

Notice to AFSCME and PSSU Employees Family and Medical Leave Act

FMLA Information

The absence provisions described below are consistent with the Family and Medical Leave Act of 1993 (FMLA) except where more generous benefits are granted by the commonwealth. The FMLA requires qualifying employers to provide at least 12 weeks of leave (with or without pay) with benefits within a 12 month period for **Sick, Parental, Family Care** and **Military Exigency** reasons, and 26 weeks (with or without pay) with benefits within a single 12 month period for **Military Caregiver** reasons, as long as the employee was employed at least one year and worked at least 1,250 hours during the previous 12 month period. Absences for the above reasons are designated as FMLA leave in accordance with the provisions of the FMLA.

Absence Reasons

Sick, Parental and Family Care

This is a paid or unpaid absence from work with benefits due to the serious health condition of an employee, the serious health condition of a qualifying family member when the employee is attending to the medical needs of the family member, or for the birth, adoption or foster care placement of a child.

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. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three 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 incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Family member for this purpose is a spouse, parent, child, or other person qualifying as a dependent under IRS eligibility criteria. A parent can be a biological, adoptive, step or foster parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older, must be incapable of self-care because of a mental or physical disability. Note: The definition of family member for AFSCME and PSSU employees also includes the employee's same-sex domestic partner and the biological or adopted child of the domestic partner.

Military Exigency

This is a paid or unpaid absence from work with benefits arising from the fact that a spouse, parent or child of any age is either a member of a reserve component or a national guard member on covered active duty during deployment to a foreign country under a Federal call, or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 of the United States code which is during a war or national emergency declared by the president or Congress; or an active member of a regular component of the Armed Forces on duty during deployment to a foreign country. Military exigency absence may be used:

- a. To address any issue arising from notification of an impending order seven calendar days or less prior to the date of deployment and used within seven days of notification of the impending call or order;
- b. For official ceremonies, programs or events sponsored by the military and related to the active duty; or for family support or assistance programs or briefings sponsored by the military, a military service organization or the Red Cross and related to the active duty;
- c. To arrange for alternative childcare when the call to duty necessitates a change in childcare; to provide childcare on an urgent, immediate need basis; to enroll or transfer to a new school or day care; or to attend meetings or conferences at a school or daycare when necessary due to circumstances arising from active duty or call to duty;
- d. To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status; or to act as the covered military member's representative to obtain, arrange or appeal military service benefits while the covered military member is on active duty or call to active duty status and for 90 days after release from active duty;

- e. To attend counseling for the employee, covered military member or child provided by someone other than a health care provider provided the need for counseling arises from the active duty or call to active duty status. Note: For military exigency absence used under this section, the definition of child is a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older must be incapable of self-care because of a mental or physical disability at the time the leave is to commence;
- f. To spend time with a covered military member who is on short-term rest and recuperation during the period of deployment. Up to fifteen days may be used for each instance;
- g. To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military 90 days after release from active duty; or to address issues arising from the death of a covered military member while on active duty;
- h. To arrange for alternative care, provide care on an urgent, immediate need basis, to admit to or transfer to a care facility, or to attend meetings with staff at a care facility for a military member's parent who is incapable of self-care, when the care is necessitated by the military member's covered active duty; or
- i. To address other events arising from active duty or call to active duty status when agreed upon between the employer and employee.

Military Caregiver

This is a paid or unpaid absence from work with benefits due to the serious injury or illness of a servicemember who is a family member when the employee is attending to the medical needs of the servicemember.

A serious injury or illness is an injury or illness incurred in the line of duty or an injury or illness that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may either render a servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or result in a veteran's medical treatment, recuperation or therapy. Servicemember for this purpose is an individual who is 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 an out-patient status, or is otherwise on the temporary disability retired list, as a result of a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the period of five years prior the first date the employee takes leave to care for the veteran.

Family member for this purpose is a spouse, parent, child of any age and next of kin. Next of kin for this purpose is the nearest blood relative of a servicemember who has a serious injury or illness in the order of blood relatives granted legal custody by court decree or law or otherwise in the following order: blood relative designated in writing by the servicemember as the nearest blood relative for this purpose, brothers and sisters, grandparents, aunts and uncles, first cousins.

Absence Requests

All requests for paid or unpaid FMLA absences, shall be made at least two weeks in advance, if circumstances permit. When not foreseeable, requests shall be made as soon as practicable to ensure protection under the FMLA. This request shall be made in writing on the *Request for FMLA/SPF Absence*, *Request for Military Exigency*, or *Request for Military Caregiver Absence* form.

Eligibility

Some employees may not be eligible to use FMLA. Eligibility is determined based on two factors: One year of employment and 1,250¹ hours worked during the 12 month period preceding the date of the first absence of each event. An event is a specific reason or medical condition for which an FMLA absence is approved. Regular hours and overtime hours worked and all military absence hours count toward the 1,250 hour requirement; holidays and other paid and unpaid absences do not count.

Once eligibility is determined for the FMLA event, the employee remains eligible for that event for the next 12 months as long as FMLA entitlement is available and the absence is certified, medically or otherwise, as required. At the end of the 12-month period, eligibility will be re-measured for each new or different event (except for military caregiver).

¹ For permanent part-time employees the hours worked requirement to determine an employee's eligibility for FMLA absence is 900 hours.

Absence Entitlement

Sick, Parental, Family Care and Military Exigency Absence

Employees who meet eligibility are entitled to up to 12 weeks² of absence within a rolling year for all events. The 12-week entitlement for all events runs concurrently. If an employee has in excess of six months of paid leave, the entitlement is not limited to six months. Because a rolling year is the 12 month period measured backward from the date of each absence, an employee's entitlement can change by the day. Paid and unpaid leave for all reasons except military caregiver within the rolling year count against the 12-week absence entitlement.

For a birth, adoption, or foster care event, the absence begins upon the employee's request; however, it may not be used prior to the date of birth, custody, or placement, except when required for adoption or foster care placement to proceed. The event shall expire one year from the date of birth, adoption, or placement for foster care, regardless of whether or not the entire absence entitlement has been used.

The absence code for unpaid parental leave shall not be used while incapacitated from childbirth. Paid or unpaid sick leave is available prior to birth, if necessary, or after the birth when a female employee is unable to work due to childbirth as certified by a physician. Female employees who are incapacitated before or after childbirth are required to provide the *Serious Health Condition Certification* form.

Military Caregiver Absence

Employees who meet eligibility are entitled up to 26 weeks³ of military caregiver absence within a single 12 month period. A single 12-month period is the 12-month period following the date of the employee's first absence for a servicemember's serious injury or illness. Up to 26 weeks of military caregiver absence is available for each servicemember and each serious injury or illness, but not more than 26 weeks may be used within any single 12-month period. Paid and unpaid military caregiver absences count against this entitlement. Eligibility cannot be renewed after the single 12 month period.

Use of Paid Leave

FMLA Absence

Upon commencement of each FMLA absence, all applicable accrued sick leave (including sick family and additional sick family leave) except up to ten days, must be used before any other paid or unpaid absence. Employees may choose to save up to ten days of accrued sick leave. The choice to retain or not retain sick leave cannot be made retroactively, and saved days will be measured based on accrued sick leave available at the commencement of the absence. Sick leave is only required to be used and may only be used for reasons in which sick leave is ordinarily used. After all applicable, accrued sick leave is used, employees may choose to use accrued annual, holiday and compensatory leave. Employees also may choose to use anticipated annual and/or sick leave in accordance with anticipation rules. All forms of paid leave used, beginning with sick leave, will run concurrently with the commencement of and be deducted from the FMLA and military exigency absence entitlements.

Military Exigency Absence

Upon commencement of each military exigency absence, all accrued annual, holiday and compensatory leave must be used before using leave without pay. All forms of paid leave will run concurrently with the commencement of and be deducted from the absence entitlement.

Military Caregiver Absence

Upon commencement of each military caregiver absence, all applicable accrued sick family and additional sick family leave must be used before any other paid or unpaid leave. After all applicable accrued sick family and additional sick family leave is used, employees **must** use all accrued annual, holiday and compensatory leave. Employees also may choose to use anticipated annual and/or sick family leave in accordance with anticipation rules. All forms of paid leave, beginning with sick family leave, will run concurrently with the commencement of and be deducted from the absence entitlement.

Intermittent or Reduced-time Absences

Absences for sick and family care, that are medically necessary, and parental and military exigency may be taken on an intermittent or reduced-time basis only during the initial 12 weeks of absence in a rolling year. For parental absence, approval for intermittent or reduced-time absences is at the University's discretion. Military

² Any time 12 weeks is referred to it means 450 hours for employees with a standard work schedule of 37.5 hours per week; 480 hours for employees with a standard work schedule of 40 hours per week; or a prorated amount for part-time employees.

³ Any time six months or 26 weeks is referred to it means 982.5 hours for employees with a standard work schedule of 37.5 hours per week; 1,048 hours for employees with a standard work schedule of 40 hours per week; or a prorated amount for part-time employees.

caregiver absences that are medically necessary may be taken on an intermittent or reduced-time basis for up to 26 weeks within a single 12 month period.

For all intermittent or reduced-time absences for planned medical treatment, the employee shall attempt to develop a schedule, working cooperatively with the supervisor, which meets the employee's needs with consideration to the times that are least disruptive to normal operations, subject to the approval of the health care provider. Employees are expected to continue to follow applicable procedures for requesting absences, including the call-off notification procedures.

Required Medical/Proof Documentation

Sick and Family Care Absences

Medical documentation on a Serious Health Condition Certification form must be provided within 15 calendar days of receiving a written request for the medical documentation. The request for leave could ultimately be denied if complete information is not provided or the medical information provided does not certify a serious health condition. Medical recertification of the need for FMLA absence may be requested as often as every 30 calendar days in connection with intermittent absence, upon expiration of the initial certification and/or upon changed circumstances. A second and third medical opinion may be ordered at the University's expense. Failure to provide timely and complete documentation may result in the delay or denial of FMLA absence.

Parental Absences

Proof of the child's birth, adoption, or foster care placement must be provided within 15 calendar days of the event. Note: To enroll a dependent in health coverage, contact your University Human Resources Office. Failure to provide timely and complete documentation may result in the delay or denial of FMLA absence.

Military Exigency Absences

For qualifying exigency absences, a copy of the family member's orders or other military documentation is required at the time of the first request. In addition, for **each** absence, a written request that includes the justification for the absence and the specific activity that will be performed during the absence is required on the *Military Exigency Certification* form. A copy of the Rest and Recuperation leave orders, or other documentation issued by the military with the dates of the military member's leave, is required when requested to spend time with a family member who is on short-term rest and recuperation during a period of deployment. Additional documentation to substantiate that the employee performed that activity during the absence also may be requested. Failure to provide timely and complete documentation may result in the delay or denial of FMLA absence.

Military Caregiver Absences

An Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) is acceptable as documentation for the period covered by the ITO/ITA; however, completion of the certification form may later be required. Documentation of enrollment in the Dept. of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers is sufficient. Otherwise, documentation is required from the servicemember's health care provider or military health care provider on the *Serious Injury or Illness of a Current Servicemember Certification* or *Serious Injury or Illness of a Veteran's Certification* form. Confirmation of the employee's relationship to the servicemember may be required. Failure to provide timely and complete documentation may result in the delay or denial of FMLA absence.

Absences After 12 Weeks of FMLA Absence

The following are the only absence reasons that will be considered for approval beyond 12 weeks.

Full-Time Absences

Employees are entitled up to nine months of extended leave without pay (LWOP) absence (except for military exigency and military caregiver absences) when the absence is full-time and contiguous to the expiration of the FMLA absence. Employees must request the extended LWOP in writing, and for sick or family care reasons, proof of the need for continuing absence must be provided on the *Serious Health Condition Certification* form. Note: Only one occasion within a rolling year will be approved.

Intermittent or Reduced-Time Sick Absences

If eligibility is established, requests for intermittent or reduced-time FMLA absences after the first 12 weeks of absence in a rolling year, shall be approved only when the employee has a catastrophic illness or injury that poses a direct threat to life or to the vital function of major bodily systems or organs as determined and approved by the State System's Central Administration, of which all decisions will be final and may not be

grieved. In addition, all accrued and anticipated paid leave that was not used at the commencement of the absence must be used prior to the use of the extended leave without pay.

Intermittent or Reduced Time Military Caregiver Absences

Requests for military caregiver absence shall be approved on a full-time, intermittent, or reduced-time basis when needed to attend to the medical needs of a servicemember with a serious injury or illness during the single 12-month period.

Options When Not Eligible or Entitled to FMLA Absence

Employees have the following options when they are not eligible or entitled to FMLA: Use available paid leave that was not used at the commencement of the absence subject to ordinary provisions for the use of those leave types; request to use regular/approved leave without pay subject to ordinary provisions for the use of this leave; return to work; resign; or apply for regular or disability retirement.

IMPORTANT: An employee who wishes to apply for a regular or disability retirement must do so prior to resigning or being separated from employment.

If an option is not selected employees may be subject to disciplinary action up to and including involuntarily termination from employment.

New Employees

Employees with less than one year of service may be eligible for 13 weeks of LWOP absence for absences of at least two consecutive weeks. Note: Only one occasion within a rolling year will be approved.

Return to Work

Employees should notify their supervisor at least 24 hours in advance of their expected return to work. If the *Employee Serious Health Condition Certification* form does not cover the period of absence, an updated *Employee Serious Health Condition Certification* form or other type of release from the health care provider to return to work will be required. If the health care provider releases the employee to return to work with limitations, the job duty restrictions must be documented by the health care provider and approval to work with restrictions must be granted in writing before returning to work.

Return to Work Rights

Permanent employees with more than one year of service have the right to return to the same or equivalent position held before going on leave for a combined period of six months during a rolling 12-month period.

At the expiration of the six months, employees have limited return rights. Rights usually are to a vacant position in the same or equivalent classification to which there are no seniority claims, and which the agency intends to fill. Rights can vary by union. Refusal to return to a position that is offered will terminate these return rights. If an employee has in excess of six months of paid leave, the employee has the right to return to the same or equivalent position held before the exhaustion of the paid leave.

Benefits Continuation Information

Annual and sick leave continue to accrue based on regular hours paid. Holidays will be earned provided the employee is in a paid status the half day before and half day after the holiday.

Group life insurance coverage will continue to be University paid during an FMLA absence and the first 91 days of extended LWOP absence.

Health benefits through the Pennsylvania Employees Benefit Trust Fund (PEBTF) will continue as long as the employee continues to pay the applicable employee contributions and buy-ups, except during extended LWOP*. Employees enrolled in the PEBTF will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits. Employees must contact their University Human Resource office to add any new dependents to medical/hospital and supplemental benefits contracts within 60 days of birth or assuming custody of a child.

* In accordance with the Affordable Care Act, health benefits eligibility will continue for extended LWOP absences of 181 consecutive calendar days or less.

Disability Accommodations

Employees who wish to explore the possibility of an accommodation for a disability should contact their University Human Resources Office. The approval of an FMLA Absence does not indicate, and should not be

interpreted to indicate that you are regarded by the University as having a disability as defined by the Americans with Disabilities Act (ADA)

Questions

Questions concerning FMLA absence or the benefit entitlements may be referred to your FMLA/SPF Coordinator, at 570-422-3147, 570-422-3450 or lworrell@esu.edu.