

FAMILY AND MEDICAL LEAVE

(This policy replaces policy 407.0 Family and Medical Leave in the Staff Handbook)

PURPOSE

The Family and Medical Leave Act of 1993 (FMLA) gives certain job protections to employees when balancing work responsibilities with the demands of personal illness or injury or in caring for family members.

This policy sets for the essential provisions of FMLA. In the event that additional clarification is needed, the actual Act and regulations issued by the federal government implementing the Act shall prevail.

Depending on individual circumstances of the leave, faculty and staff may also be concurrently eligible for paid sick leave benefits under the Sick Leave policy (Staff Handbook or Faculty Handbook).

SCOPE

To be eligible for FMLA leave, an employee must have been employed by the University or other Oklahoma state agency for twelve months, which need not be consecutive, and must have worked at least 1,250 hours within the previous 12 months as of the date leave commences.

POLICY AND PROCEDURES

Qualifying Event

Under FMLA, an eligible employee may request up to 12 week of unpaid leave for a qualified event:

- a. For the birth and care of a child or replacement or placement of a child with you for adoption or foster care. Such leave must be taken within 12 months after placement. Leave may begin prior to birth or placement;
- b. For care of a family with a serious health condition. The employee must be needed to care for basic needs, psychological comfort, filling in for others, or making arrangements for the relative; or
- c. Because an employee's own serious health condition makes the employee unable to do his or her job due to illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatments.

Definition of Serious Health Condition

- a. Under FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that requires either in-patient care or continuing treatment by a health care provider.
- b. Serious health condition would not include short-term conditions, which require brief treatment and recovery, such as common colds or flu, stomach viruses, non-migraine headaches, and routine pregnancy, or voluntary or cosmetic treatments not considered medically necessary. The above list is not all inclusive.

FMLA Definitions of Family

- a. Spouse means a husband or wife as defined or recognized under State law for purpose of marriage;
- b. Parent means a biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents "in law."
- c. Son or daughter means a biological adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent, who is under age 18, or incapable of self-care because of a mental or physical disability.

Qualifying Exigency Leave Entitlements

Eligible employees with a spouse, child, or parent on federal active duty or called to federal active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies include activities related to short-notice deployment, attending military events, arranging for alternative childcare or attending school activities, addressing financial and legal arrangements, attending counseling sessions, attending post-deployment reintegration briefings, and spending time with a covered military member who is on rest and recuperation leave.

Military Caregiver Leave Entitlements

Employees may also be eligible to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

"Covered servicemember" refers to an employee's spouse, child, parent or next of kin, who is a current member of the Armed Forces, including a member of the National Guard or Reserves, who incurred a serious injury or illness in the line of active duty that renders the servicemember medically unfit to perform his or her duties and for which the

servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or in the temporary retired list.

“Next of kin” has the same definition as set forth in 29 CFR 825.127(b)(3).

The 26 weeks of leave is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemember or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any “single 12-month period.”

The “single 12-month period” begins on the first day the employee takes leave to care for the covered servicemember and ends 12 months after that date. An employee who is entitled to take leave due to a different FMLA-qualifying reason may take leave during the same single 12-month period in which leave is taken to care for a covered service member, but the total leave taken for any purpose during the single 12-month period may not exceed 6 workweeks overall.

12-Month Period under FMLA

Under FMLA, employers may select one of four options defined in the regulation to establish the 12-month period to be uniformly applied to all employees taking FMLA leave as long as the method is applied consistently and uniformly to all employees. Langston University uses the 12-month period measured forward. As defined in the regulation, this method uses the 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period.

Employee Notice and Certifications

- a. The employee must provide 30 days advance notice when the leave is “foreseeable.” On rare occasions, advance notice might not be possible. These situations will be evaluated on a case-by-case basis.
- b. Medical certification may be required prior to approval of leave indicating the employee is needed to provide care or unable to perform his/her job.
- c. Continued doctor certification will be required if the situation warrants, but not more frequently than every 30 days unless the University has reason to believe the employee is able to return to work.
- d. Forms for medical certification are available from the Office of Human Resources. This form is also acceptable for documentation of sick leave under the Sick Leave policy.
- e. Leave will be denied if the employee fails to provide the required medical certification.

Maximum Leave Entitlement

- a. Up to 12 weeks of absence from assigned duty may be requested within a 12-month period.
- b. In the event both spouses are employed by Langston University, maximum leave for each eligible spouse is 12 weeks.

Intermittent and Reduced Leave Schedule

- a. In the event of employee or immediate family member illness only, an employee may request a reduced work schedule. Necessity for the leave must be such a medical need that can best be accommodated through intermittent or reduced leave schedule must attempt to schedule their leave so as not to disrupt Langston University operations.
- b. Langston University may transfer an employee to an alternative position with equivalent pay and benefits in order to accommodate the request when such a reassignment is available.
- c. Leave taken on an intermittent or reduced schedule will be calculated on a pro rata or proportional basis comparing the employee's new schedule to his or her prior schedule.

Interaction With Other Leave Programs

University employees shall exhaust all accrued sick, annual, personal leave, and compensatory time balances, as appropriate, prior to going on unpaid leave. The paid leave used will count concurrently as FMLA leave.

When FMLA leave is used concurrently with disability leave or workers' compensation leave, the leave policies of those programs shall override the requirement of this policy for employees to exhaust all of their accrued leave.

Employees requesting workers' compensation or disability leave who are also eligible for FMLA leave shall have up to twelve weeks of the non-working portion of the approved benefit period, including any required waiting period, count concurrently as FMLA leave. The University may also grant FMLA leave to employees while their request is being reviewed. The granting of FMLA leave shall have no bearing on the approval or disapproval of employee's request.

Continuation of Benefits during Leave

- a. An employee's coverage in a group health plan will continue under the same conditions that existed prior to family/medical leave. Employee medical will be

paid by Langston University if the employee is enrolled in medical coverage at the time the leave is requested.

- b. Employee life insurance and all optional benefits regularly paid by the employee will be paid by the employee while on leave.
- c. Dependent coverage of existing benefits would continue to be paid by the employee as under normal circumstances.
- d. Employee contributions will be made by the employee through the Bursar's Office on a timely basis.
- e. In the event an employee elects to cancel insurance coverages, such cancellation will be effective the end of the month after written notice to Langston University Office of Human Resources. No partial premiums will be calculated.
- f. If an employee fails to return to work from unpaid leave, except where health conditions will not permit or death, the employee will be required to reimburse Langston University for premiums paid on behalf of the employee during the family/medical leave. The employee will be billed through the Bursar's Office.

Restoration of Employment

- a. Upon return from FMLA leave, an employee will be restored to his/her original or equivalent position with equivalent pay, benefits, and other employment terms.
- b. An employee may not be restored to an original or equivalent position if such position has been eliminated through a reduction in force program or if the original terms of appointment expired during the leave.
- c. Key employees ranking in the top 10% of the highest paid employees at Langston University may be excluded from the job guarantee provision if there are reasons justifying such an action.
- d. If the reason for leave is personal illness or injury or the employee, medical proof of fitness to return to work will typically be required indicating the employee is able to perform the essential functions of the job.
- e. Time on leave of absence without pay may not count toward credited service for Oklahoma Teachers Retirement (OTR) purposes. The rules of the Oklahoma Teacher's Retirement System (OTRS) will prevail.

Restoration of Benefits

- a. Langston University paid benefits such as the paid health care and life insurance will be restored to the employee once returning from leave and will be equivalent

to what the employee would have had without taking the leave. If the employee does not want the insurance during this leave, s/he should cancel the insurance and upon return to work should notify Langston University of his/her desire to reinstate the benefits. If the insurance is reinstated the day the employee returns, proof of insurability will not be required and no pre-existing condition clauses will apply.

- b. Benefits normally paid for by the employee such as dependent coverage, long-term disability, etc. would also be reinstated.
- c. Health and dependent care reimbursement accounts will be reinstated once the employee is back on pay status if s/he was enrolled at the time of his/her leave.

Notice to Employees

- a. Notice of the Family and Medical Leave Act is posted in designated buildings on campus. Departments are responsible for ensuring such notification exists.
- b. Copies of this policy and procedures would be made available to employees upon their request.
- c. Health and dependent care reimbursement accounts will be reinstated once the employee is back on pay status if s/he was enrolled at the time of his/her leave.

Recordkeeping

- a. The Office of Human Resources will maintain adequate up-to-date records for each staff member that accurately reflect the rate and the amount of leave taken, the dates when such leave is used, and the current untaken leave balances.
- b. The Office of Human Resources will generate appropriate forms on any leave taken under FMLA.
- c. Supervisors will report leave used on payroll time-sheet reports. The Office of Human Resource will maintain a record of these time reports.
- d. Documentation for use of leave will be maintained by the Office of Human Resources for three years.

Exhaustion of Family and Medical Leave

- a. Once an employee has exhausted the 12 work-week eligibility under this policy and other paid leave does not apply, the employee must return to work immediately or pursue a personal leave of absence.
- b. If no other leave is approved, the employee will be terminated.

COBRA

- a. If an employee does not return to work after FMLA leave, Langston University will offer COBRA as required by the Consolidated Omnibus Benefits Reconciliation Act.
- b. The qualifying event that will trigger an offer of COBRA continuation of coverage occurs on the last day of the employee's FMLA leave. The last day of FMLA leave is the earlier of (1) the date the employee gives termination notice or (2) the last scheduled day of the FMLA leave.
- c. Length of COBRA coverage is measured from the day of the qualifying event.

EXCEPTIONS TO POLICIES AND PROCEDURES

The authority to grant exceptions to one or more of these policies and procedures is vested in the Office of the President of Langston University.