

Policy 1308 Family and Medical Leave

Date of Current Version: April 2008
Responsible Office: Director, Human Resources

1. PURPOSE

It is the objective of James Madison University to provide eligible employees with up to 12 weeks of paid or unpaid family or medical leave following the birth of a child or the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse or parent) with a serious health condition, because the employee's own serious health condition makes him or her unable to do his or her job, or because of any qualifying exigency (as defined the Department of Labor) arising out of the fact that the spouse, child or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation; or up to 26 weeks of leave to care for a spouse, child, parent or next of kin with illness or injury incurred in the line of duty while in the Armed Forces, National Guard or Reserves.

2. AUTHORITY

The Family and Medical Leave Act of 1993, 29 USC 2601, et seq., mandates that employers of more than 50 employees allow up to 12 or 26 weeks of leave for employees who qualify under certain circumstances.

3. DEFINITIONS

Active Duty:

Duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

Eligible Employee:

- A classified or wage employee who has been employed by the university for at least 12 months and worked at least 1,250 hours during the 12 months prior to the start of the leave.
 - **NOTE:** The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave date.
- A full-time instructional or administrative faculty member who has been employed by the university for at least 12 months prior to the start of the leave.
- A part-time faculty member who has been employed by the university for at least 12 months and worked at least 1,250 hours during the 12 months prior to the start of the leave.

Employment Benefits:

All benefits provided by the university to eligible employees including annual and sick leave, educational benefits, group life insurance, health insurance, and retirement contributions, etc.

Family and Medical Leave:

A leave without pay (or use of a classified employee's accrued leave) for up to 12 or 26* (see Section 6.2(b) workweeks during a calendar year for the reasons specified in this policy in conformance with the federal Family and Medical Leave Act of 1993.

Health-Care Benefits:

The health insurance program covering eligible employees.

Health-Care Providers:

- Doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice;
- Any other person determined by the U.S. Secretary of Labor to be capable of providing health-care services; and
- Others capable of providing health-care services to include only chiropractors, clinical psychologists, clinical social workers, dentists, podiatrists, optometrists, nurse-midwives and nurse practitioners authorized to practice in the state and who are performing within the scope of their practice as defined under state law as well as any other health-care provider accepted by the group health plan. This also includes Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, although an employee or family member may be required to submit to a medical examination for a second or third opinion (not treatment) from a non-Christian Science practitioner.

Key Employee:

A salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's agency or facility.

Next of Kin:

The nearest blood relative of that individual.

Parent:

Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.

Son or Daughter:

A biological, adopted or foster child, stepchild or legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or a physical disability.

Spouse:

Husband or wife as recognized under the laws of the Commonwealth of Virginia for the purpose of marriage.

Serious Health Condition/Illness:

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

- Inpatient care in a hospital, hospice or residential medical care facility
- Continuing treatment by a health-care provider.

4. APPLICABILITY

This policy applies to all university employees.

5. POLICY

5.1 The university complies with the Family and Medical Leave Act of 1993 by providing leave to qualified employees under the circumstances described in the law.

5.2 The university requires that a request for family and medical leave due to active duty of a family member, whether because the spouse, or a son, daughter, or parent, of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as is reasonable and practicable.

5.3 The university requires that a request for family and medical leave be supported by a health-care provider's certification of the medical condition of the person affected to include the date when the serious condition began, the probable duration of the condition and other appropriate facts as detailed below:

- A family illness request requires a statement that the employee is needed to care for a child, spouse or parent and must include the estimated time needed.
- A personal illness request requires a statement that the employee is unable to perform the essential functions of his or her job as defined by the Americans with Disabilities Act.
- An intermittent leave or reduced schedule request necessitated by planned medical treatment must include the expected treatment dates and duration of treatment.
- An intermittent leave or reduced schedule request necessitated by an employee's own health condition must include a statement of the medical necessity for the leave and the expected duration.
- An intermittent leave or reduced schedule requested for the care of an employee's family member requires a statement that the employee's leave is "needed to care for" the family member, the expected duration and the schedule of intermittent leave or reduced leave. The term of "needed to care for" includes: the medical certification provisions encompassing both physical and psychological care and includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a seriously ill child or parent receiving inpatient care in situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home; and an employee's intermittent leave or a reduced schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently, such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

NOTE: When possible, the employee should provide certification in advance of, or at the commencement of, the requested leave. When that is not possible, certification must be provided reasonably soon after the leave begins.

5.4 Second and Third Opinions:

- The university may require, at its own expense, a second opinion from its designated or approved health-care providers. (This health-care provider cannot be one who is employed by the university on a regular basis).
- When the second opinion differs from the first, the university may, at its own expense, require a third opinion from a health-care provider designated or approved jointly by the employee and the university. The opinion of the third health-care provider shall be considered final and binding upon the employer and the employee.
- The university may require an employee to report periodically during the leave period on his or her leave status and intention to return to work, and to provide subsequent re-certifications on a reasonable basis.

NOTE: Requests for re-certification every four to six weeks are considered reasonable.

5.5 Restoration to Position:

At the end of family and medical leave, employees normally are to be reinstated as follows:

- Original position: The university normally must restore employees to the positions they held (or to an equivalent position) when the leave of absence began unless they

are key employees (as defined below) in a position that needed to be filled during their absences.

- Equivalent position: If the previous position has been filled, employees are entitled to restoration to equivalent positions. The standard of equivalence requires comparability and correspondence to duties, terms, conditions and privileges of the employees' previous position.
- Conditions upon restoration of job position: The university can require employees to report periodically on their status and intent to return to work, and can require certification from health-care providers that employees are able to return to work.

If an employee is determined to be a key employee (within the highest paid 10 percent of state employees who work within 75 miles of the university), he or she may be denied restoration when one of the following factors exist:

- The university shows that denying restoration "is necessary to prevent substantial and grievous economic injury" to the university's operations.
- The university notifies the employee that restoration will be denied at the time the university determines that grievous economic injury would occur.
- The employee already has begun the leave and elects not to return to employment within a reasonable time after receiving the university's notice.

5.6 Status of Benefits During Family and Medical Leave:

The university will continue to contribute to the health insurance premiums of salaried employees who are on leave under the Family and Medical Leave Act as discussed below.

- When employees are using paid annual or sick leave as appropriate under the provisions of FMLA, the payroll deductions of the employee's portion of the premiums continue.
- When employees are on leave without pay under the provisions of FMLA, their premium contributions will be handled as if they were on leave without pay.

Employees who are on leave under FMLA will pay the same portion of their health insurance premiums as they would if they were not on leave.

- Premiums are due to agencies by the first day of each month of coverage.
- If employees fail to make premium payments, the university will follow the same procedures to terminate coverage as they would if employees failed to pay premiums while on leave without pay.
- If employees fail to return to work at the end of leave under FMLA, the university may recover from them the commonwealth's share of premiums paid during the period of leave. However, there will be no recovery of premiums if employees fail to return to work as a result of the following:
 - The onset, recurrence or continuation of serious health conditions that entitle them to leave to care for themselves or for a family member; or
 - Other circumstances beyond the employee's control.

5.7 EXAMPLES:

If an employee fails to return to work secondary to a disabling condition, the university will not seek reimbursement for the commonwealth's contributions for health insurance coverage during the period of leave.

If an employee fails to return to work at the end of FMLA leave because of his or her acceptance of other employment, the university should seek to recover the commonwealth's contributions for health insurance coverage during the period of leave.

Incentive Increases:

Classified employee eligibility for incentive increases will be determined in accordance with Incentive Pay Plan policies and procedures that address leave with and without pay.

Life Insurance:

The university will continue to pay life insurance premiums while employees are on family and medical leave.

Leave Accrual:

Classified employees will not accrue annual or sick leave hours during any period of leave without pay.

Retirement:

- Retirement contributions will be made for any pay period in which qualifying compensation has been received by the employee.
- Retirement contributions will not be made for any pay period in which no qualifying compensation has been received by the employee (i.e., the employee was on leave without pay for the entire pay period).

Other:

- Classified employees' service credit toward sick leave payout — an employee's periods of unpaid family and medical leave that exceeds 14 consecutive calendar days will not be credited as service time toward the required five years of continuous state service that employees must have to receive payment for sick leave balances when they separate from state employment.
- Classified employees' next annual leave anniversary — when more than 14 consecutive calendar days of unpaid family and medical leave have been taken, an employee will be placed on inactive service status and their next annual leave anniversary dates will be advanced according to the length of time taken on unpaid family leave.

6. PROCEDURES**6.1 Time Frames for Use of FMLA:**

Eligible full-time employees may take up to 12 or 26* workweeks (60/130* workdays; 480/1040* hours) of family and medical leave in a calendar year. The time missed from work due to FMLA leave cannot exceed 12 or 26* weeks in a calendar year.

6.2 FMLA for Full-Time Faculty and Classified Employees

1. Eligible full-time employees may take up to 12 workweeks (60 workdays; 480 work hours) of unpaid family and medical leave per calendar year for the following reasons:
 - The birth of a child (to be taken within 12 months of the child's birth)
 - The placement of a child with the employee for adoption or foster care (to be taken within 12 months of date of placement)
 - To care for a child who is under age 18, or age 18 or older who is incapable of self-care because of a mental or physical disability,
 - A spouse or a parent who has a serious health condition that involves inpatient care in hospital, hospice or residential medical care facility; or continuing treatment by a health-care provider.
 - Because of a serious personal health condition/illness that renders the employee unable to perform the functions of his or her position. (The university may request certification that the employee is unable to work or is unable to perform any of the essential functions of the employee's position within the guidelines of the Americans with Disabilities Act.
 - An employee who goes on leave due to a workers' compensation claim may have that time counted toward his or her 12 weeks of family and medical leave.)

- Any qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

2. Eligible full-time employees may take up to 26 weeks of leave to care for a spouse, child, parent or next of kin with illness or injury incurred in the line of duty while in the Armed Forces, National Guard or Reserves.

6.3 FMLA for Eligible Part-Time Faculty and Classified Employees:

Eligible part-time employees may take up to 12 weeks of family and medical leave in a calendar year for the reasons listed in 6.2(a). Eligible part-time employees may take up to 26 weeks of family and medical leave in a calendar year for the reasons listed in 6.2(b). Actual hours taken will be counted on a prorated basis corresponding to the percentage of hours the employees normally are scheduled to work during a calendar year.

EXAMPLE: A part-time employee works 25 hours per week year round. During any 12-week period, the employee works a total of 300 hours. Therefore, if intermittent leave is taken, the employee may take up to 300 hours of family and medical leave in a calendar year.

6.4 FMLA for Eligible Wage Employees:

Eligible wage employees may take up to 12 weeks of family and medical leave in a calendar year for the reasons listed in 6.2 (a). Eligible wage employees may take up to 26 weeks of family and medical leave in a calendar year for the reasons listed in 6.2(b). Actual hours taken will be counted on a prorated basis corresponding to the percentage of hours they normally are scheduled to work during the 365-day period prior to the date family and medical leave is scheduled to begin.

6.5 Restricted Use of Family and Medical Leave:

Family and medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and outpatient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.

When both husband and wife work for the university, the full amount of leave may be limited to a combined total of 12 workweeks in a 12-month period, if the leave is taken for the birth of the employee's son or daughter or to care for the child after birth; for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, or to care for the employee's parent with a serious health condition; or because of any qualifying exigency (as defined the Department of Labor) arising out of the fact that the spouse, child or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

Where the husband and wife use a portion of the total 12-week FMLA leave entitlement for one of the above purposes, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those listed in this section. The mother may incur a period of disability in the case of pregnancy and childbirth. This period would be considered FMLA leave for her own serious health condition and would not be subject to the combined limit.

When both husband and wife work for the university, the full amount of leave may be limited to a combined total of 26 weeks to care for a child, parent or next of kin with illness or injury incurred in the line of duty while in the Armed Forces, National Guard or Reserves.

6.6 Paid Leave:

Classified employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under family and medical leave. The university may designate such leave as family and medical leave if it meets the conditions described above.

Employees who are approved for FMLA leave may use up to 33 percent of their personal sick leave hours held at the beginning of the FMLA leave. Consistent with existing policy, agencies may require certification of need before granting family and medical leave.

NOTE: Other leave policies have not changed as a result of implementing this policy. For example, employees still are eligible to use only up to six days of sick leave for short-term family illnesses in a calendar year. This applies only to full-time classified employees and part-time classified employees.

If classified employees use their accrued paid leave balances for purposes described in this policy, then the university is required to provide only the number of unpaid workdays that, when combined with the number of days of other leave taken, equal a total of 60/130* workdays or 480/1040* work hours.

EXAMPLE: A classified employee uses six days of sick leave and 15 days of annual leave to care for a parent who has a serious health condition. The university must allow him/her to take 39 days of unpaid leave.

Instructional, administrative and eligible part-time faculty members not participating in VSDP are eligible to receive paid time off with peer coverage for the conditions listed above.

6.7 Intermittent Leave or Reduced Schedule

Employees may take intermittent leave or work a reduced schedule not to exceed 480 (or 1040*) hours for full-time employees as follows:

- When medically necessary because of an eligible employee's own serious health condition/illness or the serious health condition/illness of a child, spouse or parent, or other qualifying event an employee may take family or medical leave on an intermittent leave basis or a reduced schedule as indicated below.
 - Intermittent Leave Schedule: A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis.
 - NOTE: Employees may be required to provide medical certification that intermittent leave is necessary.
 - Reduced Schedule: A leave schedule permitting the employee to reduce the typical number of hours worked per workweek or per workday.
- Classified employees who must take intermittent leave or work a reduced schedule must first use their available paid leave balances as permitted by each specific leave policy or take unpaid family and medical leave once all accrued leave has been exhausted.
- Classified employees do not accrue annual and sick leave when they are on leave without pay status during family and medical leave.
- When an employee takes leave to care for a newborn child, or because of the placement of a child with him or her for adoption or foster care, the employee may take leave intermittently or on a reduced schedule, if university management agrees on such an arrangement beforehand.
- When the conditions noted in this policy are applicable, the university can temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule as long as the new position carries equivalent pay and benefits.
- Eligible employees may take up to 26 weeks of FMLA for reasons listed in 6.2 (b).

7. RESPONSIBILITIES

Employee:

An employee should submit a written request for family and medical leave at least 30 days before the anticipated beginning of the family and medical leave, unless emergencies or unforeseen events preclude such advance notice to his or her supervisor.

University:

The university must grant an eligible employee's request to take up to 12 or 26* workweeks of family leave during a calendar year for the reasons stated in this policy.

The university may require a physician's certification for leave that is requested for an employee's serious health condition or for a qualifying family member's serious health condition before granting family and medical leave.

The university must notify key employees before they begin family and medical leave that they may be denied restoration to their positions as outlined in this policy.

The university will make, keep and preserve records pertaining to their obligations under FMLA.

- Records must be kept for at least three years.
- Required records must include the following:
 - Basic payroll and identifying employee data including: name, address and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
 - Leave designated as FMLA leave, both paid and unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)
 - Copies of employees' notices of leave furnished to the university.
 - Any documents (including written and electronic records) describing employee benefits or university policies and practices regarding the taking of paid and unpaid leaves.
 - Records of premium payments.
 - Records of any dispute between the University and an employee regarding designation of leave as FMLA leave, including any written statement from the university or employee of the reasons for the designation and for the disagreement.
 - Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members are to be maintained in separate files/records and treated as confidential medical records except in the following instances:
 - Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations.
 - First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
 - Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination.

This includes employees who willfully attempt to take family and medical leave under conditions other than or contrary to this policy as well as supervisors who do not adhere specifically to this policy when dealing with FMLA related matters.

9. EXCLUSIONS

Certain employees, as described above, are not covered by the Family and Medical Leave Act of 1993. These include, for instance, employees who have been employed at the university for less than 12 months.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the director of the Office of Human Resources

Previous version: October, 2005

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