Family and Medical Leave Act (FMLA)

A Practical Guide for Supervisors

Employee Relations
Human Resources Administration
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Introduction

The federal Family and Medical Leave Act (FMLA) took effect on August 5, 1993. The Act is intended to balance the demands of the workplace with the needs of families by allowing leave for certain qualifying reasons. The law provides up to 12 weeks of job-protected unpaid leave for eligible employees in any 12-month period, which Indiana University defines as the calendar year.

The university voluntarily applies the FMLA provisions to same sex domestic partners as qualified by the university’s Affidavit of Domestic Partnership. Any references to a spouse in this guide also include a same-sex domestic partner, and references to a child include the child of a domestic partner.

Employees have the right to a prompt investigation and response to a question or problem concerning the application of the law and the university’s policy or procedures. If a department head does not satisfactorily resolve the employee's concerns, he or she may take the inquiry or problem to Human Resources Administration, Employee Relations for immediate attention. Human Resources Administration, Employee Relations is to respond within two weeks.

Due to the complexity of this law, this guide is intended to familiarize managers and supervisors with the basic provisions and requirements of the FMLA and to provide steps for handling FMLA requests and subsequent absences from staff employees. A quick reference checklist of the steps is included in the appendix on page 22. For questions or additional information, contact Human Resources Administration, Employee Relations.

Additional provisions to note:

- Information for FMLA for academic employees can be found at http://faa.iupui.edu/newFaa/benefits.asp, and questions should be directed to the Faculty Appointments and Advancement Office at 274-5539.
Eligibility for FMLA

To be eligible for FMLA, an employee must have:

1. Worked at least 12 months for Indiana University. The 12 months of employment need not be consecutive months.
   - Any portion of a week that an employee is on the payroll counts as a full week for FMLA eligibility.
   - Separate periods of employment in which the break in service exceeds seven years will not be used to determine FMLA eligibility.

2. Worked at least 1,250 hours during the 12 months preceding the need for leave
   - These are actual work hours and do not include paid time off.
   - This eligibility requirement must be verified with the first FMLA request of the calendar year and for each new qualifying reason during the calendar year.

Additional provisions to note:

- Part time, regular hourly, student hourly, and work study hourly employees are eligible for FMLA if they meet the above requirements.
- FMLA may be requested (or designated by the department) using Form 1, FMLA Leave Notice of Designation, Request, & Approval.
- If the need for FMLA does not end with the calendar year, employees must request another FMLA for the new calendar year, and the 1,250 work hours eligibility requirement must again be met.
- Once eligibility requirements are met for a specific qualifying reason, eligibility for FMLA continues throughout the calendar year for that qualifying reason even if hours worked drop below 1,250.
- If, while on a non-FMLA leave of absence, an employee becomes eligible for FMLA and the reason for the leave qualifies for FMLA, the remaining portion of the leave is to be designated (with notice to the employee) as FMLA.
- Check eligibility carefully. Once it is determined an employee is eligible for FMLA, and the leave is approved, FMLA cannot later be denied if it is discovered the eligibility criteria are not met.
- Employees who unequivocally state their intent not to return to work are no longer eligible for FMLA.
- Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) counts toward eligibility for FMLA.
Qualifying Reasons for FMLA

FMLA may be taken for any of the following reasons:

- birth of a child and to care for a newborn child of the employee or spouse
- placement with the employee of a child for adoption or foster care
- to care for the employee’s spouse, child, or parent with a serious health condition
- a serious health condition that makes an employee unable to perform the functions of the employee’s job
- a qualifying exigency arising out of the employee’s spouse, child, or parent’s covered active duty* or call to active duty in support of a contingency operation
- to care for a covered service member with a serious injury or illness incurred in the line of active duty if the employee is the spouse, child, parent, or next of kin of the service member (military caregiver leave)

Additional provisions to note:

- Employees can take FMLA for more than one qualifying reason in a calendar year but are limited to a total of 12 weeks in the calendar year (except military caregiver leave).
- Contact Human Resources Administration, Employee Relations if you are uncertain whether the reason for FMLA is a qualifying one.
- *Covered active duty means duty during deployment to a foreign country.
Birth, Adoption, or Care of a Newborn

- Both mother and father or domestic partners are each entitled to up to 12 weeks of FMLA leave for the birth of their child, if meeting individual FMLA eligibility. This also applies to adoption and foster care placement.
- Both mother and father or domestic partners are each entitled to FMLA for bonding time until the child is one year of age or in the case of child placement, the child has been in the home for one year.
- The mother is entitled to FMLA leave for incapacity due to pregnancy or for her own serious health condition following the birth of the child.
- FMLA for incapacity due to pregnancy may begin before the birth of the child if necessary for prenatal care, doctor appointments due to the pregnancy, or severe morning sickness.
- FMLA for adoption or foster care may begin before placement if necessary for counseling, court appearances, attorney/physician consultation, or travel to another country.
- The husband or domestic partner is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated or has a serious health condition.

Additional provisions to note:

- Medical certification is not required for birth, adoption, or care (bonding) of a newborn, but non-medical certification (such as a birth certificate) is acceptable if necessary to substantiate an employee’s claim.
- Medical certification is required for FMLA leave for incapacity due to pregnancy (or to care for a pregnant spouse who is incapacitated), for the mother’s serious health condition following the birth of the child, or for the newborn child’s serious health condition.
**“Needed to Care for” a Family Member**

FMLA leave to care for a family member with a serious health condition is limited to the employee’s:

- spouse or same-sex domestic partner
- own parent (not in-laws)
- the employee’s child or child of the same-sex domestic partner
- covered service member

Caring for a family member includes:

- psychological care, such as comfort and support
- physical care, such as feeding, dressing and transportation to doctor appointments
- substituting for others who normally care for the family member; the employee need not be the only individual available to care for the family member
- making arrangements for changes in care such as transfer to a nursing home

Caring for a family member **does not** include:

- visiting a sick parent who is being cared for by another family member
- child care when the child is not incapacitated due to a serious health condition
- attending a funeral or bereavement leave; when the family member dies, FMLA needed to care for the family member ends
- attending to the deceased’s estate
Definitions of a Family Member

Spouse
- legal spouse as defined by Indiana law
- same sex domestic partner as qualified by the university’s Affidavit of Domestic Partnership

Parent
- biological, adoptive, step or foster father or mother
- any other individual who stood in loco parentis to the employee when the employee was under age 18

Child
- biological, adopted or foster child, legal ward, stepchild, child of a same-sex domestic partner, or child of a person standing in loco parentis
- for FMLA to care for a child with a serious health condition, the child must be:
  - under the age of 18
  - age 18 or older if incapable of self-care because of a mental or physical disability
- for FMLA for military caregiver leave or family military leave, the child may be any age

Next of Kin
- nearest blood relative of the covered service member other than the spouse, parent or child in the following order of priority unless the service member has designated in writing another blood relative:
  - blood relatives granted legal custody of the service member
  - brothers and sisters
  - grandparents
  - aunts and uncles
  - first cousins

Additional provisions to note:
- Documentation (birth certificate, court document) may be requested to confirm the family relationship and the age of a child.
- In order to receive benefits as a same-sex domestic partner or for children of a same-sex domestic partner, the relationship must be registered through an Affidavit of Domestic Partnership. See www.indiana.edu/~uhrs/dp/dp.html for details on domestic partner registration.
Definitions of a Serious Health Condition

A serious health condition is defined as an illness or injury that involves:

Inpatient Care

1. A condition requiring overnight hospitalization and subsequent treatment

Continuing Treatment

2. A period of incapacity of more than three full consecutive calendar days and
   a. An in-person visit to a health care provider within 7 days of the first day of incapacity and a second in-person visit within 30 days of the first day of incapacity or
   b. An in-person visit to a health care provider within 7 days of the first day of incapacity followed by a regimen of continuing treatment such as a course of prescription medication or physical therapy

3. Pregnancy or prenatal care

4. Chronic conditions continuing over an extended period of time (e.g. asthma, diabetes, migraine headaches)
   a. Any period of incapacity
   b. May cause episodic rather than continuous incapacity
   c. Requires at least two visits annually to the health care provider

5. Permanent or long-term conditions (e.g. Alzheimer’s, stroke, terminal diseases)
   a. Any period of incapacity
   b. Requires continuing supervision by a health care provider

6. Conditions requiring multiple treatments (e.g. chemotherapy, dialysis, physical therapy)
   a. Any period of incapacity
   b. Restorative surgery or conditions, if left untreated, would result in incapacity of more than three full consecutive calendar days

Additional provisions to note:

- Incapacity is defined as the inability to work, attend school or perform other regular daily activities.
- The common cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, periodontal disease, etc., are not serious health conditions unless they fall within one of the above conditions.
- Treatment for substance abuse may be a serious health condition if it falls within one of the above conditions.
Definitions of a Health Care Provider

- A licensed physician
- Another person capable of providing health care services such as:
  - Podiatrists
  - Dentists
  - Clinical Psychologists
  - Optometrists
  - Chiropractors
  - Nurse practitioners
  - Nurse midwives
  - Clinical social workers
  - Physician assistants
  - Christian Science Practitioners
- A health care provider recognized by the university’s health care plans
Medical Certification

- Medical certification is required if the qualifying reason for the FMLA is a serious health condition for the employee or the employee’s spouse, child, or parent. Form 2E, Medical Certification for Employee and Form 2F, Medical Certification for Family are to be used for this purpose.
- Medical certification must be requested, in writing, at the time the employee gives notice of the need for FMLA or within 5 business days.
- It is the employee’s responsibility to provide the completed certification within 15 calendar days.
- If the certification is incomplete or insufficient, return the certification to the employee identifying (in writing) the additional information necessary to make the certification complete and sufficient. The employee is to be given 7 additional calendar days to obtain the necessary information.
- Information obtained from the health care provider is limited to the information on the medical certification form.
- The employee must cooperate throughout this process and if complete and sufficient medical certification is not provided, the requested FMLA leave may be denied. In addition the employee may not use any type of paid time off, and absences incurred may be subject to corrective action.
- Medical certification must be requested at the beginning of each calendar year for FMLA leave that extends from one calendar year to the next.
- The cost of acquiring medical certification (if any) is paid by the employee, and the employee is not entitled to be paid for time or travel to obtain the certification.

Recertification

- Employees may be asked to recertify the need for FMLA, and the request for recertification must always be made in connection with an absence.

<table>
<thead>
<tr>
<th>Minimum Duration of Serious Health Condition</th>
<th>Frequency of Request</th>
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<tbody>
<tr>
<td>30 days or less</td>
<td>every 30 days</td>
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<tr>
<td>30 days to 6 months</td>
<td>expiration of minimum duration period</td>
</tr>
<tr>
<td>6 months or more</td>
<td>every 6 months</td>
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</table>
• Recertification may be requested in less than 30 days if:
  o The employee requests an extension of the leave
  o Circumstances in the previous certification have changed significantly
  o Information is received that casts doubt on the reason for the absence or validity of the previous certification

• If recertification is requested due to the number and/or nature of the absences, the employee’s FMLA attendance record may be included, and the health care provider may be asked if the serious health condition and need for leave is consistent with the employee’s absences (see appendix page 29 for sample letter).

• It is the employee’s responsibility to provide the completed recertification within 15 calendar days.

• A second or third opinion cannot be requested on a recertification.

Additional provisions to note:

• At the time the medical certification is requested for the employee’s serious health condition, employees must be notified of the requirement to submit a fitness-for-duty certification upon their return to work and provided with:
  o Form 3, Intent to Return and Fitness for Duty/Medical Release Form
  o A list of essential functions of the job

• If the medical certification is still incomplete or insufficient, after the 7-day “opportunity to cure,” contact Human Resources Administration, Employee Relations to discuss additional options which may include contacting the health care provider for clarification and/or authentication of the certification.

• In certain circumstances, a second and third opinion from a health care provider may be requested, and the department pays the cost of the additional opinion. Contact Human Resources Administration, Employee Relations if you wish to explore this option.

• Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employee family members, must be kept in locked files separate from personnel files and treated as confidential medical records.

• Medical certification for a spouse, parent, or child who is out of the country is handled in the same manner. Once complete, the medical certification can be delivered via fax or email. The employee may have to translate the information if it is not in English, and you may consider allowing additional time, if necessary, to obtain the certification.
Intermittent or Reduced Schedule FMLA Leave

- **Intermittent leave** is FMLA leave taken in separate blocks of time due to a single qualifying reason.
- **Reduced schedule leave** reduces the employee’s usual number of hours work per day or per week.
- Intermittent or reduced schedule leave must be granted if medically necessary or due to a qualifying exigency.
- Intermittent or reduced schedule leave may be granted if taken following the birth or placement of a healthy child and approved by the supervisor.
- Intermittent leave may be taken in increments as little as 1/10th of an hour (6 minutes).
- Employees must consult with their supervisors and make a reasonable effort to schedule intermittent leave for planned medical treatment or appointments so it does not disrupt operations.
- Allow only as much FMLA as needed—an entire day off usually is not necessary for a doctor appointment. Adequate time off for the appointment and travel to the appointment must be provided, and employees should be required to return to work immediately after the appointment when appropriate.

Additional provisions to note:

- Departments may place employees who are on an intermittent leave or a reduced work schedule for planned medical treatment or appointments in another position with equivalent pay and benefits which better accommodates recurring absences than the employee’s regular position. This placement is considered to be a temporary transfer and should be discussed with Human Resources Administration, Employee Relations.
- Unless the reduced work schedule is specifically identified by the health care provider, the supervisor has the discretion to designate the reduced schedule of hours or days of the week to meet business needs, e.g., if the employee is limited to working six hours a day, the supervisor can designate the work schedule as 8 a.m. to 2 p.m.
Calculating and Recording FMLA Leave

- An eligible employee may take up to 12 workweeks (480 hours prorated by FTE) of leave during a 12-month period defined as a calendar year.
- Eligible employees are entitled to a new 12-week FMLA leave each calendar year.
- Unused portions of the 12-week FMLA leave cannot be carried over between calendar years.
- Employees who record their hours worked and time off electronically through TIME or ePTO record FMLA by entering the appropriate earn code (VFL, SFL, AFL, etc.) in their electronic record.
- Employees who record their hours worked and time off on paper time sheets must also record time off taken for FMLA leave, whether paid or unpaid, on the [FMLA Tracking Sheet](#).
- Absences due to FMLA are to be recorded in 1/10th-hour increments. Exempt professional PAE staff also record FMLA absences in 1/10th-hour increments, not full-day increments.
- To determine the amount of leave taken by an employee on FMLA, the following days (hours) are counted:
  - The employee’s scheduled shift, including regularly scheduled overtime
  - Holidays that occur within a week if the employee is on FMLA the entire week
  - Holidays that the employee was scheduled or expected to work
Paid or Unpaid FMLA Leave

- All accrued paid time off must be used *concurrently* with the 12-week FMLA leave before any unpaid time can be taken, including any paid time off accrued during the FMLA leave. This applies to any FMLA absence, including a leave that is taken intermittently or through a reduced schedule.

- Compensatory time (if accrued) must be used first before the use of any other paid-time-off accruals, and this time is counted toward the 12-week entitlement.

- Once compensatory time is exhausted, employees may choose the order in which their remaining paid-time-off accruals are used. Paid-time-off accruals that must be used during FMLA leave include income protection time (sick time), vacation, holidays, and PTO.

- All time missed in a work day due to FMLA leave is charged to paid-time-off accruals, including charges to PTO for partial day absences for professional staff.

- Exempt professional staff (PAE) are to use PTO accruals in 1/10th-hour increments (not full-day increments) for absences due to FMLA leave.

- Employees continue to earn paid-time-off accruals as long as they are in pay status during the absence.

- When paid-time-off accruals are exhausted, the remainder of the FMLA leave is without pay and without time off accruals (use earn code AFL, not ABS or AWB).

- Vacation and PTO hours used during an FMLA do not count toward the annual maximum number of vacation or PTO hours that can be taken in a year.

Additional provisions to note:

- FMLA leave is unpaid for eligible hourly employees.

- If an FMLA-eligible employee is absent for an FMLA qualifying reason and does not provide the requested medical certification, do not approve the use of paid time off for the absence.

- University service credit continues to accrue during an FMLA leave.

- If the employee will be absent without pay for more than 30 calendar days, an edoc must be initiated placing the employee on an unpaid leave of absence for the *balance* of the FMLA leave (see appendix page 21 for details).
Reinstatement Upon Return from FMLA Leave

- An employee who is returning from an approved FMLA absence will be returned to the same position held at the time the leave began or to an equivalent position.

- An equivalent position is one with equivalent benefits, pay, and other terms and conditions of employment, including the same shift or work schedule and a geographically proximate work site. Consult with Human Resources Administration, Employee Relations if considering an equivalent position.

- In certain circumstances prior to returning to work, an employee on FMLA leave for his or her own serious health condition may be required to provide a fitness-for-duty certification indicating the employee is fit to resume work and perform the essential functions of the job.

- At the time the FMLA leave is requested, employees must be notified of the requirement to submit a fitness-for-duty certification upon their return to work and provided with:
  - Form 3 Intent to Return and Fitness for Duty/Medical Release Form
  - A list of essential functions of the job

- If appropriate notice is provided, an employee who does not provide a fitness-for-duty certification is not entitled to reinstatement under FMLA.

- The cost of acquiring a fitness-for-duty certification (if any) is paid by the employee, and the employee is not entitled to be paid for time or travel to obtain the certification.

Additional provisions to note:

- Employees on FMLA leave whose positions are affected by a reduction in force or reassignment, may not be reinstated if it can be demonstrated the reduction in force or reassignment would have occurred had the employee been working and not on FMLA leave.

- If the employee is released to return to work with restrictions that prevent him/her from performing the essential functions of the position, contact Human Resources Administration, Employee Relations.

- Key employees (academic and professional employees who are among the highest 10% compensated at IU) may be an exception to the reinstatement rule if reinstatement would result in “substantial and grievous economic injury” to the university. Once approved by Human Resources Administration, Employee Relations, the department is to inform the key employee—before the FMLA leave begins—that reinstatement might not be available when he or she is ready to return to work.
Department Responsibilities

- It is the department's responsibility to designate any absence that meets the requirements of the FMLA as family medical leave. An employee may request a leave or may provide enough information to make the department aware that an absence may be eligible for FMLA.

- Even if the employee does not request FMLA, if a department is aware that the reason for an absence qualifies under FMLA, the absence must be designated as FMLA leave and prompt notice given to the employee.


- Establish and communicate the department’s call in procedure which should include:
  - when the employee must call in; how soon before or after the shift begins
  - who must call in; employee only or other family member
  - information that must be provided when calling in (don’t accept simply “FMLA;” it is the department’s responsibility—not the employee’s—to determine if an absence qualifies for FMLA)

- Enforce the call in procedure consistently between FMLA and non-FMLA absences.

- An employee's rights to FMLA may be denied or delayed only for the following reasons:
  - timely advance notice of foreseeable leave is not given
  - timely submission of required and sufficient medical certification is not made by the employee
  - the employee fails to provide required fitness to return to work certification
  - the employee expresses an intention not to return to work
  - the employee fraudulently requests or obtains FMLA
  - the employee is employed elsewhere while on FMLA leave without the written approval of the department head

Additional provisions to note:

- When it is known that the period without pay will exceed 30 days, the department is to process the appropriate HRMS documentation (edoc) to place the employee on a leave of absence for the balance of the FMLA leave (see appendix page 21 for details).

- An FMLA leave should start immediately if an FMLA-eligible employee who is under Worker's Compensation for a work-related injury declines a modified position assignment offered under Worker's Compensation.

- If the department fails to designate an employee’s eligible absence as FMLA, it may retroactively designate the absence as FMLA leave if:
the employee has been given notice
the retroactive designation does not harm the employee

The department and employee may also mutually agree to retroactively designate the absence as FMLA.

- The ability to retroactively designate an employee’s absence as FMLA, does not apply to absences in which the employee did not give the appropriate amount of notice or did not follow the department’s call-in procedure.

**Do’s for the manager or supervisor:**

- ask appropriate questions about the reasons for the employee's time off (when an employee seeks leave for the first time for an FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA)
- provide the employee with the appropriate FMLA forms and follow the FMLA procedures for processing the FMLA and handling subsequent absences (see appendix page 22 for a quick reference checklist)
- recognize that the requested time off, whether paid or unpaid, can be counted as an FMLA absence and promptly inform the employee
- track FMLA time and when requested, inform the employee of the number of hours used and the number remaining (check with your payroll processor about reports available in TIME or ePTO that reflect FMLA usage)

**Don’ts for the manager or supervisor:**

- interfere with, restrain, or deny the exercise of (or attempts to exercise) any rights provided by the FMLA
- discourage an employee from using FMLA leave or manipulate circumstances related to eligibility
- discharge or in any other way discriminate against a person for opposing or complaining about any unlawful practice under the Act
- consider the use of FMLA as a negative factor in employment actions such as hiring, promotions or disciplinary actions or count FMLA leave under “no fault” attendance policies
- encourage employees to waive or induce employees to waive their prospective rights under FMLA
Employee Responsibilities

- Employees must provide at least 30 days advance notice of an anticipated FMLA leave. As a general rule, a 30-day notice shall be required in cases involving:
  - birth, foster care, or adoption of a child
  - planned medical treatment for an employee or family member with a serious health condition
- If employees do not give proper notice of a clearly foreseeable leave, departments can delay the leave for up to 30 days after receiving notice of the need for FMLA leave.
- In cases where 30 days notice is not practical, an employee must provide notice as soon as practicable—the same day or next business day.
- Employees must follow the department’s procedures for requesting leave and calling in absences and provide sufficient information to allow the department to determine whether the leave request and absence qualifies for FMLA. Failure to do so may result in the time not being approved.
- Employees must consult with their supervisors and make a reasonable effort to schedule intermittent leave for planned medical treatment or appointments so it does not disrupt operations.
- If an employee will be in an unpaid status for more than 30 calendar days, the employee must contact Human Resources Administration, Benefits Office to make arrangements for payment of health care premiums and other optional benefits that have been elected.
- When an employee seeks leave due to a qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.
- If an employee simply calls in sick, does not follow the department’s call-in procedure, or does not provide sufficient information, the time off may not be designated as FMLA.
- Employees must cooperate throughout the FMLA process or risk having their FMLA delayed or denied including:
  - Giving the appropriate amount of notice of the need for FMLA
  - Providing a complete and sufficient medical certification, if requested
  - Responding to questions to determine whether an absence qualifies for FMLA
  - Following the department’s call-in procedure
  - Providing intent to return and fitness for duty medical release, if requested
  - Performing the essential functions of the job with or without reasonable accommodations
Qualifying Exigency

An eligible employee may take FMLA leave while his/her spouse, child, or parent is a covered military member on covered active duty or called to covered active duty provided:

1. The service member is either:
   a. A member of the Reserve Component (Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, Coast Guard Reserve)
   b. An active or retired member of the regular Armed Forces
2. The call to active duty is a Federal—not State—action
3. The qualifying exigency is for one or more of the following reasons:
   a. Short notice deployment
      i. Notice of or call to active duty of seven days or less
      ii. Leave can be taken for up to seven calendar days from date of notice of or call to active duty
   b. Attendance at military events and related activities such as:
      i. Official ceremonies
      ii. Family support of assistance programs
      iii. Informational briefings
   c. Childcare and school activities
      i. Arrange for alternative childcare
      ii. Provide childcare on an urgent, immediate need basis
      iii. Enroll in or transfer to a new school or day care facility
      iv. Attend meetings with school officials due to circumstances arising out of the notice of or call to active duty
   d. Financial and legal arrangements
      i. Make or update arrangements to address the military member’s absence
      ii. Act as the military member’s representative to obtain, arrange, or appeal military service benefits
   e. Attend counseling
   f. Rest and recuperation
      i. Spend time with a military member on short-term, temporary rest and recuperation leave
      ii. Leave can be taken for up to five days for each instance
   g. Post-deployment activities
i. Attendance at arrival ceremonies, reintegration briefings, or other official ceremonies within 90 days of end of active duty

ii. Address issues arising from the death of the military member

h. Additional activities

i. Address other events arising out of notice of or call to active duty

ii. Requires agreement between employee and supervisor on qualification, timing, and duration

Additional provisions to note:

- The department should provide the employee with a copy of the DOL form Certification of Qualifying Exigency for Military Family Leave to be completed by the employee. The completed form along with the documentation the employee provides will be used to determine if the leave request qualifies for FMLA and the length of the leave.

- When certification is requested, it is the employee’s responsibility to provide timely, complete, and sufficient certification and failure to do so may result in delay or denial of FMLA leave.

- Human Resources Administration, Employee Relations is responsible for coordinating all requests for leaves taken under this qualifying exigency provision.
Military Caregiver Leave

- Military Caregiver Leave is FMLA leave to care for a covered service member who has suffered serious injury or illness in the line of active duty.

- A covered service member means a current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment, recuperation or therapy; is in outpatient status; or is otherwise on the temporary disabled list for a serious illness or injury. A covered service member may also be a veteran who was a member of the Armed Forces, National Guard or Reserves within five years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

- An eligible employee who is the spouse, domestic partner, child, parent, or next of kin of a covered service member may take up to 26 weeks of FMLA leave during a single 12-month period.

- The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date.

- An eligible employee is entitled to a combined total of 26 work weeks of leave for any FMLA-qualifying reason (not 12 + 26).

- Contact Human Resources Administration, Employee Relations to determine if a qualified family relationship exists.

Additional provisions to note:

- The department should provide the employee with a copy of the DOL Form Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave to be completed by the employee and an authorized military health care provider of the covered service member.

- The employee may present certain military certifications such as “Invitational Travel Orders” or “Invitational Travel Authorizations” for purposes of certification that must be accepted by the department.

- If the certification is incomplete or unclear, the employee is to be given 7 additional calendar days to provide more complete information.

- When certification is requested, it is the employee’s responsibility to provide timely, complete, and sufficient certification and failure to do so may result in delay or denial of FMLA leave.

- Human Resources Administration, Employee Relations or a person designated by Human Resources Administration, Employee Relations may contact the covered service member’s health care provider for clarification and/or authentication of the medical certification.

- Recertification and second or third opinions are not permitted.

- Human Resources Administration, Employee Relations is responsible for coordinating all requests for FMLA leave taken to care for a covered service member.
Electronic Document (edoc) Processing for FMLA

- If the employee will be in pay status using paid-time-off benefits during FMLA, an edoc is not processed. Use earn codes SFL, VFL, AFL, etc. on the time sheet.

- If the employee be absent without pay less than 30 calendar days, record absences as AFL on the time sheet for the balance of the FMLA leave.

- If the employee will be absent without pay for 30 calendar days or more, an edoc must be initiated placing the employee on an unpaid leave of absence for the balance of the FMLA leave. The maximum allowance for FMLA—both paid and unpaid—is 480 hours (prorated for part-time employees) in the calendar year.
  - The effective date of the “Leave of Absence/FMLA” edoc is the first day in unpaid status, i.e., the day after paid time off is exhausted.
  - The expected return date is the end date of the requested FMLA.

    - For example: if the employee has an approved FMLA for 12 weeks in February, March, and April, and she exhausts her paid time off the first 4 weeks, the edoc would cover the remaining 8 weeks starting the first day in unpaid status. The expected return date is the end of April.

- At the end of the FMLA when the employee returns to work, a “Return to Duties” edoc must be done to return the employee from leave.

- If the employee is not able to return on the expected date—and the employee has enough FMLA time remaining to cover the extended leave—a “Maintain Job Data” edoc must be done to change the employee’s expected return date.

- If the employee’s FMLA time is exhausted and the employee is unable to return to work, a discretionary leave of absence may be granted at the department’s discretion. In this situation a “Return to Duties” edoc must be done to return the employee from FMLA, then a Leave of Absence/Discretionary edoc must be processed to place the employee on discretionary leave. The same effective date can be used on both edocs.

- If the employee does not return to work from FMLA or discretionary LOA due to his/her own medical situation, a “Return to Duties” edoc must be done to return the employee from leave, then a Termination/Medical edoc must be done to separate employment. The same effective date can be used on both edocs.

- If the employee notifies you that she will not be returning to work from FMLA or discretionary LOA due to reasons other than her own medical situation, a “Return to Duties” edoc must be done to return the employee from leave, then a Termination/(Appropriate Reason) edoc must be done to separate employment. The same effective date can be used on both edocs. The termination reason “Failure to Return from Leave” should only be used if the employee does not give notice or does not contact you at the end of the leave.
Handling Family and Medical Leave Requests  
Checklist for Supervisors

This information is a general summary of the steps to follow when considering a request or need for family medical leave for staff or hourly employees. An employee may request a leave or may provide you with information to make you aware of absences that may be eligible for FMLA protection. In either case take the following steps to determine if FMLA applies to the employee.

☐ **Step 1 – Receive or Initiate the Request for FMLA**

Complete Section 1 of the Notice of Designation, Request, and Approval Form (FMLA Form #1) if you become aware that the reason for an absence may qualify for FMLA (even if the employee does not request FMLA). If the employee requests FMLA leave, **Sections 1 and 2** should be completed by the employee.

☐ **Step 2 – Determine Eligibility and Qualifying Reason**

Within 5 business days of receipt or initiation of FMLA Form #1, the department is to notify the employee if eligibility and qualifying reason requirements are met. If the requirements are not met, proceed to Step 9.

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>Qualifying Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both of the following requirements must be met:</td>
<td>Leave must be due to one of the following reasons:</td>
</tr>
<tr>
<td>1. The employee:</td>
<td>□ Birth of a child and to care for the newborn child</td>
</tr>
<tr>
<td>□ Has worked for IU at least 12 months.</td>
<td>□ Placement of a child through adoption or foster care</td>
</tr>
<tr>
<td>□ Has not worked for IU at least 12 months.</td>
<td>□ To care for the employee’s</td>
</tr>
<tr>
<td>Employee has only _____ months of service with IU.</td>
<td>□ spouse/same-sex domestic partner</td>
</tr>
<tr>
<td>▪ Employment does not have to be continuous.</td>
<td>□ child/child of the same-sex domestic partner</td>
</tr>
<tr>
<td>▪ If a break in service exceeds seven years, the period of employment</td>
<td>□ parent</td>
</tr>
<tr>
<td>prior to the break is not counted.</td>
<td>who has a serious health condition</td>
</tr>
<tr>
<td>If leave is for a child, the child is ____ years old.</td>
<td></td>
</tr>
<tr>
<td>2. The employee:</td>
<td>□ Employee’s serious health condition</td>
</tr>
<tr>
<td>□ Has worked 1,250 hours in the 12 months</td>
<td>□ To care for the employee’s</td>
</tr>
<tr>
<td>immediately preceding the need for leave.</td>
<td>□ spouse/same-sex domestic partner</td>
</tr>
<tr>
<td>□ Has not worked 1,250 hours in the 12 months</td>
<td>□ child/child of the same-sex domestic partner</td>
</tr>
<tr>
<td>immediately preceding the need for leave.</td>
<td>□ parent</td>
</tr>
<tr>
<td>Employee has worked only _____ hours in the preceding 12 months.</td>
<td>□ next of kin</td>
</tr>
<tr>
<td>who is a covered service member with a serious injury or illness</td>
<td>who is a covered service member with a serious injury or illness incurred</td>
</tr>
<tr>
<td>incurred in the line of duty</td>
<td>in the line of duty</td>
</tr>
<tr>
<td>A qualifying exigency arising out of the employee’s</td>
<td>□ A qualifying exigency arising out of the employee’s</td>
</tr>
<tr>
<td>□ spouse/same-sex domestic partner</td>
<td>□ spouse/same-sex domestic partner</td>
</tr>
<tr>
<td>□ child/child of the same-sex domestic partner</td>
<td>□ child/child of the same-sex domestic partner</td>
</tr>
<tr>
<td>□ parent</td>
<td>□ parent</td>
</tr>
<tr>
<td>who is a covered service member on active duty in support of a</td>
<td>who is a covered service member on active duty in support of a contingency</td>
</tr>
<tr>
<td>contingency operation</td>
<td>operation</td>
</tr>
</tbody>
</table>
Within 5 business days the supervisor completes Section 3 and returns the form to the employee. There are three options within this section: 1) the leave is approved, 2) the leave is denied, or 3) additional information is necessary before the leave can be approved.

- **The leave is approved.**
  - If the leave is for the birth or placement of a child and eligibility is met, check the first box in Section 3, and return a copy of the form to the employee. Medical certification is not required. Proceed to Step 6.
  - If the leave is for a serious health condition, eligibility is met, and complete and sufficient medical certification is provided, check the fourth box in Section 3, fill in the date medical certification was received, and return a copy of the form to the employee. Proceed to Step 6.
  - If the leave is for a qualifying exigency or military caregiver leave, eligibility is met, and complete and appropriate certification is provided, check the fourth box in Section 3, fill in the date certification was received, and return a copy of the form to the employee. Proceed to Step 6.

- **The leave is denied.**
  - If the employee does not meet eligibility requirements, did not provide medical certification, has already used 12 weeks of FMLA, or the leave request does not qualify for FMLA, proceed to Step 9.

- **Additional information is needed.**
  - If the leave is for a serious health condition, a qualifying exigency or military caregiver leave, proceed to Step 4.

### Step 4 – Request Medical Certification

If the FMLA leave is for a serious health condition (of the employee, spouse, parent, or child), medical certification is required.

- If the leave request is for the employee’s serious health condition, give the employee:
  - A copy of FMLA Form 1 with the request for medical certification
    (Check the second box in Section 3 and fill in the date medical certification is due.)
  - FMLA Form 2E, Medical Certification for Employee with Section 2 completed
  - A copy of the employee’s essential job functions
  - FMLA Form 3, Intent to Return and Fitness for Duty/Medical Release

- If the leave request is for the employee’s spouse, child or parent’s serious health condition, give the employee:
  - A copy of FMLA Form 1 with the request for medical certification
    (Check the second box in Section 3 and fill in the date medical certification is due.)
  - FMLA Form 2F, Medical Certification for Family

- If the leave request is for a qualifying exigency or military caregiver leave, give the employee:
  - A copy of FMLA Form 1 with the request for certification
    (Check the second box in Section 3 and fill in the date certification is due.)
  - DOL Form WH-384, Certification of Qualifying Exigency for Military Family Leave or
  - DOL Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
When the medical certification form is returned by the employee, within five business days of receipt, review the form to ensure it is complete and sufficient.

- If the medical certification is complete and sufficient, review the information and make a final determination to approve or deny the FMLA. Complete Section 3 of FMLA Form 1 by checking the fourth box, fill in the date medical certification was received, and return a copy of the form to the employee.
- If the medical certification is incomplete and insufficient, check the third box in Section 3, fill in the date the complete medical certification is due, identify the information needed to make the certification complete and sufficient, and return a copy of the form to the employee.
- If the medical certification is still incomplete and insufficient, the department may choose to clarify/authenticate the medical certification. Contact Employee Relations for details.
- The department may request a second opinion. Contact Employee Relations for details.

Following the approval of FMLA leave:

- Track the use of FMLA leave on the FMLA Tracking Sheet
- If requested by the employee, provide the number of hours of FMLA leave used
- Process a leave of absence edoc if the employee will be in unpaid status for 30 days or more

The supervisor may request recertification of the need for FMLA leave, if appropriate. Recertification is requested in conjunction with an absence:

- Every 30 days if the minimum duration of the leave is 30 days or less
- Every six months if the minimum duration of the leave is six months or more
- Less than 30 days if:
  - The employee requests an extension of the leave
  - Circumstances in the previous certification have changed significantly
  - Information is received that casts doubt on the reason for the absence

If the FMLA leave is for the employee’s serious health condition, the employee must return the completed FMLA Form 3, Intent to Return and Fitness for Duty/Medical Release, signed by the health care provider before the employee can return to work.

If the employee will not be returning to work as indicated on Section 2 of FMLA Form 3, the university’s obligation under the FMLA is complete, and the employee is to be separated from employment.
## Step 9 – Deny the FMLA, if applicable

- If the employee does not meet eligibility requirements, did not provide medical certification, has already used 12 weeks of FMLA, or the leave request does not qualify for FMLA, check the appropriate box in the “Leave of absence denied” portion of FMLA Form 1 at the top of the second page, and return a copy of the form to the employee. If eligibility requirements are not met, be sure to complete the months or hours the employee has worked.

- A discretionary leave of absence may be granted. Follow university policy for handling this type of leave.
Requesting Family Medical Leave
Checklist for Staff and Hourly Employees

This information is a general summary of the steps to follow when requesting family medical leave (FMLA). At least a 30-day advance notice of the need for FMLA must be provided. If a 30-day notice is not possible, notice should be provided as soon as practicable; generally, the same day or next business day.

☐ **Step 1 – Determine Eligibility for FMLA**

Both of the following requirements must be met:

- You have worked for IU at least 12 months
  - Employment does not have to be continuous.
  - If a break in service exceeds seven years, the period of employment prior to the break is not counted.
- You have worked 1,250 hours in the 12 months immediately preceding the need for the leave
  - These are actual work hours not including time off with or without pay.

☐ **Step 2 – Determine Qualifying Reason for FMLA**

FMLA must be due to one of the following reasons:

- Birth of a child and to care for the newborn child
- Placement of a child through adoption or foster care
- To care for the employee’s
  - spouse/same-sex domestic partner
  - child/child of the same-sex domestic partner
  - parent
  who has a serious health condition
  **If leave is for a child, the child is ____ years old.**
- Employee’s serious health condition
- To care for the employee’s
  - spouse/same-sex domestic partner
  - child/child of the same-sex domestic partner
  - parent
  - next of kin
  who is a covered service member with a serious injury or illness incurred in the line of duty
- A qualifying exigency arising out of the employee’s
  - spouse/same-sex domestic partner
  - child/child of the same-sex domestic partner
  - parent
  who is a covered service member on active duty in support of a contingency operation
☐ Step 3 – Initiate a Request for FMLA

Complete Sections 1 and 2 of the Notice of Designation, Request, and Approval Form (FMLA Form #1). Within 5 business days of receipt of FMLA Form #1, your department is to notify you if eligibility and qualifying reason requirements are met, and you will be notified if your FMLA is 1) approved, 2) denied, or 3) if additional information is necessary before the leave can be approved. If eligibility requirements are not met, proceed to Step 8.

☐ Your leave will be approved if:
  • the leave request is for the birth or placement of a child, and you meet the eligibility requirements. Proceed to Step 6.
  • the leave request is for a serious health condition, you meet the eligibility requirements, and complete and sufficient medical certification is provided. Proceed to Step 6.
  • the leave request is for a qualifying exigency or military caregiver leave, you meet the eligibility requirements, and complete and appropriate certification is provided. Proceed to Step 6.

☐ Your leave will be denied:
  • if you do not meet eligibility requirements, did not provide medical certification, have already used 12 weeks of FMLA, or the leave request does not qualify for FMLA. Proceed to Step 9.

☐ Additional information will be requested:
  • if the leave is for a serious health condition, a qualifying exigency, or military caregiver leave and complete and sufficient certification is needed. Proceed to Step 4.

☐ Step 4 – Provide Medical Certification

If your FMLA request is for a serious health condition, you will be required to provide medical certification.

  • If the leave request is for your serious health condition, you will receive:
    ☐ A copy of FMLA Form 1 with the request for medical certification and the return due date
    ☐ FMLA Form 2E, Medical Certification for Employee with Section 2 completed
    ☐ A copy of your essential job functions
    ☐ FMLA Form 3, Intent to Return and Fitness for Duty/Medical Release

  • If the leave request is for your spouse, child or parent’s serious health condition, you will receive:
    ☐ A copy of FMLA Form 1 with the request for medical certification and the return due date
    ☐ FMLA Form 2F, Medical Certification for Family

  • If the leave request is for a qualifying exigency or military caregiver leave, you will receive:
    ☐ A copy of FMLA Form 1 with the request for certification and the return due date
    ☐ DOL Form WH-384, Certification of Qualifying Exigency for Military Family Leave or
    ☐ DOL Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
Once the appropriate completed certification form is returned, within five business days of receipt you will be notified that:

- Your FMLA has been approved.
- Additional information is needed on the certification form.
- Clarification/authentication of the certification will be required.
- A second opinion will be required.

Following the approval of FMLA leave:

- Follow your department’s call-in procedure when reporting absences due to FMLA and state the specific reason for the absence
- Consult with your supervisor and make a reasonable effort to schedule leave for planned medical treatment (appointments, etc.) so it does not disrupt the department’s operations
- You will be required to use paid-time-off accruals before any unpaid time can be taken
- If you will be in unpaid status for more than 30 calendar days, contact human resources to make arrangements for continuation of your healthcare benefits
- Keep track of FMLA leave taken on the FMLA Tracking Sheet, and if necessary request the number of FMLA hours used from your supervisor
- You may be required to provide periodic recertification supporting the need for continued FMLA leave

If the FMLA leave is for your serious health condition, FMLA Form 3, Intent to Return and Fitness for Duty/Medical Release, must be completed by your the health care provider before you return to work.

If you will not be returning to work as indicated on Section 2 of FMLA Form 3, notify your supervisor of your decision.

If you do not meet eligibility requirements, did not provide medical certification, have already used 12 weeks of FMLA, or the leave request does not qualify for FMLA, your FMLA request will be denied.

Consult university policy to determine if a discretionary leave of absence is an option available to you.
Dear Dr.,

Indiana University requires its employees to provide medical certification to support the need for FMLA due to a serious health condition affecting themselves or an immediate family member. Upon review of the original medical certification you completed for the above named employee on ______ (insert date of original medical certification) which indicates ______ (summarize anticipated absences as outlined in Part B: Amount of Leave Needed), the amount of time off the employee is taking is in excess of the amount you have determined.

Since January of this year ______ (employee name) has been absent ____ times for a total of ____ hours. The absences seem excessive and frequently occur as a pattern, in conjunction with days off and/or weekends (modify this sentence if no pattern exists). Please review the attached FMLA attendance tracking sheet that reflects the dates of FMLA use and the number of hours used for FMLA and advise us below if the number of days and dates are consistent with the employee’s serious health condition and the treatment regimen you have prescribed as part of his/her ongoing medical care.

______ The days/dates absent in 2010 are consistent with ______ (employee’s name) serious health condition and the course of treatment I have prescribed.

______ The days/dates absent in 2010 are NOT consistent with ____ (employee’s name) serious health condition and the course of treatment I have prescribed.

________________________________________  ____________________________
Signature of Health Care Provider  Date

At this time we are requesting recertification. For each serious health condition, please fully complete a separate medical certification form. We have included the essential functions of the employee’s position to assist you in completing the medical certification form. A self-addressed, stamped envelope is included to return this letter as well as the completed medical certification(s). Any charge for this documentation is the responsibility of the employee/patient. Thank you for your time and attention to this matter.

Sincerely,