

POLICY 11
APPROVED AND UNAPPROVED ABSENCES

Rule 11.16 – Victims Economic Security and Safety Leave

In accordance with the Illinois Victims Economic Security and Safety Act (VESSA) of 2003, and as amended in 2009, leave shall be granted to an employee who is a victim of domestic or sexual violence or who has a family or household member who is a victim. “Family or household member”, for employees with a family or household member who is a victim of domestic or sexual violence or is perceived to be a victim of domestic or sexual violence, means a spouse, parent, son, daughter, other person related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter, and persons jointly residing in the same household. “Parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age, or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

All employees are eligible for 12 workweeks of leave during any 12-month period. The initial 12-month period is measured forward from the date the employee first takes VESSA leave. The next 12-month period begins the first time VESSA leave is taken after completion of any previous 12-month period. This Act does not create a right for the employee to take a leave that exceeds the leave time allowed under, or in addition to, the leave time permitted by the Family and Medical Leave Act (FMLA) (Rule 11.07). For employees on VESSA leave who are also eligible for FMLA leave, VESSA leave time is not in addition to the 12-week FMLA entitlement when the reason for VESSA leave also qualifies under FMLA, but depletes the 12-week FMLA entitlement when used. An employee who may have exhausted all available leave under FMLA, for a purpose other than that which is available under VESSA, remains eligible for leave under VESSA.

An employee shall be entitled, on return from leave, to be restored to the position held by the employee when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other conditions of employment.

“Domestic or sexual violence” means domestic violence, sexual assault, or stalking.

“Domestic violence” means abuse, as defined in Section 103 of the Illinois Domestic Violence Act of 1986 by a family or household member, as defined in Section 103 of the Illinois Domestic Violence Act of 1986. Section 103 of the Illinois Domestic Violence Act of 1986 defines the following:

- “Abuse” means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.
- “Family or household members” include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or

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have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in paragraph (3) of subsection (b) of Section 12-21 of the Criminal Code of 1961. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high-risk adult with disabilities, “family or household members” include any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.

“Sexual assault” means any conduct proscribed by the Criminal Code of 1961 in Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16.

“Stalking” means any conduct proscribed by the Criminal Code of 1961 in Sections 12-7.3, 12-7.4, and 12-7.5.

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11.161 Entitlement to Leave

Leave shall be granted for the following purposes:

- (1) To seek medical help and recover from physical or psychological injuries caused by domestic or sexual violence to the employee or the employee’s family or household member.
- (2) To obtain victim’s services, psychological or other counseling, and legal assistance or remedies, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence.
- (3) Participate in safety planning, temporarily or permanently relocating, or taking other actions to increase health and safety, or to ensure economic safety of covered persons.

11.162 Leave Schedule

Leave under VESSA may be taken all at one time or on an intermittent or reduced leave schedule. Under such conditions, the employee may be required to transfer temporarily to an available alternative position with equivalent pay and benefits if the transfer better accommodates recurring periods of leave.

“Intermittent leave” is leave taken in separate blocks of time and may include periods from less than one hour to several weeks.

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A “reduced leave schedule” is a leave schedule that reduces an employee’s usual number of working hours per workweek or hours per workday.

The 12 workweeks of VESSA leave to which eligible employees are entitled shall be based on the number of hours in the employee’s normal workweek schedule at the percentage of the employee’s appointment. (For example, a 64-percent-time employee scheduled to work 24-hours per week would be entitled to leave for twelve 24-hour workweeks or 288 hours.) Only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. The taking of leave intermittently or on a reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

The amount of time taken for VESSA leave shall be reported in one-tenth of an hour increments for non-exempt employees and quarter-hour increments for exempt employees. VESSA leave balances shall not accrue or carry over to the next 12-month leave period.

An eligible employee on a flex-year or seasonal leave appointment shall be entitled to leave during those periods when he or she is expected to furnish regular service to the University.

11.163 Notice of Leave

The employee shall provide the supervisor with 48 hours notice in advance, unless providing such notice is not practicable. An employee’s failure to provide required certification within 15 calendar days may result in delay or denial of leave. If the leave is for planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as to not unduly disrupt the operations of the unit. When an unscheduled absence occurs, the employer may not take action against the employee if the employee, within a reasonable period of time, provides certification.

11.164 Certification

Certification issued by the employee’s or household members health care provider shall be required to support a request for VESSA leave for a serious health condition as outlined in Rule 11.07, Family and Medical Leave, Regulation 11.074, Medical Certification.

Other means of certification may be required to verify eligibility for VESSA leave taken for reasons other than medical as described in 11.161. This certification may be in the form of a sworn statement of the employee; and, any of the following: documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee’s family or household

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member has sought assistance in addressing domestic or sexual violence and the effects of the violence; a police or court record; or, other corroborating evidence.

Such certification shall be submitted to the head of the employing unit, or applicable human resources office, as requested. Units may seek assistance from the campus/central human resources office regarding the acceptability of the certification provided.

Any expenses associated with obtaining the certification shall be the responsibility of the employee. An employee may be required to obtain subsequent recertifications on a reasonable basis.

If the supervisor has acquired knowledge that the leave is being taken for a VESSA eligible reason, the supervisor may designate the leave as counting toward the 12-week entitlement. Supervisors should notify the employee within five business days (absent extenuating circumstances) that the leave is being counted towards VESSA leave. If the notice is verbal, it shall be confirmed in writing, no later than the following payday (unless payday is less than one week after the verbal notice, in which case the notice must be no later than the subsequent payday).

Units are responsible for maintaining confidential files for all leave requests, certifications and documentation associated with VESSA. These records must be kept separate from employee personnel files, and retained in confidence except to the extent that disclosure is requested and consented to in writing by the employee or required by state/federal law.

11.165 Return from Leave

Ordinarily, an employee who has been absent for VESSA leave shall be restored to the position held by the employee when the leave commenced; or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If the University would not otherwise have employed the employee at the time reinstatement is requested, the University may deny restoration to employment in accordance with the seniority provisions of the State Universities Civil Service Statute and Rules.

An employee on leave may be required to report periodically to the supervisor or unit head on his or her status and intention to return to work.

An employee who has been absent for medical reasons may be required to obtain a statement from a health care provider that the employee is able to resume work. The unit must provide notice to the employee at the time the leave is approved that a certification

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that they are able to return to work will be required. If the certification will include analysis of the employee's ability to perform essential functions of his/her job, a list of the essential functions must be provided to the employee with the VESSA/FMLA designation notice.

An employee returning from VESSA leave is expected to contact the employing unit at least 30 calendar days in advance of the anticipated date of return from leave, in order to permit the unit to plan for the employee's reinstatement.

11.166 Benefits While on Leave Without Pay

Health Insurance: Coverage of group health and dental insurance shall be continued by the University at the same level that coverage would have been provided if the employee had remained in employment continuously. Employees are responsible for paying the employee-paid portion of their health insurance premiums, as well as dependent coverage premiums. If the employee does not make required payments during the leave period, the CMS-Group Insurance Division (GID) will terminate the member's coverage the first day of the current month. These members are ineligible to continue coverage under COBRA and will not receive a COBRA notification letter (eligible or ineligible). CMS will take action to collect all outstanding premium(s), which may include involuntary withholding.. Employees are to contact the Benefits Service Center for information on changes in status and to arrange for billing prior to their last day of work.

Extension of Other Insurance Coverage: An employee may continue insurance coverage in excess of the University's contribution by contacting the Benefits Center prior to the last day of paid employment to make arrangements for premium payments.

State Universities Retirement System Benefits: To determine the effect of leave on the accumulation of service time for retirement and to assure continuation of contributions, the employee should contact the State Universities Retirement System.

Disability Benefits: In the case of an extended disability due to a serious health condition, an employee may qualify for disability benefits through the State Universities Retirement System. Employees may request an Application for Disability Benefits from the campus/central human resources office. Leave for disability or pending disability counts towards the 12-week VESSA entitlement.

Recovery of Premiums: The University may recover the premiums paid for maintaining coverage for the employee if the employee fails to return from leave for a reason other than

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continuation, recurrence, or onset of domestic or sexual violence or other circumstances beyond the employee's control.

The supervisor may require an employee who is unable to return to work because of the continuation, recurrence, or onset of domestic or sexual violence, to provide, within a reasonable period, certification that they are unable to return to work. Such certification requirements are the same as for the original leave.

Seniority: Seniority will accumulate in accordance with State Universities Civil Service System Statute and Rules 250.120 while on unpaid VESSA leave.

11.167 Use of Accrued Leave Time

Employees have the option to take leave with or without pay. For care of a family member with a serious health condition or injury or for the employee's serious health condition or injury, leave is provided under the terms and conditions of University sick leave policy (Policy 10, Sick Leave). Sick leave used for this purpose will be counted toward the 12-week entitlement (or any part thereof). If an employee's accrued sick leave is exhausted, the employee may elect to use accrued vacation to continue in pay status during the VESSA leave period. Vacation used for this purpose will also be counted toward the 12-week entitlement. Sick leave may not be used for VESSA leave for non-medical reasons. Vacation leave may be used for non-medical reasons. Any portion of the 12-week period for which accrued leave is not charged shall be without pay, and also counted toward the 12-week entitlement.

In addition, employees who exhaust their accrued sick leave balances may be eligible to receive disability benefits through the State Universities Retirement System. Employees who anticipate requiring an extended period of leave should contact the State Universities Retirement System at the same time they apply for use of VESSA/FMLA leave for medical reasons for information concerning benefits eligibility and to minimize any gaps in benefits.

11.168 Extension of Leave Beyond 12 Weeks

Benefits under the VESSA policy expire after 12 weeks of usage. An employee seeking approval of an extension of leave beyond the 12-week VESSA leave entitlement shall present a written request to his or her supervisor, which shall be acted upon pursuant to departmental procedures and in accordance with University policies related to leaves of absence.

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11.169 Nondiscrimination

The University will not discriminate or otherwise harass or retaliate against any employee with respect to the compensation, terms, conditions or privileges of employment because the individual is or is perceived to be a victim of domestic or sexual violence; attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the individual or a family or household member was a victim; or requested an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, or assistance in documenting domestic or sexual violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic or sexual violence; or the workplace is disrupted or threatened by the action of a person whom the individual states has committed or threatened to commit domestic or sexual violence against the individual or the individual's family or household member.

11.170 Reasonable Accommodation

Within the provisions of VESSA, a reasonable accommodation will be made for a qualified employee or applicant when there are limitations resulting from circumstances that relate to being a victim of domestic or sexual violence or a family or household member being a victim of domestic or sexual violence.

A reasonable accommodation must be made in a timely fashion. Any exigent circumstances or danger facing the employee or his or her family or household member shall be considered in determining whether the accommodation is reasonable.

11.171 Questions

Employees should discuss questions or disagreements about VESSA leave with their immediate supervisors. If concerns are not resolved at the supervisory level, the unit head should review the issues. If the unit head is unable to resolve the issue, the dean or director should be consulted. Should questions remain, the campus/central human resources office will provide assistance to both the employee and the unit.

Interpretation of specific requirements of the Illinois Victims Economic Security and Safety Act policy is subject to provisions contained in the full text of the Act. Questions regarding the provisions of VESSA and the Illinois Department of Labor Regulations for its implementation should be directed to the campus/central human resources office.