

THE UNIVERSITY AT BUFFALO

# Family Medical Leave



Because life's occurrences for employees and their families must be considered, the Family Medical Leave Act (FMLA) became a federal law requiring certain employers to allow eligible employees to take up to 12 workweeks, and in some military circumstances 26 workweeks, of unpaid job-protected leave during a single 12-month period for various health and family-related reasons.

The University at Buffalo is pleased to help employees through the FMLA process. Here you will see the reasons for which such leave is granted, with the provisions of the FMLA as applied in the context of Research Foundation (RF), State, and UB Foundation (UBF) leave policies, consistent with the attendance rules and negotiated collective bargaining agreements. For any assistance, please contact the appropriate UB FMLA administrator listed on the back of this brochure.

## Qualifying reasons for FMLA leave

UB must grant an eligible employee up to a total of 12 workweeks of UNPAID leave during a specified 12-month period for one or more of the following reasons:

- > birth and care of a newborn child of the employee
- > placement with the employee of a son or daughter for adoption or foster care
- > care for an immediate family member (spouse, child or parent) with a serious health condition
- > medical leave when the employee is unable to work because of a serious health condition
- > qualifying exigencies in connection with certain federal military activation of a family member and to care for a family member who is a service member as described under Military Family Leave

*Note: When both spouses are employed by the same covered employer and both are eligible under FMLA, the entitlement for the two employees is a combined total of 12 weeks leave per 12-month period for the birth of a child or placement for adoption or foster care of a healthy child, or to care for an employee's parent with a serious health condition.*

## Military family leave

THE TWO TYPES OF MILITARY FAMILY LEAVE ARE:

### MILITARY CAREGIVER LEAVE

This leave permits eligible employees to take up to 26 workweeks of FMLA leave to care for a covered service member during a single 12-month period who has a serious injury or illness.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA qualifying reason during the single 12-month period.

*Note: When both spouses are employed by the same employer and both are eligible under FMLA, the entitlement for the two employees is limited to a combined 26-week military caregiver leave in a single 12-month period per service member per injury.*

### MILITARY QUALIFYING EXIGENCY LEAVE

This leave allows eligible employees to take up to 12 workweeks of FMLA leave per calendar year for a qualifying exigency because the employee's spouse, son, daughter or parent meeting the definition of a covered military member is on active duty or has been notified of an impending call or order to federal active duty.

An eligible employee is one who meets the normal service requirements to be eligible for FMLA leave and is the spouse, parent, son or daughter of a service member who meets the definition of a covered military member.

Qualifying exigencies may include attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain

counseling sessions, and attending post-deployment reintegration briefings.

FMLA leave may be taken intermittently whenever medically necessary to care for a covered service member with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt workplace operations.

## Eligibility for FMLA leave

In order to be eligible for FMLA leave, an employee must have been employed for at least 12 cumulative months or 52 cumulative weeks of service on the date the FMLA leave will begin. Although the 12 months of employment do not have to be consecutive, employers are not required to count employment prior to a continuous break in service of seven years or more under certain circumstances.

An employee must have worked a minimum of 1,250 hours during the 52 consecutive weeks immediately preceding the date FMLA leave is to begin in order to be eligible for FMLA leave.

## What is a serious health condition under FMLA?

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

- > For employees taking leave under "three consecutive calendar days of incapacity plus two visits to a health care provider" definition, the two visits must occur within 30 days of the period of initial incapacity, absent extenuating circumstances.
- > For employees taking leave under the "three consecutive calendar days of incapacity plus a regimen of continuing treatment" definition, the first visit to a health care professional must occur within seven days of the initial incapacity.
- > The term "periodic visits to a health care provider" for chronic serious health conditions means at least two visits to a health care provider per year.



WHO CAN I TALK TO AT UB IF I HAVE A COMPLAINT RELATED TO MY FMLA LEAVE? Contact the UB Office of Equity, Diversity and Affirmative Action Administration, which ensures that the university is in compliance with state and federal non-discrimination laws and executive orders, at 716.645.2266.



## The FMLA process

To request family medical leave, the employee should notify his or her supervisor and/or departmental HR Liaison 30 days in advance of leave, if foreseeable, or as soon as practicable, and then complete a "FMLA Request for Leave" form. The employee or departmental HR Liaison should immediately send or fax the completed form to the applicable UB FMLA administrator.

To protect the privacy of an employee's confidential medical information, supervisors should instruct the employee to submit medical documentation directly to the designated university FMLA administrator.

### WITHIN FIVE BUSINESS DAYS OF AN EMPLOYEE NOTIFYING THEIR SUPERVISOR, OR UB LEARNING A LEAVE MAY BE FMLA-ELIGIBLE, A UB FMLA ADMINISTRATOR WILL:

- > Provide notice of eligibility and rights and responsibilities, form WH-381 to the employee
- > Request certification for medical or qualifying exigency, forms WH-380E (employee), WH-380F (family member), WH-384 (military qualifying exigency), WH-385 (military covered service member)

### WITHIN 15 CALENDAR DAYS AFTER UB'S REQUEST FOR MEDICAL CERTIFICATION:

- > Employee must provide UB with the certification.
- > If applicable, employee must be allowed seven more days after being notified by UB to cure any deficiencies in the certification.
- > When necessary, UB has the right to request a second medical opinion. UB will pay for the employee or employee's family member to get a certification from a second medical provider, which UB will select. UB will require the opinion of a third medical provider that the employee and UB mutually select to resolve any conflicts between the original certification and the second opinion. UB will pay for this opinion.

### WITHIN 5 BUSINESS DAYS OF UB RECEIVING THE APPROPRIATE CERTIFICATION, A UB FMLA ADMINISTRATOR WILL:

- > Provide the employee with a FMLA designation notice, form WH-382.

### RETURNING FROM FMLA LEAVE

- > Employees who take FMLA leave for their own serious health condition, will be required to provide a fitness-for-duty certification from their health care provider upon returning to work.
- > Employees may be required to provide this certification every 30 days if the employee uses intermittent leave and reasonable safety concerns exist.

## The recertification process

UB may not request a recertification more often than every 30 days and only in connection with an absence when no minimum duration for the condition is specified.

However, if the medical certification states that there is a minimum duration for the condition, UB must wait until that minimum duration passes before requiring a recertification, unless the minimum duration specified in the documentation is more than six months in the calendar leave year. If the minimum duration is more than six months in the calendar leave year, UB may request a recertification in connection with an absence after the six-month point, even for lifetime or chronic conditions.

UB will require a new medical certification at the beginning of each specified 12-month period for individuals who have conditions which will require leave. Such annual certifications may be requested separately and apart from an absence. In under 30 days, UB may request recertification if the circumstances of the leave have changed. **Employees must submit recertification documentation within 15 days after the university's request.**

## Benefits while on FMLA leave

UB must maintain the employee's health insurance coverage during the FMLA leave period. Under current employer guidelines, the employee pays a portion of the health care premium. When an employee elects to use paid leave credits while on FMLA leave, UB will continue to make payroll deductions to cover the employee share of the health care premiums. When an employee elects to take an unpaid FMLA leave, the employee must continue to make these payments.

*Note: If an employee chooses not to return to work for reasons other than a continued serious health condition of the employee or immediate family member, UB may recover the premiums which were paid for the employee's health insurance premium during the leave period.*

## Use of paid leave credits

Employees may elect to use paid leave credits while on FMLA leave. Employees are required to follow the normal procedural requirements for use of paid leave, such as advance notice, except in emergency situations and some unplanned intermittent situations.

As a matter of procedure, when use of leave credits would be allowed under the attendance rules, employees may elect to use appropriate leave credits during a period of FMLA leave or may choose not to use credits at their option. The term "appropriate leave credits" means credits that are available for absences for that specific reason.

Employees may continue to use paid leave credits while awaiting designation of leave as FMLA qualifying, and any period for which the employee is found ineligible for FMLA leave.

The FMLA medical certification will be used for all absences subject to the FMLA, regardless of whether or not the employee elects to charge leave credits.

Workers compensation and disability leaves run concurrently with FMLA.

**NON-DISCRIMINATION POLICY** The FMLA makes it unlawful for any employer to: interfere with, restrain, or deny the exercise of any right provided under FMLA; discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

## Purpose of FMLA leave

### BIRTH OF A CHILD

- > Sick time accruals must be charged during period of disability for RF employees. For state and UBF appointments, sick, vacation, personal or holiday accruals may be used during the period of disability. Following the period of disability, the employee may be eligible for other types of leave for child rearing purposes.

### ADOPTION, FOSTER CARE

- > Vacation, personal or holiday.

### CARE FOR A FAMILY MEMBER AND PATERNITY LEAVE

- > Family sick, vacation, personal or holiday.

### EMPLOYEE'S SERIOUS HEALTH CONDITION

- > Sick time accruals for RF employees must be charged until exhausted; then vacation, personal or holiday accruals may be used up to a certain percentage for the remainder of the disability period. For state and UBF appointments, sick, vacation, personal or holiday accruals may be used during the period of disability.
- > RF and UBF employees may be eligible for NYS disability benefits in some circumstances. Total compensation may not exceed the employee's full pay.

### QUALIFYING MILITARY EXIGENCY

- > Vacation, personal or holiday.

### CARE FOR COVERED MILITARY SERVICE MEMBER

- > Family sick (if applicable), vacation, personal or holiday.

## Family illness

Each campus affiliation (i.e., RF, State, UBF) specifies the maximum number of existing accrued sick leave days that may be charged in specified time frames for family illness; however, an employee may elect to use accrued vacation, personal leave and/or holiday leave to cover the remainder of the absence.

The allowable maximums are determined by the respective campus affiliation and collective bargaining agreements in effect during a specified time frame. Examples (as of October 2009) include:

COUNCIL 82,  
NYSCOPBA, ALES 15 family sick days per calendar year

CSEA, M/C  
CLASSIFIED, PEF 15 family sick days per calendar year

RF 15 family sick days per calendar year (rolling)

UBF 15 family sick days per calendar year

M/C  
PROFESSIONAL 30 family sick days per calendar year

UUP 30 family sick days per contract year

## Intermittent leave

Employees who take intermittent FMLA leave for planned medical treatment have an obligation to make a reasonable effort to schedule such planned medical treatment so as to not unduly disrupt workplace operations. Employees must follow the usual and customary procedures for requesting leave, absent extenuating circumstances, and specifically reference the need for FMLA leave.

## Retroactive designation of FMLA leave

UB may retroactively designate leave as FMLA with appropriate notice to the employee, if the failure to timely designate leave within the required time period does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated.

## Definitions of terms under FMLA

**PARENT:** *the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.*

**REDUCED LEAVE SCHEDULE:** *a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.*

**SERIOUS HEALTH CONDITION:** *an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.*

**SON OR DAUGHTER:** *a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.*

For more information visit:

[HTTP://HR.BUFFALO.EDU/](http://hr.buffalo.edu/)

## UB FMLA administrators

### UB RESEARCH FOUNDATION BENEFITS:

Ann Marie Davis, 716.645.4483

### UB STATE BENEFITS:

Claudia Samulski, 716.645.4487

### UB FOUNDATION BENEFITS:

Joyce Weeman, 716.645.8731

### UB RESIDENCE HALLS AND APARTMENTS/ STUDENT AFFAIRS HR:

Nancy Haenszel, 716.645.3006