

## **Family and Medical Leave at Georgia State University**

### **Traditional Family and Medical Leave**

Pursuant to the Family and Medical Leave Act (FMLA), the university provides eligible employees with: (1) up to 12 workweeks of unpaid, job-protected leave in a rolling 12-month period for certain family and medical reasons; or (2) up to 26 workweeks of leave for eligible employees to care for a covered service member with a serious illness or injury, as specified in the University's Military FMLA Policy (see below).

### **Eligibility**

To be eligible for FMLA leave, an employee must have been (1) employed by the university for at least 12 months (need not be continuous); (2) have worked at least 1,250 hours during the previous 12-month period (unless absent on military leave); and (3) work at a location where the university employs at least 50 persons within a 75-mile radius. The rolling FMLA leave year begins on the first day of the employee's FMLA leave.

### **Reasons for Leave**

Eligible employees can take leave for any of the following reasons:

- Birth of employee's child;
- Placement with employee of child for adoption or foster care;
- The employee's own serious health condition, including pregnancy, childbirth and related medical conditions
- To care for the child, spouse or parent of employee with a serious health condition

### **Unpaid Leave**

FMLA leave is unpaid. However, the University requires employees to use their accrued paid time off concurrently with FMLA leave before going into an unpaid FMLA leave status. Accrued sick leave will be applied first to FMLA leave and, if exhausted, accrued vacation time will then be applied. Exceptions: (1) if an employee's FMLA leave is a result of an on-the-job injury covered by Workers' Compensation, the university will not apply accrued sick and vacation time to the FMLA leave unless so elected by the Employee; and (2) if an employee on FMLA leave has short term disability insurance, he or she may elect to go into an unpaid leave status once the short term disability benefits begin although the employee must use accrued sick leave and/or vacation during the short term disability waiting period.

During FMLA leave, employees continue to accrue paid time off during times when accrued leave is being applied. FMLA leave does not constitute a break in service for purposes of longevity, seniority or employee benefits plans.

### **Health Benefits**

During FMLA leave, the university maintains health benefits for an employee under the same conditions as when the employee is working (i.e. the university continues to be responsible for the employer's portion of the premium and the employee continues being responsible for the employee's portion of the premium) as follows: During periods when accrued paid time off is being applied to the FMLA leave, the university will continue to deduct the employee portion of the benefit premiums as regular payroll deductions. During periods when FMLA is unpaid, the employee must make arrangements with Human Resource to timely pay the employee portion of the premiums. Failure to pay premiums will cause health benefits to lapse. An employee who does not return from FMLA leave may be required to reimburse the university for the employer's portion of employee benefit premiums paid by the university during the FMLA leave.

### **Notice of Leave**

A Request for Leave Form is available from Human Resources.

If the need for FMLA leave is foreseeable, the employee must give the university at least 30 days prior written notice. Where the need for FMLA leave is not foreseeable, the employee is expected to notify the university as soon as practicable. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for either the same day or next business day.

To give notice to the university, the employee should report the need for leave to both the employee's supervisor and Human Resources. Employees requesting a leave extension should do so in writing, if possible, two weeks prior to the end of their scheduled leave. Failure to comply with these notice requirements will be grounds for, and may result in, deferral or denial of the requested leave until the employee complies with these requirements.

### **Eligibility Notice / Notice of Rights and Responsibilities.**

Within 5 business days of an employee's request to HR for leave, the university will provide employee with: (1) an Eligibility Notice indicating eligibility for leave or providing the reason for ineligibility (refer to definition of "eligibility",

above); and (2) a statement of the employee's Rights and Responsibilities. The FMLA Medical Certification Form will also be provided to the employee at this time.

### **Medical Certification Required**

Employees who request FMLA leave because of their own serious health condition or that of a family member must submit a Medical Certification Form completed by the health care provider in support of the leave request. The university's FMLA Medical Certification Form is available from Human Resources and online at <http://www.gsu.edu/hr/31431.html> and must be returned to the university within 15 calendar days after it is provided or requested, or as soon as possible under the circumstances.

If the Medical Certification Form returned to the university is not satisfactory, an employee will be told of the deficiencies in writing and given 10 calendar days to complete the Form satisfactorily. If the medical information is inadequate, designated university HR representatives may contact the employee's health care provider directly to authenticate or clarify information of the certification without the employee's consent. The university's designated HR representatives may also directly contact the employee's health care provider with the employee's permission to get more complete information regarding the nature of the ailment, the duration of the leave needed, the need for intermittent leave, etc. A Medical Information Release Form is available from Human Resources. Failure to submit a complete and sufficient Medical Certification will be ground for, and may result in, deferral or denial of the employee's requested FMLA leave.

The university can request a second or third opinion regarding the employee's condition and treatment, at the university's expense.

Employees requesting an extension of any FMLA leave must provide a new Medical Certification of the need for the continued leave.

### **Designation Notice**

Absent extenuating circumstances, the university will send employee a Designation Notice within 5 business days of having enough information to determine whether the request leave is FMLA-eligible. The Designation Notice will indicate whether or not the leave is designated FMLA leave and the amount of leave that will be so designated, if known. This designation may be retroactive.

Employees absent on medical leave will be required to provide medical certification of their fitness to return to work before they may return to the workplace. The Fitness to Return to Work form is available from Human Resources. Employees cannot resume work until the completed Fitness to Return to Work certification.

Any leave that qualifies as FMLA leave may be designated as FMLA leave by the university, in its sole discretion, regardless of whether the employee requests FMLA leave or meets all employee leave obligations.

### **Duration of FMLA Leave**

Generally, eligible employees will be entitled to a cumulative total of 12 workweeks of FMLA leave within a rolling 12-month period. However, when the leave time includes military caregiver or qualifying exigency leave (described in the university's Military Family and Medical Leave Act Policy), alone or in combination with regular traditional FMLA, the employee is entitled to up to 26 workweeks of qualifying leave during any single 12 month period. Any combination of FMLA leave may not exceed the maximum limit of 26 workweeks (see Military FMLA Policy for specific rules governing use of military caregiver and qualifying exigency leave).

A husband and wife who both work for the university are entitled to a combined total of 12 weeks leave in a 12 month period for the birth, adoption or foster care placement of their child; or to care for a parent with a serious health condition. The mother and father are each entitled to take 12 workweeks of leave to care for a seriously ill child.

### **Intermittent Leave**

Under some circumstances, FMLA leave may be taken on an intermittent basis or the employee may work a reduced schedule. Intermittent leave must be certified by a health care provider as necessary and should be scheduled to avoid disruption to the university to the extent reasonable.

### **Re-certification**

An employee may be asked to re-certify a serious health condition every 30 days (if the employee is absent during that period) for chronic/long-term illness or pregnancy. A re-certification may be required in less than 30 days if: (1)

the employee asks for an extension of leave; (2) circumstances have changed; or (3) the university has doubts about employee's FMLA status (e.g. Monday/Friday absences).

Employees will be required to have annual medical certifications for their own serious health condition lasting more than one year, including chronic/lifelong ailments.

### **Return to Work**

An employee returning to work from FMLA leave will be returned to the same or an equivalent position as was held prior to the leave unless the position has ceased to exist because of business necessity. If the employee does not return to his or her original position or an equivalent position as soon as he or she is able, the university will consider the employee to have voluntarily resigned.

Certain "key employees" may not be eligible to be reinstated to the same or an equivalent position at the conclusion of their FMLA leave. The university will notify such employees of the "key employee" status and the conditions under which they may be denied reinstatement, if applicable.

### **Military Family and Medical Leave Act Policy**

Unless specifically stated otherwise herein, procedures, notices, and rights and responsibilities state above as part of the university's policy for traditional FMLA leave apply to military FMLA leave.

Pursuant to the Family and Medical Leave Act (FMLA), the university provides eligible employees with: (1) up to 12 workweeks of unpaid, job-protected leave in a rolling 12-month period for a qualifying exigency; **or** (2) up to 26 workweeks of leave for eligible employees within a single 12 month period to care for a covered service member with a serious illness or injury.

### **Eligibility**

To qualify for leave under the military Family and Medical Leave Act provision, an employee must be eligible for traditional FMLA leave and be either: (1) the parent, spouse, son or daughter of a service member in the Regular Armed Forces, National Guard, or a Reserve component of the Armed Forces, or of an Armed Forces retiree, who is on active duty (or has been notified of an impending call or order to active duty) in a foreign country; **or** (2) The spouse, son, daughter, parent, or next of kin of a covered service member undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

### **Reasons for Leave**

Eligible employees can take leave for any of the following reasons:

- Qualifying Exigency - A qualifying exigency arising out of the fact that a son, daughter, spouse or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in a foreign country.
- Military Caregiver - To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of the covered service member.

### **Covered Service Member**

A covered service member is one who is: (1) undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) 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) at any time during the previous of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy

The serious injury or illness is covered if it was incurred while in the line of duty (or the service member had a pre-existing condition that was aggravated while in the line of duty) and renders the service member medically unfit to perform his/her military duties. The university will rely on authorized health care providers or designated officials in the Department of Defense to determine whether the service member is deemed a covered service member

### **Notice of Leave**

To give notice to the University, the employee should report the need for leave to both the employee's supervisor and the Human Resources. A Request for Military Leave Form is available from Human Resources.

- Qualifying Exigency - When the need for leave because of a qualifying exigency related to a family member's active duty is "foreseeable," the employee should provide notice as soon as practicable, regardless of how far in advance such leave is foreseeable. When an employee becomes aware of a need

for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or then next business day. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

- **Military Caregiver** – As with traditional FMLA, an employee must provide the university with at least 30 days advance notice when requesting military caregiver leave that is foreseeable. If the need for leave is not foreseeable, then notice must be given as soon as practicable.

### **Eligibility Notice / Rights and Responsibilities**

As with traditional FMLA leave, employees who request military FMLA leave will be sent the university's Eligibility Notice and Notice of Rights and Responsibilities. A certification form for Qualifying exigency leave or Military Caregiver leave, as applicable, will be included with this correspondence.

### **Certification for Qualifying Exigency Military Leave**

The first time an employee requests leave because of a qualifying exigency, the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military. The documentation must indicate that the covered military service member is on active duty or called to active duty status in a foreign country and the dates of active duty service. The employee shall need to supply such documentation again only if requesting leave for: (1) the same covered service member for a different active duty or call to active duty; or (2) a different covered service member.

A Certification for Qualifying Exigency Leave Form is available from Human Resources and includes a list of approved qualifying exigencies. A completed Certification form is required in order for leave to be granted.

The university may contact an appropriate unit of the Department of Defense to request verification of active duty / call to active duty status. Employee permission for such contact is not required.

The university may require confirmation of the employee's relationship with the covered service member at any time in this process.

In all instances in which certification is requested, it is the employee's responsibility to provide the university with complete and sufficient certification, and failure to do so may result in the delay or denial of FMLA leave.

### **Certification for Military Caregiver Leave**

Employees who request military caregiver leave to care for a covered service member with a serious injury or illness are required to submit a Certification for Military Caregiver Leave form completed by an authorized health care provider of the covered service member. Certification forms are available from Human Resources. Except as stated below, a completed Certification is required before leave can be granted. The university may require confirmation of the employee's relationship with the covered service member at any time in this process.

In lieu of any certification, the university will accept Invitational Travel Orders (ITOs) or Invitational Travel Authorizations (ITAs) issued to any family member to join an injured or ill service member at his or her bedside, regardless of whether the employee is named in the order or authorization. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered service member in a continuous block of time or on an intermittent basis.

The university may seek authentication and clarification of the ITO or ITA but will not seek a second or third opinion or a re-certification during the period of time in which the employee's leave is supported by an ITO or ITA.

If an employee will need leave to care for a covered service member beyond the expiration date specified in an ITO or ITA, the university will request that the employee have an authorized health care provider complete a certification form for the additional time. Timelines designated under the traditional FMLA policy will apply for return of such certifications.

In all instances in which certification is requested, it is the employee's responsibility to provide the university with complete and sufficient certification, and failure to do so may result in the delay or denial of FMLA leave.

The university may seek authentication and/or clarification of the Certification Form but will not seek second and third opinions or re-certifications for military FMLA leave.

### **Duration of Military Family and Medical Leave**

- Qualifying Exigency - Eligible employees using qualifying exigency leave will be entitled to a cumulative total of 12 workweeks of FMLA leave within a 12 month leave period and are covered by the same policy provisions (as to duration, benefits, return to work, etc.) as employees requesting traditional FMLA leave under the traditional FMLA leave policy.
- Military Caregiver – Employees using military caregiver leave alone or in combination with traditional FMLA or qualifying exigency leave may take up to 26 workweeks of leave during any single 12 month period. The amount of traditional and/or qualifying exigency leave combined is limited to a total of 12 workweeks; the difference may be taken as military caregiver leave. The 26 workweeks of military caregiver leave run on a separate FMLA year that commences with the first day leave is taken and can run forward until the end of that 12 month period. Any combination of the FMLA leave may not exceed the maximum limit of 26 workweeks in that single 12 month period. Unused military caregiver leave is forfeited at the end of that 12 month period.

For military caregiver leave, a husband and wife who both work for the university would be limited to a combined total of 26 workweeks for military caregiver leave alone. The same 26 workweek limitation applies when in combination with any other 12 workweek FMLA leave, with the exception of caring for a seriously ill child, which expands the traditional FMLA entitlement of 12 workweeks to 24 for the mother and father combined (family members are generally limited to 12 workweeks for care due to the birth, adoption, or placement of a child or the care of a qualifying relative during the 12 month period).

In certain cases, leave may be taken on an intermittent basis or the employee may work a reduced schedule. Intermittent leave must be necessary and should be scheduled to reasonably avoid disruption to the university workplace.

2.17.11 FMLA Benefits