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UAP 3440: Family and Medical Leave

University of New Mexico

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Administrative Policies and Procedures Manual - Policy 3440: Family and Medical Leave

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Authorized by Regents' [Policy 6.3 "Privileges and Benefits"](#)

Process Owner: Vice President of Human Resources



1. General

In compliance with the federal Family and Medical Leave Act ("FMLA" or "Act"), the University of New Mexico provides eligible employees with job-protected leave under the provisions of this policy. Up to twelve (12) weeks of leave is provided within a twelve (12) month period for eligible family and medical reasons, or for qualifying exigencies arising out of a military member's covered active duty or an impending call or order to active duty. Up to twenty-six (26) weeks of leave is provided for military family leave subject to the conditions outlined in Section 5.5. For the purposes of this policy, these types of leave are collectively referred to as FMLA leave.

Job protected leave means that the employee's department will reinstate the employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions. Individuals who require an accommodation to perform the duties of their positions should review UAP 3110 ("Reasonable Accommodation for Employees with Disabilities"). It is illegal for any employee to interfere with, restrain, or deny any right provided by the FMLA to an eligible employee or to discriminate against an employee for requesting FMLA leave. This policy outlines the conditions under which employees may request FMLA leave.

The provisions of this policy are intended to be in full compliance with the FMLA. Any changes in the federal requirements for FMLA leave will supersede the relevant provisions of this policy.

2. Eligible Employees

To be eligible for FMLA leave, an employee must have:

- been employed at the University for at least twelve (12) months in total in the last seven (7) years, and,
- worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period preceding the start of the leave (Periods of absence from work due to covered service under the Uniformed Services Employment and Reemployment Rights Act are counted in determining an employee's eligibility for FMLA leave.)

Any employee, including a temporary or on-call employee who meets the above criteria, would be eligible for FMLA leave, subject to the provisions of this policy and in accordance with the Act.

3. Use of Other Leave Policies

FMLA leave will run concurrently with any catastrophic leave and workers' compensation leave used for FMLA qualifying medical conditions of either the employee or a qualified family member. For more information, refer to [UAP 3430 \("Catastrophic Leave Program"\)](#) and [UAP 3630 \("Workers' Compensation"\)](#). An employee may elect, but is not required, to use accrued annual leave or sick leave before, after, or simultaneously with FMLA leave.

4. Available Leave Time

Eligible employees may take FMLA leave up to a total of twelve (12) weeks within a twelve (12) month period for the reasons listed in Sections 5.1 through 5.4. Eligible employees may take up to twenty-six (26) weeks of FMLA leave for the reasons stated in Section 5.5; however, this FMLA leave is reduced by any other FMLA leave taken within the twelve (12) month period. The University defines the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave.

5. Events Eligible for FMLA Leave

5.1. Birth, Adoption, or Foster Care

Eligible employees may take FMLA leave to care for a child upon birth or to care for a child placed with the employee for adoption or foster care. FMLA leave must conclude within twelve (12) months of the birth or placement. Employees may use sick or annual leave before going on unpaid FMLA leave, but they are not required to exhaust leave banks before requesting unpaid FMLA leave.

If both parents or caretakers are employees of the University, FMLA leave taken to care for a child upon birth or to care for a child placed with the employees for adoption or foster care is limited to a combined total of twelve (12) weeks. FMLA leave taken for the serious health condition of an employee or child would not be subject to the combined limit.

5.2. FMLA Leave for Family Medical Conditions

Eligible employees may take FMLA leave to care for their immediate family members who have a serious health condition as defined in Section 6. For the purposes of FMLA leave for family medical conditions, "immediate family" includes sons, daughters, spouses or domestic partners, parents, grandchildren, and siblings. A son or daughter includes a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in *loco parentis*.

5.3. FMLA Leave for Employees' Medical Conditions

Eligible employees may take FMLA leave when they are unable to perform the functions of their positions because of a serious health condition as defined in Section 6.

5.4. Military Family Leave for Qualifying Exigencies

Eligible employees are entitled to FMLA leave because of any qualifying exigency arising out of the fact that the spouse or domestic partner, son, daughter, or parent of the employees is on covered active duty, or has been notified of an impending call to active duty status, in support of a contingency operation requiring deployment to a foreign country or to international waters. This includes members of the National Guard, Reserves, and Regular Armed Forces.

Categories of qualifying exigencies are:

- short-notice deployment
- military events and related activities

- childcare and school activities
- financial and legal arrangements
- counseling
- rest and recuperation for a maximum of fifteen (15) calendar days
- post-deployment activities
- parental care leave as defined under the Act
- additional activities not encompassed in the other categories, but agreed to by the supervisor and employee

The Human Resources department (“HR”) can provide further clarification regarding qualifying exigencies.

5.5. Military Family Medical Leave

Eligible employees who are family members of covered service members, including covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness, will be able to take up to twenty-six (26) weeks of FMLA leave in a single twelve (12) month period to care for a covered service member:

- who is unable to perform daily activities, or
- who has a serious illness or injury obtained in the line of active duty, or
- who has a serious illness or injury that existed before the beginning of active duty that was aggravated by service in the line of active duty

A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. Eligible family members include the spouse or domestic partner, parent, children, or designated next of kin as defined in the Act. The supervisor should contact HR for direction on designation of next of kin.

The twenty-six (26) weeks allowed for this leave will be reduced for any FMLA leave taken for events listed in Sections 5.1 and 5.4.

6. Serious Health Conditions

A serious health condition means an illness, injury, impairment, or physical or mental condition that results in an inability to work, attend school, or perform other regular daily activities and involves:

- any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility, or
- any period of incapacity requiring continuing treatment by a health care provider

Treatment by a health care provider requires an in-person visit to a health care provider as defined under FMLA. The initial in-person treatment visit must take place within seven (7) calendar days of the first day of incapacity. A period of incapacity or treatment is defined as more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, which also involves:

- Treatment two or more times within thirty (30) days of the first day of incapacity by a health care provider, or

- Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the provider. This includes treatment for chronic conditions that require periodic visits of at least twice a year for treatment by a health care provider. Such conditions can occur over an extended period of time including recurring or episodic periods of incapacity.

Examples of serious health conditions include pregnancy or prenatal care, appendicitis, or permanent or long-term conditions or conditions requiring multiple treatments such as:

- severe respiratory condition
- emphysema
- severe nervous disorder
- injury caused by a serious accident on or off the job
- back condition requiring extensive therapy or surgical procedures

6.1. Non-Serious Health Conditions

Treatment for serious health conditions does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Contact HR regarding extenuating circumstances.

7. Requests for FMLA Leave

When the need is foreseeable, such as the birth or adoption of a child or planned medical treatment, employees should advise their supervisors thirty (30) days before the start of the leave period. To the extent possible, employees should make efforts to schedule leave so as not to disrupt University operations. When thirty (30) days advance notice is not possible, the employee must provide notice as soon as practicable, and generally must comply with normal call-in procedures.

8. Notices to Employees

Within five (5) workdays of an employee's initial request for FMLA leave, the supervisor must provide the employee with a completed [Notice of Eligibility and Rights and Responsibilities](#) form. The employee has fifteen (15) calendar days to provide appropriate documentation in support of FMLA leave. See the Notice of Eligibility and Rights and Responsibilities form for the type of documentation required. If supervisors do not have sufficient supporting documentation, they may request further documentation from the employee before approving or denying FMLA leave. The employee must provide this documentation within seven (7) calendar days of the request for further documentation. After receiving the requested documentation, the supervisor will confirm or deny the FMLA leave within five (5) workdays. A link to specific forms and letters for these purposes are provided in Section 13 and are also available from HR. An employee is presumed eligible unless the supervisor notifies the employee of ineligibility.

9. Medical Certification

The University will require a medical certification to support a request for FMLA leave for medical reasons using the form language approved by the US Department of Labor (see the link provided in Section 13). The University may require a second or third medical opinion at the University's expense after an individual has submitted an initial medical certification. Second and third opinions may be required for military caregiver leave certifications that are completed by healthcare providers who are not affiliated with the Department of Defense, Veterans Administration, or TRICARE. There may also be a requirement for periodic re-certifications. In cases of illness, employees will be required to report periodically, as instructed by their supervisors, on their leave status and intentions to return to work.

9.1. Employees' Health

For employees' own medical leave, the medical certification must include a statement that the employees are unable to perform the functions of their positions.

9.2. Family Health

For leave to care for a seriously ill family member, the medical certification must include an estimate of the amount of time the employee is needed to provide care.

9.3. Intermittent Leave and Reduced Work Schedule Leave

If medically necessary for a serious health condition of employees or their family members, or if agreed to by a supervisor, leave may be taken on an intermittent or reduced work schedule basis.

If the leave is foreseeable based on planned medical treatment, or if a supervisor agrees to permit intermittent leave or leave based on a reduced work schedule for the birth of a child or for placement of a child for adoption or foster care, the University may require the employee to transfer temporarily. The transfer would occur during the period that the intermittent or reduced work schedule is required and be to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position, provided that the position has equivalent pay and benefits.

The medical certification for intermittent leave, or leave on a reduced work schedule for planned medical treatment, must include the dates on which treatment is expected to be given and the duration of such treatment. The supervisor and employee must agree on the employee's normal schedule or average hours worked each week and document the agreement in writing.

The employee is not required to take more leave than is necessary to address the circumstances that precipitated the need for the leave provided that the leave is counted using the shortest increment of leave used to account for any other type of leave and that the shortest increment of leave is no more than one hour.

10. Return to Work

An employee returning to work following a leave of absence due to his or her own serious health condition must submit a physician's statement certifying that the employee can return to work and can perform the essential functions of the job, with or without reasonable accommodations. The University may request the employee provide the physician's statement up to five (5) workdays in advance of the employee's anticipated return date.

10.1. Reinstatement of Employees

The employee's department must reinstate the employee returning from FMLA leave, within the approved leave period, to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions. However,

an employee on FMLA leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employee has no right to reinstatement if the employee would not have otherwise been employed at the time of the request for reinstatement. Leave beyond twelve (12) weeks may be granted under [UAP 3420 \("Leave Without Pay"\)](#); however, the employee's right to return to the same position is not guaranteed.

10.2. Failure to Return

If an employee fails to return within three (3) workdays after an approved leave, including any approved extensions, the employee will be considered to have resigned. Refer to Section 2.1 of [UAP 3225 \("Separation of Employment"\)](#).

11. Benefits Coverage While on FMLA Leave

While an employee is on FMLA leave, the status of various University-sponsored benefit programs will be as described below.

11.1. Group Insurance Benefits

The University will continue the employee's group insurance benefits during the period that the employee is on FMLA leave. If the leave is unpaid, the University will bill the employee for that portion of the premium normally withheld from the employee's paycheck.

11.2. Retirement

The University does not pay the employer portion of the retirement plan during the period that the employee is on unpaid FMLA leave. The period that the employee is on unpaid FMLA leave does not count as earned service time for retirement formula calculations.

11.3. Annual and Sick Leave

The employee will not accrue annual and sick leave during the period that the employee is on unpaid FMLA leave.

11.4. Holidays

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as FMLA leave has no effect; the week is counted as a full week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one (1) week, the holiday will not count against the employee's entitlement unless the employee was otherwise scheduled and expected to work during the holiday. During the winter break when the University is closed for more than one (1) week, the time will not count against the employee's entitlement unless the employee would otherwise have been scheduled and expected to work during winter break. Employees on unpaid FMLA leave are not eligible for holiday pay.

11.5. Dependent Education Scholarship

Dependents of employees who were participants in the Dependent Education Scholarship Program before the employees began FMLA leave can continue in the program while the employees are on FMLA leave as long as the dependents remains eligible.

12. Record Keeping Requirements

Departments are required to keep all documentation pertaining to FMLA leave requests for three (3) years. The documentation must include the following:

- Dates of FMLA leave taken by employees. Leave must be designated in records as FMLA leave. If FMLA leave is taken in increments of less than one (1) full day, the hours of the leave must be recorded.
- Copies of employee notices of leave furnished to the employer under FMLA and copies of all required general and specific written notices given to employees.
- Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave.

12.1. Confidentiality of Medical Records

Supervisors are responsible for maintaining records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members. The records should be treated as confidential medical information and kept in separate files from the employees' personnel files in a locked drawer. This confidential medical information will be disclosed only to those with a need to know or as required by law. The Act authorizes disclosure to first aid and safety personnel under certain limited circumstances, and to government officials investigating compliance with the Act or other pertinent laws.

12.2. Genetic Information Nondiscrimination Act (GINA)

GINA prohibits employers from requesting or requiring genetic information of employees or their family members with certain exceptions including requests for family medical history to comply with the certification provisions of the FMLA or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave.

“Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

As noted above, GINA includes an exception that allows the University to ask employees requesting FMLA leave for family medical histories, at least to the extent necessary to make the medical certification complete and sufficient under the FMLA.

13. Procedures and Forms

Click [here](#) for applicable forms and to view HR's procedures on applying for and approving FMLA leave.