



Family Medical Leave Act (FMLA)

General Information

Reason For This Procedure:

This procedure outlines the manner in which West Virginia University processes requests for leave provided under the Family Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601, *et seq.* and any of its amendments or regulations, 29 CFR Part 825, as adopted by the United States Department of Labor.

This Procedure Applies To:

This procedure applies to all classified, non-classified, faculty, and faculty equivalent/academic professional (FE/AP) employees at West Virginia University and on all its divisional campuses.

Definitions

Eligible Employee	An employee of WVU who has been employed for a length of service of at least twelve (12) months during the past seven (7) years and has worked the minimum of 1250 hours consecutively during the twelve (12) months immediately preceding the request for FMLA leave.
Leave Entitlement	FMLA leave that is available to an eligible employee for a period of twelve (12) weeks for certain qualifying reasons or conditions or twenty-six weeks for qualifying military caregiver leave.
Twelve Month Period	The period of twelve (12) months is calculated on a rolling calendar basis. This period is calculated looking backward, beginning with the date an employee begins using FMLA leave under this procedure.
Qualifying Reason or Condition	Any of the statutory reasons or conditions for taking FMLA leave: <ul style="list-style-type: none">• birth of a child or placement with the employee of a child for adoption or foster care;• care of a child after birth, adoption, or foster care placement;• care of a close family member (spouse, child, or parent) due to his/her serious health condition;• employee's own serious health condition;



- qualifying exigency arising out of the fact that spouse/child/parent is on covered active duty or call to covered active duty status with the Armed Forces; or
- employee is the spouse/child/parent/next-of-kin of a covered service-member with a serious injury or illness.

Serious Health Condition

An illness, injury, impairment, physical or mental condition that involves:

- inpatient care in a hospital, hospice or residential medical care facility, including a period of incapacity or subsequent connected treatment; or
- continuing treatment by a health care provider; or
- any period of incapacity of more than three consecutive calendar days and any additional period of related incapacity that also involves either treatment two or more times by a health care provider or a regimen of continuing treatment under the supervision of a provider; or
- any period of incapacity due to one's own pregnancy or pre-natal care; or
- any period of incapacity for the treatment of a chronic serious health condition, which may require periodic visits for treatment, may continue over an extended period of time, and/or may be episodic in nature (for example, asthma, diabetes, epilepsy, etc.); or
- any period of incapacity for the treatment of a permanent or long-term condition that requires continuing supervision, but not active treatment, by a health care provider (for example, Alzheimer's, severe stroke, terminal stage of a disease); or
- any period of absence to receive multiple treatments either for restorative surgery or for a condition which would result in incapacity if not treated (for example, severe arthritis, cancer, kidney dialysis).

Intermittent Leave

Approved FMLA leave which is taken on an intermittent basis as part of a day, a few days in a week, or on a reduced work schedule.

Health Care Provider

A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices OR any other person determined by the Secretary of Labor to be capable of providing health care services.



Parent	Biological parent of an employee OR an individual who stood in place as a parent (<i>in loco parentis</i>) to an employee when the employee was a son or daughter.
Son or Daughter (Child)	A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in place as a parent (<i>in loco parentis</i>) who is: <ul style="list-style-type: none">• under eighteen (18) years of age; or• eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
Spouse	A husband or wife, as the case may be.
Covered Active Duty	<p>In the case of a member of the regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; <i>and</i></p> <p>In the case of a member of the reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10 of the United States Code.</p>
Covered Service-Member	<p>A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; <i>or</i></p> <p>A veteran who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.</p>
Reduced Leave Schedule	A leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an eligible employee.



Outpatient Status	The status of a covered service member of the Armed Forces assigned to: <ul style="list-style-type: none">• a military medical treatment facility as an outpatient; <i>or</i>• a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
Next of Kin	The nearest blood relative of an individual.
Serious Injury or Illness	<p>In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; <i>and</i></p> <p>In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in Section 101(a)(15)(b) of Title 10 of the United States Code, an injury or illness that was incurred by the member in line of duty while on active duty in the Armed Forces</p>
Veteran	A person who served in the active military, naval, or air service and who was discharged or released from there under conditions other than dishonorable.

Procedure

PART A: BASIC LEAVE ENTITLEMENT

West Virginia University provides an eligible employee with up to twelve (12) weeks of unpaid, job-protected FMLA leave per year, for any of the following reasons:

- for incapacity due to pregnancy, prenatal medical care, or child birth;
- to care for the employee's child after birth or placement for adoption or foster care;

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- to care for the employee's spouse, son, daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the essential functions of his/her position.

At WVU, such FMLA leave may be paid or unpaid leave, contingent upon the eligible employee's leave accruals. For paid leave, all usage of accrued sick leave, annual leave, CTO (compensatory time off), STO (substitute time off), and/or other accrued leave types, shall be taken by the employee in accordance with WVU procedures or guidelines and federal FMLA regulations.

During FMLA leave, an eligible employee's health insurance benefits shall be maintained at the same level and under the same conditions as if the employee had continued to work. The employee shall be responsible for his/her share of the premium payment.

FMLA leave may be taken on a consecutive twelve (12) week basis or, when medically necessary, on an intermittent basis, which may include being taken as part of a day, a few days during the week, or on a reduced work schedule. Intermittent leave should be scheduled so that it interferes as little as possible with the employee's job duties. If necessary, WVU may assign the employee to an alternative position with equivalent pay and benefits in order to accommodate the employee's intermittent leave schedule.

FMLA leave may run concurrently with qualifying absences due to parental leave, catastrophic leave, worker's compensation leave, or other applicable personal or medical leaves of absence. When both the FMLA and the West Virginia Parental Leave Act apply to the qualifying reason or condition, the requirements that are more favorable to the employee will be used.

Upon return from FMLA leave, an eligible employee who can perform the essential functions of his/her position is entitled to be returned to the same position or to an equivalent position with equivalent pay, benefits, and terms and conditions of employment.

When an eligible employee is unable to perform the essential functions of his/her position after returning from FMLA leave because he/she may now have a disability because of the serious health condition, the employee shall have the right to be considered for reasonable accommodation(s) under the Americans with Disabilities Act (ADA).



Special hours of service eligibility requirements apply to airline flight crew employees under the FMLA. WVU does not currently have any such employees.

An employee may file a complaint with the U.S. Department of Labor or bring a private lawsuit if he/she asserts that WVU has interfered with, restrained, or denied the exercise of the employee's rights under the FMLA or discharged or discriminated against the employee for opposing any practice made unlawful by the FMLA or for being involved in any proceeding under or relating to the FMLA. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law which may provide greater family or medical leave rights.

PART B: MILITARY FAMILY ENTITLEMENTS

An eligible employee whose spouse, son, daughter, or parent is on covered active duty or called to covered active duty status may use his/her twelve (12) week leave entitlement to address certain qualifying exigencies. Qualifying exigency leave may be used for attendance at certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending counseling sessions, or attending post-deployment re-integration briefings. Qualifying exigency leave may be taken on an intermittent basis.

An eligible employee may also be able to use a special FMLA leave entitlement for a period of up to twenty-six (26) weeks of leave to care for a covered service member during a single twelve (12) month period. A covered service member is (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the covered veteran and who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury. "Serious illness or injury" for current service members and veterans is distinct from the FMLA definition of "serious health condition." (See: Definitions in this Procedure)



Responsibilities

Interpretation:

Responsibility for interpretation of this administrative procedure rests with the Vice President for Human Resources or his/her designee.

Application:

Employee Responsibilities:

An eligible employee shall provide timely verbal notice with an explanation of the reason for the FMLA-qualifying leave request to the employee's immediate supervisor and to WVU's Medical Management unit of Human Resources. If the leave is foreseeable, the employee shall provide at least thirty (30) days advance notice. If providing thirty (30) days advance notice is not possible, the employee shall provide notice as soon as practicable and shall comply with WVU's normal call-in procedures. Employee must also provide the anticipated timing and duration of the leave request.

Employee shall provide appropriate medical documentation to WVU's Medical Management unit of Human Resources within fifteen (15) days of the FMLA leave request. When submitting the information, the employee must use the appropriate Medical Verification of Leave forms, which are available from that office or on the Human Resources website. Medical Management shall review and determine if the leave request qualifies as FMLA leave and provide written notification to the employee and his/her supervisor of its determination. Such notification shall designate if this request is approved for continual or intermittent usage and the approved duration of the leave.

Employee shall provide periodic recertification from a health care provider when requested by WVU if the employee requests an extension of leave, if the circumstances have changed significantly regarding an existing leave, or if WVU receives information questioning the stated reason for the use of the leave. Recertification may not be requested more often than every thirty (30) days, however. If the employee has been on FMLA leave due to his/her own serious health condition, employee shall provide appropriate medical documentation in order to be released to return to work at the end of the FMLA leave.



Department or EBO Responsibilities:

The department or EBO is responsible for the tracking of all FMLA leave of the employee, whether it is used on a consecutive or intermittent basis.

WVU's Medical Management Unit's Responsibilities:

Medical Management shall review and determine if the employee's leave request qualifies as FMLA leave and shall provide written notification to the employee and his/her supervisor of its determination. Such notification shall designate if this request is approved for continual or intermittent usage and the approved duration of the leave.

Medical Management shall determine when recertification may be requested from the employee. To the extent a second opinion regarding the serious health condition of the employee is necessary in order to support an FMLA leave, Medical Management shall select the health care provider and review the information received. In the event a third opinion may be necessary in order to resolve the difference of opinions between health care providers, Medical Management and employee shall agree on a health care provider, who shall provide the final and binding opinion.

The Division of Human Resources is responsible for the interpretation of this procedure.

Contacts

Additional information or questions regarding this procedure should be directed to the Employee Relations or Benefits Units in the Division of Human Resources at 293-5700 or EmployeeRelations@mail.wvu.edu or Benefits@mail.wvu.edu or at P.O. Box 6640.

Related Documents

- **WVU Medical Verification Form found at <http://www.hr.wvu.edu/forms>**
- **The following forms found at www.wagehour.dol.gov:**
 - **Employee Rights and Responsibilities Under the Family and Medical Leave Act**



- **Certification of Qualifying Exigency For Military Family Leave Form**
- **Certification for Serious Injury or Illness of a Current Service member-for Military Family Leave Form**