

## **FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY**

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## **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

### **PURPOSE**

To enable eligible employees to receive time away from work, with or without pay, for limited periods to attend to specified medical or family needs with job protection and no loss of accumulated service.

### **SCOPE**

This policy applies to all full-time and half-time employees who have been employed by Abilene Christian University for at least 12 months as of the date the leave begins, and have completed 1,250 hours of service during the 12 month period immediately preceding the leave.

### **DEFINITIONS**

1. “Covered Service Member”: A member of the U.S. 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 that was incurred while the service member was serving on active duty and in the line of duty and could render the service member unfit to perform the duties of his or her office, grade, rank or rating
2. “Employee’s child, son or daughter”: the employee’s biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood in loco parentis. A child must be 18 years or younger, or a child over age 18 with a physical or mental disability that renders them incapable of self-care.

3. "In Loco Parentis": The status of a person who holds day-to-day responsibilities to care for and/or financially supports a child, or who had such responsibility for a person when the person was a child. The status does not require a biological or legal relationship.
4. "Intermittent Leave": FMLA leave taken in separate blocks of time due to a single qualifying reason.
5. "Reduced Leave Schedule": FMLA leave that reduces an employee's usual number of working hours per workweek or hours per workday.
6. "Serious Health Condition": An illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider, lasting more than three consecutive full calendar days plus either (a) an in-person treatment by a health care provider at least once within seven days of the first day of incapacity followed by a regimen of continuing treatment or (b) two or more treatments with 30 days of the first day of incapacity.
7. "Veteran": A person who served in the active military, naval, or air service of the United States, and who was discharged or released from that service under conditions other than dishonorable.

## **POLICY**

1. Events That May Entitle an Employee to FMLA Leave – Eligible employees are entitled to take FLMA leave for one or more of the following reasons:
  1. Employee's own serious health condition which makes the employee unable to perform the functions of the employee's job;
  2. To care for the employee's child, spouse, or parent with serious health condition;
  3. For the birth of a child or placement of a child for foster care or adoption;
  4. To provide care for a covered service member or veteran with a serious illness or injury if the service member is the employee's spouse, child, parent, or next of kin ("military caregiver leave"); or
  5. For a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a member of the regular U.S. Armed Forces, National Guard or Reserves who is deployed to a foreign country on active duty; or has been notified of an impending call or order to active duty in a foreign country ("qualifying exigency leave"). This does not apply to members of the state military unless they are called into federal service.

Qualifying exigencies include the following:

  1. Any issue relating to a short-notice deployment;
  2. Attendance at military events and related activities, such as pre-deployment briefings and family support sessions;
  3. Time needed to provide or arrange for childcare or participate in school-related activities with respect to a child or ward of the covered family member;
  4. Time needed to make or update financial and legal arrangements relating to the covered family member or act as the covered family member's representative with respect to military service benefits;

5. Time needed to participate in counseling, where the need for counseling arises from the covered member's active duty or call to active duty;
6. Up to five days spent with a covered family member on short-term rest and recuperation leave from a deployment;
7. Post-deployment activities, including any official ceremony sponsored by the military, as well as exigencies arising from the death of a covered family member while on active duty status;
8. Other activities provided that the University and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave.

2. Amount of Leave That May Be Taken

1. Except for military caregiver leave, employees are entitled to take up to 12 workweeks of unpaid leave during a rolling 12 month period for an approved FMLA-qualifying reason. The 12-month period to take up to 12 workweeks of FMLA begins on the day the employee first takes leave for an FMLA-qualifying reason. The university will measure backward 12 months from the date that an employee seeks FMLA leave to determine whether that employee has exhausted his or her entitlement to leave in the 12 month period. For example, assuming an employee takes no military caregiver leave, if an employee used 4 weeks of FMLA leave beginning February 1, 2011, 4 weeks beginning June 1, 2011, and 4 weeks beginning December 1, 2011, the employee would not be entitled to any additional leave until February 1, 2011. However, beginning on February 1, 2011, the employee would be entitled to 4 weeks of leave; on June 1, 2011, the employee would be entitled to an additional 4 weeks, etc.
2. Employees taking military caregiver leave are entitled to take up to 26 work weeks of leave during a rolling 12 month period. During this period the employee may not take more than a combined maximum of 26 work weeks of FMLA leave for all types of FMLA leave. For employees taking military caregiver leave, the single 12-month period to take up to 26 workweeks of FMLA begins on the day the employee first takes leave to care for the covered service member.
3. Employees may take intermittent or reduced schedule FMLA leave for their own serious health condition, for a family member's health condition, to care for an injured service member, or for recovery from a serious health condition or from treatment. Leave taken for qualifying exigencies may also be taken on an intermittent basis. Intermittent or reduced-schedule leave should be scheduled to the extent possible to minimally disrupt business operations. When an employee takes intermittent or reduced-schedule leave, the University may temporarily transfer the employee to an alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates a reduced-schedule or intermittent leave schedule.

3. Limits to Amount of Leave Taken

1. Leave taken to care for a newborn or newly placed child must conclude within 12 months after the birth or placement of the child.
2. A husband and wife who are both employed by the University and are eligible for FMLA leave are entitled to a combined 12 workweeks of FMLA, unless taking military

caregiver leave, in which case they may take up to a combined 26 workweeks of FMLA leave.

3. For exigency leave taken due to short-notice deployment, employees may take up to seven calendar days of FMLA leave beginning on the date the covered military member receives call or order to covered active duty.
4. For exigency leave taken due to rest and recuperation for the covered service member, employees may take up to five days of leave for each instance.
4. Use of Accrued/Paid Leave While on FMLA
  1. An employee must use all accrued leave concurrently with FMLA hours while on FMLA leave. This includes sick, holiday, and vacation leave. Once accrued leave is exhausted, the balance of the FMLA leave will be without pay. However, once accrued leave is exhausted, employees may apply for and receive (if approved) hours from ACU's shared leave bank to apply towards the FMLA leave.
  2. Employees receiving workers' compensation or temporary disability benefits are not required to use all paid leave while receiving those particular benefits.

## **PROCEDURE FOR APPLYING FOR LEAVE**

1. Notice by Employee/Notice to Employee
  1. Whenever reasonable and practicable, the employee must give at least thirty (30) days advance notice of the need to take FMLA leave.
  2. If the need for FMLA leave is not foreseeable, the employee should notify Human Resources and his or her supervisor as soon as possible. Supervisors should consult with Human Resources immediately upon learning of the employee's request (verbally or in writing) for FMLA leave or of an absence that may qualify for FMLA leave.
  3. Failure to give proper notice, without a reasonable excuse, may delay the commencement of the employee's leave or withdraw any designation of FMLA leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including dismissal.
  4. If the employee meets the FMLA eligibility requirements, and after Human resources receives proper documentation (see section IV. F. "Certification" below), the employee will be notified in writing within five business days whether the leave is approved, not approved, or if additional information is needed. When additional information is needed, employees will have seven calendar days to provide the requested information.
2. Certification
  1. For an employee's own serious health condition or that of a family member, or for military caregiver leave, the employee must provide a health provider's signed medical certification to Human Resources. Second or third medical opinions and periodic re-certifications may be required, but will not be required for military caregiver leave.
  2. For exigency leave, the employee must provide Human Resources with a copy of the covered active duty orders or other military documentation indicating the covered

military member is on covered active duty or call to covered active duty status, per each call to covered active duty.

3. The University requires that the serious medical condition be recertified every 30 days except for leave related to pregnancy or childbirth or where the minimum duration of the serious health condition at issue is more than 30 days. For employees requesting intermittent or reduced leave for periods in excess of six months, the University requires recertification every six months. In addition, employees are required to report periodically on their status and intent to return to work. If the circumstances of an employee's leave change, and the employee is able to return to work earlier than originally indicated, the employee should notify the University at least two days prior to the date that he or she intends to return to work.
  4. Before an employee may return to work after taking continuous FMLA leave, Human Resources may require the employee to present a fitness-for-duty certification from a health care provider.
  5. Certifications must contain particular information, so employees are encouraged to consult with Human Resources to verify the information required.
3. Continuation of Benefits
    1. While on FMLA leave, ACU will continue to contribute its applicable share of insurance premiums as if the employee were at work or on paid leave.
    2. Employees on FMLA leave are required to pay their share of health plan premiums in any manner customarily used by ACU.
    3. Failure to pay the employee's share of premiums will result in cancellation of coverage for remaining duration of the FMLA leave. Upon return to work, the employee's benefits will be restored to at least the same level and terms as were in place when the FMLA leave began.
  4. During FMLA leave, the taking of another job may lead to disciplinary action, up to and including dismissal.
  5. Reinstatement/Returning to Work
    1. Upon returning from FLMA leave, eligible employees will be restored to their former position or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.
    2. ACU cannot guarantee that the employee will be returned to the position held before the FMLA leave began. Exceptions are permitted when the original position is abolished during the FMLA leave due to reduction in force, reorganization, or if the employee would not otherwise have been employed even if the leave had not been taken.
    3. If the employee on leave of absence is a salaried employee among the highest paid ten percent of university employees living within 75 miles of the university, and keeping the job open for the employee would result in substantial economic injury to the university, reinstatement to the position may be denied. However, the employee will be given an opportunity to return to work in a different job.
    4. Any employee who fails to return to work as scheduled after FMLA leave may be subject to dismissal from employment. Employees who exceed their FMLA entitlement without extension(s) of their leave approved under other appropriate

leave provisions, may be subject to dismissal from employment.

6. Record Keeping Requirements

1. Any document containing medical information about an employee is considered a medical record and is regarded as confidential. The Office of Human Resources will maintain medical records in a file separate from all other employee records. If necessary, however, these records may be disclosed to supervisors and managers as needed to evaluate and accommodate necessary work restrictions, to first aid and safety personnel if the employee's physical or medical condition might require emergency treatment, and to government officials investigating compliance with FMLA.

7. Applying For Leave

1. To apply for FMLA Leave an employee must first notify his or her supervisor of his or her absence from work. Employee must complete the [FMLA Request Form](#) to initiate the leave request. If needed, the employee may contact the Office of Human Resources at 325-674-2359 to assist the employee in completing the FMLA Request Form.
2. Employee will need to see his or her physician and provide the physician with a signed and dated copy of the certification form that will be provided to the employee upon the employee's receipt of the Notice of Eligibility and Rights & Responsibilities form (WH-381).
3. Employee is responsible for returning the Certification of Health Care Provider form to the Office of Human Resources within 15 calendar days of the employee's receipt of the Notice of Eligibility and Rights & Responsibilities form (WH-381).
4. Employee will then receive a Designation Notice from the Office of Human Resources within 5 business days of HR receiving the employee's medical certification informing the employee of the approval or denial of their FMLA leave. If the leave is approved, the Designation Notice will provide official notice to the employee that their associated leave time will be considered FMLA leave.