

**Family & Medical Leave Policy Changes  
Effective January 1, 2011**

**Objectives:**

1. Add qualifying adult, parents-in-law, son-in-law, and daughter-in-law as eligible family members for FMLA-equivalent benefit. See definitions at Paragraphs III.B, III.J, and III.I, with UofL Eligibility note at III.P. See conforming references for qualifying adults at III.C, IV.B, IV.D, and V.
2. Clarify that all regular FT and PT faculty and staff are eligible for family and medical leave, proportionate to the employee's FTE. See definition at III.E.
3. Eliminate provision that two married employees (or an employee and his or her qualifying adult) must share 12 weeks of FML for child birth or adoption. See Para IV.C.
4. Eliminate need to submit an FML request to Human Resources if an employee has accrued vacation or sick leave (except for intermittent leave). Conforming changes will be made to procedural guidelines and forms which are not included in the policy, but will be published separately. See Para IV.A.

**Policy:** PER 4.17  
**Title:** Family and Medical Leave  
**Adopted:** January 4, 2001  
**Revised:** January 16, 2009  
**Revised:** January 1, 2011.

**I. PURPOSE AND SCOPE**

This policy has been established to comply with the [Federal Family and Medical Leave Act of 1993 \(FMLA\)](#) and related Department of Labor regulations, and to establish University equivalent benefits for such other individuals as deemed consistent with the University's equal employment policy. The policy prescribes the leave benefits available to eligible employees and under these laws; it applies to all faculty and staff employees who meet the eligibility requirements defined in Section III of this policy.

**The policy was revised effective January 16, 2009 to include two Military Family Leave Provisions: [Qualifying Exigency Leave](#) and [Service Member Family Leave](#).**

**II. POLICY STATEMENT**

Family and medical leave is provided to eligible employees for any of the events or conditions listed below. Leave taken for these events must be reported as family and medical leave.

- The birth of a child and the care of the newborn.
- The placement of a child with an employee in connection with the adoption or state-approved foster care of the child.
- The serious health condition of a child, parent, or spouse of the employee or a qualifying adult or child of a qualifying adult.
- A serious health condition of the employee.

- **Qualifying Exigency Leave.** An employee whose son, daughter, spouse, ~~or parent,~~ qualifying adult or child of a qualifying adult who ~~are is~~ on active duty or ~~have has~~ been notified of an impending call to active duty in the regular Armed Forces, National Guard or Reserves. May be used for notice of deployment or return; any official ceremony, program or event sponsored by the military; to attend family support and assistance programs and informational briefings sponsored by the military, military service organizations, or the American Red Cross; to arrange child care or attend certain school functions of the son or daughter of a covered military family member; to make or update financial or legal arrangements to address the covered military family members absence while on active duty or call to active duty; to attend counseling by a non-health care provider; to spend time with a covered military family member on rest and recuperation leave during a period of deployment; to address issues arising from the death of a covered military family member.

An eligible employee is entitled to a maximum of 12 weeks of approved family and medical leave in a year, as defined in this document. (The employee may request a shorter leave.)

### III. DEFINITIONS

- Active Duty:** limited to a member of the Reserve components, the National Guard, certain retired members of the Regular Armed Forces and retired Reserve while serving on active duty status. Only available where the Federal call to active duty is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
- Child:** A biological, adopted, or foster child; a stepchild or child of a qualifying adult; a son-in-law or daughter-in-law; a legal ward; or a person for whom the employee or the employee's qualifying adult has (or had during the person's youth) daily responsibility to care and financially support the child and who is either under 18 years of age or is incapable of self-care because of physical or mental disability. [See "UofL Eligibility Note" at the end of this section, at paragraph III.P]
- Continuing treatment:** Under "serious health condition."
- Chronic health condition:** One that meets all the following requirements:
  - Requires periodic visits for treatment by a health care provider,
  - Continues over an extended period of time, and
  - May cause episodic rather than continuing incapacity (E.g., asthma, diabetes, epilepsy).
- Eligible employee:** Any employee who has been employed by the University for at least 12 months, and who has worked for the University at least 1250 hours during the last 12 months immediately preceding the leave. Full-time (100% FTE) exempt staff and faculty are presumed to have worked 1,250 hours. All regular full-time and part-time faculty and staff are presumed to be eligible for family and medical leave, in proportion to the employee's FTE (percent of regular working hours, based on employment status).
- Health care provider:** A person authorized to practice as a health care provider in Kentucky or Indiana who is performing within the scope of that practice as one of the following:

- Doctor of medicine
- Doctor of osteopathy
- Podiatrist
- Dentist
- Clinical psychologist
- Optometrist
- Chiropractor (for manipulation of spine to correct subluxation)
- Nurse practitioner
- Nurse midwife
- Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts
- Clinical social worker
- Any health care provider from whom the university's group plan will accept certification of a serious health condition. Any health care provider within the scope of practice listed above practicing in another state who is authorized to practice in that state.

G. **Incapacity:** For the purposes of FMLA, the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment therefor, or recovery therefrom.

H. **Intermittent leave or reduced leave schedule:** A leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee. Intermittent leave is calculated on an hourly basis, as a proportion of the employee's normal workweek.

I. **Parent:** A biological, foster, adoptive parent or parent-in-law; a stepparent; a legal guardian; or a person who has (or had during the employee's childhood) daily responsibility to care for and financially support the employee. ~~Parents-in-law are not included in this definition.~~ [See "UofL Eligibility Note" at the end of this section, at paragraph III.P]

J. Qualifying Adult: A person over 18 years of age and, if a blood relative or relative by adoption or marriage, who is of the same or younger generation as the employee; who is residing in the employee's household and has done so for a period of at least 12 months; who has been financially interdependent with the employee for a period of at least 12 months; and who is unmarried or whose marriage is not recognized by the State of Kentucky. [See "UofL Eligibility Note" at the end of this section, at paragraph III.P]

K. **Regimen of continuing treatment:** Includes a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.

L. **Serious health condition:** An illness, injury, impairment, or physical or mental condition that involves either or both of the following:

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

For an employee to qualify for family and medical leave for a serious health condition, the employee or family member must be under continuing supervision of, but not necessarily receiving active treatment by, a health care provider, who must certify to one of the following:

- In the case of leave requested to care for a family member, the employee is needed to care for the family member.
- In the case of leave requested for the serious health condition of the employee, the employee is unable to perform the essential functions of the position.

A serious health condition involving continuing treatment by a health care provider includes any of the following conditions:

1. A period of incapacity of more than three consecutive full calendar days plus two visits to a health care provider:
  - the two visits must occur within 30 days of the beginning of period of incapacity and first visit must be in person and within seven days of the first day of incapacity;
  - continuing treatment can be prescription drugs only
2. Any period of incapacity due to pregnancy or prenatal care;
3. Any period of incapacity due to a chronic serious health condition;
4. A period of incapacity that is permanent or long-term for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease);
5. Any period of absence to receive multiple treatments either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three or more days in the absence of medical treatment (e.g., cancer, severe arthritis);
6. Allergies or mental illness resulting from stress, but only if they meet all of the other criteria of a serious health condition;
7. Substance abuse, but only if the employee is taking leave for treatment by a health care provider.

M. **Spouse:** A husband or wife, as recognized under the laws of the States of Kentucky ~~or Indiana~~ or the state where the employee resides.

N. **Treatment:** For the purpose of FMLA, includes, but is not limited to, examinations to determine if a serious health condition exists. Treatment does not include routine physical, eye, or dental exams.

\*\*\* Specific conditions for which treatment does not qualify for FMLA leave include: cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental, or orthodontia problems and periodontal disease. Cosmetic treatments are not considered a serious health condition unless medically required or unless complications arise. \*\*\*

O. **Year:** Twelve months measured backward from the first date family and medical leave begins.

P. UofL Eligibility Note: The Federal Family & Medical Leave Act does not recognize or confer benefits on an employee's "qualifying adult," a parent-in-law, a son-in-law, or a daughter-in-law. The inclusion of these individuals in the University's family and medical leave policy is intended solely to provide equivalent family and medical leave.

benefits to other members of the employee's household that are within the University's discretion and control. The inclusion of these individuals in this policy does not create any statutory entitlement to such benefits under either Federal or State law.

#### IV. PROCEDURES

- A. An eligible employee must use all applicable accrued paid leave balances (including sick, vacation, and personal leave) while taking family and medical leave.
1. Any sick leave of more than seven consecutive days or intermittent leave of any duration for qualifying serious or chronic health conditions must be counted as family and medical leave.
  2. FML while Paid Leave is Available: Family medical leave is administered at the department level, so long as the employee has paid leave available. Attendance and Leave Time Sheets include an employee acknowledgement and supervisory approval that sick leave, vacation leave, or personal leave in excess of seven consecutive days counts toward the family and medical leave entitlement.
  3. FML after Paid Leave is Exhausted and Intermittent FML: After an employee exhausts all paid leave or if the employee is requesting intermittent family and medical leave, the employee must submit a Family & Medical Leave Request to his or her immediate supervisor and forward a Certification of Serious Health Condition to Human Resources.

When there is any question about whether a condition qualifies as family and medical leave, the employing department should contact the Human Resources Department. Supervisors may request a Certification of Serious Health Condition for any absence where the supervisor is not able to verify the extent to which a personal or family member illness limits the employee's ability to perform his or her job. If it is determined that the leave qualifies as family and medical leave, the procedures for reporting family and medical leave must be initiated.

- B. An employee on Workers' Compensation who wishes to continue to receive ~~insurance-premium-sharing-University health benefits~~ is required to apply for family and medical leave.
- C. If both spouses (or an employee and his or her qualifying adult) are employed by the University of Louisville, they are each employee is entitled to ~~a combined~~ 12 weeks of leave during any 12-month period (~~rather than 12 weeks each~~) for the birth or placement of a child or. ~~A jointly filed request form is required from spouses who are both requesting leaves for the birth or placement of a child. Spouses who are eligible employees are entitled to 12 weeks~~ for other qualifying events or conditions.
- D. Leave for birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption. Leave for birth or placement of a child is available equally to both sexes.

- E. An intermittent or reduced leave schedule is available under the Family and Medical Leave Act for the serious health condition of the employee, employee's spouse, child, or parent or the employee's qualifying adult.
- F. For the period of the family and medical leave that is without pay, the employee may continue insurance benefits (excluding disability insurance plans) and will receive the premium sharing from the university toward the cost of health insurance. The employee is responsible for self-paying by personal check or money order that part of his/her insurance cost that would otherwise be deducted from the employee's paycheck.
- G. For the period of the family and medical leave that is without pay, the employee on family and medical leave will continue to accrue service credit but will not accrue vacation and sick leave.
- H. Except under the conditions outlined in section I below, employees returning from approved family and medical leave must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
1. An employee offered an equivalent position who chooses to decline the position waives any rights to reinstatement.
  2. An employee who believes that a position offered is not an equivalent position is entitled to file a grievance under the university's grievance policy and procedure, [Section PER- 5.03, Grievances](#).
- I. The university may decline to restore an employee on family and medical leave to his/her original or equivalent position under the conditions listed below.
1. If an employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan, the employee's family and medical leave rights (including rights to restoration of employment) end on the scheduled termination date.
  2. If misconduct by the employee which constitutes grounds for termination occurs or is discovered, the employee is subject to termination, even if the employee is on family and medical leave at the time of the misconduct or discovery of misconduct.
  3. If an employee is scheduled for termination for any other reason prior to notification of family and medical leave and has received written notice of the termination, the employee's family and medical leave rights end on the previously scheduled termination date.
  4. If the employee is among the highest paid ten percent employed by the University of Louisville and a determination is made by the president that restoring employment to the employee would result in substantial economic injury to the university, the employee's right to restoration of employment may end at the close of the family and medical leave period. At the time an employee in this category applies for family and medical leave, the employee must be notified that he/she may be ineligible for reinstatement.
- In such cases, the employee maintains only those rights provided by such regulations as COBRA and in the case of a reduction in force.
- J. If an employee elects not to return to work upon completion of an approved unpaid family and medical leave, the employee is obligated to reimburse the university for the amount of the university's contribution of insurance premium during any complete months of unpaid leave. The employee need not reimburse the university if the failure to

return to work was for reasons beyond the employee's control, or if the employee retires directly from leave or within 30 days of returning from leave.

For information regarding temporary medical disability, please see [PER 4.13 Leave of Absence without Pay](#). For additional information and assistance, please contact the Human Resources Department at (502) 852-6258.

## V. SERVICE MEMBER FAMILY LEAVE

An eligible employee who is the spouse, son, daughter, parent, ~~or~~ next of kin, or qualifying adult of a [covered service member](#) shall be entitled to a total of 26 work weeks of leave during a single 12 month period to care for the service member.

**Covered Service Member:** a member of the regular 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 health injury or illness.

**Outpatient Status:** a member of the regular Armed Forces assigned to:

1. A military medical treatment facility as an outpatient; or
2. A unit established for the purpose of providing command and control of members of the regular Armed Forces receiving medical care as outpatients.

**Next of Kin:** the nearest blood relative of that individual or someone who stood in the place of a parent of such individual.

**Serious Injury or Illness:** An injury or illness incurred by the service member in the line of duty or on active duty in the regular Armed Forces that may render the service member medically unfit to perform the duties of the service member's office, rank, or rating.

For more information and assistance, please contact the Human Resources Department at (502) 852-6258.

## VI. REVIEW AND RESPONSIBILITIES

**Responsible Party:** Vice President, Human Resources

**Review:** The ~~university~~University expressly reserves the right at anytime to modify, alter, or amend this policy in whole or in part. The university shall have the unlimited right to amend this policy at any time, retroactively or otherwise, in such respect and to such extent as may be necessary to meet any legal requirement and to the extent necessary to accomplish this purpose. The President or the Vice President for Human Resources, as the President's his designee is hereby granted authority to issue interpretations and clarify rules under this policy and to coordinate it with or modify other rules of the university as required from time to time for compliance with the law.

**Recommended:**

/s/ (Sam Connally) (12-20-10)

Sam Connally  
Vice President, Human Resources

**Approved:**

/s/ (Shirley Willihnganz) (12-23-2010)

Shirley C. Willihnganz  
Executive Vice President & University Provost