



NUMBER: 4.6.11

DATE: 07/15/1996

REVISION: 08/17/2005; 07/27/2009; 10/23/09

PAGE: 1 of 7

SECTION: HUMAN RESOURCES

AREA: TIME OFF

SUBJECT: FAMILY AND MEDICAL LEAVE ACT

PURPOSE

UAMS recognizes the importance of achieving a healthy balance between work and family responsibilities. The Family and Medical Leave Act of 1993 (“FMLA”) requires certain employers to allow eligible employees to take up to 12 weeks of leave (paid and/or unpaid) to care for a newborn or newly adopted child, to recuperate from their own serious illness, to care for a seriously ill family member, and to care for servicemembers injured in the line of duty, or qualifying exigency. **An eligible employee is one who has at least 12 months of employment with the State of Arkansas and has worked at least 1,250 actual work hours during the previous 12-month period.** The purpose of this policy is to notify employees and departmental supervisors within UAMS of the guidelines established by the FMLA and to ensure that uniform procedures and compliance exist across all organizational lines.

SCOPE

This policy covers all UAMS employees, faculty and staff.

POLICY

An eligible employee may take up to 12 weeks of family and medical leave during a 12-month period for qualified medical reasons. This period is “measured forward” from the date an employee’s first FMLA leave begins. Example: October 5, 2009 to October 5, 2010) All FMLA leave taken within the 12-month period is counted against the employee’s allotment of 12 weeks. A new 12- month period will not begin until the completion of any previous 12 month period.

Family and medical leave may be requested for:

- **Birth, adoption, or foster care** --- A new parent or foster parent may apply for leave within one year after the child is born or placed in the parent’s home. If both parents work for UAMS, they will be entitled to a total of 12 weeks between them.
- **The employee’s serious health condition, as defined by law** --- An illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider. Continuing treatment by a health care provider must include either (1) a period of incapacity lasting more than three consecutive calendar days and treatment two or more times by a health care provider, or treatment by a health care provider on one occasion resulting in a regimen of continuing treatment under the provider’s supervision, or (2) any period of incapacity due to pregnancy, or for prenatal care, or (3) any period of

incapacity due to a chronic serious health condition. (*A specialized Health Care Provider form is available and must be completed for the employee.*)

- **A serious health condition, as defined by law, of an employee’s spouse, child, or parent and for whom the employee is needed to provide care.** (*A specialized Healthcare Provider Form is available and must be completed for covered family members.*)

- **Illness, injury or financial exigency related to military service**
 - **Family Members of Service members Injured in the line of duty**--Employees can take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious illness or injury incurred in the line of duty. This provision extends FMLA protection beyond the normal 12 weeks. The “son or daughter” can be any age for this particular leave and protection is extended to additional family members i.e., next of kin. (*A specialized Certification form is available and must be completed for this leave request.*)

 - **Qualifying Exigency Leave**—This leave is available to family members of a covered military member on active duty and falls under the normal 12 workweeks of FMLA leave. (*A specialized Certification form is available and must be completed for this leave request.*) Qualifying exigencies include:
 - Short-notice deployment
 - Military events and related activities
 - Childcare and related activities
 - Financial and legal arrangements
 - Counseling
 - Rest and Recuperation
 - Post-deployment activities
 - Additional activities not encompassed in the other categories, but agreed to by the employer and employee

Leave can be taken on a continuous, reduced, or intermittent basis depending upon the situation. A reduced leave schedule is one which reduces an employee’s usual number of working hours per workweek or hours per workday. Intermittent leave is taken in separate blocks of time due to a single qualifying reason. Employees should contact their immediate supervisor to request reduced or intermittent leave. (*Additional information on reduced and intermittent leave appears at the end of this administrative guide policy.*)

UAMS requires employees to use all unused sick days, annual/vacation days, and personal holidays during any FMLA leave. If an employee has exhausted all paid leave, the balance of the FMLA leave is unpaid. (*Exception: The State of Arkansas, OPM Section 105.5.1, provides that an employee taking maternity leave may elect to take a leave of absence without pay and not exhaust their accumulated annual and sick leave. Also, adoption, foster care and paternity leave is taken in a different sequence. Please contact the Office of Human Resources (OHR) for clarification.*) At the point when an employee's FMLA leave is without pay, the department MUST place the employee on a FMLA "leave of absence without pay status" in SAP.

FMLA leave runs concurrently with any paid or unpaid leave that is taken (e.g., Sick, Vacation, Worker’s Compensation and Catastrophic Leave). Any leave falling under the protection of

FMLA **cannot** be classified as an occurrence in any absence control policy or practice, nor may any disciplinary action be taken for absences covered by FMLA. The employee is still required to follow the departmental call-in procedure while on FMLA Leave. The department is responsible for making sure the employee's job duties are fulfilled while the employee is on FMLA leave.

An employee does not exhaust FMLA leave while performing "light duty" work. An employee's right to be restored to their job is preserved during the period of a light duty or until the end of the applicable 12-month FMLA year.

An employee **will not** accrue sick days, vacation days, or personal holidays while on an unpaid FMLA leave. While on unpaid intermittent or reduced-schedule FMLA leave, an employee's accrual of sick, vacation, and personal days will be pro-rated in accordance with the intermittent or reduced work schedule. When FMLA leave is unpaid, the Office of Human Resources (OHR) will contact the employee to arrange for payment of their insurance premiums.

When FMLA leave is paid leave, the employee may maintain regular payroll deductions for benefit coverage, and UAMS will continue to pay the University share. The employee will also accrue vacation, sick, and holiday hours as long as they are on paid leave. If, at any time, the employee's normal scheduled work hours are reduced and they are still in a pay status, their department is responsible for contacting Payroll to adjust their monthly leave accrual.

FMLA leave does not have to be requested by the employee. UAMS will designate the leave as FMLA when the guidelines for receiving leave are met. An employee's department will notify the employee in writing that their leave will be classified as FMLA.

Upon return from FMLA leave, the employee is entitled to be returned to the same position held when FMLA leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. In the event that an employee's position is eliminated as part of a scheduled reduction in force while the employee is on leave, UAMS is not obligated to reinstate the employee unless there is an open equivalent position available at the time the employee is able to return to work and for which the employee is otherwise qualified.

Certain "**key employees**" (*as defined by law is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all employees employed by UAMS*) may be denied restoration to their jobs when that restoration would cause substantial and/or grievous economic injury to the University's operations. An employee who is considered a key employee under the FMLA will be notified of that fact at the time he/she requests a leave of absence.

If an employee fails to return to work following FMLA leave, the employee may be required to reimburse UAMS for its share of benefit premiums paid on the employee's behalf during the period of unpaid FMLA leave. If it becomes known that the employee is not returning to work and, therefore, ceases to be entitled to FMLA leave, the University's obligation to provide health benefits (except as provided under COBRA) and to restore the employee to work will cease at that time. In order to be eligible for COBRA, the employee must first pay all of their portion of benefit premiums.

When an employee completes twelve (12) weeks FMLA leave in any twelve (12) month period and has not returned to work, the supervisor should contact the Employee Relations Manager in the Office of Human Resources for guidance.

Each department at UAMS is responsible for all documentation and record keeping and **must** maintain a record of all leave reports involving FMLA for a minimum of three years. This confidential file must be kept separate from other files and only include medical documents.

PROCEDURES

Employee Notice: An employee should request FMLA leave from the employee's supervisor verbally or by submitting a written request for leave with sufficient information to make the employer aware that the employee needs FMLA qualifying leave and the anticipated timing and duration of the leave. An employee must provide the supervisor at least 30 days advance notice before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of lack of knowledge of approximately when leave will be required to begin, a change of circumstances, or a medical emergency, notice must be given as soon as practicable.

- If the employee fails to properly inform the employer, he or she may not have FMLA protection for the absence;
- When the employee calls in "sick" for a shift, they must specifically reference the qualifying reason or state "FMLA" leave.
- For extended FMLA leave, the employee is required to give advance notice where possible, keep the supervisor informed of their need for continued leave, give two days notice prior to returning to work, and promptly return to work when the conditions which necessitated the leave are no longer present.

Departmental Response: If an employee requests FMLA leave or the employer designates time off as FMLA leave, the employer **must** provide the employee with written notice that includes, as appropriate, the following information:

- That the leave will be counted against the employee's annual FMLA leave entitlement;
- Any requirement for a medical certification or certification of a qualifying exigency arising out of active duty or call to active duty status;
- Notify employee that failure to respond to an inquiry may result in denial of FMLA protection if the employee is unable to determine that leave is FMLA qualifying;
- The leave runs concurrently with any paid or unpaid leave that is taken;
- Any requirement to make premium payments to maintain health benefits, the arrangements for payments, and the consequences of failing to do so -- the employee must contact OHR for assistance;
- Requirements for a fitness-for-duty certificate -- The employer must notify the employee on the designation notice whether a Fitness for Duty will be required in order to return to work and indicate whether it must address ability to perform essential job functions. If this notice is provided and an employee later fails to provide certification, the employee

loses his/her rights to reinstatement under the law unless additional FMLA leave is requested;

- The employee's status as a "key employee" and its consequences;
- Being restored to employment, the right to restoration to the same or equivalent position; and
- Potential liability for the employer's share of health insurance premiums paid by the employer if the employee fails to return to work.

Absent extenuating circumstances, the supervisor or director must notify the employee within 5 business days of the request date, thereby granting or denying the request. (*The proper form to use is the "[Leave or Clocking Exception Request](#)"*).

Certification: When the FMLA leave is to care for the employee's seriously-ill spouse, child, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, UAMS requires that leave be supported by a certification issued by the health care provider of the employee or the employee's ill family member. ¹¹ (*The "Certificate of Health Care Provider" forms, are available through the Office of Human Resources or at www.uams.edu/ohr*). When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employee's supervisor within 15 calendar days from the supervisor's request. The 15 day window starts the day after the supervisor gives the employee the form. Leave can be denied if the medical certification is not returned in the 15 day window unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts.

If the duration of the leave (continuous or intermittent) is more than 30 days, the supervisor may not request recertification until the end of the period specified on the Healthcare Provider form. If the duration of the leave is less than 30 days, the supervisor may only request recertification if (1) the employee requests an extension beyond the original duration, (2) there are significant changes in circumstances of duration or frequency of absences or severity of the medical condition, or (3) information that casts doubt upon the need for continued leave. In cases of illness, the employee can be required to report periodically to their manager their leave status and their intention to return to work. Supervisor may not request recertification for a qualifying exigency or for military care giver leave.

If the employee's absence does not match what the health care provider stated on the Certificate of Health Care Provider form, an updated form can be requested and the employee will be given 7 calendar days to cure the deficiencies (more days may be needed depending on the situation and the good faith effort). If the 7 day window is not met or timely returned and does not meet the deficiencies, leave can be denied. If the supervisor suspects leave abuse, a health care provider's note can be requested. ~ Ref: [Admin Guide, Sick leave 4.6.03](#) Also, if the department has questions or needs additional information about what is written on the form, a designated health care provider who represents UAMS will contact the employee's health care provider, with the employee's permission, to clarify or authenticate the medical certification. (*Contact the Employee Relations Manager for guidance.*) In some instances the form may be returned to the employee for completion if it is obvious that it is not completed in its entirety. Both the FMLA and the Health Insurance Portability and Accountability Act ("HIPAA") require that UAMS

obtain authorization prior to seeking this information from the employee's health care provider. (This form entitled "[HIPAA Authorization for release of Information to UAMS](#)" is available in the Office of Human Resources or at www.uams.edu/ohr.) The employee is not required to sign the authorization, but if he/she does not, UAMS may not be able to adequately evaluate the request for leave. Under such circumstances, UAMS may deny the request for leave based on the information provided in the employee's health care certification or require the employee to obtain a second opinion from a health care provider retained by UAMS at its expense.

If there is reason to doubt the validity of the Certification of Health Care Provider, UAMS may require a second opinion from a health care provider it designates. If that opinion differs, the opinion of a third health care provider, jointly approved by the employee and UAMS, may be solicited. That opinion shall be final and binding. UAMS will be responsible for the expenses of the second and third opinions. UAMS may not require a second opinion on qualifying exigency or military care giver leave.

As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, UAMS may require the employee to obtain and present certification from the employee's health care provider that the employee is able to resume work. Such "**fitness-for-duty certification**" may only be sought with regard to the particular health condition that caused the employee's need for FMLA leave. This form must be requested from the employee prior to their return to work. It must address the employee is able to perform the essential functions of their job. If an employee is released to intermittent leave, the same certification may be requested where reasonable job safety concerns exist.

Intermittent and reduced schedule leave: FMLA leave may be taken intermittently or the employee can work a reduced work schedule under certain circumstances:

- For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. This medical necessity must be certified by the employee's health care provider on the Certification of Health Care Provider form.
- Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the University's operations.
- When an employee requests FMLA intermittent or reduced-schedule leave for any reason, UAMS may temporarily transfer the employee to another available position with equivalent pay and benefits if such a transfer better accommodates the employee's need for a reduced schedule or intermittent leave.
- Leave may be taken on a reduced leave (part-time) work schedule when approved by the employee's manager. This will not reduce the total amount of leave entitlement.
- The employee may take intermittent FMLA leave for their own chronic serious health condition if they are unable to perform the essential functions of the job

because of this chronic condition. They may also take intermittent FMLA leave to care for a family member that has a chronic serious health condition. The employee or the family member does not have to receive treatment for each episode, but there must be an initial diagnosis by a Health Care Provider and the completed form must be on file with their manager. The Certification Form must contain a statement that the employee is needed to care for the child, spouse or parent and also give an estimate of the amount of time required.

- An expectant mother may take FMLA leave intermittently before the birth of her child and for prenatal care or if her condition causes her to be unable to work.
- Intermittent FMLA leave may be used before the actual placement or adoption of a child and if the absence from work is necessary for the adoption or foster care placement to proceed.
- When the employee takes FMLA leave for the birth of a child or the placement of a child with them for adoption or foster care, they may take the leave intermittently only if the supervisor agrees to the proposed arrangement. The part-time arrangement must not exceed the 12 week cumulative limit.
- Management approval is not required if a new mother has a serious health condition connected with the birth of her child or if the newborn child has a serious condition.
- The employee has 5 days upon their return to work to advise their manager that their absence was covered under FMLA (*the manager should already have a Certificate for Healthcare Provider Form on file.*)

REFERENCES

[4.6.08 - Leave of Absence](#)

[4.6.07 - Catastrophic Leave](#)

[4.1.08 - Workers Compensation](#)

[4.6.03 – Sick Leave](#)

^[1] For purposes of this policy: “Health Care Provider” refers to a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the US Department of Labor to be capable of providing health care services. This includes clinical social workers who are authorized to practice under state law, podiatrists, dentists, clinical psychologists, Christian Scientists practitioners, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated to exist by an x-ray), nurse practitioners and nurse-midwives.

SIGNATURE: _____



Chancellor

Date: October 23, 2009