***Supervisor FAQ’s:***

***Do I have the option to deny FMLA if our department is really busy?***

No. If the employee is eligible and approved for FMLA, they must be able to take the leave.

***Does the employee return to the same position after FMLA leave?***

Yes. Under FMLA, the employee is returned to the same or equivalent position upon return from leave. Exceptions might exist if the employee’s job would have been lost if he or she had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal.

***When should I start the FMLA process?***

You should contact Human Resource Services to initiate the FMLA process when an employee informs you that she or he needs time off for a reason that may be covered by the FMLA. The employee may not be as clear as to mention the “FMLA” when asking for the time off, but you should be aware that the reason may qualify for FMLA. When in doubt, contact Human Resource Services.

Sometimes an employee may not ask for the time off or you may not immediately know if an absence could be covered by the FMLA. You should monitor your employee’s attendance. You should consult with Human Resource Services when an employee is off for his or herself or a covered family member for:

• A period of incapacity of more than three - five consecutive full calendar days (which can include absences Friday and the following Monday), and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30

days, or treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

• Any period of incapacity due to pregnancy or prenatal care.

• Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a health care provider, which continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.

• Permanent or long-term conditions

• Conditions requiring multiple treatments

• Hospital Care: Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care

• Absence Plus Treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

* Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of , or on referral by, a health care provider, or
* Treatment by a health care provider on a least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

• Pregnancy: Any period of incapacity due to pregnancy or for the prenatal care.

• Chronic Conditions: Requiring Treatments: A chronic condition which

* Requires periodic visits for treatment by a health care provider or by a nurse or physician’s assistant under the direct supervision of a health care provider;
* Continues over an extended period of time (including recurring episodes of a single underlying condition); and
* May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc)

• Permanent/Long-Term Conditions Requiring Supervision: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

• Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under the orders of, or on referral, by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a

period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

• Care for a covered family member returning from covered active duty with the Armed Forces or a veteran of the Armed Forces that has sustained an injury or illness.

***Is it my responsibility to confirm the employee is eligible for FMLA?***

Yes. Human Resource Services will likely need your assistance to determine whether the employee is eligible; that is, has the employee been employed at least 12 months, has the employee worked at least 1,250 hours in the 12-month period preceding the leave, and how many FMLA hours if any have been taken this calendar year by the employee.

***I am a supervisor and one of my employees has been out unexpectedly for a week. Is this covered by FMLA?***

It could be. You should try communicating with the employee. You should also contact Human Resource Services so they can send the employee the appropriate paperwork to determine whether the absence is covered by FMLA.

***I am a supervisor and one of my employees regularly takes sick leave for appointments and treatment. Is this covered by FMLA?***

It could be if the underlying condition qualifies. You should contact Human Resource Services so they can send the appropriate paperwork to determine whether the absences are covered by FMLA.

***Must I allow an employee an extension of leave beyond FMLA?***

There may be instances where it could be reasonable to extend a leave of absence after an employee has used all of the allowable time under the FMLA. Please work with Human Resource Services in these situations. It is best to keep in touch with the employee before the FMLA ends so there are no surprises at the end of the leave.

***What if the employee is unable to perform some or all of the position after FMLA leave?***

The FMLA provides only the 12/26 weeks of leave. If the employee is unable to perform his or her position at the end of the FMLA leave, HR should engage in an interactive discussion with the employee regarding what limitations the employee has and what would help the employee return to work. Consult with Human Resource Services, as it may be necessary to initiate an accommodation process. An employee who cannot perform the essential functions and/or description of the position with or without accommodation may not be eligible to return to work.

***What if I have a temporary light duty position available for the employee – do I still have to allow the FMLA leave?***

Yes. You can certainly offer the light duty work, but if the employee is otherwise eligible for FMLA leave, the employee may choose to take the FMLA leave and not accept the light duty work.

***What if a faculty or staff member gives notice of intent not to return? Are their benefits terminated?***

Yes, as long as the notice is “unequivocal” or definite. One form of an unequivocal notice is when the employee submits a written letter for resignation. The individual has the option to continue coverage through COBRA following termination of employment.

There is also no right to reinstatement once the employee “unequivocally” or definitely gives notice that he or she will not return. Consult with Human Resource Services before concluding on your own that you have received unequivocal notice.

***Can I discharge an employee who is on FMLA leave?***

Yes. Termination of employment may occur while an employee is on approved FMLA leave if the employee’s job would have been lost if he or she had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal. In this situation, consult with Human Resource Services before taking any action.

You cannot discharge an employee simply because he or she is taking FMLA leave, or otherwise retaliate against the employee for taking FMLA leave.

***Can I discipline an employee who is on FMLA leave?***

Yes. You may discipline an employee who is on FMLA leave for any legitimate reason that is not related to the FMLA leave. For instance, if the employee fails to follow proper call-in protocol for reporting absences. In this situation, consult with Human Resource Services before taking any action. You cannot discipline an employee simply for taking FMLA leave, or otherwise retaliate against an employee for taking FMLA leave.

***What about transferring a staff member to another position?***

You may consider temporarily transferring a staff member to an alternative position in order to accommodate intermittent absences or a request for a reduced schedule, provided that it provides “equivalent pay and benefits” and the transfer is permitted by policy or contract. Before pursuing this possibility, consult with Human Resource Services to make sure you are not violating any contracts or other policies.

***Can an employee request sick leave or vacation for a serious health condition and NOT count this toward the FMLA period?***

No, such a request should automatically count as FMLA leave. You should record such vacation or sick leave as FMLA if covered.

***An employee is approved for intermittent leave for treatment (for his/herself or family member). Can I ask the employee to work with me to schedule those appointments, or can he/she schedule them when it is convenient for him/her?***

The employee must work with you and make a reasonable effort to schedule those planned appointments at a time that will not disrupt the work of your department.

***An employee is approved for intermittent FMLA. Does he/she need to call in for each absence?***

Yes. The employee needs to follow your department’s call-in procedures (e.g., when to call, whom to call) for intermittent or unplanned absences. Make sure these rules are known and evenly applied to everyone.

***An employee is approved for intermittent FMLA. Does the employee need to provide a new medical certification for each absence?***

No, the employee does not need new medical certification of the condition that causes the intermittent absence if that condition is already approved. However, it may be necessary to document the reason for the absence – that is, that the employee was out that day for that reason and not some other reason.

If the employee develops new conditions that require absence from work, you may need to seek certification of that new condition to determine if FMLA will apply. Contact Human Resource Services in that situation.

***An employee is approved for FMLA. How will I know which absences are for the FMLA-covered reason?***

Ask the employee. First, the employee must follow your department’s call-in procedure for absences (e.g., when to call, whom to call). Second, when the employee calls in, you need to ask the employee whether the absence is for one or more FMLA-covered reasons. The employee must answer your questions that are reasonably directed to determining whether the absence is covered. You do not need a lot of information, but you do need to know enough to determine whether the absence is FMLA or not (e.g., “are you out today for an FMLA reason?” or “I understand you are unable to work today – is this related to your FMLA leave?”).

***Can the University place an employee on FMLA leave if the employee fails to request the leave?***

Yes. If the employee is eligible for FMLA and is taking time off for a covered situation, the University can designate the time off as FMLA even if the employee did not request it. You should not count leave as FMLA if it is not covered.

***When should an employee’s absence be designated as FMLA leave?***

Designation of absences as FMLA leave should occur as soon as possible, preferably within two business days. For this reason, it is important that you are working with Human Resource Services to determine that the employee is eligible and that the absence qualifies for FMLA leave.

Sometimes, because information has not been shared quickly, the absence can’t be designated as FMLA leave until the employee actually returns to work. Otherwise, retroactive designation is discouraged.

***Can the University deny FMLA leave even if the employee meets the eligibility requirements and has a serious health condition?***

No. However, FMLA leave could be delayed or denied if the employee fails to submit the required paperwork.

***What if the employee’s absences are not consistent with the information I received from Human Resource Services (e.g., the employee is absent more often than the health care provider suggested)?***

Contact Human Resource Services. It may be necessary to have the employee recertify the FMLA absences if the number or frequency of absences is not what the health care provider suggested. Human Resource Services will not know the amount of absences unless you let them know. Once notified, HRS will send a recertification request to the employee.

***Can I ask for updates from the employee on leave?***

Yes. A supervisor can ask the employee for periodic updates on status and intent to return to work. These are not medical certifications or paperwork, but just informal touching base with the employee.

***Are there differences in how FMLA leave is administered between Merit, P & S, and Faculty?***

No, all groups of employee have the same rights under the FMLA. However, the University leave policies that outline how employees may be paid during their time off may differ depending on the employee category.

***An employee is a full-time faculty member on a 9-month appointment. How does the FMLA apply?***

The FMLA covers the employee assuming he/she meets the eligibility criteria set out in the policy. FMLA only governs leaves of absence from time the employee would otherwise be working – the 9-month appointment. FMLA would not cover the three months the employee is not employed by OSU. If the employee is paid by OSU and continues to perform services for OSU over the summer, seek clarification as to whether the FMLA might cover the employee in such a situation.

***An employee is on a full-time 9-month faculty appointment and had a baby in June. The appointment requires the employee to return to work in August. How does the FMLA apply to this situation?***

For birth or care of a baby (or placement of a child through foster care or adoption), leave must be taken and completed within the first year of the birth (or placement). Either parent may take FMLA any time in the 12 months after the baby is born. So even though the baby was born in June, the employee may still use FMLA when the appointment commences in August.

***An employee’s partner is pregnant. Do both parents have FMLA time for birth or adoption of child or placement of foster child?***

Yes, both parents are eligible for FMLA leave in covered situations. However, the University leave policies that outline how employees may be paid during their time off may differ. For instance, birth mothers typically need time to recover physically from the pregnancy and childbirth, which would be covered by sick leave. Or, if the child developed a serious health condition, either parent could use available sick leave per University policy for such situations. Finally, both parent could take time to care for and bond with a healthy child – that time will either be paid through vacation or unpaid because there is no medical need for the leave.

***An employee and his/her partner both work for OSU. Does that affect their FMLA leave rights?***

Each eligible parent shall have to 12/26 weeks of FMLA leave independent of each other *except for* the birth or adoption of a child or placement of foster child, or care for a service member who was injured or became ill in the line of duty. In those exceptions, the partners share 12/26 weeks. For example, both parents could take 6 weeks to care for their newborn, for a total of 12 weeks. While no more time can be taken under the FMLA for the newborn, each parent has 6 weeks left to use for other FMLA covered situations. Parents may wish to discuss other options with their individual departments.

***How does an employee start the FMLA process?***

The employee should submit the Employee Request Form to Human Resource Services and also notify you that he or she will be needing time off. The employee may also want to check his or her paid leave balances to determine whether his or her FMLA leave will be paid or unpaid. The employee will most likely be asked to provide documentation to certify the need for FMLA.

***How should FMLA be administered for individuals with ‘potential” absence due to a disclosed illness (i.e., cancer diagnosed but never missed 3 days).***

If you have knowledge that the person may need time off because of their illness or injury, you should contact Human Resource Services so they can send the FMLA paperwork to the employee. The “3-5 day rule” is just one example of a covered condition under the FMLA – there are other conditions that are covered by FMLA.

***Where is FMLA paperwork kept?***

FMLA paperwork will be kept confidential in Human Resource Services. There should be no medical information in the employee’s personnel file. If you have any medical information, it should be kept separately from the department personnel file.

***What is the department’s responsibility after FMLA has been approved?***

The Department is responsible for tracking the employee’s absences and knowing when the FMLA leave will expire. It is helpful to get in touch with the employee before the FMLA expires so they can plan for their return to work. The Department needs to keep in touch with Human Resource Services regarding absences and leave. The supervisor should receive the employee’s FMLA Return to Work Release before the employee returns. If the release requires work restrictions, please contact Human Resource Services to discuss the restrictions.

***Can time spent as a student employee be combined with that of a regular appointment to fulfill the eligibility requirement of at least 1,250 hours and twelve months?***

Yes, provided all of the employment at issue has been within the University.

***Is Workers Compensation leave counted simultaneously with that of FMLA leave?***

Yes, if the injury or illness meets the definition of a serious health condition.

***How do you calculate intermittent leave*?**

To track intermittent leave, hours must be counted. As an example, an employee with a full-time appointment who is on intermittent leave is entitled to the hourly equivalent of 12 weeks at full-time (480 hours).

***If FMLA leave is taken for the birth or placement of a child, when must the leave conclude?***

An employee’s FMLA leave taken for the birth or placement of a child must be completed by the end of the 12 month period that begins on the date of the birth or placement.

***Is there a total of 12 weeks of leave per calendar year, or 12 weeks per situation?***

The employee may use 12 weeks, total, during the calendar year regardless of how many qualifying situations exist.

***May an employee drop optional insurance coverage during FMLA leave?***

Yes, an employee may drop optional insurance coverage during FMLA and has the right to be reinstated into such coverage at the end of the FMLA leave.

***Do temporary employees have any rights under FMLA?***

Temporary employees are eligible for FMLA if they meet the same eligibility criteria:

They have worked (anywhere at Oklahoma State University) for at least 12 months

They have worked at least 1,250 hours in the 12 months immediately preceding the leave.

If otherwise eligible, temporary employees may only use FMLA during their appointment. If the appointment was set to expire or end, the FMLA will not extend the employment.

***What happens if the employee doesn’t complete the paperwork?***

FMLA leave could be delayed or denied if the employee does not complete the necessary paperwork.

***The employee has a lot of sick leave. Why do he or she need to go through the FMLA process for the absence if the employee has available sick leave to use?***

The University is required to designate and track FMLA, per Department of Labor guidelines, even if the employee has sufficient sick leave to cover the leave of absence. Remember, the sick leave and FMLA run together at the same time.

***Should I wait until the employee uses all his or her sick leave before contacting Human Resource Services to start FMLA?***

No. FMLA should begin as soon as you know the employee needs leave for a covered reason, even if the employee has paid leave available. Do not wait for the employee to exhaust the paid leave. Paid leave and FMLA leave should run together at the same time.

***An employee would like to save his or her paid leave for another situation, can FMLA be unpaid?***

No, not if the employee has paid leave available to use. The FMLA allows employers to require employees to use paid leave during an FMLA absence. However, merit, P&S, and eligible faculty may reserve up to 80 hours of vacation for later use.

***Who is responsible for tracking FMLA absences?***

The proper designated departmental employee is responsible for tracking an employee’s FMLA absences. It is extremely important that the tracking is accurate. This is especially true when an employee is taking intermittent FMLA leave. Human Resource Services will need this information since they will not know about the employee’s attendance or absences.

When an employee who is covered by FMLA is absent, you should ask whether the absence is due to the FMLA condition. That is, the person could be certified to take FMLA for chemotherapy sessions, but may be absent for an unrelated illness. Only count FMLA for the absence supported by the FMLA documentation. If the employee develops multiple conditions, each condition needs to be certified as FMLA-qualifying and should be tracked accordingly.

See HR for Tracking Spreadsheet.

***What are the supervisor’s responsibilities?***

Be receptive to requests about FMLA. If you do not know the answer to a question, refer the employee to Human Resource Services. If you have received a request for FMLA, contact Human Resource Services so they can begin the process to determine if the employee is eligible and if FMLA is warranted under the circumstances. Remember the request may be written or verbal and the employee may not always mention “FMLA.”

If an employee is absent from work for reasons you know or suspect to be covered by FMLA, consult Human Resource Services to determine if FMLA is implicated. The “3-5day rule” is just one situation that may call for FMLA when the employee is ill or out of work for 3-5 consecutive calendar days. Explain your expectations to the employee so there are no surprises, especially related to calling in for intermittent or unexpected absences. Keep Human Resource Services updated on absences and whether those absences are consistent with the expected need for leave. If the employee is unable to return to work at the end of the FMLA leave, engage in an interactive discussion with the employee regarding limitations and ability to return.

Review the employee’s Release to Return to Work form and consult with Human Resource Services if the health care provider has indicated work restrictions.

**For Additional questions, please contact:**

**Human Resource Services**

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