



# WILLIAM & MARY

CHARTERED 1693

## HUMAN RESOURCES

### **Family Medical Leave Act (FMLA)**

#### **FREQUENTLY ASKED QUESTIONS**

**Q: What is the Family Medical Leave Act (FMLA)?**

- The Family Medical Leave Act (FMLA) is a federal law entitling eligible employees to take unpaid leave in certain situations where the employee, or a member of the employee's immediate family, suffers a qualifying injury or illness.

**Q: Which employees are eligible for FMLA leave?**

- FMLA leave is available to both full-time, part-time and hourly eligible employees.
- An eligible employee is an employee who has been employed for at least one year, and who has worked 1,250 hours within the previous 12-month period.
  - The required 1,250 hours do not have to be worked during consecutive months.
  - The hours of work requirement applies to the 12 months immediately preceding the start of leave date.

**Q: Does the employee's eligibility for FMLA leave change if both the employee and employee's spouse are university employees?**

- Yes, if both spouses are university employees, the full amount of FMLA leave may be limited to a combined total of 12 workweeks in a single leave year if leave is taken for one of the following reasons:
  - Birth of the employee's child or care for the child after birth;
  - Placement of a child with the employee for adoption or foster care, or to care for the child after placement;
  - Care for the employee's parent with a serious health condition; or
  - Any Department of Labor defined qualifying exigency arising out of the fact that the child, spouse or parent of the employee is called to active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation

**Q: How does the combined entitlement for spouses apply to caring for a family member in the military?**

- The full amount of leave for the care of a family member with an illness or injury incurred in the line of duty while active in the Armed Forces may be limited to a combined total of 26 weeks.
- Employees are only eligible for FMLA-leave if the military member is a child, parent or nearest blood relative of the employee.

**Q: What is the duration of FMLA leave?**

- Eligible employees are entitled to 12 weeks of unpaid FMLA leave, which is equivalent to 480 work hours, or 60 workdays.

**Q: What is the duration of FMLA leave with regard to service members?**

- If an employee is requesting leave for the care of a service member with a serious injury or illness, the period of FMLA leave coverage is extended to 26 weeks.

**Q: Can employees carry-over unused military caregiver leave from one 12-month period to another?**

- No. If employees do not use their entire 26-workweek leave entitlement during the single 12-month leave period, the remaining workweeks of leave are forfeited.

**Q: Does the FMLA leave need to be taken consecutively in one block, or are there other options?**

- FMLA leave can be taken in a single block of time or may be taken as intermittent leave.
- Intermittent leave is a work schedule permitting the employee to take leave through a reduced work schedule for a few hours a day (less than 8 hours), or for leave on a periodic basis, or on an as needed and intermittent basis.
- A full-time employee working a reduced schedule may not exceed 480 hours during the leave period.

**Q: Are there restrictions on the use of paid leave for employees who choose intermittent leave or a reduced work schedule?**

- Employees who take intermittent leave or work a reduced schedule must first use their available paid leave balances, as permitted by each specific leave policy.
- Unpaid family and medical intermittent leave can only be taken once the employee has exhausted all accrued leave.

**Q: What action will the university take if the employee's current position does not accommodate intermittent leave or a reduced work schedule?**

- If the employee is eligible for FMLA leave, the university can temporarily transfer the employee to another position that better accommodates the need for intermittent leave or a reduced work schedule. The temporary position must have equivalent pay and benefits to the employee's current position.

**Q: How is the leave year defined?**

- A leave year is a 12-month period. The university has established January 10 of each year, to January 9 of the following year as the leave year. This is the same leave period designated by the Virginia Department of Human Resource Management (DHRM).

**ELIGIBILITY**

**Q: When is an employee eligible for FMLA leave?**

- Eligibility for FMLA leave is determined on the start date of the requested leave. In order to be eligible, the employee must qualify for one or more of the following reasons:
  - Prenatal care for or birth of a child, and to care for the newborn child
    - Leave for the care of a newborn child must be taken within 12 months of the child's birth to qualify for FMLA leave
  - Placement of a child for adoption or foster care
    - Leave must be taken within 12 months of the date of the child's placement

- To care for a child who is under the age of 18, or age 18+ who is incapable of self-care because of a mental or physical disability
- To care for the employee's spouse or parent with a serious health condition that involves inpatient care in a medical or health care facility, or continuing treatment by a health care provider
- The employee's own serious health condition, which renders the employee unable to perform functions of his or her position.
  - The university may request certification from a health care provider, certifying that the employee is unable to work or unable to perform the essential functions of his or her position within the guidelines of the Americans with Disabilities Act.
- Qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation.

**Q: How does the university define a “serious health condition”?**

- The university defines a *serious health condition* as an illness, injury, impairment, or physical or mental condition that involves:
  - Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility;
  - A period of incapacity requiring absence of more than **three** calendar days from work, school, or other regular daily activities, that also involves continuing treatment by (or under the supervision of) a health care provider;
  - Any period of incapacity due to pregnancy or for prenatal care;
  - Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g. asthma, diabetes, or epilepsy);
  - 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, stroke, terminal disease); or
  - Any absences from work to receive multiple treatments (including a period of recovery) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (such as chemotherapy, physical therapy, dialysis)

**Q: Can an employee use FMLA leave for a short-term illness, such as a cold or flu?**

- No. FMLA leave may not be used for short-term conditions where the treatment or recovery period are brief, such as minor illnesses or outpatient surgical procedures with expected brief recuperating periods. FMLA leave also may not be used for leave taken to care for an immediate family member with a short-term or commonplace illness.
- If an employee is not eligible for FMLA leave, he or she may, with supervisor approval, use accrued annual or personal leave.

**USING PAID LEAVE DURING APPROVED FMLA LEAVE**

**Q: Are employees allowed to use accrued paid leave toward their period of approved FMLA leave?**

- Yes, although FMLA leave is unpaid job protected leave, employees have the option of using paid leave available under other university or state leave programs. Paid leave available under these programs runs concurrently with FMLA leave.
- If an employee is on short-term disability or is on worker's compensation leave, FMLA leave runs concurrently with the disability claim.

**Q: What leave is available to employees enrolled in the Virginia Sickness and Disability Plan (VSPD)?**

- Employees enrolled in the Virginia Sickness and Disability Plan (VSPD) are eligible for short-term disability leave. The amount of leave varies based upon dates of service and available leave balances. This period of paid leave runs concurrently with FMLA.
- Employees enrolled in the (VSPD) may also use up to 33% of their VSPD personal sick leave hours towards the individual's approved period of FMLA leave to care for a family member.

**Q: What leave is available to classified employees enrolled in the Traditional Sick Leave Program?**

- Classified employees who participate in the Traditional Sick Leave Program may use their accrued sick leave balances towards the period of approved of FMLA leave for their own serious health condition.
- In addition, classified employees may use up to 48 hours of their sick leave balance towards their period of approved FMLA leave to care for a family member. Thereafter, you may use up to 33% of your sick leave balance towards your period of approved FMLA leave for care of a family member.

**Q: What leave is available to Professional employees and Instructional faculty who are enrolled in the William & Mary Sick Leave Program?**

- Professional employees and Instructional Faculty who are enrolled in the William & Mary Sick Leave Program may use up to 120 calendar days of paid leave towards the employee's period of approved FMLA leave. This period of paid leave may taken either for the employee's own serious health condition or to care for a family member. Thereafter, any period of approved leave is unpaid leave.
- Professional employees and Instructional faculty are also eligible for long-term disability benefits. The university's long-term disability program is administered through the Standard. There is a 180 day waiting period from the onset of disability before benefits are effective. More information can be found at <http://www.wm.edu/offices/hr/currentemployees/benefits/9monthfaculty/disability-b/index.php>.

**Q: What leave is available to eligible part-time employees?**

- The leave allowed under the university's FMLA policy for eligible employees is prorated to reflect the actual hours worked by an employee during the leave accrual period. Part-time employees, therefore, have the option of using paid leave available to them under university leave policies for qualifying family and medical leave, subject to the prorated hours available to the part-time employee.

**Q: What leave is available to hourly employees who are eligible for Paid Time Off (PTO)?**

- Hourly employees who have PTO have the option of using their available leave balance towards the employee's period of approved FMLA leave.

**Q: What leave is available to Postdoctoral employees who are eligible for Paid Time Off (PTO)?**

- Postdoctoral employees who have PTO have the option of using their available leave balance towards the employee's period of approved FMLA leave.

## **REQUESTING FMLA LEAVE FROM HUMAN RESOURCES**

### **Q: What is the process for requesting FMLA leave?**

- Employees must notify Human Resources of the need for leave. An employee must provide as much notice to the university as is reasonable and practicable. A 15-day advanced notice is reasonable when the need for leave is foreseeable.
- If the requested leave is due to an emergency or unforeseen event that precludes advanced notice, the employee must notify Human Resources within a reasonable and practicable timeframe.
- Human Resources will review the employee's request for FMLA leave and determine if the employee is eligible for leave. Human Resources will send the employee an eligibility notice. The notice will also be accompanied by a separate written notice of the employee's rights and responsibilities, including employee obligations concerning the use of FMLA leave, and the consequences of failing to meet those obligations.

### **Q: What is the time frame for receiving the eligibility notice?**

- The eligibility notice must be provided to the employee within 5 business days of the initial request for leave, or when the university acquires knowledge that an employee's leave may be for an FMLA-qualifying reason.
- An eligibility notice is not required for FMLA absences for the same qualifying reason, during the same leave year, or for FMLA absences for a different FMLA-qualifying reason where the employee's eligibility status has not changed.

### **Q: What does the employee have to provide the university to be approved for protected FMLA leave?**

- If eligible, the employee must return and provide the university with a health care provider's certification form. The certification must include:
  - Verification of the condition
  - Date when the serious condition/qualifying event began
  - Probable duration of the serious health condition
  - Recommended type of leave (continuous, intermittent, reduced schedule)
- NOTE: The University may request a second or third opinion from a health care provider, at its own expense, regarding the eligibility of the employee's condition for FMLA leave. The opinion of the third health care provider shall be considered final and binding upon the university and the employee.

### **Q: Does an employee have to provide the university with medical records in addition to the certification form?**

- No. A medical certification that meets the requirements set forth above is sufficient.

### **Q: Should the employee return the medical certification form to the supervisor or to his or her department head?**

- No. The medical certification form should always be returned to Human Resources. It should never be provided to the employee's supervisor or department.

### **Q: Must the employee sign a medical release as part of a medical certification?**

- No. An employer may not require an employee to sign a medical release as part of the medical certification process. However, an employee may voluntarily provide such a release.

**Q: What happens if the university advises the employee that the medical certification is incomplete?**

- Under the FMLA, the university must provide a written statement to the employee identifying what additional information is necessary for the medical certification to be complete.
- Under the FMLA regulations, the university must provide at least 7 days to cure the deficiency, unless 7 days is not practicable under the circumstances.
- If the deficiency is not corrected, the employee will not be able to use paid leave or the employee's period of protected leave may end.

**EMPLOYEE RESPONSIBILITIES AND RECERTIFICATION OF MEDICAL NEED**

**Q: If the employee's request for FMLA leave is approved, what are the employee's responsibilities to the university during the leave period?**

- The university may require the employee to provide periodic updates on the employee's status and intent to return to work.
- Depending on the circumstances, the university may also request a recertification of the employee's need for FMLA leave, on a reasonable basis.

**Q: Why might the university request recertification of the employee's need for FMLA leave?**

- The university may request a new medical certification if the FMLA leave period will last beyond a single FMLA leave year.
- Additionally, the university may request recertification if it has acquired knowledge that calls into question the validity of the employee's existing medical certification.
- The university cannot require a second or third opinion for recertification.

**Q: When may the university request recertification?**

- If the FMLA leave period is encompassed within a single leave year, the university may request the employee to provide a recertification no more often than every 30 days.
- The exception to this 30 day rule is if:
  - The employee requests an extension of leave;
  - The circumstances described by the previous certification have changed significantly; or
  - The university receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.
- Additionally, if the employee's medical certification indicates the minimum duration of the serious health condition is more than 30 days, the university must wait until the minimum duration has passed before requesting recertification.

**Q: How often will the university request a recertification if the employee's serious health condition is for an indefinite duration?**

- The university may request recertification for absences every six months for serious health conditions with an indefinite duration.

**Q: Who is responsible for the cost of the recertification?**

- The employee is responsible for the cost of recertification.

**Q: After the university requests certification, when must the employee provide it?**

- After a request has been made, the employee must provide the recertification within 15 days. If the employee does not provide the recertification within this time frame, the university may deny the employee the continuation of FMLA leave.

**RETURN TO WORK AND FITNESS FOR DUTY CERTIFICATION**

**Q: What forms are required to return to work at the end of the employee's period of approved FMLA leave?**

- An employee on FMLA leave due to a serious health condition, whether work related or non-work related, must present a Fitness for Duty Certification form to Human Resources prior to returning to work.

**Q: May the university also require a Fitness for Duty evaluation?**

- Yes, in some cases, the university may require a Fitness for Duty evaluation. Please refer to the Fitness for Duty Policy regarding when a Fitness for Duty evaluation will be required prior to the employee's return to work.

**Q: When would a Fitness for Duty Certification not be required?**

- A Fitness for Duty Certification may not be required for each absence taken on an intermittent or a reduced leave schedule. However, if the university has a reasonable belief that the employee's return to work while on an intermittent or reduced leave schedule presents a significant risk of harm to the employee or to others, the university may request a Fitness for Duty Certification once every 30 days.

**Q: Will the employee be reinstated to the employee's former position upon return to work?**

- FMLA leave is unpaid job protected leave. Therefore, at the end of the FMLA leave period, employees are normally reinstated to the positions they held prior to the leave, or to an equivalent position.
- This reinstatement provision does not apply to key employees.

**Q: What factors are considered when reinstatement involves a different but equivalent position?**

- If the position the employee held prior to the FMLA-leave has subsequently been filled, non-key employees are entitled to restoration of equivalent positions. Factors taken into consideration when evaluating comparable positions includes:
  - Duties, responsibilities, and status of the employee
  - Employment terms and conditions
  - Shift and general work schedule
  - Geographic proximity
  - Same general skill level, effort, responsibility and authority
  - Identical pay, including equivalent premium pay, overtime and bonus opportunities,, and any unconditional pay increases that occurred during the FMLA leave
  - Identical benefits: life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.

**Q: What if an employee is unable to return to work at the end of the FMLA leave period or period of paid leave?**

- If an employee is unable to return to work and has exhausted his or her period of FMLA leave during the designated 12-month leave year, the employee no longer has FMLA job leave protection or job restoration rights. Faculty reinstatement is subject to the provisions of the Faculty Handbook.

**EMPLOYEE BENEFITS DURING LEAVE PERIOD**

**Q: What is the status of employee benefits while the employee is on FMLA leave?**

- Employee benefits will continue, subject to the obligation to remit the required premium payments.

**Q: Will the university continue to contribute the employer portion of the employee's health insurance premium during the period of FMLA leave?**

- Yes. The university will continue to contribute the employer portion of the health insurance premium of salaried employees who are on FMLA leave.

**Q: Does the payroll deduction for health insurance premiums continue if the employee uses accrued paid leave during the FMLA leave period, and what happens if the employee chooses not to use paid leave during the FMLA leave period?**

- Yes. If an employee is using paid leave during the FMLA leave period, the payroll deduction of the employee's portion of the health insurance premiums continue, for the same amount.
- However, if an employee chooses not to use paid leave during the FMLA leave period, the employee is responsible for remitting the premium contributions to the university by the due date. If this premium contribution is not received, the benefits will be discontinued.

**Q: What if the employee does not return to work at the end of the FMLA leave period?**

- If an employee does not return to work at the later of the designated FMLA leave period or such other period of approved short-term leave under another state or university program, the employee will be placed on an inactive service status and will not be eligible for pay or benefits, unless the employee qualifies for income replacement and benefits under the university's long-term disability program.

**Q: What are the employee's responsibilities with regard to health insurance premium payments?**

- If the employee is released to return to work but does not return to work, the university may also recover from the employee the Commonwealth's share of premiums paid during the leave period. The university will not recover these premiums if the employee fails to return to work as a result of the following:
  - The onset, recurrence, or continuation of serious health conditions that requires the employee to care for the employee or a family member; or
  - Other circumstances beyond the employee's control

**Q: Will the employee accrue paid leave during the FMLA leave period?**

- Employees on paid leave will accrue leave in accordance with the applicable leave policy. Employees will not accrue leave during any period of approved leave without pay.
- If an employee has taken any unpaid leave during a pay period, the employee will not accrue leave.

## **EMPLOYER OBLIGATIONS**

**Q: What information may the university provide to others regarding the employee's need for FMLA leave?**

- Human Resources may inform supervisors or managers of any necessary restrictions or accommodations that the employee may need to perform his or her job.
- Human Resources may advise first aid and safety personnel if the employee's physical or mental condition might require emergency treatment.
- Human Resources may provide Government officials investigating FMLA compliance with relevant information.

**Q: Where are records and documents relating to family and medical leave maintained?**

Records and documents relating to the employee's medical certifications, recertification, or medical histories of employees or employee's family members are maintained in separate files/records and are treated as confidential medical records.

**Q: Can an employee be adversely affected for exercising FMLA leave?**

- No, an employer may not take adverse action or retaliate against an employee for exercising his or her entitlement to FMLA leave. It is prohibited for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA.

**Q: Who should employees contact with additional questions about FMLA compliance?**

- Please contact John Poma in the Office of Human Resources at [jmpoma@wm.edu](mailto:jmpoma@wm.edu) or 757-221-3115 or Kiersten Boyce in the Office of Compliance at [kboyce@wm.edu](mailto:kboyce@wm.edu) or 757-221-2473.

NOTE: If the provisions of this FAQ are inconsistent with the university's Family and Medical Leave Policy or Fitness for Duty Policy, the terms and provisions of the policies are controlling.