

Oklahoma State University Policy and Procedures

FAMILY AND MEDICAL LEAVE ACT

3-0708
ADMINISTRATION
& FINANCE
February 2008

PURPOSE

1.01 The Family and Medical Leave Act of 1993 (FMLA) gives certain job protections to employees when balancing work responsibilities with the demands of personal illness or injury or in caring for family members.

1.02 This policy sets forth the essential provisions of FMLA. In the event that additional clarification is needed, the actual Act and regulations issued by the federal government implementing the Act shall prevail.

1.03 Depending on individual circumstances of the leave, faculty and staff may also be concurrently eligible for paid sick leave benefits under Policy and Procedures 3-0716 (Sick Leave for Staff) or Policy and Procedures 2-0113 (Faculty Sick Leave).

SCOPE

2.01 This policy applies to all OSU campuses and any other locations where business of the University is conducted.

2.02 To be eligible for FMLA leave, an employee must have been employed by the University for twelve months, which need not be consecutive, and must have worked at least 1,250 hours within the previous 12 months as of the date the leave commences.

POLICY AND PROCEDURES

3.01 Qualifying Event

An eligible employee will be provided up to 12 weeks of family medical leave for a qualified event:

- A. For the birth and care of a child or placement of a child with you for adoption or foster care. Such leave must be taken within 12 months immediately after birth or within 12 months after placement. Leave may begin prior to birth or placement;
- B. For care of a family member (as defined in 3.03) with a serious health condition. The employee must be needed to care for basic needs, psychological comfort, filling in for others, or making arrangements for the relative; or

- C. Because an employee's own serious health condition makes the employee unable to do his or her job due to illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatments.

3.02 Definition of Serious Health Condition

- A. Under FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that requires either inpatient care or continuing treatment by a health care provider. A more complete definition can be found as part of the Certification of Health Care Provider form at the end of this policy.
- B. Serious health condition would not include short-term conditions, which require brief treatment and recovery, such as common colds or flu, stomach viruses, non-migraine headaches, and routine pregnancy, or voluntary or cosmetic treatments not considered medically necessary. The above list is not exclusive. Questions regarding specific conditions that would meet the FMLA definition can be referred to OSU Human Resources.

3.03 FMLA Definitions of Family

- A. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage.
- B. Parent means a biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents "in law."
- C. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent, who is under age 18, or incapable of self-care because of a mental or physical disability.
- D. FMLA definitions of family differ from OSU Sick Leave Policy definitions as found in Policy and Procedures 3-0716 (Sick Leave for Staff) section 3.03a and Policy and Procedures 2-0113 (Faculty Sick Leave) section 3.01e. Because OSU provides an extended definition of "family," an employee may qualify for sick leave but not Family Medical Leave.

3.04 National Defense Authorization Act Amendment

- A. A spouse, son, daughter, parent, or next of kin may take up to 26 workweeks of leave to care for a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or on the temporary disability retired list, for a serious injury or illness.
- B. The serious injury or illness is one that was incurred in the line of duty while on active duty.

C. The next of kin is the nearest blood relative of the injured/sick service member.

3.05 Employee Notice and Certifications

- A. The employee must provide 30 days advance notice when the leave is "foreseeable." On rare occasions, advance notice might not be possible. These situations will be evaluated on a case-by-case basis.
- B. Medical certification may be required prior to approval of leave indicating the employee is needed to provide care or unable to perform his/her job.
- C. Continued medical certification will be required if the situation warrants, but not more frequently than every 30 days unless the department has reason to believe the employee is able to return to work.
- D. Forms for medical certification are available from the local personnel office or OSU Human Resources and are attached to this policy. This form is also acceptable for documentation of sick leave under Policy and Procedures 3-0716 (Sick Leave for Staff) section 3.03f.
- E. Leave may be denied if the employee fails to provide the required medical certification.

3.06 Maximum Leave Entitlement

- A. Up to 12 weeks of absence from assigned duty may be requested within a 12-month period except as noted in section 3.04 above.
- B. In the event both spouses are employed by Oklahoma State University, maximum leave for each eligible spouse is 12 weeks.

3.07 Intermittent and Reduced Leave Schedule

- A. In the event of employee or immediate family member illness only, an employee may request a reduced work schedule. Necessity for the leave must be such a medical need that can best be accommodated through an intermittent or reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt OSU's operations.
- B. Oklahoma State University may transfer an employee to an alternative position with equivalent pay and benefits in order to accommodate the request when such a reassignment is available and expedient for the department in question.

- C. Leave taken on an intermittent or reduced schedule will be calculated on a pro rata or proportional basis comparing the employee's new schedule to his or her prior schedule.

3.08 Concurrent Use of Accrued Paid Leave

- A. FMLA leave is taken concurrently with, other OSU leave policies. The employee should be so notified of the leave. Any paid leave remaining after exhaustion of Family and Medical Leave would be taken in accordance with applicable OSU leave policies.
- B. An employee with accrued compensatory, annual, or sick leave will take all applicable leave prior to unpaid leave. Paid sick leave is granted only when conditions in OSU Policy and Procedures for such leave are met.
- C. A parent meeting the eligibility criteria under the Family and Medical Leave Act may, upon application, use up to five days accrued sick leave for the qualifying event of birth or adoption of her or her child. The twelve-month employment requirement of the Family Medical Leave Act will not apply. Additional accrued leave can be used, as applicable, under the conditions in OSU Policy and Procedures.

3.09 Continuation of Benefits during Leave

- A. An employee's coverage in a group health plan will continue under the same conditions that existed prior to family/medical leave. Employee medical will be paid by OSU if the employee is enrolled in medical coverage at the time the leave is requested.
- B. Employee life insurance and all optional benefits regularly paid by the employee will be paid by the employee while on leave.
- C. Dependent coverage of existing benefits would continue to be paid by the employee as under normal circumstances.
- D. Employee contributions will be made by the employee through the Bursar's Office on a timely basis.
- E. In the event an employee elects to cancel insurance coverages, such cancellation will be effective the end of the month after written notice to OSU Human Resources. No partial premiums will be calculated.
- F. If an employee fails to return to work from unpaid leave, except where health conditions will not permit or death, the employee will be required to reimburse Oklahoma State University for premiums paid on behalf of the employee during the family/medical leave. The employee will be billed through the Bursar's Office.

3.10 Restoration of Employment

- A. Upon return from FMLA leave, an employee will be restored to his/her original or equivalent position with equivalent pay, benefits, and other terms of employment.
- B. An employee may not be restored to an original or equivalent position if such position has been eliminated through a reduction in force program or if the original terms of appointment expired during the leave.
- C. Key employees ranking in the top 10% of the highest paid employees at OSU may be excluded from the job guarantee provision if there are reasons justifying such an action.
- D. If the reason for leave is personal illness or injury of the employee, medical proof of fitness to return to work will typically be required indicating the employee is able to perform the essential functions of the job.
- E. Time on leave of absence without pay may not count toward credited service for Oklahoma Teachers Retirement (OTR) purposes. The rules of the Oklahoma Teachers Retirement System (OTRS) prevail.

3.11 Restoration of Benefits

- A. OSU paid benefits such as OSU paid health care and life insurance will be restored to the employee once returning from leave and will be equivalent to what the employee would have had without taking the leave. If the employee does not want the insurance during this leave, s/he should cancel the insurance and upon return to work should notify OSU Human Resources of his/her desire to reinstate the benefits. If the insurance is reinstated the day the employee returns, proof of insurability will not be required and no pre-existing condition clauses will apply.
- B. Benefits normally paid for by the employee such as dependent coverage, long-term disability, etc. would also be reinstated.
- C. Health and dependent care reimbursement accounts will be reinstated once the employee is back on pay status if s/he was enrolled at the time of his/her leave.

3.12 Notice to Employees

- A. Notice of the Family and Medical Leave Act is posted in designated buildings on campus. Departments are responsible for ensuring such notification exists.
- B. Copies of this policy and procedure should be made available to employees upon their request.

- C. When leave is requested, the department head is required to respond in writing to the employee specifying the rules for eligibility, 12-month period used, medical certification requirement, required substitutions of leave, rules on payment of benefit premiums, liability of employee for repayment, medical certification requirements for return to work, status as a key employee, and right to restoration of original or equivalent position. Forms suitable for this response are available from OSU Human Resources.

3.13 Recordkeeping

- A. Departments will maintain adequate up-to-date records for each staff member that accurately reflect the rate and the amount of leave taken, the dates when such leave is used, and the current untaken leave balance.
- B. Departments will generate appropriate forms on any leave taken under FMLA.
- C. Departments will maintain accurate leave balances on the Human Resource System. Leave used will be reported on the confirmation payroll or biweekly time report.
- D. Documentation for use of leave will be maintained by the department for three years.

3.14 Exhaustion of Family and Medical Leave

- A. Once an employee has exhausted the 12 work-week eligibility under this policy and other paid leave does not apply, the employee must return to work immediately or pursue a personal leave of absence.
- B. If no other leave is approved, the employee will be terminated.

3.15 COBRA

- A. If an employee does not return to work after FMLA leave, OSU will offer COBRA as required under the Consolidated Omnibus Benefits Reconciliation Act.
- B. The qualifying event that will trigger an offer of COBRA continuation of coverage occurs on the last day of the employee's FMLA leave. The last day of FMLA leave is the earlier of (1) the date the employee gives termination notice or (2) the last scheduled day of the FMLA leave.
- C. Length of the COBRA coverage is measured from the day of the qualifying event.

EXCEPTIONS TO POLICY AND PROCEDURES

4.01 The authority to grant exceptions to one or more of these policies and procedures is vested in the Office of the President of the University, as stated in Policy and Procedures Letter 3-0701, section 3.03.

4.02 Oklahoma State University reserves the right to change this Policy and Procedures Letter or any portion thereof at any time without prior notice.

NOTE: Family and Medical Leave (FMLA) forms are now located on the HR website at http://www.okstate.edu/osu_per/ Click on the FMLA link on the right side of the page to find all FMLA forms and information.

Adopted: September 1995
Revised: May 2001, June 2004
February 5, 2008