

**Florida A & M University
Office of Human Resources**

INTERNAL OPERATING PROCEDURE

Procedure No. HR-3001

Subject: Family and Medical Leave Act (FMLA)	
Authority: Family and Medical Leave Act of 1993; Title 29, Part 825, Code of Federal Regulations; Chapter 110.221, Florida Statutes; FAMU Board of Trustees Policy 2005-23	Effective Adopted Date: 07/01/1999
Revision(s)	06/27/1996; 11/23/2016; 2/25/17
Related References	
Purpose	To establish a standard operating procedure for the administration of the Family and Medical Leave Act (FMLA)
Signature of Approving Authority	

1.0 General Information

Florida Agricultural and Mechanical University (FAMU) recognizes that during an employee's career, circumstances may arise which require prolonged or intermittent absence from work due to medical reasons. The Family & Medical Leave Act (FMLA) is a benefit that allows qualified employees to have up to 12 workweeks of leave per fiscal year. FMLA allows eligible employees to take unpaid, job-protected leave for a qualifying circumstance. In addition, eligible employees are entitled up to 26 workweeks of unpaid, job-protected FMLA leave for Military Caregiver leave.

For purposes of FMLA, the employee must meet certain eligibility guidelines before leave can be designated as FMLA. Employees may elect to substitute accrued annual or sick leave while on FMLA leave. During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work.

The exceptions and unique situations regarding FMLA leave benefits are too numerous and complex to address in this operating procedure. Therefore, consultation and communication with the Office of Human Resources (HR) is required.

2.0 Responsibilities

- A.** *Employees* are responsible for collaborating with supervisors or designees and the FMLA Coordinator to determine eligibility for FMLA leave, meeting FMLA leave deadlines and reporting restrictions, and complying with the requirements of this operating procedure.
- B.** *Supervisors, Deans and Directors* are responsible for facilitating compliance with this operating procedure, communicating requirements to employees, working with eligible employees to schedule qualifying FMLA leave, submitting leave requests to the FMLA Coordinator and ensuring FMLA leave has been coded accurately.
- C.** *FMLA Coordinator* is responsible for ensuring compliance with FMLA rules and regulations, monitoring employees FMLA leave balances and reviewing for accuracy, training the campus community on FMLA where necessary, answering questions and distributing forms to employees who may need FMLA leave.

3.0 Definitions

- A. **Spouse** – A husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.
- B. **Parent** – A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”
- C. **Son or daughter/child** – A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.
- **Incapable of self-care:** The individual requires active assistance or supervision to provide daily self-care in three or more of the Activities of Daily Living (ADLs) or Instrumental Activities of Daily Living (IADLs). ADLs include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. IADLs include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
 - **Physical or mental disability:** A physical or mental impairment that substantially limits one or more of the major life activities of an individual.
 - **In loco parentis:** Individual responsible for the day-to-day care and supports a child financially, or, in the case of an employee, who is responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- D. **Health Care Provider** – A physician, dentist, podiatrist, clinical psychologist, or optometrist who is authorized to practice medicine or surgery in the state in which the individual practices his/her profession. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor.
- E. **Adoption** – Legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g., whether from a licensed placement agency or otherwise*) is not a factor in determining eligibility for FMLA leave. See §825.121 for rules governing leave for adoption.
- F. **Serious Health Condition** – 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.
- G. **Covered Active Duty** – Member of a regular component of the Armed Forces means duty during deployment of the member of the Armed Forces to a foreign country. For members of the reserve components of the Armed Forces (*members of the U.S. National Guard and Reserves*), the term means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation, as defined under applicable law.
- H. **Covered Veteran** – A former member of the Armed Forces (*including a member of the National Guard or Reserves*) and who was discharged or released from that service under conditions other than dishonorable within five years prior to the first date that the employee’s military caregiver leave begins.
- I. **Covered Service Member** – 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 illness, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Outpatient status with respect to a covered service member means the status of a member of the Armed Forces assigned to: a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- J. **Next of kin of covered service member** – A blood relative designated by the service member in writing as next of kin for purposes of military caregiver leave under FMLA (*in which case that person is deemed the sole next of kin*). A blood relative that has been granted legal custody of the service member by court decree or statutory provisions. This includes brothers, sisters, grandparents, aunts uncles, and first cousins.
- K. **Serious Injury or Illness** – Injury or illness incurred by a covered service member in the line of duty on active duty that may render him or her unfit to perform the duties of his or her office, grade, rank, or rating:
- A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the military member unable to perform the duties of his/her office, grade, rank or rating; or
 - A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of fifty percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
 - A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
 - An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

4.0 FMLA Eligibility

1. Employees are eligible for FMLA leave if they have been employed with the University for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding commencement of the leave.
2. The 12 months of service need not be consecutive and time previously worked for the University may be used to meet the 12-month requirement.
3. The University does not have to take into consideration any period of previous employment occurring more than seven years before the date of the employee’s most recent hire, unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement outlining the University’s intention to rehire the employee after the break in service.
4. All periods of time worked during the 12-month period preceding commencement of leave count for purposes of meeting the “1,250 hours” requirement.
5. Time taken for holidays, vacation or leave is not considered work time except that an employee returning from his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence due to or necessitated by USERRA-covered service.

5.0 FMLA Qualifying Leave Reasons

1. The University will grant FMLA leave to eligible employees for the following reasons:
 - The birth of a child and to care for the newborn child within one year of birth; or
 - The placement of a child for adoption, foster care, and/or to care for the newly placed child within one year of placement; or

- A serious health condition affecting your spouse, child, or parent for which you need to provide care; or
 - A serious health condition in which you are unable to perform the essential functions of your job; or
 - A qualifying exigency due to the fact that your spouse, child, or parent is on covered active duty or call to covered active duty with the Armed Forces; or
 - To care for a covered service member or veteran with a serious injury or illness affecting your spouse, child or next of kin.
2. The 12 month period in which an eligible employee can take FMLA leave is based on a calendar year from July 1 through June 30.
 3. In the event an employee and his/her spouse are both employees of the University, they may take a combined total of 12 workweeks during a 12-month period for the birth and care of a newborn child, placement of a child in adoptive or foster care, or care for a parent with a serious health condition.
 4. FMLA leave for the birth and care of a newborn child, or placement of a child in adoptive or foster care, must conclude within 12 months of the birth or placement.

5.0 FMLA Military Caregiver Leave

1. FMLA allows qualified employees to take up to 26 workweeks of FMLA leave during a 12 month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.
2. The 12-month period in which an eligible employee may take military caregiver leave is based on a calendar year from July 1 through June 30.
3. Please note that an eligible employee may take no more than a combined total of 26 workweeks of leave for any FMLA-qualifying reason during a 12 month period and, during that period, the employee may not take more than 12 workweeks for FMLA leave that has not been designated as military caregiver leave.

6.0 FMLA Continuous Leave

1. FMLA Continuous Leave is leave that is taken and not broken up by periods of work.
2. FMLA Continuous Leave is typically when an employee is absent for three consecutive business days or longer and has been treated by a doctor such as:
 - A new mother can take eight (8) weeks off from work to care for her newborn baby. The eight week period is continuous FMLA leave; or
 - Leave to care for a sick family member; or
 - Leave to receive treatment for your own serious illness.

7.0 FMLA Intermittent or Reduced Leave Schedule

1. Eligible employees may take FMLA leave intermittently or on a reduced leave schedule under certain circumstances.
2. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason.
3. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.
4. A reduced leave schedule or intermittent leave are appropriate under FMLA for the following:

- An employee's own serious health condition, to care for a spouse, parent, son or daughter with a serious health condition, or to care for a covered service member's serious injury or illness, where there is a medical need for such leave that can be best accommodated through an intermittent or reduced schedule;
 - When medically necessary for planned and/or unanticipated medical treatment of a serious health condition or a covered service member's serious injury or illness, or for recovery from treatment, a serious health condition, or a covered service member's injury or illness;
 - To provide care or psychological comfort to a covered family member with a serious health condition or to a covered service member with a serious injury or illness; or
 - A qualifying exigency (*as that term is defined above*).
5. The University will account for intermittent or reduced leave using increments no greater than the shortest period of time that the University uses to account for use of other forms of leaves (*within the employee's classification group*) provided that the increment is not greater than one hour and that the employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.
 6. Employees requiring intermittent or reduced schedule leave for a planned medical treatment should make a reasonable effort to schedule their leave to minimize disruption of their department's operations.
 7. During any period of intermittent leave or reduced schedule, the University reserves the right to transfer the employee to an alternative position, with equivalent pay and benefits, for which the employee is qualified and which may better accommodate the periods of leave than the employee's regular position.

8.0 FMLA Employee Responsibilities

1. Employees are responsible for providing sufficient and timely notice of the need for leave. Employees are responsible for the following actions related to complying with FMLA:
 - A. Foreseeable Leave
 - The employee must provide notification to his/her immediate supervisor or designee of the need for leave at least 30 days before the leave is scheduled to begin, where practicable.
 - As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.
 - When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day.
 - B. Unforeseeable Leave
 - In situations where advance notification is not possible, the employee must notify the department as soon as practicable.
 - As soon as practicable typically means the employee must provide verbal notice to the department when first learning of the need for FMLA leave, as soon as both possible and practicable.
 - If an employee is unable to complete the *FMLA Leave Request Form*, to request unforeseen FMLA leave, the supervisor or designee should complete the form on the employee's behalf and immediately notify HR.

- If an employee is unable to provide notice, his friend or family member may notify the department of the employee's need to take FMLA leave. Such notice should be by phone, email, or fax. In this event, the supervisor or designee should complete the *FMLA Leave Request Form*, on the employee's behalf and immediately notify HR. HR's approval of FMLA designation job-protected leave may be delayed if notice of the need for leave is not given as soon as practicable.

10.0 FMLA Employer Responsibilities

1. When an employee requests FMLA leave, or when the supervisor acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, an eligibility notice must be provided to the employee within five business days.
2. The eligibility notice must specify any additional information required as well as the employees' rights and responsibilities.
3. The eligibility notice must state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.
4. The employee must be informed if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement.
5. If determined that the leave is not FMLA-protected, the employee must be notified.

11.0 FMLA Medical Certification

1. Employee must provide a complete and sufficient medical certification from their health care provider supporting the need for leave.
2. The employee must return the medical certification to HR within fifteen (15) calendar days from receipt of the Notice of Eligibility, Rights & Responsibilities.
3. The certification must provide a description of medical facts regarding the patients' health condition. Such medical facts may include:
 - Information on symptoms and diagnosis; and
 - Hospitalization, doctor visits and whether medication has been prescribed; and
 - Any referrals for evaluation or treatment (physical therapy, for example); and
 - Any other regimen of continuing treatment.
4. A complete and sufficient certification means that the applicable entries on the certification form are completed and are not vague, ambiguous, or non-responsive.
5. If the certification is incomplete or insufficient, then the FMLA Coordinator will advise the employee in writing about what additional information is necessary.
6. Employees have seven calendar days to provide the additional information unless it is not practicable under the circumstances. If an employee fails to provide the medical certification, FMLA leave may be denied.
7. When determining the extent of an employee's serious health condition and the department has reason to doubt the validity of the first medical certification, HR may request a second opinion.
8. If the second opinion is different from the first, HR may request a third, and the third opinion is binding. If HR requests second or third opinions, the department must pay for the subsequent opinions. Below is list of the medical certification forms:
 - Certification of Health Care Provider for Employee's Serious Health Condition
 - Certification of Health Care Provider for Family Member's Serious Health Condition

- Certification of Qualifying Exigency for Military Family Leave
- Certification of Serious Injury or Illness of Covered Service Member for Military Family Leave

12.0 FMLA Returning to Work

1. Employees returning from FMLA leave for his/her own serious health condition must provide a fitness-for-duty certification before being restored to employment.
2. The fitness-for-duty certificate must be provided at least three (3) business days prior to the scheduled return date.
3. If such certification is not received, the employees return to work may be delayed until certification is provided.
4. The employee will be responsible for providing a copy of their position description to the health care provider.
5. The fitness-for-duty certification must address the ability to perform the essential functions of the position.
6. This form is not required if FMLA leave was taken for other purposes such as caring for a family member or adopting a child.
7. If the fitness-for-duty certification stipulates modified duty or other accommodations, the employee must submit to their immediate supervisor and HR.
8. The certification from the health care provider must provide in detail the restrictions and length of time before returning to work.
9. The department evaluates each request for modified duty or a reasonable accommodation on a case-by-case basis.
10. If accommodations are required under the Americans with Disabilities Act (ADA) to perform the essential functions relating to your position, the department will be require to contact the Office of Equal Opportunity Programs (EOP) for assistance.

12.0 FMLA Benefits and Protections

1. While on FMLA leave, the University must maintain the employee's health coverage under any group health plan on the same terms as if the employee had continued to work.
2. The employee is responsible for his/her share of the monthly health premiums.
3. If the employee is using accrued sick, comp-time, or vacation leave balances to receive a paycheck while on FMLA leave, the employee's portion of the health premiums are deducted from his/her paycheck as usual.
4. If the employee does not receive a sufficient paycheck to cover his/her portion of the premiums, the employee must make arrangements with HR to pay his/her portion of the premiums.
5. The employee's use of FMLA leave must not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.
6. Upon return from FMLA leave, an employee is entitled to be returned to the same position prior to using FMLA leave, or a substantially equivalent position with equivalent benefits, pay and other terms and conditions of employment.

13.0 FMLA Substitution of Paid Leave

1. The substitution of accrued sick or family leave is limited by the employer's policies governing the use of such leave.

2. Employees may choose or the University may require use of accrued paid leave while taking FMLA leave.
3. In order to use paid leave for FMLA leave, employees must remain in compliance with all attendance and leave policies and procedures.

15.0 Procedures

1. Submit a leave of absence request to your supervisor or designee. Faculty should submit the request to their department chair or dean.
2. The forms can be located on the Office of Human Resources main webpage. Please select the form that pertains to the type of leave requested which are listed below:
 - Parental Leave of Absence Request
 - Military Leave of Absence Request
 - Medical Leave of Absence Request
3. The leave of absence request must be submitted at least 30 days prior to the proposed leave date for a foreseeable qualifying event or in the event of unforeseen leave, as soon as practicable.
4. Upon receipt, the FMLA Coordinator will be responsible for:
 - Reviewing and confirming that the employee meets the eligibility requirements; and
 - Determining if the reason for FMLA leave is for an FMLA qualifying reason; and
 - Providing the employee with a letter of Notice of Eligibility, Rights and Responsibilities within five business days from receipt of leave of absence request.
5. If eligible, the employee will be required to have their health care provider complete a medical certification form and submit to HR within fifteen (15) calendar days from receipt of the Notice of Eligibility, Rights and Responsibilities. The medical certification must support the need for FMLA leave.
6. Once the employee's supporting documentations has been reviewed, the employee will be notified in writing whether the leave has been designated as FMLA.
7. The designation notice will state the amount of leave counted against the employee's FMLA leave entitlement, advising the employee that prior to returning to work a fitness-for-duty certification is required and whether additional information is needed to determine if your FMLA leave request can be approved.
8. The employee will be responsible for reporting FMLA leave by using the following time reporting codes for sick leave FMLAS and annual leave as FMLAA in iRattler.

16.0 Records

1. The Office of Human Resources is responsible for documenting and maintaining for three (3) years, records of paid and unpaid FMLA leave and reduced work schedules related to the FMLA.
2. FMLA requires that Human Resources must keep the following records pertaining to their obligations:
 - Basic payroll and identifying employee data, including name, address, occupation, rate or basis of pay and terms of compensation, daily and weekly terms of hours worked per pay period, additions to or deductions from wages, and total compensation paid. Hours worked records need not be kept for employees who are not covered by or are exempt from Fair Labor Standards Act.
 - Dates FMLA leave are taken by employees and designated in records as FMLA leave. This includes written record of intermittent or reduced leave schedules

- If FMLA leave is taken in increments of less than one (1) full day, the hours of the leave.
- Copies of employee request for leave furnished to the Human Resources and copies of all supporting documents and specific notices given to employees.
- Any documents (including written and electronic records) describing employee benefits or policies and practices regarding the taking of paid and unpaid leaves.
- Premium payments of employee benefits.
- Records of any dispute between FAMU and an employee regarding designation of leave as FMLA leave.

17.0 Violations

Violations of these procedures will subject employees to discipline, up to, and including discharge from employment with Florida Agricultural & Mechanical University.