Family Medical Leave Act (FMLA)

Note: This presentation is a high level overview. For Bargained for employees, please also refer to appropriate contract.
Family Medical Leave Act (FMLA)

- FMLA was enacted in 1993 and allows an employee to take job-protected, unpaid leave, or substitute the appropriate accrued paid leave for up to 12 weeks in a 12 month period.

- The primary purpose of FMLA
  - To assist employees in balancing work and family life.
  - The University of Michigan has long recognized the importance of providing assistance to employees in meeting legitimate family obligations.
  - As a result, longstanding University policy and practice provide for a generous amount of paid and unpaid time away from work for the reasons recognized by the FMLA.
Eligibility Requirements

- An employee, must be employed for at least 12 months (does not have to be consecutive may be up to 7 years prior to leave begin date) **PLUS**

- A **Non-Exempt** employee must have **worked** a minimum of 1250 hours the previous 12 months prior to the first day off for a qualifying event (the HR Solutions Center can run a report to determine if an employee qualifies).

- An **Exempt** The employee is beyond their probationary period, and has at least a 50 percent (20 hours per week or more) appointment when the absence from work begins.
What is a Benefit Year?

A benefit year is the 52 week period that an employee has to use their FMLA time.

- Non-Bargained for and AFSCME employees re-new annually on their anniversary date.

- UMPNC employees have a “rolling” year.
  - a rolling year begins with the first day of usage and will renew the following year, same date or the first day of usage after that date, whichever is applicable
What are FMLA Qualifying Events?

- The birth of a child, and care of the newborn child (within one year of birth). Must be continuous unless the department and employee agree on intermittent use ahead of time.
- Placement of a child with the staff member for adoption or foster care (within one year of placement). The child must be under the age of 18, or 18 years of age or older and incapable of self-care due to a physical or mental disability. Must be continuous unless the department and employee agree on intermittent use ahead of time.
- Your own serious health condition.
- Serious health condition of a qualified family member with a serious health condition.
- Absences due to Military Family Leave as defined by Family Medical Leave Act regulations.
What is a Serious Health Condition?

- Inpatient (hospital) care, including any period of incapacity after inpatient care.
- Continuing treatment by a health care provider that includes one or more of the following:
  - A period of incapacity of more than three full consecutive calendar days
  - Requires in-person treatment by a health care provider at least once within seven days of the first day of incapacity
  - Requires either a regimen of continuing treatment initiated by the health care provider during treatment or a second in-person visit to the health care provider for treatment within 30 days of the first day of incapacity.
A chronic condition is one that:

• Requires visits for treatment by a health care provider at least twice a year.
• Continues over an extended period of time (including recurring episodes of condition).
• May cause episodic incapacity rather than a continuing period of incapacity. (Flare-ups)
What is not considered a serious health condition?

- Common cold
- Flu
- Upset stomachs
- Earaches
- Minor ulcers
- Headaches other than migraines
- Routine dental, eye, or doctor appointments
- Periodontal disease

Please note these conditions can lead to a serious health condition.
What are examples of a qualified serious health condition for oneself?

A serious health condition means an illness, injury, impairment, or physical or mental condition. Some examples include:

- Overnight stay in a hospital.
- Surgery requiring you to be out of work for more than three days (outpatient surgery may or may not qualify).
- Incapacity due to pregnancy.
- Incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer’s disease, stroke, terminal diseases, etc.).
- Absences to receive multiple treatments by or a referral by a health care provider for a condition that will likely result in incapacity of more than five consecutive days if left untreated (e.g. chemotherapy, physical therapy, dialysis, etc.).
- Incapacity that is due to permanent or long-term chronic condition (e.g. asthma, diabetes, epilepsy, etc.).
What is the University’s definition of Family Member?

- Spouse: Husband or wife as recognized in the State of Michigan
- Other qualified adult: Shares a primary residence with the staff member and has done so for the previous six months, other than as an employee or tenant.
- Child, sibling, parent, or grandparent of the staff member, the staff member’s spouse or other qualified adult.
  - Parent is defined as a biological, adoptive, step or foster father or mother, or any other individual who had daily responsibility for the care and financial support of the staff member, the staff member’s spouse, or other qualified adult during the staff member’s childhood.
- Other related individual whose care is the responsibility of the staff member, the staff member’s spouse, or other qualified adult.
Definition of “Needed to Care For”

- An employee may take leave to care for a family member if needed to provide physical and/or psychological care.

- The employee does not need to be the only individual or family member available to provide the care nor is the employee required to provide actual care (e.g., someone else is providing in-patient or home care) as long as the employee is providing at least psychological comfort and reassurance.
Examples of ‘Needed to Care For”

• A family member needs:
  – care for “ADL’s” – activities of daily living (basic medical, hygienic, or nutritional needs or safety)
  – is unable to transport him or herself to the doctor because of a serious health condition
  – psychological comfort and reassurance who is receiving inpatient or home care
Employee Notice Requirements

• In the case of foreseeable leave, 30 days advance notice is required or, if 30 days advance notice is not possible, notice must be given “as soon as practicable” (meaning the same day or the next business day).

• If leave is unforeseeable, the employee must give notice of the need “as soon as practicable” (meaning within a reasonable timeframe).
How often can I request medical documentation?

When an employee's absence is to care for a family member with a serious health condition or for the employee's own serious health condition, medical documentation **may not be requested** more often than every 6 months unless:

- The employee requests an extension of the absence
- Circumstances described by the previous medical documentation have significantly changed
- New information casts doubt on the validity of the employee's medical documentation.
How long does an employee have to return documentation?

- The employee has up to 15 calendar days to return completed certification forms from the physician.

- If more information is required, the employee has an additional 7 calendar days to return an updated certification form.
Can FMLA be retro active?

• Yes, depending on the circumstances and if approved by your HR representative.

• Normally no greater than 30 days.
Return from an FMLA event

• Upon return from FMLA leave, an employee must be restored to his/her original job, or to an “equivalent” job, which means virtually identical to the original job in terms of pay, shift, benefits, and other employment terms and conditions.
What is Work Connections?

• Integrated disability management program to assist staff members, supervisors, and human resources through recovery and helps facilitate a staff member’s return to work.
• Acts as a liaison with other programs and services at the University and can be a liaison for you and your department.
• The program is meant to help staff members with a serious condition for which the staff member will be out of work OVER 10 days.
• Handles all work related injuries.
• Gateway to the use of Extended Sick Time (ESF).
• All information is kept confidential.
Example Scenario's Work Connections can help with (this list is not all inclusive):

• If a staff member:
  – will be having surgery and will be out for over 10 days
  – is a cancer patient and will need treatment.
  – has a chronic condition and will need to be out of work intermittently. They may advise, but if not validated by Work Connections, employee may still be approved for FMLA coverage.
  – has any work related injury.
How do I get paid?

• FMLA does not pay an employee
• FMLA runs congruent with paid/unpaid time
• Employee could be paid by a combination of:
  – PTO, Sick, Vacation, Extended Sick time
• If an employee has no paid time, an unpaid leave of absence could be an option
• Family Care event has the option to use paid or unpaid time
*ALL “LEAVES” ARE UNPAID

Non-Discretionary Leaves
- Personal Medical
- Child Care
*Family Care
- Care of a Covered Service member (Military Caregiver Leave)
- Qualifying Exigency
- Military Service
- Government Service

*Need to exhaust ALL paid time before an unpaid leave begins

Discretionary Leaves
- Educational
- Personal
HR’s Role

FMLA:

- Verify employee qualifies for FMLA
- Work with supervisor to have employee complete necessary paperwork (DOL, Work Connections, etc.)
- Work with supervisor to ensure employee is educated to FMLA Benefits
- Create FMLA Notification Letter and email
- Depending on length of FMLA Absence, work with department on obtaining updated Medical Documentation, if needed
- Ensure department is educated on maintaining records of FMLA usage (i.e. FMLA documentation must be retained for a minimum of 3 years after termination and must be kept in a file separate from an employee’s personnel file.)
- Work with Department on maintaining accurate records of usage (i.e. recording on timesheet)
- Work with Department on appropriate placement upon the employee’s RTW. It may be possible to conduct a Return to work meeting or place employee in RTW program.
Extended Sick / Intermittent Absences:

- Review documentation and determine whether Work Connections should be involved
- Work with Department/Work Connections on appropriateness, timing, IME, Return to work, etc.

Leave of Absences:

- Work with supervisor to complete Request for LOA Form
- Create LOA Notification Letter
- Keep in contact with the department during the LOA regarding any changes to RTW date or extension
- Work with Department on appropriate placement upon the employee’s RTW
- Once a RTW date is determined, send submittal to reactivate the appointment in the system.
HR Contact for FMLA/Medical/LOA

HR Solutions Center

• Phone: 734-647-5538
• Fax: 734-936-9526
Questions?