THE BASICS

Reasons for Family and Medical Leave

- An employee’s own serious health condition.
- The serious health condition of the employee’s child, spouse, parent, or domestic partner.
- The birth of a child.
- To bond with the employee’s newborn, newly adopted child, or a child newly placed in the employee’s foster care. Leave taken for this purpose must be completed within a year of the birth or placement in the adoptive or foster home. Leave can also be granted prior to a child being placed for adoption or foster care when needed for such items as court appearances and licensing.

Length of Leave

- Up to 12 workweeks in a calendar year.

Eligibility

Any employee who meets both of these conditions:

- The employee must have at least 12 months of University service. All prior service counts, regardless of any service breaks, including time worked at any UC campus, medical center or DOE laboratory.
- The employee must have worked at least 1250 actual hours during the 12 months immediately preceding the commencement of the leave.

Since eligibility requirements are based on hours worked, many part-time employees will not be eligible for FML, while some employees with limited appointments will be eligible. Employees who are not eligible for FML may be eligible for other types of leave; please consult the appropriate personnel policy or collective bargaining agreement for each specific type of leave.

Since time records are not kept for most FLSA exempt employees, you should assume that an exempt employee who has at least 12 months of UC service is eligible for FML unless there are written records or other good evidence that indicate the employee worked less than the required 1250 hours during the last 12 months.

All employees disabled by pregnancy are eligible for PDL.

Leaves do not extend past a predetermined separation date; for example, the end date of a limited appointment, with a specified end date.
WHAT IS A SERIOUS HEALTH CONDITION?

According to federal regulations, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

- inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity* related to inpatient care, or any subsequent treatment in connection with inpatient care.
- any period of incapacity* for three consecutive calendar days or longer that also involves treatment two or more times by a health care provider.
- any period of incapacity* for three consecutive calendar days or longer that also involves treatment by a health care provider and a regimen of continuing treatment under his or her supervision.
- any period of incapacity* due to pregnancy or prenatal care.
- any period of incapacity* due to a chronic serious health condition which is under the supervision of a health care provider.

A serious health condition does not include minor illnesses, such as the common cold, flu, earaches, upset stomach, or routine dental problems, orthodontic treatments, or periodontal disease. Of course, complications, if they arise, could convert a minor illness into a serious health condition. If you have a question about whether a particular illness or injury qualifies as a serious health condition, please contact your Employee Relations Consultant, Human Resources Office.

The medical certification provision that an employee is “needed to care for” a family member encompasses both physical and psychological care. It 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 child, spouse, parent or domestic partner with a serious health condition who is receiving inpatient or home care. The term also includes 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.

* Incapacity is defined as the inability to work, attend school or perform other daily activities due to the serious health condition, treatment or recovery.
EMPLOYEE NOTICE

When the need for FML is foreseeable, the employee is required to give 30 days advance notice. No advance notice is required for FML that is unforeseeable. Written notice is encouraged, but not required.

An employee does not have to use the specific words “Family and Medical Leave” in order to be eligible for FML. When an employee requests leave, it is the department’s responsibility to notify the employee of his or her rights and obligations under FMLA, and to ascertain sufficient information to determine whether the leave could be designated as FML.

Once you become aware of the need for a leave, provide the employee with an FML information packet, which may include the following items:

- Cover letter provisionally designating the leave as FML;
- Your Rights and Obligations Under the Federal Family and Medical Leave Act of 1993;
- Leave of Absence Request form;
- Certification form(s);
- University of California Family and Medical Leave Benefits Checklist;
- Declaration of Relationship (for Family, Domestic Partner and In Loco Parentis Medical Leave Purposes form, if applicable;
- Record of Reduced Work/Intermittent Leave Schedule for Exempt Employees form.

You can find a sample FML information packet in Appendix B.

CERTIFICATION OF NEED FOR LEAVE

- If the leave is for the employee’s own serious health condition, the need for the leave may require certification from the employee’s own health care provider. Consult the applicable personnel policy or collective bargaining agreement.

- If the leave is for the serious health condition of the employee’s spouse, child, parent, or domestic partner who has a serious health condition, the need for leave may require certification from the family member’s health care provider. Consult the applicable personnel policy or collective bargaining agreement.
All leaves, whether paid or unpaid, which meet the qualifications for FML should be designated as Family and Medical Leave. The department must provide notice to the employee that a leave has been approved and designated as FML, or denied as FML, within **two** working days of the request of leave.

Sometimes a department may not have sufficient information to determine whether a requested leave qualifies as FML. For example, physician verification of a serious health condition may not yet have been provided. In those cases, provisional designation of FML should be made, subject to the verification being submitted. An employee must provide verification from his/her health care provider (or the health care provider of the ill family member) within 15 calendar days.

Federal regulations state:

- **Unless a qualified leave is designated as FML in writing, it is not FML.**

- **FML designation may not be retroactive even if the leave in progress has been certified as FML.**
PAY

All of the leaves discussed in this training guide are unpaid. However, accrued paid leave may be substituted for the unpaid leave as follows:

- Accrued sick leave may be used for the employee's own serious health condition.
- Accrued sick leave may be used to care for an employee’s child, spouse, parent, or domestic partner with a serious health condition to the extent permitted by the applicable personnel policy or collective bargaining agreement.
- Accrued vacation may be used by the employee.
- FML granted to an employee who is receiving temporary disability payments under the Workers’ Compensation Act may be paid through the use of extended sick leave as provided in the applicable personnel policy or collective bargaining agreement.
- Federal regulations prohibit the use of accrued compensatory time off (CTO) for family and medical leave.
- The University’s disability insurance programs may supplement unpaid time for the employee’s own serious health condition.

Paid time away from work is still considered part of FML.
BENEFITS

Health benefits are to be continued during FML as if the employee were on pay status. Therefore, the University will continue to pay its portion of health benefit costs for the FML period only (a maximum of 12 workweeks). This includes medical, dental, and optical insurance.

If the employee is in a health plan for which he or she makes contributions, the employee must arrange with the local Benefits Office to pay his or her normal portion of health benefit costs. Employees who wish to continue non-health benefits (e.g., life insurance) during FML leave should make arrangements for payment with the Benefits Office. If the leave is extended beyond 12 workweeks, the employee may be eligible to continue certain benefits, but must arrange to pay for all benefits he or she wishes to maintain during the extension.

An employee who continues on leave beyond the initial 12 workweeks of FML and who is qualified to receive disability benefits under the University’s Short-Term Disability Plan is eligible for continuation of the University’s contribution toward medical benefits while receiving the disability benefits (not to exceed a total of 26 weeks).

Check with your Benefits Office or see the Family and Medical Leave Benefits Checklist for more information.
Accurate recordkeeping is essential for the protection of both the employee and the department. Local procedures may vary, but some general principles apply.

The employee’s home department is the “Office of Record” for all FML records. **FML records must be filed separately from the employee’s regular personnel file**, and they must be kept for at least three years. Records that must be maintained are listed below.

- Copies of cover memos provided to the employee provisionally designating leave as FML.
- Leave of Absence Request forms. If leave is taken in increments of less than one full day, the hours of the leave must be recorded.
- Time Record forms showing dates FML is taken. Leave must be designated in these records as FML.
- Record of Reduced Work/Intermittent Leave Schedule for Exempt Employees forms.
- Declaration of Relationship (for Family, Domestic Partner and *In Loco Parentis* Medical Leave Purposes) form, if applicable.
- Copies of employee’s notice(s) of leave furnished to the department, if in writing.
- Medical certifications, re-certifications, or medical histories of an employee or the employee’s family members.
- Any other records relating to FML.
REINSTATEMENT

- The employee is entitled to reinstatement to the same or equivalent position.
- If the employee’s position has been abolished during the period of leave (limited appointment ending, layoff), the employee is entitled to the same considerations afforded to other employees whose positions have been abolished.

RETURN TO WORK CERTIFICATION

A return to work certification from the academic or staff employee’s health care provider may be required when the reason for any leave is the employee’s own health condition. When required, a return to work certification shall include a statement by the health care provider of the employee’s ability to perform the essential functions of the position.

Please note that if the department wants to require a return to work certification, the requirement must be uniformly applied by policy or practice that requires all similarly situated employees to present a return to work certification. Examples of similarly situated employees include all employees who are out on leave over two weeks; all employees who have back injuries; or all employees who have patient contact.
REDUCED WORK SCHEDULE / INTERMITTENT LEAVES

In some instances, an employee may need to reduce his or her schedule for FML reasons, rather than take a complete leave. For example, a full-time employee and his sister share care responsibilities for their mother, who is recovering from a mild stroke. The sister provides care during the morning, and our employee provides care in the afternoon. His work schedule is reduced by one-half, and each week he utilizes one-half week of FML.

When medically necessary, intermittent leaves are also available under FML. For example, a full time employee may need to schedule two hours leave for physical therapy twice a week for a month. In this instance, the employee would utilize one-half day each week for FML.

All intermittent leaves or reduced work schedules for FML purposes should be designated as FML. Employees should attempt to minimize disruption to the department when scheduling FML for planned medical treatments. An employee who is on an intermittent or reduced work schedule due to FML reasons may be temporarily transferred to a job that can better accommodate the reduced work schedule or the intermittent leave. Salary and classification would not change.

Exempt Employees

Under PPSM 42.G.1, and APM - 710-20-e, exempt employees may not have absences recorded in less than one day increments for the purposes of receiving salary. An exception to this policy is that an exempt employee who is on a reduced schedule or intermittent family and medical leave is subject to salary or appropriate leave bank deductions for absences of less than day. Consult with your Human Resources office.