

FREQUENTLY ASKED QUESTIONS FOR UNIVERSITY OF UTAH EMPLOYEES ON LEAVES OF ABSENCE UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (“FMLA”)

What protections are provided by FMLA? During an approved FMLA leave, the law requires:

- Covered absences cannot be the basis for adverse employment action
- Employee can maintain health coverage under the same conditions as if the employee were actively at work (the University allows employees to maintain certain other benefits, as well)
- With a timely, full medical release to return to work, if applicable, the employee must be restored to the same or an equivalent position with equivalent pay, benefits and terms and conditions of employment

What are the qualified reasons for FMLA Leave? There are four qualified reasons:

1. Birth of a child and to care for the child during the first year following birth
 - If both father and mother work for the University, they may take a combined 12 weeks for the care of the child.
2. Placement of a child with the employee for adoption or foster care and to care for the child during the first year following placement
 - If both father and mother work for the University, they may take a combined 12 weeks for the care of the child.
3. Employee’s serious health condition that makes the employee unable to perform his/her essential job functions
4. Care for employee’s spouse, parent, or child with a serious health condition
 - Child must be under age 18 or have a disability that meets the definition of the Americans with Disabilities Act.

What is a “Serious Health Condition”? The FMLA defines a Serious Health Condition as an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care - Inpatient care (overnight stay) in a hospital, hospice, or residential medical facility (includes any period of incapacity¹ or subsequent treatment in connection with or consequent to such inpatient care)
2. Absence from Work Plus Treatment - A period of incapacity¹ of 4 or more consecutive calendar days that also involves: (a) treatment 2 or more times by a Health Care Provider; or (b) treatment 1 time which results in a regimen of continuing treatment
3. Pregnancy (including pregnancy complications and prenatal care)
4. Chronic Conditions Requiring Treatments
5. Permanent/Long-Term Conditions Requiring Supervision
6. Multiple Treatments (Non-Chronic Conditions)

Does FMLA leave need to be taken all at once or can I take it as needed over a period of time? The FMLA provides for four different types of leave: continuous leave (from one date to a set end date), intermittent leave (leave taken as needed for periods of Incapacity caused by the Serious Health Condition), reduced work schedule (a set amount of FMLA time to be taken each day), and medical appointments only. Your doctor must certify the type of leave needed.

Can I choose to take leave on an intermittent or reduced work schedule basis? Your Health Care Provider must certify that you need to take leave on an intermittent or reduced work schedule basis. If you are taking leave after the birth or adoption of a child, your supervisor may authorize intermittent FMLA leave, based on the needs of your department.

¹ “Incapacity” for purposes of FMLA is defined as the inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, and recovery therefrom.

My doctor certified that I need to take leave for medical appointments. What is required of me? Medical appointments should be scheduled outside your regular working hours if at all possible. If you are unable to schedule appointments outside your regular working hours, you may take FMLA leave for medical appointments with your Health Care Provider, including travel time to and from the appointment. You need to work with your supervisor prior to scheduling any medical treatments. The FMLA requires employees to “consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer’s operations.” It also states that employees should “consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee.”

I have been approved for intermittent FMLA leave. What notice am I required to give when I am incapacitated by my Serious Health Condition and unable to go to work? The FMLA requires that you give notice as soon as possible and practical taking into account all the facts and circumstances. If you are unable to work as a result of an approved Serious Health Condition, you must call in as soon as reasonably possible. If do not provide notice as soon as possible and practical, your supervisor may take corrective action.

What is the University’s policy regarding use of sick and vacation accruals during an FMLA leave? You must use your sick and vacation accruals, but may save up to 10 days of vacation by request. The Request for Leave Under the Family and Medical Leave Act form has a box to check if you wish to retain vacation leave. It is recommended that you use your sick leave accruals first, but not required. You may also choose to use your personal preference leave. Once you use all accruals, the balance of your FMLA leave is unpaid/excused.

I elected to save 10 days of vacation when I applied for FMLA leave. Can I use those hours at any time? If you are taking continuous FMLA leave, you may use the vacation hours when your FMLA leave has been completed. If you have been approved for intermittent FMLA leave, you may use the vacation hours for non-FMLA time off. University Policy states that use of vacation, other than during an approved FMLA absence, must be arranged in advance with your supervisor to prevent disruption of departmental operations and avoid compromising the efficiency of the organizational unit.

Will I continue to accrue sick and vacation time while I am on FMLA leave? If you are using sick and vacation time or work and receive pay as of the 15th of the month, you will be eligible for accruals on the 16th of the month. If you have used all sick and vacation leave prior to the 15th of the month and are not working intermittently, you are not eligible to accrue additional sick and vacation leave until you return to work.

Will I receive pay for Holidays and University Closure Days while I’m out on FMLA Leave? University Policy provides that if an employee works or receives any payment for time (including use of accruals) during the week of a holiday, the employee receives pay for the holiday. However, if the employee is on unpaid leave all week, the holiday is not paid.

Are Holidays and University Closure Days counted as part of my FMLA leave time taken? The FMLA provides that if an employee works or receives pay for time during the week of a holiday, the holiday is not counted as FMLA time taken. If, however, an employee takes the full week off unpaid, the employee is considered as having taken one full week of FMLA leave. If the University (including just the employee’s department) closes and employees are not expected to report for work for one full week or more, the days the department is closed do not count against the employee’s FMLA entitlement.

What happens to my University benefits while I’m on an approved FMLA Leave? While you are using sick and vacation leave, your benefits will continue as if you were actively at work. Once your leave accruals are exhausted, your benefits may be continued, as follows:

- Health Care Coverage – You may discontinue coverage, pay in advance, or continue to pay health care contributions during your FMLA leave at the employee rate. If you are eligible and you make advance arrangements with your Benefits Representative, health care contributions may be taken

from your pay retroactively upon your return to work. If you choose to discontinue health care coverage during your unpaid FMLA leave, you may reenroll within 3 months of the date you return to work.

- Flexible Spending Accounts – You may choose to do one of the following (must arrange in advance):
 - Stop participation (expenses incurred during the period you do not participate will not be eligible for reimbursement) and have the option to reinstate participation upon return to work
 - Pre-pay with pre-tax dollars deducted prior to your leave or with after tax dollars (expenses incurred during your leave will be eligible for reimbursement)
 - Pay-as-you-go with after-tax dollars during your leave when due (expenses incurred during your leave will be eligible for reimbursement)
 - Catch-up with pre-tax dollars after return to work (expenses incurred during your leave will be eligible for reimbursement only after payments have been caught up)
- Retirement – The University will discontinue retirement contributions to your account during any periods of unpaid leave. If you are enrolled in the Utah State Retirement Systems Plan, you will not accrue service credit for any periods of unpaid FMLA leave.
- Life, AD&D, Long Term Disability, and Long Term Care Insurance – You may elect to do the following:
 - Cancel coverage and reinstate your enrollment when you return from FMLA leave (if you choose to cancel Life and/or Long Term Care Insurance, you may be required to provide evidence of insurability and go through underwriting in order to reenroll upon return to work; if you choose to cancel Long Term Disability Insurance, you may reenroll within 31 days of the end of your FMLA leave without providing evidence of insurability)
 - Pre-pay
 - Pay-as-you-go
 - Catch-up when you return to work (available only with prior authorization)

How often can the University ask me to obtain a new Certification of Health Care Provider?

If your Health Care Provider filled in a specific date that your leave would end, the University may only require you to obtain recertification of the Serious Health Condition if you request an extension of the leave, if circumstances described in the Certification have changed significantly, or if we receive information that casts doubt upon the continuing validity of the Certification. If your Health Care Provider did not fill in a specific date that your leave would end, we may request recertification of your Serious Health Condition no more often than every 30 days (only in connection with an absence), or for one of the three reasons stated in the sentence above.

Can my supervisor transfer me to an alternate position during my FMLA leave? While you are taking intermittent or reduced work schedule FMLA leave, your supervisor may transfer you to an alternate position where the supervisor is better able to handle your intermittent or reduced schedule. The only requirement is that your pay not change. The job duties and responsibilities may be completely different from the job you originally held. When you return to regular work at the end of your FMLA leave, you will be returned to the same or an equivalent position as the original position you held before the FMLA leave.

When do I need to submit tracking forms? If you have been approved for intermittent or reduced work schedule leave, you must submit a completed tracking form to the Benefits Department *each pay period*, even if you did not take any FMLA leave. You should complete the tracking form and sign it, certifying that the information is correct. After you sign it and your supervisor has reviewed and approved it, send it to the Benefits Department. If you do not submit a tracking form, all leave taken during that pay period may be designated as FMLA leave.

I want to return to work, but am unable to perform all the aspects of my job and am taking medication that may impair my judgment. Does the FMLA protect me from adverse employment action for unsatisfactory performance while I am at work? No. The FMLA protects employees who must be absent from work. The FMLA does not require any modified working conditions or protect your job if your performance is unsatisfactory while working. If you are able to

work, you will be held to the same performance standards, whether you are covered by FMLA or otherwise. If you return to work and are unable to perform the work, your supervisor may take corrective action.

What do I do when I am ready to return to work? If your leave was for your own Serious Health Condition (other than pregnancy), you must provide a full medical release to return to work signed by your Health Care Provider prior to or upon return to work. If you are ready to return to work prior to your scheduled return to work date, please contact your supervisor and give at least two days' notice.