

Family and Medical Leave Act (FMLA) Frequently Asked Questions

1. **What sort of leaves are covered by the FMLA leave?** A FMLA leave would include up to 12 weeks absence in a fiscal year for any of the following reasons: Birth of a son or daughter, and to care for the newborn child; placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; or because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
2. **Who is eligible for family and medical leaves?** "Employees" who have completed at least 12 months of service and worked at least 1250 hours in the 12 months preceding the commencement of the leave are eligible. It does not apply to any "employee" who has worked fewer than 1250 hours in the last 12 months. (Unpaid leaves would not count towards hours worked.) For parental leave ONLY, "employees" are also eligible if they have worked at least 12 consecutive months immediately before the request for leave and have worked at least half-time during that period (generally 1040 hours). For employee groups refer to listing information under 'Who Should Know this Policy'.
3. **What is the maximum leave time allowed under the FMLA leave?** A total of 12 unpaid weeks for all FMLA leaves in any fiscal year. If both husband and wife are employed by the University, they each have a total of 12 unpaid weeks available for FMLA leave purposes in any fiscal year, but they cannot use more than a shared total of 12 weeks for parental leave and/or to care for a seriously ill parent.
4. **Are these paid or unpaid leaves?** The FMLA leave is unpaid, but the University will continue to make its contribution to benefits. Employees are obligated to make their contribution for benefits if they wish to continue them. The University requires employees to use all accrued sick leave for which they are eligible and all accrued vacation in excess of 10 days, concurrently with FMLA leave. An employee will be paid for the use of any accrued sick or vacation leave. When paid time is used for a FMLA leave purpose, it will count toward the 12 weeks of leave entitled under the FMLA. For instance vacation, sick, or any other leaves will count as part of the 12 weeks when it is used for a FMLA purpose.
5. **Must employees use paid sick leave during a FMLA leave?** Sick leave must be used if current University policies or labor contracts would permit this - for instance it must be used for some types of FMLA leave - e.g. sick leave must be used for an absence due to the employee's serious health condition.
6. **Will faculty and staff be required to use up their accrued paid time (vacation and sick leave) first during their FMLA leave?** Yes, employees are required to initially use all accrued sick leave for which they are eligible during the FMLA leave, followed by all accrued vacation in excess of ten days. Under the official language of the FMLA leave policy, Section d. "Benefits/Other Leave Programs", the words "otherwise eligible" is defined as use of available paid time as allowed by the applicable governing document (e.g. Civil Service Rules, labor contracts).
7. **What position does the employee get assigned upon return from an FMLA leave?** Under FMLA the employee is guaranteed the same or equivalent position upon return to work by the end of a FMLA leave or within 30 days of the end of a FMLA leave, unless the appointment would have ended prior to that time.
8. **Do temporary employees have any rights under FMLA?** Temporary employees are generally not eligible for FMLA leaves, but may be eligible if: They have worked (anywhere) at the University of Minnesota for at least 12 months; They have worked at least 1250 hours in the 12 months immediately preceding the leave; and, Their appointment has not expired. If the appointment expires or the position is eliminated during the leave, the employee's employment will be terminated (and the leave will end) on the last day of the appointment.
9. **Will the University of Minnesota contribute towards medical and dental coverage during a FMLA leave?** Yes, if a faculty or staff member was eligible for University contributions for health premiums immediately prior to the leave, the University will continue to contribute during FMLA leave (up to 12 weeks in any fiscal year) or any paid leave during which the employee is receiving at least 50% of base pay, whichever would be longer. Paid leave includes sick leave, parental leave, and vacation. Coverage will be canceled if employees do not pay their share of the premium or if it is more than 30 days late.

10. **What happens to retirement contributions when an employee takes an FMLA leave?** Salary deductions for retirement will continue to be taken from an employee's pay as long as the employee is on paid leave - including sick leave, parental leave, vacation. The University will also continue to make its contributions while the employee is on paid leave. For any time which is unpaid, contributions will cease. Any employee covered under MSRS may be able to obtain service credit for any authorized leave if the leave does not extend beyond one year and the employee returns to work. The service credit is obtained by paying the sum of the employee and employer contribution rates at the time of the return from leave.
11. **What period constitutes a "year" for the purposes of FMLA leave?** The "year" used by the University under the FMLA is the fiscal year from July 1 to June 30.
12. **May an employee drop optional insurance coverages during FMLA leave?** Yes, an employee may drop optional life and disability coverages during an FMLA leave. Coverages may be reinstated without evidence of good health at the end of the 12 week leave, or return to active employment, whichever is sooner. If the leave extends beyond approved FMLA leave, coverages may be reinstated with evidence of good health or at the next available open enrollment. If the employee chooses not to continue life or disability coverage, and the employee should die or become disabled when coverages are not in force, no disability, waiver of premium, or life insurance benefits are payable for that disability or death.
13. **What happens if a faculty or staff member gives notice of intent not to return? Are their benefits terminated?** Yes, as long as the notice is "unequivocal". One form of an unequivocal notice is when the employee submits a written letter of resignation. The individual has the option to continue coverage through COBRA following termination of employment.
14. **What about transferring a staff member to another position?** An employer may temporarily transfer a staff member to an alternative position in order to accommodate intermittent absence or a request for a reduced schedule, provided that it provides "equivalent pay and benefits". The law does not specify that the staff member be assigned to equivalent duties in these cases. The Americans with Disabilities Act may provide additional requirements which must be considered on a case by case basis.
15. **What rights do employees have?** The employee has the right to be free from discrimination and the right to return to the same or equivalent position following an FMLA leave. The employee may challenge the employer's actions if these rights are not provided.
16. **What kind of medical documentation is required?** Medical documentation for FMLA leave is needed to certify a serious health condition. It will also generally be required for absences of 4 days or longer if continued treatment is needed. Recertification may be required every 30 days. (Employees may be required to provide earlier and more frequent documentation under University policies related to absences, e.g. negotiated contracts.) The Certification of Health Care Provider form may be used to document whether or not there is a serious health condition, the estimated time that the employee will be absent, and, in the case of a FMLA leave, whether or not the employee is the only person available to care for the sick or injured family member. The employee should return the FMLA certification form as part of the request for leave - 30 days prior to the leave when possible. This form should also be used to confirm the employee's ability to return to work. If any private medical information is written by the health care provider on the standard form, the form must be sent to Disabilities Services for filing to avoid violating the Data Practices Act.
17. **When does the University contribute to the health insurance of eligible employees who are on sick leave or vacation or on any type of paid or unpaid leave?** The University will continue contributions for health insurance for eligible employees on leave of absence if they meet at least ONE of the following requirements: The employee is on any leave in which they are receiving full pay; the employee is on an approved FMLA leave; or the employee is on a partial leave during which they work at least half-time (20 hours per week). Continued eligibility for contribution will be reviewed annually.
18. **Can an employee request sick leave or vacation for a serious health condition and NOT count this toward the 12-week FMLA period?** No, such a request should automatically count as FMLA leave. The supervisor should record such vacation or sick leave as 'FMLA' and complete a Distribution Document (DD) at the time the FMLA leave is requested. All documentation should be completed at the time of advance leave request when the leave is "foreseeable" and within the first week of the begin date of the leave when there is an "unforeseeable" leave. Under both situations, the employee must receive the FMLA documentation.

19. **Is an employee eligible for a new 12 weeks of FMLA leave on/after July 1 of each year?** Yes, 12 weeks of leave are available each fiscal year for eligible employees who provide appropriate medical documentation.
11. **How does the FMLA leave eligibility apply to graduate students and professional employees in the 95xx classes?** Graduate students and post-baccalaureate professional degree students and trainees in the 95xx classes are eligible for FMLA leave if they meet the 1250 hours and 12 month employment eligibility requirements.
12. **Are Distribution Documents (DDs) to be processed for unpaid leaves under FMLA?** Yes, DDs are to be processed for all unpaid leaves under FMLA as soon as the advance FMLA leave requests are granted. DDs must be processed for graduate assistants who are on unpaid FMLA leaves and for academics on informal sick leave, which counts against the 12 week FMLA leave. All DDs should have the FMLA unpaid leave.
13. **What happens if a holiday falls during the 12 week FMLA unpaid leave?** A holiday during a week of FMLA unpaid leave has no effect. The week is still counted as one week of FMLA leave.
14. **If an individual has been employed by the University for at least 9 months and has provided an average of 20 hours or more per week but has not been here for the 12 months of service, can that individual take a leave that is covered under FMLA?** No. An employee must meet both eligibility requirements in order to qualify.
15. **Can an administrator place an employee on FMLA leave if the employee fails to request the leave?** Yes, an administrator/supervisor should place all employees on FMLA who meet the eligibility requirements. FMLA Leave documentation must be sent immediately (preferably certified, U.S. mail) to inform the employee that they are being placed on FMLA leave.
16. **Can an administrator deny a FMLA leave even if the employee meets the eligibility requirements and has a serious health condition?** Yes, if an employee fails to request a "foreseeable" leave appropriately, or fails to provide an appropriate medical certificate, FMLA leave may be denied. These individual circumstances should be discussed with Human Resources.
17. **Can time spent as a student employee be combined with that of civil service (or any other employee group, i.e. academic, bargaining unit represented, etc.) appointment to fulfill the eligibility requirement of at least 1250 hours and twelve months?** Yes, provided all of the employment at issue has been within the University.
18. **Are registered same-sex domestic partners included under the FMLA leave policy?** Yes. Please refer to the "Definitions" Section to see how same-sex domestic partners are included under the FMLA leave policy.
19. **Is Workers Compensation leave counted simultaneously with that of FMLA leave?** Yes.
20. **Is FMLA leave determined by weeks or days of portions thereof? For example, if a 50% employee begins an FMLA leave, is the FMLA leave period 12 weeks or 24 weeks?** The FMLA leave period is defined in weeks, e.g. 12 weeks. The FMLA leave period is prorated based on the employee's percentage appointment, e.g. 12 weeks at 50% for employees appointed on 50% appointments.