

The Family and Medical Leave Act

Understanding Your Rights

&

University of Denver Guidelines

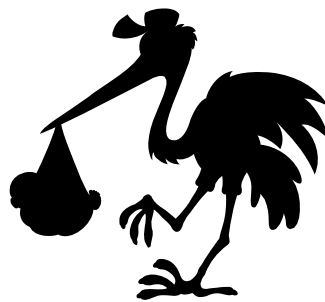


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Your Rights under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employee are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months and if there are at least 50 employees within 75 miles. * *On January 16th 2009 several changes to the FMLA regulations were put in place. They are listed in italics in the following pages.*

Reasons for Taking Leave: Unpaid leave must be granted for any of the following reasons:

- To care for the employee’s child after birth, or placement for adoption or foster care;
- To care for the employee’s spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee’s job.
- *12 weeks of FMLA leave can be taken because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty.*
 - *A qualifying exigency may include: Short-notice deployment (7 days or less), Military events and related activities Childcare and school activities Financial and legal arrangements, Counseling, Rest and recuperation, post-deployment activities, Additional activities.*
- *For an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member injured in the line of duty on active duty, FMLA provides a total of 26 weeks of leave during a 12 month period to care for the service member. This 12 month period begins on the first day the eligible employee takes leave to care for the service member, and if the employee does not take all 26 weeks during this time period, the balance is forfeited. Husband and wife working for the same employer are limited to 26 weeks of leave.*

At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave.

Advance Notice and Medical Certification: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- *The first or only in-person treatment visit must occur within seven days of the first day of incapacity. The second treatment visit must be directed by*

health care provider and occur within a 30 day period of time after first day of incapacity.

- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.
- *"Chronic Health Condition" the employee must make at least two visits in a year to the health care provider.*
- *Voluntary treatments and procedures language was deleted.*

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan".
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers: FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information: Contact the nearest office of Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

University of Denver's Guidelines and Procedures Family Care and Medical Leave

The University provides family care and medical leave to all employee (including faculty) in accordance with the federal Family and Medical Leave Act of 1993 (FMLA).

If any questions arise which are not covered by this guideline or prior published statements interpreting our policy, the University reserves the right to make any necessary interpretation which shall be conclusive for purposes of resolving the question.

General Provisions

The University of Denver will grant up to 12 weeks of family and/or medical leave during any 12 month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances, as specified in the following guidelines and procedures.

Eligibility

Any employee (including faculty, union, appointed or non-appointed employees) is eligible for FMLA leave, if the employee:

- Has worked for the University for at least 12 months, or 52 weeks prior to the date upon which the FMLA leave is to commence. This time need not have been consecutive; and
- Has worked at least 1,250 hours in the 12 months immediately proceeding the FMLA leave.

FMLA leave may be taken by employees who satisfy other requirements that are imposed by law or that may be imposed by the University. Some (but not all) of those requirements are described below.

Type of Leave Covered

In order to qualify as FMLA under these published guidelines, the employee must be taking the leave for one of the reasons listed below:

- 1) the birth of a child, and in order to care for that child;
- 2) the placement of a child for adoption or foster care;
- 3) to care for a spouse, child, or parent with a serious health condition; or
- 4) the serious health condition (described below) of the employee.
- 5) *For any qualifying exigency from the fact that spouse, son, daughter, or parent of employee is on active duty or has been notified of an impending call to active duty.*

- 6) *26 weeks of FMLA will be granted to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member injured in the line of duty on active duty to care for that servicemember.*

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical facility, or a condition which requires continuing care by a licensed health care provider.

The FMLA covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.

Employees with questions about what illnesses are covered under these FMLA guidelines or under the University's sick leave policy are encouraged to consult with the Human Resources Department.

If an employee takes paid sick or vacation leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under these guidelines, the University will allow all or some portion of related leave taken as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

An eligible employee can take up to 12 weeks of leave under the FMLA during any 12 month period. The University will measure the 12 month period as a rolling 12 months measured backward from the date an employee uses any leave under these guidelines. Each time an employee takes leave, the University will compute the amount of leave the employee has taken under these guidelines and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to take at that time.

If a husband and wife both work for the University, and each wishes to take leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a total of 12 weeks of leave.

Employee Status and Benefits During Leave

During the FMLA leave period, the University will continue the employee's health benefits at the same level and under the same conditions as if the employee continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the University will require the employee to reimburse the

University the amount it paid for the employee's health insurance premium during the leave period.

Under current University policy, the employee pays a portion of the health care premium. While on paid leave, the University will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the first day of each month. **If the payment is more than 30 days late, the employee's health care coverage may be dropped.**

If the employee contributes to a life insurance or disability plan, the University will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee must continue to make those payments. The payments must be received by the first day of each month. **If the payment is more than 30 days late, the coverage may be dropped.**

Employee Status After Leave

An employee who takes leave under the FMLA will be able to return to the same job or a job with equivalent status, pay, benefits and other employment terms. The position will be the same or one, which entails substantially equivalent skill, effort, responsibility, and authority. The University may choose to exempt certain highly compensation employees from this requirement and not return them to the same or similar position.

The University may require a fitness-for-duty certification prior to restoration for employees taking leave for a serious health condition. The University reserves the right to make additional medical inquires and/or require follow-up examinations, at its expense, to ensure that employees can safely perform all the functions of the job. These medical inquires will be conducted in accordance with the Americans with Disabilities Act.

Use of Paid and Unpaid Leave

If the employee has accrued paid leave, the employee must use paid leave first and take the remainder of the 12 weeks as unpaid leave.

Intermittent Leave or Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year), or under certain circumstances may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 weeks or a 12 month period. (For employee working a standard 37.5 hour workweek, on a 12 month appointment, this equates to 450 hours annually.)

The University may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the University before taking intermittent leave or working a reduced hour schedule. The employee must prove that the use of the leave is medically necessary. The University may require certification of the medical necessity, as discussed in the next section.

Certification of the Serious Health Condition

The University may ask for certification of the serious health condition. The employee is expected to respond to such a request within 15 calendar days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the Medical Certification Form.

Certification of the serious health condition shall include:

- The date when the condition began;
- It's expected duration;
- Diagnosis; and
- A brief statement of treatment.

For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of his/her position.

For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The first or only in-person treatment visit must occur within seven days of the first day of incapacity. Second treatment visit must be directed by health care provider and occur within a 30-day period of time after the first day of incapacity.

The University has the right to ask for a second opinion, if it has reason to doubt the certification. The University will pay for the employee to get a certification from a second doctor, which the University will select.

If necessary to resolve a conflict between the original certification and the second opinion, the University will require the opinion of a third doctor. The University and the employee will jointly select the third doctor, and the University will pay for the opinion. The third opinion will be considered final.

Leave Requests

Except where leave is not foreseeable, all employees requesting leave under this policy must submit the request in writing to their immediate supervisor, with a copy to the Human Resources Department.

When an employee plans to take leave under this policy, **the employee must give the University 30 days notice**. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable (usually within not more than 1 or 2 business days of when the need became known.) An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to their department's operations.

If an employee fails to provide 30 days notice for foreseeable leave, with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice.

While on leave, employees are requested to report periodically to the University regarding the status of the medical condition, and their intent to return to work.