

POLICY 11
APPROVED AND UNAPPROVED ABSENCES

Rule 11.07 - Family and Medical Leave

In accordance with the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. § 2601 *et seq.*) and as amended in 2009, 2013, and 2015, family and medical leave shall be granted to an employee for the birth or adoption of a child; for the care of a son, daughter, spouse, or parent who has a serious health condition; to an employee who is unable to perform the functions of his or her position due to a serious health condition; for the care of a son, daughter, spouse, parent or next of kin who is a covered servicemember with a serious injury or illness incurred: (a) in the line of duty on active duty; and (b) that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or because of a qualifying exigency arising out of the fact that a son, daughter, spouse, or parent is on a covered active duty or call to active duty status in support of a contingency operation as a member of the National Guard, Reserves, or Regular Armed Forces. Covered active duty requires deployment to a foreign country. Eligible employees may take leave to care for a servicemember's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.

Individuals who have been employed by the University for at least 12 months and who have performed at least 1,250 hours of service during the previous 12-month period, are eligible for up to 12 workweeks (up to 26 workweeks to care for a covered servicemember) of unpaid family and medical leave during each consecutive twelve-month period for which eligibility criteria have been met. Periods of employment with the University separated by a break in service will be counted when determining the 12 months of service provided that the break in service does not exceed seven years. For breaks in service that are seven years or longer, service time will be counted if one of the following applies: break in service due to National Guard or Reserve military service obligation; or written agreement by the University of Illinois indicating intent to rehire the employee after the break in service. The initial 12-month period is measured forward from the date the employee first takes FMLA leave. The next 12-month period begins the first time FMLA leave is taken after completion of any previous 12-month period. For example: the first time an employee takes FMLA leave is on September 19 and he/she uses the entire 12 weeks. The next time the employee is eligible for FMLA leave is on September 19 of the following year (year two). However, the employee does not need to take an FMLA leave starting on September 19 of year two, but needs to take one starting on November 23 of year two. The employee uses 4 weeks starting with the November 23 date and then needs to use the remaining 8 weeks in January. The employee has now exhausted their twelve weeks for year two (which started on November 23) and is not eligible to take another 12 weeks until November 23 (year three).

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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.

11.071 Entitlement to Leave

Family and medical leave shall be granted for the following purposes:

- (1) For the birth of a son or daughter of the employee, and in order to care for such child. Both parents are entitled to FMLA leave to be with the healthy newborn child (i.e. bonding time) during the 12-month period beginning on the date of birth. Entitlement expires at the end of the 12-month period beginning on the date of birth.
- (2) For the placement of a son or daughter with the employee for adoption or foster care, entitlement expires at the end of the 12-month period beginning on the date of placement. If such leave began before the actual placement because absence from work was required for the placement or adoption to proceed, entitlement expires at the end of the 12-month period beginning on the last day worked.
- (3) For care of a son, daughter, spouse, or parent of the employee in case of serious health condition. Employee does not need to be the only individual available to care for the spouse, son, daughter, or parent to be eligible. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition.

“Son or daughter” includes biological, adopted, foster, stepchild, legal ward, legal same-sex spouse’s child, or a child of person standing *in loco parentis*--who is under 18 years of age, or over age 18 but incapable of self-care because of a mental or physical disability (as defined by FMLA regulations). “Spouse” includes a husband or wife to whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into

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in a State that recognizes such marriages; or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. “Parent” is defined by the Family and Medical Leave Act as a biological, adoptive, step or foster father or mother, legal same-sex spouse of parent, or any individual who stood *in loco parentis* to the employee. “In loco parentis” includes those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship. FMLA leave for a parent-in-law is specifically excluded by the Act; however, a leave of absence to care for a parent-in-law may be granted under Policy 10, Sick Leave and other leave policies.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider, which includes:
 - (A) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); or

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- (B) Any period of incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of a child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days; or
 - (C) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A visit to a health care provider is not necessary for each absence; or
 - (D) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal stages of a disease, etc.). Only supervision by a health care provider is required, rather than active treatment; or
 - (E) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).
- (4) For a serious health condition that makes the employee unable to work at all or is unable to perform any one of the essential functions of his or her position. "Serious health condition" is defined in (3) above.
- (5) For the care of a son, daughter, spouse, including legal same-sex spouse as defined in 11.071 (3), parent or next of kin who is a covered servicemember with a serious injury or illness. During a single 12-month period, an eligible employee is entitled to twenty-six (26) workweeks of leave on a per-covered servicemember, per-injury/illness basis. Employee does not need to be the only individual available to care for covered servicemember to be eligible.

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“Son or daughter” includes biological, adopted, foster child, stepchild, legal ward, legal same-sex spouse’s child, or a child for whom the employee stood in loco parentis and who is of any age.

“Parent” means a biological, adoptive, step or foster father or mother, legal same-sex spouse of parent or any other individual who stood in loco parentis to the employee.

“Next of kin” means the nearest blood relative of a covered servicemember (other than his/her spouse, parent, son, or daughter), in the following priority order: (1) a blood relative designated in writing by the servicemember as his/her nearest blood relative for purposes of caregiver leave; (2) blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions; (3) brothers and sisters; (4) grandparents; (5) aunts and uncles; (6) first cousins.

“Covered servicemember” is a covered veteran or a current member of the Armed Forces, including a member of the National Guard, Reserves, or Regular Armed Forces, 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.

“Covered veteran” is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

“Serious injury or illness” means an injury or illness incurred by a covered servicemember: (a) in the line of duty on active duty; and (b) that may render the servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating; and (c) injuries or illnesses that existed before the beginning of the member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

“Serious injury or illness for a covered veteran” means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran,

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and is: (1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or (2) a physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or (3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or (4) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

The "single 12-month period" for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave.

- (6) Because of a qualifying exigency arising out of the fact that a son, daughter, spouse, or parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard, Reserves, or Regular Armed Forces.

"Qualifying exigency" includes any one or more of the following: short-notice deployment activities; military events and related activities; childcare and school activities; financial and legal arrangements; counseling activities; rest and recuperation activities; post-deployment activities; and/or additional activities, upon which the University and the employee agree, which arise out of the active duty status or call to duty. Employees who request qualifying exigency leave to spend time with a servicemember on rest and recuperation may take up to 15 calendar days of leave.

"Active duty or call to active duty status" means military duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to Section 688, Section 12301(a),

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Section 12302, Section 12304, Section 12305, Section 12406, or Chapter 15 of Title 10 of the United States Code, or pursuant to any other law during a war or during a national emergency declared by the President or Congress as long as it is in support of a contingency operation.

“Contingency operation” is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the U.S. or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services under the Sections and Chapter listed above, or under any other provision of law during war or during a national emergency declared by the President or Congress.

11.072 Leave Schedule

Leave for birth or adoption of a child shall be taken all at one time, not on an intermittent or reduced leave schedule, unless the employee and supervisor or responsible departmental official agree otherwise. Leave for a newborn or adopted child with a serious health condition may be taken as a block of time, intermittently, or on a reduced schedule. In the case of adoption or foster care, leave may begin before the actual placement or adoption of a child if an absence from work is required for the placement or adoption to proceed. Leave may be taken intermittently or on a reduced schedule when the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

Leave for a serious health condition (employee or family) may be taken intermittently or on a reduced schedule basis when medically necessary. 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. Employees cannot be transferred to an alternative job while on exigency leave.

Spouses who are eligible for FMLA leave and are both employed by the University of Illinois may be limited to a combined total of 12 workweeks of leave during the single 12-month period if leave is taken for birth of the employee’s son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, or to care for the employee’s parent with a serious health condition. Leave may be limited to a combined

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total of 26 workweeks during the single 12-month period if leave is taken to care for a covered servicemember with a serious injury or illness. These limitations on the total weeks of leave applies as long as the spouses are both employed by the University of Illinois.

“Intermittent leave” is leave taken in separate blocks of time or any part of a single day due to a single qualifying reason.

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 workweeks of family and medical 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 sixty-four percent-time employee scheduled to work twenty-four hours per week would be entitled to leave for twelve twenty-four hour workweeks or 288 hours (or, if leave is to care for a covered servicemember, twenty-six 24-hour workweeks, or 624 hours). Only the amount of leave actually taken may be counted toward the 12 or 26 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 family and medical leave shall be reported in one-tenth of an hour increments for non-exempt employees and quarter-hour increments for exempt employees. FMLA 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.

11.073 Notice of Leave

In any case in which the necessity for leave is foreseeable based on an expected birth or adoption placement, or based on planned medical treatment, the employee shall provide the supervisor with not less than 30 calendar days notice before the date the leave is to begin. If not foreseeable 30 days in advance, the employee shall provide verbal notice

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within two working days of learning of the need for leave and should provide an explanation to his/her supervisor indicating why providing such notice was not practicable. Failure to respond to such inquiries may result in denial of FMLA protection if the supervisor is unable to determine that leave is FMLA qualifying. If employee fails to comply with these procedures, absent unusual circumstances, the supervisor may delay or deny FMLA-protected leave. If the leave is for planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the unit. When foreseeable leave is due to a qualifying exigency, notice must be provided as soon as practicable regardless of how far in advance leave was foreseeable.

11.074 Medical Certification

An employee's request for leave to care for a son, daughter, spouse, or parent with a serious health condition or for a serious health condition that makes the employee unable to perform the functions of the position of the employee, must be supported by an acceptable certification issued by a health care provider. An acceptable certification must include:

- (1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
- (2) The approximate date on which the serious health condition commenced, and its probable duration;
- (3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;
- (4) If the employee seeks leave for his or her serious health condition, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability;

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- (5) If leave is sought to assist a serious health condition of a covered family member, information sufficient to establish that the employee is needed to care for the son, daughter, spouse, or parent and an estimate of the frequency and duration of the leave required to care for the family member;
- (6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;
- (7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and
- (8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

Such certification shall be submitted to the head of the employing campus unit, or applicable human resources office, before the commencement of the leave, or within 15 calendar days of the notification of the need for leave when the leave is not foreseeable, or as is practicable. Units may seek assistance from the campus/central human resources office regarding the acceptability of the certification provided.

If the University deems a medical certification to be incomplete or insufficient, it shall provide the employee with written notice of what information is lacking, and the employee shall have seven calendar days to cure the deficiency.

Second Opinion: If the medical certification provided is determined to be unacceptable to the employing unit or applicable human resources office, the employee may be

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required to obtain the opinion of a second health care provider designated or approved by the University, but not employed by the University.

Binding Third Opinion: In any case in which the second opinion differs from the opinion provided by the employee's provider, the opinion of a third provider may be required. The third provider shall be designated or approved jointly by the University and the employee. The opinion of the third provider shall be considered final and shall be binding on the University and employee.

Each campus shall develop procedures for the review of medical certification and referral for second and third opinions. The campus/central human resources office shall serve as a resource on medical certification procedures. Units should contact this office for assistance with medical certification questions or problems.

Any expenses associated with obtaining second and third opinions shall be the responsibility of the employing unit.

An employee may be required to obtain a recertification of a medical condition every six months in connection with an absence. Under certain circumstances, recertification may be requested more often. Contact your campus/central human resources office for assistance.

An employee's failure to provide required certification within 15 calendar days may result in delay or denial of leave. If the supervisor or campus/central human resources office has acquired knowledge that the leave is being taken for an FMLA required reason, the supervisor may designate the leave as FML leave and must notify the employee within five business days (absent extenuating circumstances). 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 medical certifications and related medical records separate from employee personnel files.

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11.075 Certification of Qualifying Exigency

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a military member's active duty or call to active duty status in support of a contingency operation.

11.076 Return from Leave

Ordinarily, an employee who has been absent for family and medical leave shall be restored to the position held by the employee in the same unit from which the employee took leave; or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment to which the employee would have been entitled had the employee not taken leave. 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 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 FMLA designation notice.

An employee returning from family and medical 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.

11.077 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

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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.

Extension of Other Insurance Coverage: An employee may continue insurance coverage in excess of the University's contribution by contacting the Benefits Center within 30 calendar days following 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 Benefit from the campus human resources office. Leave for disability or pending disability counts towards the 12-week FMLA entitlement.

Workers Compensation: All leave under workers compensation counts towards the 12-week FMLA 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 continuation, recurrence, or onset of a serious health condition (employee or family), or other circumstances beyond the control of the employee. Certification of such conditions may be required by the University.

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

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11.078 Use of Accrued Sick Leave and Vacation and Personal Leave
Birth, Adoption, or Foster Care

Employees have the option to take leave with or without pay. To continue in pay status during the FMLA period (or any part thereof) to care for a child following birth or adoption, an employee must use accrued sick leave or vacation and personal leave in accordance with University leave provisions as allowed within Policy and Rules. Accrued leave used for this purpose will be counted toward the FMLA entitlement. Any portion of the FMLA period for which accrued leave is not charged shall be without pay.

Serious Health Condition, Family Member or Covered Servicemember

Employees have the option to take leave with or without pay. For care of a son, daughter, spouse, or parent with a serious health condition, 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 FMLA entitlement (or any part thereof). If an employee's accrued sick leave is exhausted, the employee may elect to use accrued vacation and personal leave to continue in pay status during the FMLA period. Vacation and personal leave used for this purpose will also be counted toward the FMLA entitlement. Any portion of the FMLA period for which accrued leave is not charged shall be without pay.

Serious Health Condition, Employee

Employees have the option to take leave with or without pay. If an employee is unable to work because of a serious health condition, 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 FMLA entitlement (or any part thereof). If an employee's accrued sick leave is exhausted, the employee may also elect to use accrued vacation and personal leave to continue in pay status during the FMLA period. Vacation and personal leave used for this purpose will also be counted toward the FMLA 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 family and

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medical leave for information concerning benefits eligibility and to minimizing any gaps in benefits.

Any portion of the FMLA period for which accrued sick leave, or accrued vacation and personal leave, are not charged or for which the employee does not receive disability benefits, shall be without pay.

Qualifying Exigency

Employees have the option to take leave with or without pay. To continue in pay status during the FMLA period (or any part thereof) for a qualifying exigency leave, an employee must use accrued vacation leave in accordance with University leave provisions and policies. Accrued leave used for this purpose will be counted toward the FMLA entitlement. Any portion of the FMLA period for which accrued leave is not charged shall be without pay.

11.079 Extension of Leave Beyond 12 or 26 Weeks

Benefits under the family and medical leave policy expire after 12 weeks (26 weeks to care for a covered servicemember). An employee seeking approval of an extension of leave beyond the family and medical 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 without pay and other leaves.

11.080 Questions

Employees should discuss questions or disagreements about family and medical 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 family and medical leave policy is subject to provisions contained in the full text of the Act. Questions regarding the provisions of the FMLA and the Department of Labor Regulations for its implementation should be directed to the campus/central human resources office.