



Minot State University

Policy Manual

Section 22

Family (FMLA) Leave

Source: NDUS Human Resource Policy, Section 20, 21, 22
SBHE 607.4

1. Family leave (FMLA leave) is an unpaid leave of absence of up to 12 weeks available to all eligible employees:
 - a. For incapacity due to pregnancy, prenatal medical care or child birth.
 - b. To care for the employee's child after birth, or placement for adoption or foster care.
 - c. To care for the employee's spouse, child, or parent, who has a serious health condition.
 - d. For a serious health condition that makes the employee unable to perform the employee's job.
 - e. A qualifying exigency arising out of the fact that your spouse, son or daughter, or parent is on covered active duty or call to covered active duty status with the Armed Forces.
 - f. Because you are the spouse, son or daughter, parent, or next of kin of a covered service-member with a serious injury or illness.
 - g. Because of the death of the employee's child, if the leave concludes within six months of the child's death. Child bereavement leave is limited to one hundred sixty hours and must be taken within six months following the death of the child.

Consistent with applicable law and upon notice to the employee by the employing entity or election by the employee, family leave shall be concurrent with paid leave.

FMLA leave also includes military family leave as provided under the 2008 National Defense Authorization Act and section 22.15 of this policy, including a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service-member during a single 12-month period.

The 12-month leave entitlement period will be measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA

leave is taken after completion of the prior 12-month period.

MSU allows employees exercising FMLA rights to preserve up to 40 hours of their available annual and sick leave balances, resulting in an unpaid leave option to the employee, while the remainder of paid leave runs concurrent with the FMLA leave entitlement period. After FMLA eligibility is exhausted then FMLA protections shall not apply to the preserved sick leave balance.

2. Employees utilizing family leave will be provided health benefits at the same level and coverage as if the employee had not taken leave.
3. An “eligible employee” means an individual employed by the state for at least twelve months, and who has worked at least one thousand two hundred fifty hours for the state over the previous 12 months. Eligibility is determined as of the date FMLA leave commences.
4. FMLA leave used for the birth, adoption, or foster care placement of a child must begin within 12 months of the event.
5. Serious Health Condition

Certification may be required to verify the existence of a serious health condition. A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Generally, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy or chronic condition. Other conditions may meet the definition of continuing treatment. Certification information that may be requested is defined and limited by implementing FMLA regulations (appendix A and B).

6. The maximum length of available FMLA leave for eligible employees is 12 weeks in a 12-month period that begins with the first day of leave. The maximum length of all types of FMLA leave available during a 12-month period is 26 weeks. An employee is not required to use the FMLA leave in one block or at one time. Leave can be taken intermittently or on a reduced schedule, provided that for a serious health condition of the employee or to care for someone with a serious health condition, it is medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations. A married couple is not limited to a total of 12 weeks if both are employed by the state; each is entitled to 12 weeks. However, the aggregated total number of workweeks to which both husband and wife may be entitled is limited to 26 weeks during a single 12-month period. Reasonable/practical notice must be provided.

7. All leave taken for an approved event or condition will be designated as FMLA. An employee is required to use applicable, accrued paid and donated leave and compensatory time before authorized unpaid FMLA leave. An employee who has exhausted all types of paid leave shall be provided unpaid leave to fulfill the authorized period of family leave.
8. Notice Requirements
 - a. Employees must provide 30 days advance written notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the normal call-in procedure.
 - b. An employee must submit a request for FMLA leave, providing the type of leave requested and the anticipated duration of the leave. If the employee is unavailable, or refuses, to complete the request, the employee's supervisor should complete and submit the request for the employee to human resources.
 - c. Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing, duration of the leave and the anticipated start date of the leave in writing, using the Medical Leave (FMLA) Request form, within the specified notice period. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave.
 - d. An employee seeking leave to care for a family member is not required to demonstrate that the employee is the only family member available to provide care. Employees must inform the employer if the requested leave is for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.
9. Employees are entitled to eligibility notice within 5 business days of leave request, or the day the employer acquires knowledge that the employee leave may be FMLA qualifying leave. If an employee is ineligible, notice must identify at least one reason to explain the basis of the ineligibility determination. Employees are entitled to Designation Notice, or notice that leave is FMLA-qualifying, within 5 business days. The employer may provide eligibility and designation notices simultaneously if the employer has enough information to do so at the time of the leave request.
10. Intermittent and Reduced Schedule Leave
 - a. An eligible employee may take leave all at one time or intermittently – that is, blocks of time, rather than continuous – for his or her own serious health condition, to care for a family member with a serious health condition (e.g., to attend doctor appointments or chemotherapy), or for military caregiver leave, if it is medically

necessary to do so. An eligible employee may also take leave in the form of reduced hours for his or her own serious health condition or to care for a family member with a serious health condition, if it is medically necessary to do so (e.g., to recover from an illness or medical treatment).

- b. If an employee needs intermittent or reduced-schedule leave for planned medical treatment, Human Resources may temporarily reassign the employee to an alternative position that is better able to accommodate his/her needs for intermittent or reduced-schedule leave. The employee must make a reasonable effort to schedule his/her intermittent or reduced-schedule leave, so it does not unduly disrupt University operations.

11. Reinstatement

- a. If an employee is returning from leave for his/her own serious health condition, the employee will be required to provide a fitness-for-duty report from his/her health care provider before being allowed to return to work.
- b. When an employee returns from family or medical leave, he/she has the right to return to his/her former position or an equivalent position, except:
 - i. The employee has no greater right to reinstatement than he/she would have had if he/she had not been on leave. If the position is restructured for reasons unrelated to the employee's leave, for example, he/she has no right to reinstatement to the exact position held before leave.
 - ii. Two weeks prior to the employee's intended return date, the employee should notify their supervisor of his/her intent to return to work. Any changes concerning the employee's return to work should be communicated to his/her supervisor, who will notify Human Resources of the change.

12. MSU posts and distributes FMLA employee rights notices to all employees. Notice may be distributed in employee handbooks, at hiring, or on the HR policy web page.

13. When leave is completed, the employee must be returned to the same position, or a position with equivalent compensation and benefits. If a reduction in force would have caused the position to be eliminated, this reinstatement requirement does not apply.

14. Military Family Leave

- a. A "covered servicemember" means a 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 injury or illness.
- b. "Outpatient status" means the status of a member of the Armed Forces assigned to a

military medical treatment facility as an outpatient; or a unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.

- c. "Serious injury or illness" means an injury to or illness incurred by the service-member in the line of duty or active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.
- d. Qualifying exigency" includes:
 - (1) making arrangements for childcare required due to the servicemember's absence;
 - (2) making financial and legal arrangements to address the servicemember's absence;
 - (3) attending counseling related to the servicemember's active duty;
 - (4) attending official ceremonies or programs where the military requests participation of the family member;
 - (5) attending a farewell or arrival arrangements for the servicemember; or
 - (6) attending affairs caused by the missing status or death of the servicemember.
- e. An eligible employee with a spouse, child or parent who is on armed forces active duty or has been notified of an impending call or order to active duty, may take up to 12 weeks of unpaid leave due to a qualifying exigency. If the need for leave is foreseeable, such as when the family member receives military orders in advance, the employee must provide the employer with reasonable and practicable notice of the need for leave. The employer may require the request for leave to be supported by a certification, such as a copy of the military orders.
- f. An eligible employee who is the spouse, child, parent, or nearest blood relative of a servicemember who has incurred a serious illness or injury while on active duty may take up to 26 weeks of unpaid leave in a single 12-month period to care for the injured servicemember.
 - i. An employer may require that the servicemember or family member provide a medical certification certifying the servicemember is seriously injured or ill and is actively receiving medical treatment.

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