

## **Family and Medical Leave Act Rights & Responsibilities**

Oakland University is covered by the Family and Medical Leave Act of 1993 (FMLA). Employees are eligible for the leave if they have been employed with Oakland University for at least twelve (12) months and have worked at least 1,250 hours during the twelve (12) month period before the earlier of the date the employee requests or the date the leave commences. Additionally, to be eligible, employees must work at a worksite with fifty (50) or more employees within a seventy-five (75) mile radius of the worksite.

The FMLA requires the University to provide eligible employees with up to twelve (12) work weeks of unpaid leave during a twelve (12) month period for any one (1) or more of the following reasons:

1. For birth of a child, and to care for the newborn child;
2. For placement with the employee of a child for adoption or foster care;
3. To care for the employee's spouse, child or parent (biological or adoptive, not in-law) with a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job.
5. Their spouse, child, or parent is called up for or is on active duty in the Armed Forces and employees' circumstances justify their need for leave.

For the purposes of FMLA Leave, the University has determined that the rolling twelve (12) months shall constitute the twelve (12) month leave period. Leave under 1 and 2, above, must be taken in one continuous period lasting up to 12 weeks, and must be taken before the end of the twelve (12) month period commencing on the date of birth or placement. Leave under 3 or 4, above, may be taken intermittently or on a reduced time basis (e.g., by working fewer days in a week or fewer hours in a day) but only if such a schedule is medically necessary.

Service members family leave. Eligible employees can take up to 26 weeks of FMLA leave in a single 12-month period because their spouse, child, parent, or next of kin (nearest blood relative) is seriously ill or injured as a result of serving on active duty in the Armed Forces.

For purposes of leave under 3 or 4, above, illnesses, injuries, impairments, or physical or mental conditions which fall under one of the following categories qualify as "serious health conditions" under the FMLA:

- Conditions requiring inpatient care, regardless of the length of the incapacity, and any subsequent treatment associated with the inpatient care.
- A condition which causes incapacity of three or more days (or any subsequent treatment or incapacity relating to the same condition), which involves treatment two or more times by or under the direction of a health care provider.

- A condition which causes incapacity of three or more days (or any subsequent treatment or incapacity relating to the same condition), which involves treatment on at least one occasion by a health care provider and results in a regimen of treatment under the supervision of the health care provider. Note: the “regimen of treatment” includes prescribing medication.
- A condition which causes any period of incapacity due to pregnancy or prenatal care.
- A condition which causes any period of incapacity and which (a) requires periodic visits for treatment by or under the supervision of a health care provider, (b) continues over an extended period of time, and (c) may cause episodic rather than a continuing period of incapacity. These conditions are called “chronic health conditions,” and can include conditions such as diabetes, asthma, and epilepsy.
- A condition causing a long-term or permanent incapacity and for which treatment may not be effective, if the employee is under the continuing supervision of (but not necessarily receiving active treatment by) a health care provider. Conditions which might fall under this category include Alzheimer’s, a severe stroke, or the terminal stages of a disease.
- A condition which causes any period of incapacity to receive multiple treatments or recovery from those treatments for restorative surgery after an accident or other injury, or for a condition which would likely result in an incapacity of three or more days if not treated. Conditions which might fall under this category include cancer (chemotherapy, radiation), and kidney disease (dialysis).

Any determination whether a situation involves entitlement to FMLA leave will be ultimately determined and governed by reference to the Act, itself, together with applicable regulations and interpretive decisions.

If a husband and wife work for Oakland University, the two are limited to a total of twelve (12) workweeks if the leave is for the birth, adoption, or foster care of a child, or to care for a sick parent. However, each faculty member may use up to twelve (12) workweeks of unpaid leave granted by Oakland during any twelve (12) month period to care for his/her child or spouse who is suffering from a serious health condition.

### **Leave Integration**

FMLA Leave will run concurrently with other types of leave so long as the reason for such leave also constitutes an FMLA-qualifying reason.

### **Return to Work**

Upon return from a FMLA Leave, an employee will be reinstated to the same or equivalent position with equivalent pay and benefits, but has no greater right to such reinstatement than the employee would have enjoyed had the employee been actively employed rather than on FMLA Leave.

To prevent serious economic injury to the University, the University may deny reinstatement to an exempt employee who is among the highest paid 10% of all employees. The University must notify the employee of its intent to deny reinstatement either before or during the leave and must offer the employee a reasonable opportunity to return to work from FMLA Leave after giving this notice, and make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

### **Intermittent or Reduced Schedule Leave**

If an employee requests intermittent leave or a reduced leave schedule for a serious health condition reason that is foreseeable based on planned medical treatment, the University may require the employee to transfer temporarily to an available alternative position that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular position.

### **Group Health Care Benefit**

Group health care benefits will continue during the FMLA Leave, on the same basis as if the employee were actively at work, including provisions relating to payment of contributions, deductibles and co-pays by the employee, and further including any changes in such benefits or terms which occur during the FMLA Leave. An exempt employee who is among the highest paid 10%, and who has received notice of the University's intent to deny reinstatement, is nonetheless entitled to health care continuation for the full twelve (12) weeks. Group health care benefits will not continue for an employee on a FMLA Leave if the employee's employment would have terminated if the employee had not taken a FMLA Leave (except as may be required under the provisions of COBRA). The University shall have the right to recover the premiums paid for maintaining coverage for the employee under such group health care plans during the period of the FMLA Leave if the employee fails to return to work for reasons other than the continuation, recovery, or onset of the serious health condition which entitled the employee to the FMLA Leave, or due to other circumstances beyond the employee's control.

### **Employee Notice Requirements**

When the need for a FMLA Leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of an employee or family member, the employee must provide the University with thirty (30) days notice before the leave is to begin or, if thirty (30) days notice is not practical, notice must be given as soon as practical, taking into account all relevant facts and circumstances. A FMLA Leave Request Form is available for this purpose by contacting Academic Human Resources. The notice must include information as to the commencement date of the leave, its anticipated duration, and the purpose of the leave. If the requested leave is for planned medical treatment for a serious health condition, the employee must consult with the University and make a reasonable effort to schedule

the treatment leave so as not to unduly disrupt University operations, subject to the approval of the health care provider. Similar efforts must be made where the employee requests intermittent or reduced time FMLA Leave.

When the need for or timing of a FMLA Leave is not foreseeable, the employee should notify the University of the need for the leave as soon as practical under the facts and circumstances of the situation, ordinarily within one (1) or two (2) days of learning of the need for the leave. Failure to provide the required notice may result in a delay in the taking of the FMLA Leave until notice requirements have been met.

An employee on an approved FMLA Leave is also required to report to the University periodically [at least every thirty (30) days] on the employee's status and intent to return to work, as well as of any changed circumstances affecting the amount of FMLA Leave originally anticipated.

### **Medical Certification**

The University requires that medical certification be provided to support any FMLA Leave request involving a serious health condition of the employee, his/her spouse, child or parent. The certification must be provided by the health care provider of the employee or affected family member. The medical certification should be provided prior to the commencement of the leave when the leave is foreseeable and at least thirty (30) days notice has been provided, or within fifteen (15) days of the University's request in other circumstances. Required medical certification information includes a description as to how the serious health condition meets FMLA criteria, the commencement and probable duration of the same and any resultant incapacity, whether an intermittent or reduced time leave schedule is medically necessary and its probable duration, the anticipated treatment by the health care provider (or other health care providers) and, if a serious health condition of the employee is involved, the employee's ability to perform work of any kind or one or more of the essential functions of the employee's position. Forms for providing required medical certification information are available by contacting Academic Human Resources.

In addition, if the requested leave is to care for a spouse, child or parent who has a serious health condition, the employee must provide medical certification from the family member's health care provider describing the care or assistance (medical, personal, safety, transportation or other) that the employee will be providing, including the time period or schedule and duration. Medical certifications must be updated every thirty (30) days [unless the initial certification indicated the minimum duration of the period of incapacity was greater than thirty (30) days] and in the event of significant changed circumstances or where questions arise as to the reasons for the employee's absence. Such medical re-certifications are required to be provided within fifteen (15) days of the University's request, absent impracticability of the same despite the employee's good faith and diligent efforts.

The University may require, at its expense, second and third medical opinions from different health care providers as permitted under and subject to the conditions of the FMLA.

The University also requires that the employee provide a fitness for duty medical certification from the employee's health care provider(s) prior to return to work from a FMLA Leave involving a serious health condition of the employee where the employee has been off of work for five (5) or more days. The University may also require a fitness for duty certification in other circumstances where warranted. Return to work will be delayed until the same is provided.

### **Conflicts**

The foregoing provisions are intended to comply with the Family and Medical Leave Act of 1993, and any terms used herein will be as defined in the Act. To the extent that any of the foregoing provisions afford fewer benefits than the Act, or the event of any other conflict, the provisions of the Act shall control.