

Title/Subject: **FAMILY AND MEDICAL LEAVE**

Applies to: faculty staff students student employees visitors contractors

Effective Date of This Revision: July 1, 2020

Contact for More Information: Faculty Personnel Services, Human Resources

Board Policy Administrative Policy Procedure Guideline

Policy Statement

The University will provide eligible employees job-protected leave of up to twelve (12) workweeks per calendar year for certain family and medical reasons or because of any qualifying exigency of a covered military family member. In addition, eligible employees may take up to a total of twenty-six (26) workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. Family and Medical leave will be tracked concurrently with paid leaves (sick leave, personal leave, vacation leave, workers' compensation, short-term disability, etc.) and unpaid leaves. FMLA is not considered a separate leave category.

It is the policy of the University to comply with the U.S. Department of Labor, Family and Medical Leave Act and regulations.

Policy Guidelines

Employee Eligibility

In order for a requested leave to qualify as FMLA leave, it must first be determined if the employee requesting leave is an "eligible" employee. An eligible employee is an employee who:

- 1) Has been employed by CMU for at least twelve (12) months (need not be consecutive months), **and**
- 2) Has been employed for at least 1,250 hours of service (does not include any paid leave time) during the 12-month period immediately preceding the date on which the leave commences.

This policy may apply to temporary or student employees, providing they meet the requirements of this section.

Qualifying Reasons for Family and Medical Leave

Leave will be granted with or without pay for **up to twelve (12) workweeks per calendar year** to eligible employees for family or medical leave purposes as defined below:

- 1) For the birth of a child of an employee or to care for such child, or for the placement with the employee of a child via adoption or foster care. Family leave must be taken within twelve (12) months of the birth or placement, although the leave may begin before the actual birth, adoption or placement. Family leave may be

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taken intermittently or as a reduced work schedule at the discretion of the University, as determined by the immediate supervisor (*status change forms must be submitted to Benefits & Wellness, Rowe 108 within 30 days of the event to add the child to your health insurance*).

- 2) To care for the employee's spouse, other eligible individual (OEI), son, daughter, or parent with a serious health condition.
- 3) For the employee's own serious health condition that makes the employee unable to perform the functions of their job.
- 4) For a qualifying exigency of an employee's covered military family member (National Guard, Reserves and active duty service members) on covered active duty or a call to duty to a foreign country. The covered military member must be the employee's spouse, other eligible individual (OEI), son, daughter, or parent.

Leave will be granted with or without pay for **up to twenty-six (26) workweeks in a single 12-month period** for military family leave as follows:

- 5) To care for a member of the Armed Services (including the National Guard and Reserves) or a veteran who has a serious injury or illness incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces). An eligible employee who is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of a covered servicemember shall be entitled to a total of **26 workweeks** of leave during a single 12-month period (single 12-month period starts the first day employee takes FMLA leave) to care for the servicemember. During this single 12-month period, an employee is limited to **a combined total of 26 workweeks** of injured servicemember family leave and any other type of FML leave.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical/mental condition that involves one or more of the following:

- 1) **Inpatient Care** means an overnight stay in a hospital, hospice or medical care facility, including any period of incapacity and subsequent treatments in connection with the inpatient care.
- 2) Continuing treatment by a health care provider, including any one or more of the following:
 - a) **Incapacity and treatment:** A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - 1) Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, or
 - 2) Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 - 3) Treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.
 - 4) Extenuating circumstances are considered circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider.
 - b) **Pregnancy or prenatal care:** Any period of incapacity due to pregnancy or for prenatal care.
 - c) **Chronic conditions:** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition- (Example: asthma). A chronic serious health condition is one which:
 - 1) Requires periodic visits (at least twice a year) for treatment by a health care provider;
 - 2) Continues over an extended period of time; and

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- 3) May cause episodic rather than continuing periods of incapacity.
- d) **Permanent or long-term conditions:** A period of incapacity, which is permanent or long term due to a condition for which treatment may not be effective. Person must be under continuing supervision of, but need not be receiving active treatments by, a health care provider. (Example: Alzheimer's, cancer)
- e) **Conditions requiring multiple treatments:** Any period of absence to receive multiple treatments (including recovery there from) for restorative surgery after an accident or injury or for a condition that would likely result in a period of incapacity of more than three days in the absence of medical treatment. (Example: Chemotherapy for cancer)

NOTE: Items b) and c) qualify as FMLA leave even though the employee or covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than 3 consecutive, full calendar days. These leaves can be taken intermittently.

Serious illness or Injury (Injured Service Member)

1. For a member of the Armed Forces - An injury or illness incurred by the member of the Armed Forces (including the National Guard and Reserves) in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran who was a member of the Armed Forces (including the National Guard and Reserves - An injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Treatment includes examinations to determine if a serious health condition exists. Routine physical, eye or dental exams are not included.

Regimen for Continuing Treatment includes a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of taking over-the-counter medications, bed rest, exercise or other similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment for FML purposes.

Substance abuse may be a serious health condition if criteria in a-e above are met, however FML may be taken only for treatment of substance abuse.

Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, headaches other than migraine, routine dental or orthodontia problems, periodontal disease are examples of conditions that do not qualify for FML.

Health Care Provider includes doctor of medicine or osteopathy, authorized to practice medicine or surgery by the state in which doctor practices, podiatrists, dentist, clinical psychologist, clinical social worker, optometrist, chiropractor (limited), nurse practitioners, midwives, Christian Science practitioners and providers authorized to give care under the health plan.

Care for a Family Member includes physical and psychological care (basic medical, hygienic or nutritional needs or safety needs, transportation for medical treatments/appointments, arranging for changes in care, psychological comfort or reassurance).

Definition of a Covered Family Member:

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a) **Spouse** is defined as all individuals legally married, whether opposite-sex or same-sex, or married under common law, regardless of where they live. Spouses who both work for the University are each entitled to exercise the provisions of this policy.

b) **Other eligible individual (OEI)** CMU has exercised its right to broaden the definition of a covered family member to include individuals enrolled as an Other Eligible Individual for the purposes of this policy and per employee group handbooks and collective bargaining agreements. The Other Eligible Individual pilot program was implemented effective October 1, 2008 and is defined by university policy and incorporated by reference; the policy is found at:

https://cmich.teamdynamix.com/TDClient/664/Portal/Requests/TicketRequests/NewForm?ID=AQFqIaRTvuY_&RequestorType=Service

c) **Parent** means a biological parent or an individual who stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law".

d) **Son or daughter**

1) For the leaves taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, foster child, stepchild, legal ward or 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."

2) For the leaves taken for a qualifying exigency, son or daughter means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom, the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

3) For injured service member family leaves, son or daughter, means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom, the servicemember stood in loco parentis, and who is of any age.

e) **Next of kin of a covered servicemember** means the nearest blood relative other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority:

1. Blood relatives who have been granted legal custody of the cover servicemember by a court decree or statutory provisions.

2. Brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA.

When no designation has been made and there are multiple family members with the same level of relationship to the covered servicemember, all such family members are considered next of kin and may take FMLA leave to provide care for the covered servicemember. If a designation is made, the designated individual shall be deemed the covered servicemember's only next of kin.

f) **Covered servicemember** means -

1. 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 a serious injury or illness.

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2. a veteran who is 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 treatment, recuperation or therapy commences.

Certification of Family and Medical Leaves

1) Medical Certification - Medical certification is typically required to verify the serious illness of the employee or the covered family member. If medical certification is required, the supervisor must inform the employee of the need for medical certification within five (5) business days after employee requests foreseeable leave or within 5 business days after unforeseeable leave commences. The University allows the use of standard Department of Labor medical certification forms or a medical note from a healthcare provider. The certification must include the date the condition began, the probable duration, medical facts, and a statement that the employee is unable to perform the functions of their position; or the employee is needed to care for family member and an estimate of time required to provide the care. If intermittent leave or reduced work schedule is requested, the certification must speak to the dates, frequency and duration of the leave and explain why it is medically necessary for the employee to be absent for work during the intermittent periods.

It is the employee's responsibility to obtain a complete and sufficient certification from the health care provider and provide it to the University within fifteen (15) calendar days. If certification is not received within the 15 calendar days and the employee is not making a good faith effort to obtain requested certification, the requested leave will not be counted as FML and therefore not subject to the protections of the FMLA. If the submitted medical certification is incomplete or insufficient, the employee will be given seven (7) calendar days to cure any deficiencies and the deficiencies will be identified in writing to expedite this process.

If authentication (verification that the health care provider completed the form) or clarification of the information (understand handwriting or meaning of a response) contained on the complete/sufficient medical certification is necessary, a representative from Human Resources or Faculty Personnel Services may contact the health care provider. The immediate supervisor cannot contact the health care provider for this information. The representative can contact the employee's health care provider for clarification of individually identifiable health information only if the employee has given the authorization to do so. If an employee chooses not to grant authorization for the CMU representative to clarify the certification, CMU may deny the taking of the FMLA leave if the certification is unclear.

The employee is responsible for any costs (cost for completing the form) associated with obtaining medical certification. Failure to provide requested medical certification may mean that the leave will not be counted as FML and therefore not subject to the protections of the Family and Medical Leave Act. In addition, the approval and pay status may be evaluated and changed.

The University, through Human Resources or Faculty Personnel Services, may require a second opinion at the University's expense (charged to the department of the employee). If the medical opinions conflict, a third opinion may be obtained from a health care provider jointly approved by the employee and the University through Human Resources or Faculty Personnel Services, at the University's expense (charged to department of the employee).

Departments should not keep or copy medical certification forms. Once a decision has been made regarding the leave and FML, this documentation should be delivered to Human Resources, Rowe 109, for staff and student employees and to Faculty Personnel Services, Warriner 308 for faculty.

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The University will require certification of the employee's ability to return to work following a leave necessitated by the employee's own serious health condition. Failure to submit such documentation will delay the employee's return to work.

2) Medical Recertification - The University may require an employee to submit medical recertification of the continuing need for FML (except for injured servicemember family leave) every 30 days except in the following instances:

- a) If the medical certification indicates that the minimum duration of the condition is more than 30 days, the request for recertification must wait until that minimum duration expires.
- b) CMU may request recertification in less than 30 days if:
 - i. Request for leave exceeds the specified leave time on the previous medical certification form, or;
 - ii. Either the duration or the frequency of the absences or the severity of the condition changes significantly;
 - iii. The University receives information that casts doubt on the employee's stated reason for the absence or the continuing validity of the certification; or
 - iv. Annually- Every January or upon first request for leave in the new calendar year
- c) If medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (i.e. for a lifetime condition), CMU may request recertification every six months in connection with an absence.

As with initial medical certification, the medical recertification form must be submitted within 15 calendar days of the request.

The annual medical recertification can be treated by the University the same as the initial medical certification, allowing for eligibility determination and the right to request a second opinion at the University's expense (charged to the department of the employee). If the medical opinions conflict, a third opinion may be obtained from a health care provider jointly approved by the employee and the University through Human Resources or Faculty Personnel Services, at the University's expense (charged to department of the employee).

Failure to provide requested medical recertification may mean that the leave will not be counted as FML and therefore not subject to the protections of the Family and Medical Leave Act. In addition, the approval and pay status of the leave may be evaluated and changed.

3) Qualifying Exigency Certification – The University may require employees to submit one of the following when requesting leave for a qualifying exigency of a covered family member:

- a) A copy of the covered family member's active duty orders or other documentation issued by the military which indicates active duty status and dates of the active duty service.
- b) Completion of the CMU Certification for Qualifying Exigency form

Charging and Recording Time for FMLA Leaves

When approving FML, the University will require the employee to use paid leave time (i.e., sick, vacation, personal, as applicable). FML will also be tracked concurrently.

An employee is only able to use sick leave so long as the leave is for their own serious health condition, or a medical condition of a qualifying family member. After all sick leave has been exhausted, all vacation-eligible employee groups must use vacation and/or personal time prior to taking unpaid leave. Employees going on a continuous leave

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may elect to leave up to forty (40) hours of vacation time and/or any accrued compensatory time (if applicable) banked, which allows the employee to have paid leave available when they return. Upon exhaustion of applicable paid leave time, the remaining portion of the leave will be recorded and tracked as unpaid leave and FML. Employees will be transitioned to an unpaid leave of absence as appropriate by Human Resources or Faculty Personnel Services.

Hourly employees will be able to charge paid leave time in ½ hour (30 minute) increments when using it concurrently with FML. Hourly employees are not required to use compensatory time (time in lieu of paid overtime) to cover FML. If an employee elects to use compensatory time to receive pay for time taken off for a FMLA reason, the time will be counted against the employee's FMLA leave entitlement.

Salaried employees will generally charge paid leave time in 4-hour increments, unless otherwise determined by Human Resources or Faculty Personnel Services.

Other provisions in the respective handbooks or contracts for leaves of absence without pay will not be extended because of this policy.

Notification

General Notice

General notice of employees' rights and responsibilities under the Family and Medical Leave Act are posted in Rowe and Warriner halls. On-line applicants can view this information via a FMLA link on the on-line application website. Employees and applicants can view these rights and responsibilities any time by visiting the U.S. Department of Labor website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>

Eligibility Notice

When an employee requests FMLA leave or when the supervisor acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the supervisor must notify the employee of their eligibility to take FMLA leave within five (5) business days, absent any extenuating circumstances. Supervisors must use the *CMU Notice of Eligibility & Rights and Responsibilities* to notify the employee of their eligibility. Employee eligibility is determined, and notice must be given at the commencement of the first instance of leave for each FMLA-qualifying reason in the calendar year. All FMLA absences for the same reason are considered a single leave situation and employee eligibility once granted remains for the entire calendar year.

Employee notification may be oral or written and must state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA, the employee must be given at least one reason for this decision, either:

- 1) The employee has not worked for CMU for at least 12 months (need not be consecutive) and/or,
- 2) The employee has not worked 1250 hours (removing all paid leave time) in the 12-months immediately preceding the date on which the requested leave commences.

If an employee's status has not changed upon subsequent requests for FMLA leave, no additional eligibility notice is required.

Employee Rights and Responsibilities Notice

Supervisors shall provide written notice using the *CMU Notice of Eligibility & Rights and Responsibilities* detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. HR/FPS will complete the DOL Designation Notice once complete and sufficient information has been

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obtained. This notice shall be provided to the employee for each leave request that is for an FMLA qualifying reason. If the employee has already gone on leave, the notice may be mailed to the employee's address of record (home address) or emailed to employee's CMU email address.

For intermittent leave or leave on reduced leave schedule that is foreseeable based on planned treatment for the employee, a family member or covered servicemember, the employer may temporarily transfer the employee to an alternative position for which the employee is qualified. The alternative position must have equivalent pay and benefits but does not have to have equivalent duties if the position better accommodates the intermittent or reduced leave than the employee's regular job. Such transfers must be requested through Human Resources or Faculty Personnel Services.

The employee will generally be returned to the same position held prior to the leave. In certain situations, the employee may be returned to a position equivalent in pay, benefits and other terms and conditions of employment upon return from leave. These situations must be approved through Human Resources or Faculty Personnel Services.

EMPLOYEE'S RESPONSIBILITIES

Employees will be responsible for:

- giving at least 30 days advance notice for foreseeable leaves (expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for serious injury or illness of a covered servicemember). If this is not practical because of a change in circumstances or a medical emergency, then notice shall be given as soon as practicable.
- giving adequate notice (as defined by departmental policy or program or employee group handbook or contract) or as much notice as practicable for unforeseeable leaves. Notice may be given by the employee's spokesperson if the employee is unable to do so personally. Failure to give adequate notice may result in delayed or denied FMLA-protected leave.
- providing sufficient information (verbally) to the supervisor regarding the need for leave so the supervisor can determine if it is for a FMLA-qualifying reason.
- obtaining and submitting complete and sufficient certification (medical or qualifying exigency) as requested by the supervisor.
- for intermittent chronic serious health conditions, the employee must specify the qualifying reason for the leave when requesting leave. Just calling in "sick" is not sufficient notice to trigger obligations under the FMLA.

SUPERVISOR'S RESPONSIBILITIES

Supervisors will be responsible for:

- determining whether the employee is eligible for family and medical leave and informing the employee of their eligibility status and rights and responsibilities within five (5) business days (CMU Notice of Eligibility & Rights and Responsibilities),
- determining if requests are for family and medical leave reasons (*FML Eligibility Checklist*),
- assuring that employees have completed and submitted the appropriate certification form.
- recording FMLA in the timekeeping system.

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Supervisors need to inform employees who request leave that qualifies as FML:

- that the time will be counted against their annual family and medical leave entitlement,
- if there is any requirement that the employee furnish a medical certification within 15 calendar days of requesting leave and the consequences of failing to do so,
- how their time will be recorded, and that paid time must be used before going on unpaid leave,
- what are their rights, requirements, arrangements and consequences of making payments for benefit continuation,
- of their potential liability for premium reimbursement if they do not return from leave,
- of their right to restoration to their regular position or an equivalent position, and
- that a return to work release will be required in all cases of a serious health condition of the employee that results in a continuous leave (the employee's job description may be attached to the CMU *Notice of Eligibility & Rights and Responsibilities*).

BENEFIT CONTINUATION

The University will continue contributions toward group health benefits for medical, prescription drug and dental coverage at the same level and under the same conditions that existed while the employee was actively at work. The employee will be required to continue to pay any portion of the premium which they were paying prior to taking the leave. Arrangements must be made with the Benefits/Wellness Office for premium payments. Payback will not continue for an employee who has elected "no coverage."

Failure to pay the benefit premium within a 30-day grace period of the payment due date will result in a retroactive cancellation of benefits effective the first day for which the payment was due. Any claims that have already been paid by the plan for service dates that occur after the effective date of the termination of coverage may be billed to the participant and will become the responsibility of the participant to re-pay the plan. The University will provide written notice to the employee that payment has not been received at least 15 days before the group health coverage will cease and advise the employee that coverage will be cancelled on a specific date unless payment is received.

The University will recover health and/or dental premiums paid on an employee's behalf if the employee fails to return to work from an unpaid Family & Medical Leave for at least 30 days for a reason other than: the continuation, recurrence or onset of a serious health condition which would entitle an employee to Family & Medical leave, circumstances beyond an employee's control, end of appointment or retirement. The University may require medical certification of the employee's inability to return from leave.

The employee will not lose any benefit leave accruals prior to the start of leave but will not accrue any leave time while in an unpaid status. Seniority, for the purposes of leave accrual calculations, will continue to accrue during an approved family & medical leave (paid or unpaid).

If an employee gives notice that they will not to return to work, CMU's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease immediately; therefore, an employee's resignation will be accepted effective immediately unless an employee has paid leave time available and is eligible and approved for a non-FML medical leave, if applicable (see respective collective bargaining agreement or handbook).

It is unlawful to interfere with, restrain or deny employees of any right provided under the Family & Medical Leave Act.

For more information on employee rights under the Family & Medical Leave Act visit
<https://www.dol.gov/agencies/whd/fmla>

Central Michigan University reserves the right to make exceptions, modify or eliminate this policy. This document supersedes all previous policies, procedures and directives relative to this subject. Please refer questions or concerns to the Originating Department.