

## FAMILY AND MEDICAL LEAVE

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### SUMMARY

The Family and Medical Leave Act (FMLA) of 1993 was passed by Congress to ensure leave is available for authorized medical reasons (including maternity/paternity leave) and for compelling family reasons. The FMLA was amended on January 28, 2008 and October 28, 2008, to provide new leave rights related to military service.

Regular faculty and staff are eligible for unpaid Family and Medical Leave (paid leave may be substituted for unpaid leave depending on the specific circumstances of the absence in accordance with University policies) during a twelve month period, measured forward, if the employee has:

1. worked for Wake Forest University for at least 12 months during the period immediately preceding the start of the leave and
2. worked for Wake Forest University at least 1250 hours during the past 12 month period immediately preceding the start of the leave.

An eligible employee may take up to 12 weeks of Family and Medical Leave (FML) for any of the reasons listed below.

1. The employee's own serious health condition prevents the employee from performing one or more of the essential functions of the job.
2. To care for a parent, spouse or child with a serious health condition.
3. To care for the employee's child after birth, or placement for adoption or foster care in the employee's home, providing the leave is taken within 12 months of the child's introduction to the family.

Because of any qualifying exigency (as defined by federal regulation) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call, order to active duty or deployed to a foreign country) in the Armed Forces, as a full-time member or member of a reserve component, in support of a contingency operation.

This leave applies only to families of members of the National Guard, reserves and certain retired members of the military, not to families of active members of the regular armed services.

Limitations on the amount of leave time available for certain qualifying exigencies may be less than 12 weeks. Employees should consult Human Resources for information about these limitations.

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An eligible employee may take up to 26 weeks of leave during a single 12-month period to care for a covered service member, including a veteran, when the employee is the spouse, son, daughter, parent or next of kin of the covered servicemember. The servicemember must have:

A serious illness or injury in the line of duty, that may render the employee medically unfit for which the service member is undergoing medical treatment, recuperation, therapy or outpatient treatment or is on a temporary disability retired list. The veteran must have served in an active duty capacity within 5 years of the date the veteran needs care.

An eligible employee will be required to submit an appropriate and properly completed Certificate to support the requested Family and Medical Leave.

The duration of FML and whether it is paid or unpaid, depends on the employee's individual situation. Staff will be required to use any accrued Sick Leave Reserve (if applicable and authorized) and Paid Time Off (minus 5 days of PTO if the employee wishes to retain it) before being placed on unpaid leave. All paid leaves run concurrently (including Worker's Compensation Leave, Short Term Disability, and Paid Parental Leave) and do not extend the time the employee is entitled to under the FMLA. During paid leave, staff will continue to accrue PTO. During any unpaid leave, staff will not accrue PTO.

Staff members are not eligible for holiday pay or administrative leave pay while on family and medical leave.

During periods of FML, an employee has the option to continue insurance coverage. If the employee is being paid, the share of premiums may continue to be paid through normal payroll deduction. If the employee is on unpaid leave, upon the employee's return from FML, the employee is responsible for making payments of the insurance premiums. Failing to make timely payments can result in the loss of coverage. Any remaining benefit premiums owed will be deducted from the first paycheck when the employee returns to work. If an Open Enrollment period occurs while the employee is on FML, the employee will still have the opportunity to participate. Information is mailed directly to the address of record for the employee of the University and the employee must meet any related deadlines applicable to all employees.

If an employee fails to return to work from FML, the employee must repay Wake Forest University for the employer's portion of any benefit-premiums paid while the employee was on paid FML, unless the continuing health condition of the employee or the employee's family member, or other circumstances beyond the employee's control, prevent the employee from returning to work.

When spouses/same sex domestic partners are both employed by Wake Forest University and both are entitled to leave because of the birth or placement of a child or to care for the same sick parent, the total period of FML may be limited to twelve (12) weeks. In circumstances when

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both are entitled to leave to care for a covered servicemember, the total period of leave may be limited to twenty six (26) weeks.

### **REQUESTING FAMILY AND MEDICAL LEAVE (FML)**

As with any type of leave, advance notice and approval are expected, except in emergencies. If the leave is foreseeable by at least 30 days, the employee must give at least 30 days written notice before leave may begin. If the leave is not foreseeable by at least 30 days or if an unexpected change occurs, notice is expected as soon as possible and practical. If an employee does not provide timely notice, the employee's FMLA protected leave may be delayed or denied. When planning medical treatment, the employee must consult with the appropriate supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly the University's operations, subject to the approval of the health care provider.

The Request for Family and Medical Leave form (<http://hr.wfu.edu/files/2012/11/Request-for-Family-Medical-Leave.pdf>) is to be used to request leave. The form is available on the Human Resources website. The completed form is to be submitted to Human Resources.

In the case of a serious health condition for the employee, the employee's family member or a covered service member, the employee must provide a medical certification from the employee's, the employee's family member's or the covered servicemember's health care provider. The following procedures are applicable:

1. The ***required Medical Certification*** forms are available on the Human Resources website. The employee has 15 calendar days to return the required and completed medical certification form. If the employee fails to provide a complete and sufficient medical certification, FML may be delayed or denied. All medical certifications, recertifications and medical histories created for FML purposes will be maintained separately from the employee's personnel file and will be treated as confidential information, and if applicable, in accordance with the Americans with Disabilities Act.
2. The University may contact the health care provider for purposes of clarification and authentication of the medical certification. In addition, the University also has the right to require a second opinion and select the health care provider. If the second opinion and the original certificate conflict, the University has the right to require a third opinion by a health care provider that is selected in conjunction with the employee. The third opinion is final and binding. Wake Forest University is responsible for the expenses connected with a second and/or third opinion.
3. The University may also request additional medical certifications at reasonable intervals during the employee's FML. Typically, this interval will be no more often than 30 days.

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An employee who requests leave because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member will be required to submit a completed Certification of Qualifying Exigency form and may be required to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. Failure to provide the properly completed Certification or the requested orders or documentation may result in the delay or denial of requested FML.

Subject to the University's reasonable approval, employees may take intermittent leave or leave with a reduced work schedule. For example, intermittent leave or leave with a reduced work schedule may be taken when medically necessary to care for a seriously ill family member or covered servicemember, because of the employees own serious health condition, or due to a qualifying exigency. To accommodate the intermittent or reduced schedule leave, an employee on FML may be temporarily reassigned to a different position with different duties. When an employee is put on a reduced work schedule, the salary will be reduced proportionately. The employee must work with the appropriate supervisor and Human Resources to establish a mutually satisfactory work schedule that does not unduly disrupt business and meets the employees (or patient's) medical needs. If an employee fails to consult with the appropriate supervisor and Human Resources, the employee's right to intermittent leave or leave with a reduced work schedule may be affected.

### **RETURN TO WORK**

Employees returning from leave for a serious health condition must provide the appropriate supervisor with a certificate from a health care provider documenting the employee's ability to perform the essential functions of the employee's job.

Employees returning from leave will be reinstated to the same or equivalent position, with equivalent pay, benefits, and other terms and conditions of employment. Failure to return to work in a timely fashion may result in termination of employment. This does not apply if the employee's job would have otherwise been terminated (i.e., a reduction in force) had the employee not taken FML.

When an employee needs more time than 12 weeks of leave or 26 weeks as applicable, he or she is to call Human Resources to discuss options that are available to the department and to the employee.

### **FMLA DEFINITIONS**

#### **“Serious Health Condition”**

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

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**1. Hospital Care** – Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (inability to work or perform regular daily activities) or subsequent treatment in connection with or consequent to such inpatient care.

**2. Absence Plus Treatment** – A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to same condition), that also involves:

a. Treatment (to determine and evaluate condition) two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health services (i.e., physical therapist) under orders of, or upon referral by, a healthcare provider within a 30 day period, unless extenuating circumstances exist.

b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment (i.e., course of prescription medication) under the supervision of the health care provider.

**Pregnancy** – Any period of incapacity due to pregnancy, pregnancy complications, or prenatal care.

**Chronic Conditions Requiring Treatments** – A chronic condition which:

1. requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

2. continues over an extended period of time (including recurring episodes of a single underlying condition); and

3. may cause episodic rather than a continuing period of incapacity (i.e., asthma, diabetes, epilepsy, etc).

**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 employee or family member must be under continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, severe stroke, or terminal stages of a disease.

**Multiple Treatments (Non-Chronic Conditions)** – Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a

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provider of health care services under orders of, or referral by a health care provider, either for restorative surgery after an accident, or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation treatment, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**Active Duty** – The term “active duty” means duty under 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.

**Contingency Operation** – The term “contingency operation” has the same meaning given such term in section 101 (2)(13) of title 10, United States Code.

**Covered Service member** – The term “covered servicemember” means 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.

**Outpatient Status** – The term “outpatient status” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to:

1. a military medical treatment facility as an outpatient or
2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Next of Kin** – The term “next of kin” used with respect to an individual, means nearest blood relative or that individual designated by servicemember in writing.