

VIRGINIA UNION UNIVERSITY

Family and Medical Leave Act (FMLA) Procedures

The University offers Family and Medical Leave as required by the Family Medical Leave Act of 1993. Any employee who has been employed at the University for a total of 12 months and has worked at least 1,250 hours over the previous 12 months is eligible to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- because of a serious health condition that makes the employee unable to perform the functions of the employee's job; or
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

The University will offer an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member.

Definitions:

- Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.

- Continuing Treatment

Continuing treatment is treatment two or more times by or under the supervision of a health care provider,

- In-person visits
- The first visit must be within 7 days of the first day of incapacity
- Both visits must be within 30 days of the first day of incapacity
- One treatment by a health care provider with a continuing regimen of treatment
- In-person visit within 7 days of the first day of incapacity

Examples of Covered Leave:

- Any period of incapacity related to pregnancy or for prenatal care;
- Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider (at least 2 per year), and may involve occasional episodes of incapacity;
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or
- Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than 3 days if not treated.

Intermittent Leave Usage:

Leave due to a serious health condition of the employee, or his/her parent, spouse, son or daughter, may be taken on an intermittent basis when medically necessary. Employees who request intermittent leave are subject to the requirement of notice for “foreseeable” events in instances of “planned medical treatment.”

Employees who request intermittent leave may also be required to obtain certification and/or recertification of their condition, to communicate periodically with the appropriate University officials regarding his/her intention to return to work.

Certification for planned medical treatment will be deemed sufficient if it provides:

- the date on which the serious health condition began;
- the probable duration of the condition;
- the appropriate medical facts; and
- the dates any planned treatment is expected to occur.

The expected duration of the intermittent leave must be specified by the employee and health care provider. Once the expected duration expires, the University can require recertification of the medical condition.

In the case of intermittent leave for other than planned medical treatment, the certification must also provide:

- the probable duration of the treatment;
- the medical necessity of intermittent leave; and,
- the expected duration and schedule of the intermittent leave, to the extent known.

When an employee's leave is **unforeseen**, s/he must provide notice as soon as practical under the "facts and circumstances" of each particular case. If the employee fails to provide reasonable notice, the University can delay FMLA leave for that period.

Employee Notice:

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the University's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for the University reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the **first** time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-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 the FMLA leave.

An employee is expected to utilize accrued paid leave (sick or vacation leave) to cover some or all of the FMLA leave if the employee has sufficient accrued leave available. An employee may request an unpaid leave extension up to 6 months, in writing, and may be granted by the President upon the recommendation of the supervisor and/or Vice President. The first ten (10) days of any leave of absence will be charged as annual leave and paid accordingly; to the extent the employee has sufficient accrued annual leave.

Supervisor's Responsibilities:

When an employee requests FMLA leave or the supervisor acquires knowledge that leave may be for a FMLA purpose, the supervisor must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under FMLA. The Supervisor may obtain a sample notification letter from the Office of Human Resources or requests that the Human Resources Office prepare the notification to the employee when an employee requests leave for medical reasons and is expected to be out for more **than three days**. When the supervisor has enough information to determine that leave is being taken for a FMLA-qualifying reason, the supervisor must notify the employee that the leave is designated and will be counted as FMLA leave.

Notice Requirements by the University:

The University will provide eligibility notice to an employee **within 5 business days** of the date on which the employee requests leave or when the University acquires knowledge whether the leave will be designated as for FMLA leave or will not be treated as FMLA leave.

The notice will detail the specific expectations and obligations of the employee and will include whether substitution of paid leave is required, any additional requirements for paid leave, the consequences of failing to provide all requested information within the deadlines set and will provide at least **15 calendar days** for submission of the completed forms.

If the leave is requested due to a serious health condition of the employee, the notice will advise that the employee will be expected to present a fitness-for-duty certification before returning to work, that the certification must address fitness to perform the essential job functions and must include a list of the essential job functions.

Medical Certification:

The University requires that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. The University may require second or third medical opinions (at the University's expense) and periodic recertification of a serious health condition. The University may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition.

The University requires that each employee returning to work after a serious health condition to submit a certification that they are able to resume work. If reasonable concerns exist, the University may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

Certification for Employee's Own Serious Health Condition:

The health care provider must provide:

- Required health care provider contact information,
- Approximate date on which the condition commenced and probably duration
- Medical facts regarding the patient's health condition that are sufficient to support the need for leave (i.e., symptoms, diagnosis, hospitalization, doctor's visits, medications, referrals for evaluation or treatment).

The health care provider's certification must:

- determine whether **the employee** is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the "...ADA."
- provide information sufficient to establish that the employee cannot perform the essential functions of his or her job, the nature of any work restrictions and the likely duration of the restrictions.

If leave is requested for a **covered family member**, the health care provider must provide information sufficient to establish that the family member is in need of care and include an estimate of the frequency and duration of the care required.

Incomplete or Insufficient Medical Certification:

If an employee submits medical certification that is deemed incomplete or insufficient, the employee will be advised in writing what additional information is needed to make the form complete. The employee must resubmit the form within 7 calendar days to cure the stated deficiencies.

If it becomes necessary for the University to contact the health care provider for purposes of clarifying the certification (attempting to understand the health provider's handwriting or understanding the meaning of a response given by the provider), the employee must sign a release form giving the University permission to contact the health provider and discuss the certification. When clarifying, the University may not request information beyond that required by the form. Contact must be made with the health provider by a Human Resources professional, leave administrator or management official. The employee's direct supervisor may not contact the health care provider.

An employee's failure to provide a signed release allowing contact with the health care provider may result in loss of entitlement to FMLA leave.

Re-Certification for Employee's Own Serious Health:

The University may request re-certification of an employee's serious health conditions no more than every 30 days.

The University may request recertification every six months in connection with an absence in all cases, even for intermittent or reduced schedule leave extending beyond six months.

If the initial certification is for more than 30 days, the University may not request recertification before the minimum duration expires unless:

- the employee request an extension,
- circumstances change significantly, or
- the University receives information that casts doubts on the stated reason for leave or the continued validity of the certification.

If the University has reason to doubt the validity of a medical certification, it may require the employee to obtain a second opinion at the University's expense. The University may designate the health care provider, but the designated provider must not be employed on a regular basis by the University or regularly utilized by the University for providing second opinions.

Maintenance of Health Benefits:

All employee benefits with the exception of accruals of annual and sick leave are continued during the Family and Medical Leave absence. The employee is responsible for his/her benefit contributions which may include: the employee's health insurance contribution; health care and/or dependent care. flexible spending accounts; and the employee portion of any 403(b) retirement contributions, i.e., TIAA-CREF, Principal Financial, etc. In the event of an extension of a leave of absence, the employee will be responsible for the total cost of health insurance premiums after the initial 12 week period.