



Ohio Administrative Code

Rule 3342-6-11.11 Administrative policy regarding leave under the FMLA.

Effective: December 3, 2018

(A) Policy statement. In compliance with the Federal Family and Medical Leave Act (FMLA), it is the policy of the university to grant up to twelve weeks of unpaid job protected leave to eligible employees per rolling twelve-month period. Military family leave entitles eligible employees a combined total of twenty-six weeks of FMLA leave per rolling twelve-month period. FMLA will run concurrently with other paid or unpaid leaves for the following qualifying events:

- (1) A serious health condition that prevents an employee from performing his or her job;
- (2) Care for a child during the first year following birth, adoption or foster care placement; or
- (3) Care for a family member who has a serious health condition;
- (4) Qualifying exigency leave for active duty of a family member;
- (5) Care for injured or ill member of the armed forces.

(B) Definitions.

- (1) FMLA. The Family and Medical Leave Act provides up to twelve weeks of job protected leave to eligible employees under certain circumstances:
- (2) Family member. For the purposes of this policy, a family member is defined as a parent, spouse, registered domestic partner, step-child, biological, adopted, foster or legal ward son or daughter (up to age eighteen, except in the cases where the child is incapable of self-care because of a mental or physical disability).
- (3) Paid leave. The use of accrued sick, vacation and personal time as appropriate, comp time, prior to going on unpaid status. Use of sick leave is limited by physician certification.



(4) Serious health condition. An injury, impairment or physical or mental condition that involves either:

(a) Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential mental care facility; or

(b) A period of incapacity requiring absence of more than three full calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider, provided that the employee, family member or other eligible party visits the health care provider within seven days after the first day of the incapacity, a second visit within thirty days of the incapacity and periodically thereafter for as long as the incapacity exists (at least two visits to a health care provider per year); or

(c) Any period of incapacity due to pregnancy, or for prenatal care; or

(d) Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g. asthma, diabetes, epilepsy, etc.); or

(e) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimers, stroke, terminal diseases, etc.); or

(f) Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g. chemotherapy, physical therapy, dialysis, etc.), provided that the employee visits the health care provider within seven days after the first day of the incapacity, a second visit within thirty days of the incapacity and periodically thereafter for as long as the incapacity exists (at least two visits to a health care provider per year);.

(g) Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, etc. are examples of conditions that do not meet the definition of a serious health condition.

(5) Unpaid leave. A leave of absence where the employee has exhausted all sick and vacation time



and there is still a need for additional leave.

(6) Intermittent FMLA leave. A leave of absence taken in nonconsecutive blocks of time rather than one continuous period. Leave periods may range from an hour or more to several weeks.

(7) Reduced schedule FMLA leave. A reduction in the usual number of working hours per day or week for a period of time for reasons related to the approved FMLA.

(8) Qualifying exigency. Leave for active duty of a family member for a serious health condition or to care for a seriously ill family member. This leave is part of the regular twelve-week entitlement -- that is, the employee gets twelve weeks total per year for any qualifying reason, not an additional twelve weeks for issues relating to a family members military service.

(9) Military family leave. FMLA leave to care for injured members of the armed forces. This leave allows eligible employees twenty-six weeks of unpaid leave to provide care to wounded U.S. military personnel. Eligible employees include:

Spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness, and provides care for such service member.

(C) Eligibility.

(1) Any university employee (excluding student employees) who has been employed by the university for at least twelve months; and has worked for at least 1,250 hours during the past twelve months is entitled to FMLA for covered circumstances.

(2) To be eligible for a qualifying FMLA leave, the employee must meet all of the following criteria:

(a) The employee must have been employed by Kent state for at least twelve months. Any portion of a week that the employee is on the payroll counts as a full week for FMLA eligibility. These hours must be actual hours worked, which do not include holiday, vacation, sick or compensated hours.

(b) The employee must not have already received twelve weeks of FMLA leave in the last twelve



month rolling period.

(D) Implementation.

(1) General provisions. The following provisions apply while an employee is considered to be on qualified leave under FMLA.

(a) FMLA will not exceed twelve weeks within a twelve month rolling period, whether taken at once, in intermittent periods or as a reduced schedule. The twelve-month period is measured forward from the date the employees first approved FMLA absence begins.

(b) If the employee is away from the workplace for more than three consecutive calendar days and has not notified the supervisor of the need for FMLA, and the employees supervisor has sufficient knowledge to make a determination that leave is being taken for a qualifying FMLA reason (either at the time the employee gives notice or begins leave), but fails to designate leave as FMLA, the university may not retroactively designate leave as FMLA so long as the leave is in progress or within two business days of the employees return to work. The university must notify the employee that such absence is being designated as FMLA leave.

(c) Employees may be placed on FMLA leave anytime the employee experiences a period of incapacity of more than three consecutive calendar days with proper physician certification of a qualifying FMLA reason, or are absent on an intermittent basis for a qualifying FMLA reason. The university must notify the employee that an absence is being designated as FMLA leave.

(d) After the twelve weeks of qualifying FMLA leave is exhausted, and if the employee is still not medically able to return to work, the employee or their representative must notify the employees supervisor of the need for continued leave of absence under the unpaid leave status.

(e) Once leave protected under regular FMLA and military family leave has been exhausted, the employees failure to return to work should be treated as any other failure to return to work.

(f) Upon completion of regular FMLA leave or military family leave of absence, the employee is to be returned to the position formerly occupied, or to an equivalent position if the employee's former



position no longer exists.

(2) Intermittent or reduced schedule FMLA. Normally, FMLA will be approved for an employees complete regular work schedule. Employees may also request an intermittent or reduced work schedule with the approval of the employees supervisor and review by human resources. Employees who need foreseeable leave for planned medical treatment must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the university.

(a) The employee must submit written medical or other supporting certification subject to the following conditions:

(i) Serious health condition of the employee or of a member of the employees family member. The employee must submit written medical certification to support the intermittent or reduced schedule FMLA request (e.g., periodic testing or treatment);

(ii) Birth or placement (adoption or foster care) of a child with the employees family;

(iii) Utilization. Intermittent FMLA is calculated by hours, based upon a forty-hour week. For a full-time employee, the maximum utilization of FMLA is four hundred eighty hours; for part-time employees the maximum is twelve times the regular scheduled weekly work hours.

(b) The university will require an employee taking continuous or reduced schedule leave to provide a fitness-for-duty certification before returning to work. The university requires this fitness-for-duty certification to specifically address the employees ability to perform the "essential functions" of his job. It must be submitted prior to the employee returning to work.

(3) Military family leave and use of FMLA to care for injured members of the armed forces will be approved under the following conditions:

(a) The serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the armed forces.

(b) Covered family members are entitled to up to twenty-six weeks of unpaid FMLA leave and



military family leave during a single twelve-month period to care for the service member.

(c) As with regular FMLA leave, military family leave is leave for which an employee may substitute any vacation or sick leave.

(d) Military family leave and reemployment rights. Employees returning from active duty must make timely application for reemployment according to the requirements of USERRA as stated in rule 3342-6-11.6 of the Administrative Code regarding military leave of absence.

(e) Qualified exigency leave. Certain employees are eligible to take twelve weeks of unpaid leave needed because of a qualifying exigency relating to the service of either the employee or a family member who is a member of the national guard and reserves for the purpose of managing the employees or family members affairs (including the member's spouse, child, or parent) while the service member is on active duty in support of a contingency operation.

Qualifying exigency leave is limited to situations involving a short-term deployment, military events and related activities (before and during deployment), childcare and school activities, financial and legal arrangements, counseling, rest and recuperation of the service member, post-deployment activities, and additional activities agreed to in writing by the employer and employee.

(4) Interaction with other types of leave. Generally, any absence that meets the standards for FMLA shall be considered to be covered by unpaid FMLA leave, and will run concurrently with the employees sick leave, personal leave, vacation leave and/or unpaid temporary disability/child care leave. Employees with accrued compensatory time will be required to use their accrued time first, before exhausting other forms of leave to run concurrently with their designated FMLA leave.

(a) Compensatory time off. Employees who request compensatory time off for qualifying events covered by FMLA will not be considered to be on FMLA during their approved compensatory time off.

(b) Workers compensation. A serious health condition may result from a work related injury or illness to an employee. If an injury or illness meets the criteria for a serious health condition, whether it is covered by workers compensation or not, the employee will be considered to be on FMLA leave. If



the employee applies for workers compensation benefits, any granted time off will be counted against the employees FMLA entitlement. The granting of FMLA leave shall have no bearing on the approval or disapproval of the employees workers compensation request.

(5) Certification, reporting and record keeping.

(a) Medical certification. FMLA will not be approved until the applicable medical certification from the appropriate licensed physician has been received and approved. If the leave is due to the serious health condition of the employee, or the serious health condition of a family member, the employee must ensure that the patients health care provider completes the required medical certification form, and returns it within fifteen business days of receipt (or as soon as practicable).

(i) A designated representative from university benefits office may speak directly to the employees health care provider during the medical certification process.

(ii) If the university deems a medical certification to be incomplete or insufficient, the university will specify in writing, what information is lacking, and the employee will have seven business days to cure the deficiency.

(iii) Failure to provide medical documentation may result in the denial of leave until the required certification is provided.

(b) Additional medical review. The university may request up to two additional medical reviews of the employees medical condition, at university expense.

(c) Certification of family relationship. The university may request certification of family relationship. The university benefits office can request certification in the form of a written statement from the employee, or documentation such as a birth certificate, court document, etc. Domestic partner relationships will require the completion of a notarized domestic partner affidavit to be returned to the Benefits office.

(d) Record keeping. The benefits office will keep records of FMLA requests and all supporting documentation. Medical records accompanying FMLA requests will be maintained confidentially and



separate from personnel files for a period of three years.

(6) Group insurance and retirement contributions.

(a) Employees who are participating in university-sponsored group insurance programs will be eligible to continue participation while on FMLA. If the FMLA is unpaid, employees will be responsible for paying their insurance contributions at the same rate as before the unpaid leave began. If employees fail to submit payment in a timely manner, their insurance benefits will be terminated.

(b) Employees returning from FMLA will return to their regular assignment, and the FMLA will be treated as continuous service for the purpose of calculating any university benefits based upon service.

(c) During an unpaid leave of absence, both the employer and the employee contributions to OPERS, STRS, or the Alternative Retirement Program (ARP) are discontinued. Accrued retirement benefits are not forfeited, nor can they be withdrawn during a leave of absence. In certain cases, service credit can be purchased by the employee for a period of time spent on an approved unpaid leave of absence. Additional information relative to purchase of retirement credits may be obtained by contacting the university benefits office.

(7) Application procedure.

(a) Employees must complete an initial request for FMLA and submit it to the university benefits office. All leaves of absence and extensions thereof must be requested thirty days in advance of the date the leave is to begin, when the necessity for leave is foreseeable such as where leave is taken for: an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered service member. If the need for a leave is not foreseeable thirty days prior to the effective date of such leave, the employee must provide notice as soon as possible on forms provided by the university.

(b) A request for leave of absence which is approved must be submitted to the employee's supervisor for acknowledgement.



(c) The employee must provide sufficient information to the university to allow the university to understand the condition and duration of the leave.

(d) Furthermore, the employee is obligated to respond to the university's questions designed to determine whether leave is FMLA-qualifying. Calling sick, without providing sufficient notice, is not sufficient notice.

(8) Responsibility.

(a) Under this policy, the employee's responsibilities include, but are not limited to:

(i) Provide their supervisor with advance notice of leave requests with a minimum of thirty days or as much time as is reasonable.

(ii) Complete appropriate leave request forms and, if possible, clarify FMLA from other types of leave.

(iii) Submit the required medical certification (completed by a licensed physician) for every new event (serious health condition of the employee, or family member; pregnancy, or adoption, qualifying exigency, or service member leave) within a twelve month period.

(iv) Return the appropriate leave request form and medical certification forms to the benefits office within fifteen business days of receipt. Failure to return required documentation to benefits within this timeframe may result in denial of leave request.

(v) Employees must contact the university benefits office to determine eligibility for benefits while on FMLA.