



## University of Colorado Denver | Anschutz Medical Campus Guidelines for Family Medical Leave

Revised March 2020

The University of Colorado Denver | Anschutz Medical Campus recognizes that its employees strive to balance their work and personal lives and provides leave in accordance with the Family Medical Leave Act (FMLA). These Family Medical Leave (FML) guidelines for officers, university staff and all faculty types are designed to support these efforts and to meet the provisions of the FMLA. Generally, the FMLA requires employers to provide up to 12 weeks of job protection 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 to consult with employees regarding their specific situations. Please contact: HR.FML@ucdenver.edu for assistance.

FML for state classified staff is governed by the rules of the State Personnel System. Those State Personnel rules are to be consulted for leaves applicable to classified staff.

### 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 and same sex marriage in states where it is recognized. Colorado law recognizes common law marriages as well as same sex civil unions.
2. Parent: A biological parent or an individual who stands or stood in loco parentis to an employee 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 Americans with Disabilities Act (ADA).
4. Next of kin of a Covered Service member: The service member's nearest blood relative other than the covered service member's spouse (including same sex spouse or civil union), parent, son or daughter, as defined by the federal regulations.

5. Covered Service member: A current 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 incurred while in the line of duty on active duty. A veteran undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran underwent medical treatment, recuperation, or therapy.
6. Qualifying Exigency: Short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post deployment activities and additional activities not encompassed in other categories, but agreed to by the employer and employee.
7. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves:
  - a. Inpatient care – includes an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment and recovery in connection with or consequent to such inpatient care.
  - b. Continuing treatment by a health care provider – A period of incapacity of more than three consecutive full calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
    - i. Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; OR
    - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
    - iii. Treatment by a health care provider means an in-person visit to a health care provider. The first in person treatment must take place within seven days of the first day of incapacity.
  - c. Pregnancy – Any period of incapacity due to pregnancy, including prenatal care.
  - d. Chronic Conditions Requiring Treatments –
    - i. Requires periodic visits (at least twice a year) to a health care provider or a nurse or physician’s assistant under direct supervision of a health care provider; AND
    - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); AND
    - iii. May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).
  - e. Permanent/Long-term Conditions Requiring Supervision – A period of incapacity which is permanent or long term due to a condition for which treatment may not be

effective. The patient must be under continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, terminal stages of disease).

- f. Multiple treatments (non-chronic condition) – Any period of absence to receive multiple treatments (including any period of recovery there from)

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.

8. 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 FMLA regulations. Also included is any health care provider recognized by the University of Colorado group health plan for reimbursement of services.

9. Equivalent Position: A position that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, perquisites and status.

## Provisions

### 1. Basic FMLA Entitlement

Eligible employees are entitled to a total of 12 work weeks of unpaid FML during a rolling 12-month period\*, measured backward from the date an employee uses any FML if leave is requested for any one or more of the following reasons:

- a. the birth of the employee'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 employee 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 employee's spouse, son, daughter, or parent with a Serious Health Condition; and
- d. because of a Serious Health Condition that makes the employee unable to perform one or more of the essential functions of his/her position.

\* Paid Leave may run concurrent to FML leave under section 3(a-d) below.

### 2. Military Family Leave Entitlement

- a. Injured Service Member Leave – Eligible employees are entitled to up to a total of 26 work weeks of leave during a 12 month period to care for an injured covered service member who is the employee's spouse, parent, son or daughter, or relative for whom the employee is the "next of kin." This leave is based on a single 12 month period and begins with the first day

the employee takes leave. This leave is applied on a per-covered-service member, per-injury basis. Regardless of the type of FMLA leave, employees are entitled to no more than 26 weeks in a single 12 month period.

- b. Qualifying Exigency Leave – Eligible employees may take up to a total of 12 weeks of leave while the employee’s spouse, son, daughter or parent (covered military member) is on active duty or called to active duty status due to a qualifying exigency.

### 3. Determination of Eligibility

A request for leave is contingent upon a determination that the individual is eligible for FML. To be eligible for FML protected leave, an employee must have been employed by the University 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 these guidelines. Part time employees who are designated as exempt from overtime eligibility under the Fair Labor Standards Act with an appointment of greater than 50% are presumed to have met the 1,250 hours requirement, provided they have at least one year of University service. This presumption will be lost if the employee has taken FML and or any extended period of leave in the 12 months prior to requesting FML. The 12 work weeks is prorated for eligible part-time employees. For purposes of confirmation of family relationship, the University may require the individual to provide reasonable documentation or statement of family relationship.

### 4. Substitution of Leave

FML is federally mandated job protection and unpaid leave; it runs concurrently with all types of paid leave. Under the provisions of this section, an employee may be required to substitute paid leave for unpaid FML.

- a. Sick Leave: The employee will be required to substitute any accrued sick leave for unpaid FML.
- b. Vacation Leave: Following the exhaustion of accrued sick leave, the employee will be required to substitute any accrued vacation leave for unpaid FML.
- c. Short-term Disability Leave: The FML 12-week entitlement will run concurrently with any leave taken while an employee 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 or leave while covered by the Workers' Compensation Plan will also count against the 12-week FML entitlement.

### 4. Intermittent or Reduced Leave Schedule

An employee 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 FML continuously. FML may be taken intermittently or on a reduced leave schedule if the employee provides certification of medical necessity. Employees needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the operations of their department. Supervisor may temporarily assign the employee 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. An employee taking leave for birth or placement may take leave intermittently or on a reduced leave schedule only with the approval of Supervisor.

## 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.

### 2. Notice to Supervisor

If the need for the leave is foreseeable, the employee must provide notice of not less than 30 days to Supervisor. Leave may 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. Notice of Eligibility and Rights and Responsibilities

Upon receiving notice from the faculty or staff of the possible need for FML, the supervisor will provide the employee with a Notice of Eligibility Rights and Responsibilities and medical certification within 5 business days (absent extenuating circumstances) detailing the employee's eligibility for FML and the specific expectations and obligations of the employee and the department explaining any consequence of failure to meet those obligations. If the employee is not eligible for FML, the supervisor must provide a reason for the ineligibility.

### 4. Designation Notice

Once the supervisor has sufficient documentation to determine whether an employee's leave is FML qualifying, the supervisor has 5 business days (absent extenuating circumstances) to provide the employee with a notice, in writing, designating the employee for FML. The designation decision will be based only on information received from the employee or designee.

If there is a question regarding designation of FML, it should be resolved through discussion between the supervisor and employee in consultation with the Office of Human Resources, if necessary. Such discussions and resolution shall be documented.

If the supervisor determines the leave requested is not FML protected, the supervisor must notify the employee in writing.

### 5. Certifications

- a. Certification of Health Care Provider for Employee's Serious Health Condition/Certification of Health Care Provider for Family Member's Serious Health Condition



## 6. Periodic Reporting and Recertification

Employees on FML are required to report on their status and intent to return. During FML, the supervisor may also require recertification of the medical condition no more often than every 30 days and only in connection with an absence, unless the minimum duration of the condition is more than 30 days. Recertification for life-long or continuous conditions may be requested on an annual basis. Recertification may be requested in less than 30 days if the following circumstances exist:

- a. When the supervisor obtains information that casts doubt on the continuing validity of the original certification;
- b. When the individual requests an extension of leave; or
- c. When the employee's circumstances have changed.

### **Continuation of Health Plan Benefits During Unpaid FMLA Protected Leave**

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

#### 1. Timely Payment of Premiums

When an employee has exhausted all paid leave and is on leave without pay, he or she may elect to continue health plan benefits by contacting Employee Services. If the employee elects to continue health plan benefits while on leave without pay, the University will maintain health plan coverage and the University will continue to pay its share of the premiums as long as the employee continues to pay his or her share. If Employee Services does not receive payment from the employee to pay his or her share of the premiums, Employee Services may discontinue coverage without notice.

#### 2. Failure to Return to Work

The employee 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

An employee may choose not to retain the University's health insurance program during unpaid leave. When the employee returns from leave, he or 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.

## Return from FML

Upon return from FML, the employee 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 and Promotion Probationary Periods

Tenure-track faculty members who take extended Family Medical Leave during their tenure probationary period may request a stop of their promotion and tenure clocks. In addition, non-tenure track Assistant Professors at the Anschutz Medical Campus in a unit, school or college where there is an up-or-out promotion clock who take extended FML may also request a stop of their promotion clock. All requests shall be made in writing within six months of returning from extended FML 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

Employees receiving paid leave while on FML will continue to accrue sick and vacation leave. When a faculty or staff member is on leave without pay, the employee does not accrue sick or vacation leave.

### 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 employee. 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. Fitness to Return Form

An employee returning to work because of his or her own serious health condition may be required to present written documentation from his/her attending physician that he/she is able to return to work. A fitness to return 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 fitness to return 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. These guidelines shall be applied consistently to all similarly situated individuals. The fitness to return shall only address the particular health condition that caused the individual's need for FML. This fitness to return may be required of individuals taking intermittent FML up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties. Return to work may be delayed until the

required fitness to return is furnished. Any such medical inquiry will be conducted in accordance with the ADA.

**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 these guidelines. Any FML taken to care for the birth or adoption of a child runs concurrently with any leave taken under the Parental Leave Policy.