

## C. Definitions

1. Spouse: A husband or wife as recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Colorado law recognizes common law marriages.
2. Parent: A biological parent or an individual who stands or stood *in loco parentis* to a faculty or staff member when he/she was a child. Parent does not include parent-in-law.
3. Son or Daughter: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the ADA.
4. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves:
  - a. inpatient care;
  - b. continuing treatment by a health care provider and any period of incapacity due to pregnancy or for prenatal care;
  - c. a period of incapacity of more than three consecutive calendar days and continuing treatment by a health care provider;
  - d. a period of incapacity or treatment for such incapacity due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy) and continuing treatment by a health care provider;
  - e. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or the terminal stages of a disease) and continuing treatment by a health care provider; or
  - f. any period of absence to receive continuing treatment by a health care provider either for restorative surgery or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment (e.g., cancer, severe arthritis, and kidney disease).

Cosmetic treatments (e.g., most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of serious health condition.

5. Health Care Provider: Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse midwife and clinical social worker, performing within the scope of his/her practice as defined under State law. Chiropractors and Christian Science practitioners are health care providers to the extent defined under FML regulations. Also included is any health care provider recognized by the University's group health plan for reimbursement of services.
6. Equivalent Position: A position that is virtually identical to the faculty or staff member's former position in terms of pay, benefits, and working conditions, including privileges, prerequisites and status.

## D. Provisions

### 4. FML Entitlement

Eligible faculty and staff are entitled to a total of 12 work weeks of unpaid FML during a rolling 12-month period, measured backward from the date a faculty/staff member uses any FML if leave is requested for any one or more of the following reasons:

- a. the birth of the faculty or staff member's son or daughter, and to care for the newborn child. (Leave must be completed within 12 months of the date of birth.);
- b. the placement with the faculty or staff member of a son or daughter for adoption or foster care and to care for the newly placed child. (Leave must be completed within 12 months of the date of placement.);
- c. to care for the faculty or staff member's spouse, son, daughter, or parent with a serious health condition; and
- d. because of a serious health condition that makes the faculty or staff member unable to perform one or more of the essential functions of his/her position.

### 2. Determination of Eligibility

A request for leave is contingent upon a determination that the individual is eligible for FML. Unless waived by Supervisor for good cause after consultation with the Human Resources Office, a faculty or staff member, to be eligible for FML, must have been employed by the University of Colorado for at least 12 months and have worked at least 1,250 hours during the most recent 12-month period. Full-time faculty on nine-or 12-month appointments are deemed to meet the 1,250 hour test. Eligibility also includes compliance with requirements of this Policy. The 12 work weeks is prorated for eligible part-time faculty/staff. For purposes of confirmation of family relationship, the University may require the individual to provide reasonable documentation or statement of family relationship.

### 3. Substitution of Leave

Generally, FML is unpaid. However, under the provisions of this section, a faculty/staff member may choose or may be required to substitute paid leave for unpaid FML.

- a. Sick Leave. If the purpose of the leave is the serious health condition of the faculty or staff member, he/she will be required to substitute any accrued sick leave for unpaid FML. The faculty or staff member may elect to substitute sick leave for unpaid leave to care for his/her spouse, son, daughter, or parent with a serious health condition.
- b. Vacation Leave. If the purpose of the leave is the serious health condition of the faculty or staff member, he/she will be required to substitute any accrued vacation leave for unpaid FML. The faculty or staff member may elect to substitute vacation leave to care for her/his spouse, son, daughter, or parent with a serious health condition.
- c. Short-term Disability Leave. The FML 12-week entitlement will run concurrently with any leave without pay taken while a faculty or staff member is receiving short-term disability benefits, including any waiting period.
- d. Job-related Injury or Illness. A serious health condition may result from job-related injury or illness. Paid injury leave (staff) or leave while covered by the Workers' Compensation Plan (faculty), even though taken for an FML qualifying purpose, will

not count against the 12-week FML entitlement; except that, such leave will be counted against the individual's FML entitlement if the injury leave/leave while covered by the Workers' Compensation Plan is exhausted and the individual requests FML for the same work-related injury or illness.

#### 4. Spouse Limitation

If husband and wife both work for the same University department or administrative unit, and are eligible for leave, they are only entitled to a combined 12 work weeks of leave taken for birth, adoption, foster care, and to care for a parent. This provision may be waived by Supervisor for good cause after consultation with the campus department of human resources.

#### 5. Intermittent or Reduced Leave Schedule

A faculty or staff member taking leave for his/her own serious health condition or to care for a spouse, parent, son or daughter with a serious health condition need not take leave continuously. Leave may be taken intermittently or on a reduced leave schedule if the faculty or staff member provides certification of medical necessity. Faculty or staff needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the operations of his/her department.

Supervisor may temporarily assign the faculty or staff member to an alternative position with equivalent pay and benefits, during the period of the intermittent or reduced leave schedule, for which the individual is qualified and which better accommodates recurring periods of leave. A faculty or staff member taking leave for birth or placement may take leave intermittently or on a reduced leave schedule only with the approval of Supervisor.

#### 6. Designation of Leave

It is the responsibility of Supervisor to designate leave, paid or unpaid, as FML and to give notice of the designation to the faculty/staff member. If Supervisor does not have sufficient information about the reason for the use of leave, he/she should inquire to ascertain whether the leave qualifies as FML. The designation decision will be based only on information received from the faculty/staff member (or spokesperson).

The Supervisor must promptly (within two working days, absent extenuating circumstances, after notice of the need for leave or after Supervisor (or delegate) has acquired knowledge that the leave is being taken for a FML reason) notify the faculty/staff member that leave is designated and will be counted as FML. This designation may be oral, but must be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice in which case the notice must be no later than the subsequent payday).

If there is a dispute over designation of leave, it should be resolved through discussions between Supervisor and the faculty/staff member. Such discussions and decision shall be documented.

### **E. Process**

#### 1. Request for Leave

Faculty shall request leave under this Policy whenever the University must hire a substitute for the faculty member or when the Dean or other administrative superior, after consultation with the department concerned, shall so decide. Staff shall request a leave under this Policy whenever paid or unpaid leave time for any purposes listed in Section A above, extends for a period of one week or longer.

#### 4. Notice to Supervisor

If the need for the leave is foreseeable, the faculty or staff member must provide notice of not less than 30 days to Supervisor. Leave will be denied, unless there is a reasonable excuse for the late notice, until 30 days' notice is provided. If the need for the leave is of an emergency nature, the request must be submitted as soon as practicable, but no later than two business days from the day the individual learns of the need for the leave, except in extraordinary circumstances where such notice is not feasible.

#### 3. [Medical Certification](#)

For leave to care for a family member with a serious health condition or for leave due to the individual's own serious health condition, [Medical Certification](#) must be provided, using a form provided by the University, within 15 calendar days of the date the leave request is made, unless it is not practicable under the particular circumstances. A second opinion, at University expense, from an independent medical provider selected by the University, may be required. If the two opinions conflict, the conflict may be resolved by a third opinion, at the University's expense, by an agreed-upon provider which shall be considered final.

#### 4. [Written Notice](#)

The University will provide the faculty or staff member with [Written Notice](#), detailing the specific expectations and obligations of the individual and explaining any consequences of a failure to meet these obligations.

#### 5. Scheduling

If the leave is for the planned medical treatment of the faculty or staff member or family member, or requires intermittent or reduced schedule leave, faculty and staff may be required by their Dean or Supervising Officer (or delegate) to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.

#### 6. Periodic Reporting and Recertification

Faculty and staff on leave may be required to report on their status and intent to return. During leave, the University may also require recertification of the medical condition that caused the individual to take leave when the University obtains information that casts doubt on the continuing validity of the original certification, when the individual requests an extension of leave or when circumstances have changed.

## F. Health Plan Benefits During Unpaid Leave

During unpaid FML, the University will maintain health plan coverage on the same conditions as coverage would have been provided if the faculty or staff member had been continuously employed during the entire FML period.

1. Timely Payment of Premiums

Once the employee starts leave without pay the [CU Payroll and Benefits Services](#) will contact them to arrange payment for their share of the premiums. During this same time frame, the university will continue its share of the premiums as long as the employee maintains their share. In order to drop coverage the University shall provide written notice that the payment has not been received.

2. Failure to Return to Work

The faculty or staff member will be required to reimburse the University for the employer's share of health insurance premiums paid on the employee's behalf during unpaid leave if the faculty or staff member does not return to work following FML, or returns but fails to stay 30 calendar days, for a reason other than (1) the continuation, recurrence, or onset of a serious health condition which would entitle the individual to FML or (2) other circumstances beyond the individual's control.

3. Benefits Upon Return to work

A faculty or staff member may choose not to retain the University's health insurance program during unpaid leave. When the faculty or staff member returns from leave, he/she is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, or exclusion of pre-existing conditions.

## **G. Return From FML**

Upon return from FML, the faculty or staff member will be returned to the same position he/she held when the leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, except that an individual has no greater right to reinstatement or to other benefits and conditions of employment than if he/she had been continuously employed during the period.

1. Tenure Probationary Period

Leave taken pursuant to this Guideline does not count as part of the tenure probationary period. However, a faculty member may elect, no later than six months following his/her return to full-time service, to have the leave time count as part of the tenure probationary period. Such an election shall be made in writing and must be approved by the Dean and the Chancellor. The faculty member's election is irrevocable and not subject to modification.

2. Accrual of Sick and Annual Leave

Accrual of sick leave and annual leave (for staff) while the faculty/staff member is on unpaid FML will be determined by established University policy on leave without pay.

3. Other Benefits

At the end of the FML, other benefits, including group life insurance, health insurance, disability insurance, and pensions must be resumed in the same manner and at same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FML affecting the workforce, unless otherwise elected by the faculty or staff member. Upon return from FML, an individual cannot be required to requalify for any benefit enjoyed before FML began. With respect to University pension plans, any period of unpaid FML will not be treated as, or counted toward, a break in service for purposes of vesting and eligibility to participate. However, unpaid FML will not be treated as credited service for purposes of benefit accrual vesting and eligibility to participate.

#### 4. Certification Upon Return

A faculty or staff member returning to work because of his or her own serious health condition may be required, consistent with FML Regulation 825.310, to present written documentation from his/her attending physician that he/she is able to return to work. A certification shall be required of any individual who is on Family and Medical Leave for more than 30 days due to his/her own serious health condition. A certification may be required for leaves of less than 30 days when it is determined that the nature of the health condition in relation to the individual's duties make such a certification consistent with business necessity. This Policy shall be applied consistently to all similarly situated individuals. The certification shall only address the particular health condition that caused the individual's need for FML. This certification shall not be required of individuals taking intermittent FML. Return to work may be delayed until the required certification is furnished. Any such medical inquiry will be conducted in accordance with the ADA.

### H. Coordination with University [Parental Leave Policy](#)

The provisions of the university [Parental Leave Policy](#) are maintained and implemented in a manner consistent with the requirements of this Guideline.

Provisions of this Guideline are applicable to leave taken under the [Parental Leave Policy](#) only if the leave is taken for a FML reason listed under Section D of this Policy. If leave is taken for such a FML reason, provisions of this Policy are applicable only to that portion of the leave taken under the Parental Leave Policy that does not extend beyond the 12 week entitlement.

If leave is taken under the [Parental Leave Policy](#) for a FML reason, listed under Section D of this Policy, the leave shall count against the 12 week FML entitlement. Similarly, if leave is taken under this Policy for a purpose allowed under the Parental Leave Policy, the leave shall count against the entitlement under the Parental Leave Policy.