



Brandeis University

Family and Medical Leave Policy for Staff

Policy Statement

In accordance with the Family and Medical Leave Act of 1993 (FMLA), it is the policy of the University to grant up to 12 weeks of family and medical leave ("FMLA leave") to eligible employees during any "rolling" 12 month period measured backward from the date an employee uses any FMLA leave. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances.

It is also the policy of the University to grant an employee up to 26 weeks of leave in a single 12 month period to care for a current member of the Armed Forces with a serious injury or illness incurred in the line of duty. The 12 month period begins on the first day the employee takes such leave. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances.

An employee is responsible for ensuring that his/her supervisor and department are kept apprised of any absence from work whether paid or unpaid.

Applicability

In order to be eligible for FMLA leave under this policy, the employee must have been employed for 12 months (not necessarily consecutive) or more in a benefits eligible position and have worked at least 1250 hours over the previous 12 months before the leave commences. An eligible employee will be granted up to 12 weeks of FMLA leave during a 12 month period (counted backward from the onset of the requested time away).

Type of Leave Covered

FMLA leave must be for one of the following reasons:

- 1) The birth and care of the newborn child of the employee;
- 2) Placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- 3) To care for an immediate family member (spouse, child¹, or parent) with a serious health condition;
- 4) Personal medical leave when the employee is unable to perform the essential functions of his/her own position because of a serious health condition (may include job-related illness or injury of a serious nature which is covered by workers' compensation);
- 5) Because of a qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty (or had been notified of an impending call to active duty) in support of a contingency operation;
- 6) To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the service member; or
- 7) Due to incapacity caused by pregnancy, for prenatal care, or for the mother's serious health condition following the birth of a child. A spouse is entitled to FMLA leave needed to care for the pregnant spouse under any of these circumstances.

¹A child is defined as a biological, adopted, or foster child, stepchild, or a legal ward who is under 18 years of age, or 18 or older and incapable of self-care because of mental or physical disability at the time that FMLA leave commences.

Definition of a Serious Health Condition

A serious health condition under the Family Medical Leave Act is defined as an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential medical care facility, or (2) a period of incapacity requiring an absence of greater than three days and continuing treatment by a health care provider. Continuing treatment is defined as (1) two or more visits to a health care provider within 30 days of the first day of incapacity, or (2) a single visit that results in a regimen of continuing treatment under the supervision of the health care provider. The visits must be in person and the first visit must occur within 7 days of the first day of incapacity. For chronic conditions, visits to a health care provider at least twice a year are required.

Length of FMLA Leave

For Employee's or Family Member's Serious Health Condition. Based on medical certification, an eligible employee may be approved for a maximum of 12 weeks of FMLA leave in a 12-month period. For purposes of this policy, a "rolling" 12-month period will be used, measured backward from the time an employee uses any FMLA leave. FMLA leave may be taken as follows:

- 1) A continuous leave;
- 2) An intermittent (a schedule of individual days or partial days off in increments of at least an hour for medically necessary treatment, etc.) leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition; or
- 3) A reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.

Care for a Service Member

An eligible employee may be approved for a maximum of 26 weeks of leave in a single 12 month period to care for a current member of the Armed Forces with a serious injury or illness incurred in the line of duty. The 12 month period begins on the first day the employee takes such leave.

Because of a Qualifying Exigency

An eligible employee may be approved for a maximum of 12 weeks leave in a 12 month period, calculated on a "rolling" basis. Qualifying exigencies include short-notice deployment, military events, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, as well as other circumstances. Employees are advised to consult with the Human Resources Office regarding eligibility.

For Birth, Placement or Adoption of a Child

An eligible employee may be approved for a maximum of 12 weeks leave in a 12 month period, calculated on a "rolling backwards" basis.

Conditions for Intermittent or Reduced Schedule Leaves

The employee must try to schedule intermittent or reduced schedule leave so as not to disrupt the department's operation. Whenever possible, the employee and manager should reach agreement on a leave schedule before intermittent leave or a reduced schedule begins. If FMLA leave is for care of a newborn or newly placed adopted or foster care child, use of intermittent leave is subject to the employee's supervisor's approval and must conclude within 12 months of the birth or placement.

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.

Length of FMLA leaves for Spouses Who Are Both Employed by the University Spouses who are both employed by the University are entitled to a combined total of 12 weeks of FMLA leave for the birth and care of the newborn child, for placement of a child, for adoption or foster care and to care for the newly placed child, and to care for a parent who has a serious health condition.

Procedure for Requesting FMLA Leave and Medical Documentation

A request for FMLA leave shall be made to the Benefits section of the Office of Human Resources at least 30 days prior to the leave or, under emergency circumstances, the employee (or the employee's representative) should give Brandeis as much notice as practicable (within 1 or 2 business days of learning of the need to take FMLA leave). Employees are also required to inform their immediate supervisor of their need for FMLA leave; however, they are not required to provide the medical reason for the leave to the supervisor.

In the case of planned medical treatment, an employee should make a reasonable effort to schedule treatment in order to avoid disrupting the work of his/her department.

Applications for FMLA leave are available from the Benefits section of the Office of Human Resources. Employees must provide satisfactory medical certification with a request for FMLA leave. A "Certification of Health Care Provider" form must be completed and submitted with the employee's application for FMLA leave within 15 days of the request, or a reasonable explanation for the delay must be provided. Forms must be submitted to the Office of Human Resources for review. Failure of the employee to comply with the medical certification request may result in the denial of the leave.

If there are deficiencies in the medical certification, the University will explain in writing what additional information is needed and the employee will have 7 days to provide the requested information. If questions still remain after receiving information from the employee or the employee does not provide the requested information within seven days, the University's Office of Human Resources may contact the employee's health care provider for clarification and/or confirmation of the authenticity of the medical certification. In these situations, employees must sign a HIPAA² release form permitting the Office of Human

Except in cases involving service members, the University has the right to request a second medical opinion. The University will pay for the employee to see a second health care provider who is not employed by the University, which the University will select. If the second opinion differs from the first, the University may require, at its own expense, a third final and binding opinion from a health care provider designated and approved jointly by the University and the employee.

Response to Employee's Request for FMLA Leave

The Office of Human Resources will provide initial notice either verbally or in writing responding to the employee's request for FMLA leave within 5 business days (absent extenuating circumstances) If the initial notice is given verbally, a written notice will follow. The notice will inform the employee of eligibility for FMLA leave. It also describes the employee's rights and responsibilities under FMLA and includes specific expectations and obligations of the employee and the consequences for failing to meet these obligations.

After submitting an application requesting FMLA leave and supporting medical documentation to the Office of Human Resources, an employee will receive a written notice that describes whether the request for FMLA leave is approved and designated as FMLA leave. If additional information is needed to make the determination the employee will be notified in writing.

²*The Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulates the use and disclosure of protected health information.*

Recertification of Medical Condition

Except in cases involving service members, employees on leave for their own serious health condition are required to provide periodic documentation no less frequently than once a month to the Office of Human Resources regarding the status of the medical condition and intent to return to work.

An employee on leave to care for an immediate family member with a serious health condition (unless that person is a service member), is required to provide periodic documentation no less frequently than once a month to the Office of Human Resources regarding the status of the medical condition.

Use of Sick, Vacation or Personal Leave during FMLA Leave

If the leave is for an employee's pregnancy and birth of a child, available sick leave benefits may be used during the portion of the leave verified by medical certification of need (generally, up to 8 weeks of sick leave benefits may be used). In addition, accrued vacation and personal time may be used during the leave. When this time is exhausted or if an employee elects not to use sick, vacation or personal leave the employee will be placed on an unpaid status.

If the leave is for care of a newly placed adopted or foster care child, employees may elect to use their accrued sick, vacation and personal time balances during their leave. When this time is exhausted, the employee will be placed on an unpaid status. (Up to 12 accrued sick days may be used by full-time employees for the purpose of adoption. Leave will be pro-rated for part-time employees)

If the leave is for an employee's own serious health condition, available sick leave benefits must be used during the portion of the leave verified by medical certification of need. Once sick leave benefits are exhausted, an employee may use vacation and personal time balances. When this time is exhausted, the employee will be placed on an unpaid leave status.

If the leave is to care for an immediate family member with a serious health condition, up to 5 accrued sick days may be used (if available). In addition, an employee may use accrued vacation and personal leave balances. When this time is exhausted or an employee elects not to use available sick, vacation or personal leave, the employee will be placed on an unpaid leave status.

Status of Benefits during FMLA Leaves

The University will continue an employee's medical and/or dental coverage during both paid and unpaid FMLA leaves provided the employee continues to pay his/her portion of the premiums (payroll deductions will continue to be taken during a paid leave). Employees should make arrangements with the Benefits section of the Office of Human Resources to continue the premium payments during an unpaid leave.

Group Basic Life Insurance and Long-Term Disability Insurance will continue at no cost to the employee during an approved FMLA leave. If the employee is enrolled in the Supplemental Life Insurance the premium deductions will continue through payroll during a paid leave. Employees should make arrangements with the Benefits section of the Office of Human Resources to continue the premium payments during an unpaid leave.

Retirement Plan contributions will continue during a paid FMLA leave based on eligible salary received. Under IRS rules, Retirement Plan contributions cannot be continued during an unpaid leave.

Vacation, Personal and Sick leave will continue to accrue during a paid FMLA leave however these leave accruals may not be used until the employee returns to work. Note that an employee receiving the 60% paid extended illness benefit will accrue vacation, personal and sick time at a 60% rate. Vacation, Personal and Sick leave will not accrue during an unpaid FMLA leave. Vacation leave accrued during FMLA leave will not be paid out if the employee does not return to work.

Flexible Reimbursement Accounts: Deductions for employees who participate in either the University's dependent care or health care reimbursement accounts will stop immediately upon the beginning of the unpaid portion of the leave. An employee may continue to submit claims for covered expenditures during the leave and continues to be responsible for expending the account in accordance with plan provisions or risk losing an unused balance.

Tuition Reimbursement: Tuition benefits cannot be used or paid while on leave. However, upon return to a benefits eligible position, eligibility is reinstated immediately. Eligible employees must be actively at work while taking an approved course at the time of reimbursement to receive this benefit.

Reinstatement and Employee Status after FMLA Leave

Employees are expected to contact their supervisor and the Office of Human Resources at least one week prior to their return to work date. If the FMLA leave was for the employee's own serious health condition, a "Fitness for Duty" form/letter completed by his/her health care provider will be required, certifying that he/she is able to return to work and perform the essential functions of his or her position. The letter/form should also indicate what accommodations, if any, are recommended. The letter/form must be submitted to the Office of Human Resources prior to the employee's return to work. The University may deny reinstatement until such "Fitness for Duty" certification is provided.

At the completion of the approved period for FMLA leave, an employee will be reinstated to his or her former position or a position with equivalent status, pay, benefits and other employment terms.

Failure to Return to Work after an Approved FMLA Leave

Employment will be terminated if an employee does not report to work within 30 days of the expiration of an approved FMLA leave. Engaging in other employment while on leave without the approval of the University will result in termination of employment.

The University will recover its cost of health and dental insurance premiums paid to maintain coverage during the unpaid portion of the leave for employees who accept other employment or who do not return to work due to reasons under the employee's control. Deductions will be made from any payments due to the employee such as vacation leave or unpaid wages. The University also reserves the right to take any other legal action necessary to recover any amount due.

This policy is for general guidance only. It does not create an employment contract or any right to continued employment at Brandeis University. Brandeis University reserves the right to modify, revoke, suspend, terminate and/or change any and all policies and procedures at any time, with or without notice.