

# Family and Medical Leave

## Employees – Human Resources

### CWU Policy 301-09

**Effective:** February 1, 2017

**Policy Review Date:** YEAR

**Policy Executive:** Senior Vice President – Finance and Administration

**Responsible Office/Unit:** Human Resources

#### Policy Statement:

#### Applicability:

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#### Content:

Policy

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#### (1) General Information

##### A. Authority

1. Family and Medical Leave Act (FMLA) of 1993, Public Law 103-3 (February 5, 1993)

##### B. Scope

1. FMLA covers all eligible employees at Central Washington University. Represented staff and faculty need to refer to their current collective bargaining agreement. Employees may be eligible for additional leave provided by state and/or local law.

#### (2) Introduction

- A. Time away from work under FMLA is time away from work granted to an eligible employee for certifiable medical reasons. Family and medical leave provides protection of an employee's current or equivalent position while away from work for up to twelve weeks within a 12-month period. The time away from work may include appropriate use of sick leave, annual leave, compensatory time, personal holiday, and leave without pay. Leave under FMLA is a federal mandate and must be granted when the employee is eligible. Leave may be subject to medical certification.

B. An eligible employee shall be entitled to a total of 12 workweeks of leave within a 12-month period for one or more of the following circumstances or up to 26 weeks for Service Member Family Leave:

1. The birth of a son or daughter of the employee and in order to care for such son or daughter.
2. Placement of a son or daughter with the employee for adoption or foster care.
3. To care for the spouse, son, daughter, domestic partner, or parent of the employee, if such spouse, son, daughter, domestic partner, or parent has a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
5. To provide exigency leave arising from the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call to active duty in the Armed Forces in support of a contingency operation.
6. To provide care for a covered service member who is suffering from a serious illness or injury incurred in the line of duty. Service member family leave shall be allowed to an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member and shall be for a period of up to twenty-six (26) workweeks of leave in a single twelve (12) month period. During the single twelve (12) month period during which Service member family leave is taken the employee may only take a combined total of twenty-six (26) workweeks of leave for Service member family leave and leave taken for the other FMLA qualifying reasons.

C. Entitlement of leave for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

### **(3) Definitions for exigency and service member family leave:**

- A. **Active duty** - A call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.
- B. **Contingency operations** - Defined in section 101 (a) (13) of title 10, United States Code.
- C. **Covered service member** - A 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 serious injury or illness.
- D. **Daughter** - To be defined by the Department of Labor.
- E. **Eligible employee** - An exempt employee who has worked for the state for at least 12 months and for at least 1,250 hours during the previous 12-month period.
- F. **Next of Kin** - Used with respect to an individual, means the nearest blood relative of that individual.

- G. *Qualifying exigency* - To be defined by the Department of Labor.
- H. *Serious Injury or Illness* - In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member unfit to perform the duties of the member's office, grade, rank or rating.
- I. *Son* - To be defined by the Department of Labor.

#### **(4) Provisions Governing Leaves**

- A. A leave normally begins the first calendar day following the last day worked. The leave ends when the employee returns to work in accordance with established procedures, or employment is terminated.
- B. Employees who would have been subject to layoff had they remained at work will be notified of this potential condition. These employees will receive advance notification consistent with the notification provided other employees in effect at the time of layoff declaration.

#### **(5) Alternative Position**

- A. If an employee needs intermittent leave or work on a reduced-work schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employer agrees to permit intermittent leave or a reduced work schedule for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily during the period the intermittent- or reduced-work schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.
- B. The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.
- C. When an employee who is taking intermittent leave or who is on a reduced-work schedule and has been transferred to an alternative position, no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job the employee left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

#### **(6) Certification and Subsequent Re-Certification Requirements**

- A. For pregnancy, chronic, or long-term conditions under continuing supervision of a health care provider, the university may request re-certification no more often than every 30 days and only in connection with an absence by the employee, unless circumstances described by the previous

certification have changed or the employer receives information that casts doubt upon the employee's stated reason for the absence.

- B. The employee must provide the requested re-certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
- C. Any re-certification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on re-certification may be required.

## **(7) Insurance Coverage**

- A. During any FMLA leave, the university will maintain the employee's coverage under the employer's health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- B. If an employer provides a new health plan or benefits, or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave.
- C. An employee may choose not to retain the employer's health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverage, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.
- D. Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), an employer's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a layoff and the employee would not have been transferred to another position); an employee informs the employer of the intent not to return from leave (including before starting the leave if the employer is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting FMLA leave entitlement in the 12-month period.
- E. The university will continue the contribution for health/life insurance for eligible employees during FMLA leave and any portion of the premium that is paid by the employee will continue through payroll deduction during the FMLA leave period unless there is no pay coming. In the event that any portion of FMLA leave is unpaid and payroll deduction is not available to cover the employee's share of the premiums, the employee will be required to make the premium payments.

## **(8) Return-To-Work Provisions**

- A. The employee is expected to maintain contact with the supervisor while on leave and plan for the employee's return.

- B. Employees returning from a leave will receive no less favorable placement consideration from their department than if the employee had remained at work.
  - 1. The department that granted the leave is responsible for ensuring that timely placement occurs when leave is completed.
  - 2. This provision can result in displacing an employee with less seniority.
- C. The employee will normally be returned to the last job held or, if necessary, to an equivalent position, unless one of the following conditions applies:
  - 1. Employee's position was affected by a layoff situation.
  - 2. Medical restriction precludes placement.
- D. Documentation in addition to medical certification from the employee's health care provider is required if temporary or permanent restrictions are recommended.

## **(9) General Guidelines**

- A. Spouses who both work for Central Washington University may be limited to a combined total of 12 workweeks during any 12-month period due to business necessity if leave is taken for birth, placement for adoption or foster care, exigency, or service member family leave, or a combined total of 26 if used for service member family leave.

### **History:**

*Responsibility: BFA; Authority: Cabinet/UPAC; Reviewed/Endorsed by: Cabinet/UPAC;  
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