

**CHANCELLOR’S PROCEDURES FOR POLICY
611.01: LEAVES WITHOUT PAY**

I. Maternity Leave

1. The six (6) month maximum designation is intended to apply exclusively to unpaid maternity leave. Therefore, any paid leave taken by an employee for maternity purposes will not reduce the maximum amount of six (6) months of unpaid maternity leave which the employee may also take.

II. Family and Medical Leave Act (“FMLA”)

A. All provisions of the Family and Medical Leave Act will be followed as they relate to Leave occurrences for individuals meeting the eligibility requirements. Each system institution will comply with the FMLA. FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of employment benefits under the same terms and conditions as if the employee had not taken leave. Benefits of FMLA leave laws include, but are not limited, to the following:

1. Job Protection. An employee who takes FMLA leave is guaranteed the right to return to the same or similar position with equivalent pay, benefits, and other employment terms and conditions upon return.
2. Benefit Protection. Insurance coverage is maintained, and no accrued benefits can be lost by taking FMLA leave.
3. An employee on FMLA leave does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule to deal with a serious health condition.
4. The college or entity will not interfere with an employee’s FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

B. Eligibility. To be eligible for FMLA benefits, an employee must have been employed by the college or entity for a total of twelve (12) months from the date on which any FMLA leave is to begin and must have worked at least one thousand two hundred fifty (1,250) hours over the previous twelve (12) month period. These guidelines generally do not cover temporary employees. However, if a temporary employee is extended beyond one (1) year, the employee would be covered if the employee had worked at least one thousand two hundred fifty (1,250) hours during the previous twelve (12) month period.

C. Definitions. The college or entity will use the governing definitions provided under the FMLA, if amended from this list of definitions.

1. Parent. A biological or adoptive parent or an individual who stood *in loco parentis* (a person who is in the position or place of a parent) to an employee when the employee was a child.
2. Child. A son or daughter under eighteen (18) years of age or eighteen (18) years of age or older and incapable of self care because of mental or physical disability who is: a biological child; an adopted child; a foster child (one for whom the employee performs the duties of a parent as if it were the employee's child); a stepchild (a child of the employee's current spouse); a legal ward (a minor child placed by the court under the care of a guardian); a child of an employee standing *in loco parentis*.
3. Spouse. A husband or wife.
4. Serious Health Condition. An illness, injury, impairment, or physical or mental condition that involves either any period of incapacity or treatment connected with inpatient care (an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or continuing treatment by a health care provider which includes any period of incapacity (inability to work, attend school, or perform other regular daily activities) due to: (a) a health condition lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also includes treatment two or more times by or under the supervision of a health care provider; or one treatment by a health care provider with a continuing regimen or treatment; or (b) pregnancy or prenatal care; or (c) a chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity; or (d) a permanent or long-term condition for which treatment may not be effective; or (e) any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated.
5. Health Care Provider. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or podiatrists, dentists, clinical psychologists, optometrists, and chiropractors authorized to practice, and performing within the scope of their practice under state law; or nurse practitioners, nurse-midwives, and clinical social workers authorized to practice, and performing within the scope of their practice as defined under state law; or Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or any health care provider recognized by the employer or the employer's group health plan benefits manager.
6. Workweek. The number of hours an employee is generally scheduled to work each week.

D. Leave Entitlement.

1. An employer must grant an eligible employee up to a total of twelve (12) workweeks of unpaid leave during any twelve (12) month period for one or more of the following reasons:
 - (a.) For the birth and care of the newborn child of the employee, provided the leave is taken within twelve (12) months following birth;
 - (b.) For placement with the employee of a son or daughter for adoption or foster care, provided the leave is taken within twelve (12) months following placement;
 - (c.) To care for an immediate family member (spouse, child, or parent) with a serious health condition;
 - (d.) To take medical leave when the employee is unable to work because of a serious health condition.
 - (e.) To take leave for a “qualifying military exigency” arising out of the employee’s spouse, son, daughter, or parent being a military member who: is on covered active duty; is on call to covered active duty status; or has been notified of an impending call or order to covered active duty as defined in 29 USC § 2611. For more specific information on qualifying military exigency leave, see subsection (N).
 2. An employer must grant an eligible employee up to a total of twenty-six (26) workweeks of unpaid leave during any twelve (12) month period for the care of a covered servicemember with a serious illness or injury as defined in 29 USC § 2611. For more specific information on military caregiver leave, see subsection (O).
- E. Requirement to Use Accrued Leave. Employers shall require all employees to use accrued paid leave (vacation, sick leave, annual leave, personal leave, etc., but not compensatory time) concurrently with unpaid FMLA leave.
- F. Continuation of Health Benefits. The employer must maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. An employee on FMLA leave must make arrangements to pay his or her normal portion of the insurance premiums to maintain insurance coverage, as must the employer. An employer’s obligation to maintain health benefits under FMLA stops if and when an employee informs the employer of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted. The employer’s obligation also stops if the employee’s premium payment is more than thirty (30) days late and the employer has given the employee written notice at least fifteen (15) days in advance advising that coverage will cease if payment is not received.

- G. Notice and Certification. Employees seeking to use FMLA leave are required to provide notice thirty (30) days in advance of the need to take FMLA leave when the need is foreseeable and such notice is practicable. This subsection does not apply to military caregiver leave or exigency military leave. Employers may also require employees requesting FMLA leave to provide:
1. Certification of serious health condition. When requested, employees must provide a certification from their health care provider that they have a serious health condition within the time frame requested by the employer (which must allow at least fifteen (15) calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. See FMLA certification form at <https://www.dol.gov/whd/forms/WH-380-E.pdf>.
 2. Second or third medical opinions (at the expense of the employer) can be requested in accordance with FMLA.
 3. Fitness for duty certification. Employers may require all employees who are on leave because of their own serious health condition to provide the employer certification from their health care provider that the employee is fit to return to work. This certification must include that in the opinion of the healthcare provider, the employee is able to perform the essential functions of his or her job. Any employee failing to provide a fitness for duty certification after being notified that the certification is required shall no longer be entitled to reinstatement under the FMLA.
 - a. If an employer elects to require certain employees to provide a fitness for duty certification, the employer must require all employees provide the certification who are similarly situated (i.e., same occupation, same serious health condition) and request FMLA leave, without exception.
 - b. If an employer elects to require an employee's health care provider certify that the employee can perform the essential functions of his or her position, it must provide the employee with a list of the essential functions of his or her position as part of the FMLA leave designation notice, and the designation notice must address the employee's ability to perform those essential functions.
 4. Recertification. An employer may require any employee on FMLA leave to obtain recertification at the employee's expense from their health care provider. The following procedures apply to recertification:
 - a. 30 Day Rule. An employer may request recertification no more than every thirty (30) days and only in connection with an absence by the employee.
 - b. If the medical certification indicates that the minimum duration of an

employee's condition is thirty (30) days, an employer must wait until that minimum duration expires before requesting recertification, except that in all cases, an employer may request recertification every six (6) months in connection with an absence by the employee. For example, if medical certification states that an employee will be unable to work, either continuously or intermittently for forty (40) days, the employer must wait forty (40) days before requesting recertification.

- c. An employer may request recertification in less than thirty (30) days if:
 - i. The employee requests an extension of leave;
 - ii. Circumstances described by the previous certification have changed significantly; or
 - iii. The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.
- d. Employers cannot request second or third opinions for recertification.

The employee must provide the requested recertification to the employer within the timeframe requested (this timeframe must allow for at least fifteen (15) days to recertify), unless it is not practicable under the circumstances to do so despite the employee's good faith efforts.

- 5. Periodic reports. Employers may require periodic reports during FMLA leave regarding the employee's status and intent to return to work.
- H. When intermittent leave is needed to care for an immediate family member or for the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to disrupt unduly the operation of the employer.

- I. Each employer must post in conspicuous places (where notices to employees and applicants for employment are customarily posted) a notice setting forth excerpts from and summaries of the pertinent provisions of FMLA and information on filing a charge of a violation of FMLA. Copies of the notice may be downloaded from: <https://www.dol.gov>. The poster may be posted electronically.
- J. Each employer must provide a general notice to employees of their rights and responsibilities under FMLA, containing the same information that is in the poster in either its employee handbook or other written material. Each employer may meet this general notice requirement by either duplicating the general notice language found on the FMLA Poster or by using another format so long as the information provided includes, at a minimum, all the information contained in the FMLA Poster. The general notice may be distributed electronically provided all other requirements are met.
- K. Each employer must provide a written notice designating employee leave as FMLA leave and detailing specific expectations and obligations of an employee who is exercising FMLA rights. The notice should be provided to the employee within five business days of the initial request for leave or when the employer acquires knowledge that an employee leave may be for an FMLA-qualifying reason; and should include the following: (a) that the leave will be counted against the employee's annual FMLA leave entitlement; (b) any requirements for the employee to furnish medical certification and the consequences of failing to do so; (c) that the employer will require the use of all accrued paid leave, except compensatory time, for FMLA leave prior to the use of unpaid FMLA leave; (d) any requirement for the employee to make co-premium payments for maintaining group health insurance and the arrangement for making such payments; (e) rights to job restoration upon return from leave; and (f) employee's potential liability for reimbursement of health insurance premiums paid by the employer during the leave if the employee fails to return to work after taking FMLA leave. Copies of the form designating leave as FMLA leave may be downloaded from the web site of the U.S. Department of Labor at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>. Each employer must be responsive to answer questions from employees concerning their FMLA leave.
- L. If an employer has knowledge that leave is for an FMLA reason at the time the employee either gives notice of the need for leave or at the time the leave commences, and the employer does not notify the employee as required at that time that the leave is being designated as FMLA leave, the employer may not then designate the leave as FMLA leave retroactively. The employer may designate such leave only prospectively, as of the date of notification to the employee of the designation, that the time is being charged against the employee's FMLA leave entitlement. The employer may not designate leave that has already been taken as FMLA leave after the employee returns to work, with two exceptions:
 - 1. If an employee is out of work for an FMLA-qualifying reason, and the employer does not learn of the reason for the leave until the employee returns to work, the employer may designate the leave as FMLA leave promptly (within two (2)

working days) upon the employee's return to work (including a provisional designation based on information from the employee, subject to confirmation upon the employer's receipt of medical certification if the employer requires it and has previously notified the employee of the requirement); or

2. If the employer has provisionally designated the leave under FMLA and is awaiting receipt from the employee of medical certification or other "reasonable documentation" to confirm that the leave was FMLA-qualifying, or the employer and employee are in the process of obtaining second or third medical opinions.

If the employer does not designate leave as FMLA leave in a timely manner as required, the employer may not later designate the absence as FMLA leave absent the circumstances specified above. Similarly, the employee is not entitled to the protections of the FMLA if the employee gives notice of the reason for the leave later than two working days after returning to work. If an absence which begins as other than FMLA leave later develops into an FMLA-qualifying absence, the entire portion of the leave period that qualifies under FMLA may be counted as FMLA leave.

- M. Each employer shall designate any FMLA qualifying leave as FMLA leave, regardless of the employee's preference for using some other form of leave, such as sick leave, vacation, annual leave, etc. Designation, however, must be made based solely on information provided by the employee or the employee's representative.
- N. Special information related to Qualifying Exigency Leave. The employer will comply with the FMLA as it relates to Qualifying Exigency Leave. Employees must use [DOL Form WH-384: Certification of Qualifying Exigency For Military Family Leave](#). Qualifying Exigency Leave is discussed in detail in DOL's Fact Sheet #28M(c): Qualifying Exigency Leave under the Family and Medical Leave Act.

An employee must provide notice of the need for qualifying exigency leave as soon as practicable. The employer shall require that an employee's request for qualifying exigency leave be supported by appropriate certification, such as the military member's active duty orders, within the time frame requested by the employer (which must allow at least fifteen (15) calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. The employee is only required to provide this information to the employer once for a military member on a specific deployment. The employer may also require the employee to submit certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, such as a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation with the dates of the covered military member's active duty service; the date on which the qualifying exigency commenced or will commence and the end date; where leave will be needed on an intermittent basis, the frequency and duration of the qualifying exigency; and appropriate contact information if the exigency involves meeting with a third-party.

The employer may not require second and third opinions or recertification for qualifying exigency leave. When the leave involves meeting with a third party, an employer may contact the third party to confirm that the meeting is taking place and the nature of the meeting, but the employer may not request additional information.

An employer also may contact the Department of Defense to verify a military member's covered active duty status.

- O. Special Information related to Military Caregiver Leave. The employer will comply with the FMLA as it relates to Military Caregiver Leave. Employees must use [DOL Form WH-385: Certification for Serious Injury or Illness of a Current Servicemember--for Military Family Leave](#). Military Caregiver Leave is discussed in detail in [DOL's Fact Sheet #28M\(a\): Military Caregiver Leave for a Current Servicemember under the Family and Medical Leave Act](#).

The "single twelve (12) month period" for FMLA purposes begins on the first day the eligible employee takes military caregiver leave and ends twelve (12) months after that date, regardless of the method used by the employer to determine the employee's twelve (12) workweeks of leave entitlement for other FMLA-qualifying reasons.

An employee must provide thirty (30) days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. When thirty (30) days advance notice is not possible, the employee must provide notice as soon as practicable taking into account all of the facts and circumstances. When the need for leave is unforeseeable, an employee must comply with an employer's normal notice or call-in procedures, absent unusual circumstances. The employee must provide sufficient information to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.

When leave is taken to care for a covered servicemember with a serious injury or illness, an employer shall require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember within the time frame requested by the institution (which must allow at least fifteen (15) calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

An authorized health care provider includes Department of Defense health care providers; Veterans Affairs health care providers; or a private health care provider if the health care provider is either a DOD TRICARE network authorized private health care provider or a DOD non-network TRICARE authorized private health care provider. The employer may authenticate and clarify medical certifications submitted to support a request for military caregiver leave using the procedures applicable to FMLA leave taken to care for a family member with a serious health condition.

Given the seriousness of the injuries or illnesses incurred by a servicemember whose family receives an "invitational travel order" (ITO) or "invitational travel authorization" (ITA), and the immediate need for the family member at the servicemember's bedside, an employer is required to accept the submission of an ITO

or ITA, in lieu of the DOL Form WH-385, as sufficient certification of a request for military caregiver leave during the time period specified in the ITO or ITA. The regulations also permit an eligible employee who is a spouse, parent, son, daughter or next of kin of a covered servicemember to submit an ITO or ITA issued to another family member as sufficient certification for the duration of time specified in the ITO or ITA, even if the employee seeking leave is not the named recipient on the ITO or ITA. If the covered servicemember's need for care extends beyond the expiration date specified in the ITO or ITA, the regulations permit an employer to require an employee to provide certification for the remainder of the employee's leave period.

The employer is not permitted to require second or third opinions on military caregiver leave, unless certification is provided by a non-military-affiliated healthcare provider. The employer is also not permitted to require recertification for military caregiver leave.

For purposes of confirmation of family relationship, the employer shall require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship, such as birth certificate, court document, affidavit, etc.

For military caregiver leave that also qualifies as leave taken to care for a family member with a serious health condition, FMLA requires that an employer must designate the leave as military caregiver leave first. FMLA prohibits an employer from counting leave that qualifies as both military caregiver leave and leave to care for a family member with a serious health condition against both an employee's entitlement to twenty-six (26) workweeks of military caregiver leave and twelve (12) workweeks of leave for other FMLA-qualifying reasons.

An eligible employee is limited to a combined total of twenty-six (26) workweeks of leave for any FMLA qualifying reasons during the single twelve (12) month period. Up to twelve (12) of the twenty-six (26) weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses ten (10) weeks of FMLA leave for his or her own serious health condition during the single twelve (12) month period, the employee has up to sixteen (16) weeks of FMLA leave left for military caregiver leave.

- P. To the extent this policy does not address a particular FMLA issue, the employer is required to comply with the FMLA.