

I. Purpose

The Family & Medical Leave Act (FMLA) was adopted by Congress in 1993 to balance the demands of the workplace with the needs of employees and their families. The FMLA provides for twelve (12) work weeks of unpaid leave in any 12-month period for an eligible employee to use for the birth or adoption of a child, the employee's own serious health condition, or the serious health condition of a family member as described herein. The Federal government expanded the eligible events under the Family and Medical Leave Act to include two provisions applicable to military families. For information about these two provisions, refer to the policy on FMLA Military Caregiver/Qualifying Exigency Leave.

UNC General Administration (UNC-GA) has enacted a policy to provide a mechanism for employees to access, and UNC-GA to administer, the benefits made available through the FMLA (FMLA leave). Under this policy, employees may use paid leave, leave without pay, or donated voluntary shared leave (for approved recipients only) for absences from work due to childbirth, adoption or foster care placement, or a serious health condition of an employee or an employee's spouse, child or parent.

An employee's job and benefits are protected while an employee takes leave under this policy, whether taken as vacation leave, sick leave, voluntary shared leave, leave without pay, or any combination. It is the responsibility of UNC-GA to designate leave (either paid or unpaid) as FMLA leave based on information provided by the employee. UNC-GA will also initiate FMLA leave if an employee has been absent due to an eligible FMLA-qualifying reason for a period of 10 or more workdays.

Employees should refer also to the Family Illness Leave, Voluntary Shared Leave, and Leave without Pay policies.

II. Eligibility

An employee is eligible if:

1. The employee is in a SHRA career status, probationary, or time-limited position or an EHRA permanent or time-limited position and the appointment is half-time or more, AND
2. The employee has at least 12 months of service with the State (may be a combination of temporary and permanent status service), AND
3. The employee has been in pay status at least 1040 hours (half-time) during the previous 12 months.

Special Circumstances:

1. Temporary employees generally are not eligible for FMLA leave. However, if a temporary employee has 12 months of cumulative service and has been employed for at least 1250 hours during the previous 12-month period, the employee is eligible to take leave (without pay) under this policy.

2. A request for up to 12 weeks of leave without pay for a permanent employee who does not meet the eligibility requirements for FMLA Leave must be approved by department management if the purpose of the absence is for the birth or adoption of a child or to be at home with the child within 12 months of the birth or adoption. However, the continued health care contribution benefit as described in this policy would not be available for this situation.

Eligible Qualifying Conditions:

When an employee is on paid or unpaid leave but has not given notice of the need for FMLA leave, the manager will alert the Benefits Office after a period of 10 work days. The FMLA/Benefits Consultant will request that the employee provide sufficient information to establish if the leave is for an FMLA-qualifying reason. This requirement does not preclude the FMLA/Benefits Consultant from requesting the information sooner.

An eligible employee can use FMLA Leave for any of the following reasons:

1. The birth of a child and to care for the child following birth, so long as the leave is taken within 12 months of the birth of the child.
2. To care for a child placed with an employee for adoption or foster care, so long as the leave is taken within 12 months of the placement.
3. To care for an employee's child, spouse or parent, where that child, spouse or parent has a serious health condition.
4. Because an employee has a serious health condition that makes the employee unable to perform the essential functions of their position.

Definitions:

Spouse: A husband or wife as recognized by the State of North Carolina.

Parent: A biological, adoptive, step or foster parent or an individual who is in the position or place of a parent.

Child: A son or daughter who is under 18 years old (or who is 18 years old or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act) and who is:

1. a biological child; or
2. an adopted child; or
3. a foster child (a child for whom an employee performs the duties of a parent); or
4. a step-child (a child of an employee's spouse); or
5. a legal ward (a minor child placed by the court under the care of an employee as guardian); or
6. a child for whom the employee is in the position or place of a parent.

Serious Health Condition:

An illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential medical care facility, or that involves continuing treatment by a health care provider. If inpatient care is not required, absence from work (or school, in the case of a child), or incapacity from normal activities is part of the definition of “serious health condition.”

The period of actual physical disability associated with childbirth is considered a serious health condition and qualifies for Family & Medical Leave, whether as paid or unpaid leave.

Also included in the definition of “serious health condition” are chronic conditions that require periodic treatments or conditions that may cause episodes of symptoms preventing the employee from reporting for work. Examples of such conditions may include, but are not limited to, most cancers, back conditions requiring extensive therapy or surgery, severe arthritis, severe nervous disorders, Alzheimer’s disease, and kidney disease.

III. Benefits Provided

UNC-GA will maintain its contribution to an employee’s health insurance coverage under the State Health Plan for the duration of the employee’s FMLA Leave at the level and under the conditions that coverage would have been provided had an employee not taken leave. Coverage is maintained even if the employee uses leave without pay for some or all of the leave period. However, the employee continues to be responsible for providing all employee contributions for self or dependent coverage under the State Health Plan and for any other benefits that are continued during FMLA Leave.

An employee will be reinstated to the same position held when the leave began, or one of similar band, pay, benefits and other conditions of employment. All benefits (e.g., leave earnings, retirement service credit) will continue to accrue during any period of paid leave. However, no benefits will accrue during any period of leave without pay.

IV. Length of Leave

An eligible employee may apply for up to 12 work weeks of FMLA leave under this policy in any 12-month period. (The 12-month period is computed by counting back 12 months from the date the leave begins.) The 12 work weeks of leave do not need to be consecutive. A work week consists of the number of hours an employee is regularly scheduled to work each week. A reduced or intermittent work schedule during the period of FMLA leave may result in an employee receiving FMLA for more than 12 calendar weeks but for the equivalent time. However, it is important to note that an hour of absence that qualifies for coverage under FMLA reduces the employee’s available FMLA time by one hour.

After a request for FMLA leave is approved, periods covered by paid leave, leave without pay (including leave without pay while drawing short-term disability benefits), and voluntary shared leave will be counted toward the 12 work weeks of leave to which an employee is entitled under this policy.

NOTE: FMLA leave due to birth, adoption, or foster care placement qualifies for the full 12 work weeks of FMLA coverage, regardless of any period of physical disability. FMLA leave due to a serious health condition is limited to the timeframe indicated by the health care provider on the Medical Certification Form. Therefore, some serious health conditions may not require or be eligible for a FMLA leave of 12 weeks.

An employee who needs to be absent from work beyond the 12 week work period covered by the FMLA (or for an employee who is not covered by this policy), and does not have paid leave available may request leave without pay. Leave without pay is administered under the Leave without Pay Policy.

An employee on a leave without pay not administered under the FMLA Policy who participates in the State Health Plan is required to pay the full premium (including UNC-GA's contribution) in order to continue health insurance coverage during the period of leave without pay. An employee's job and benefits are not protected while an employee takes leave without pay not covered by FMLA (refer to the Family Illness Leave policy for additional options.)

V. Leave Options

An employee has several options for taking leave under this policy, including vacation leave, sick leave, bonus leave, other accumulated time off, approved donations of voluntary shared leave, and leave without pay. In some cases, the situation will limit the options available. Please note the following two issues when planning for paid and unpaid leave:

Compensatory Time Off ("Comp Time"): If an employee is scheduled for a period of FMLA leave, all compensatory time off owed must either be taken or paid out prior to coding other paid leave for the absence.

Voluntary Shared Leave: If approved, shared leave is available only for serious health conditions lasting 20 consecutive work days or more. Shared leave may be used by both parents and applied to the period of physical disability of the mother for a birth. However, shared leave cannot be used for the "bonding" period associated with the birth, nor can it be used for leave associated with adoption or foster care placement.

Leave-Eligible Events:

Birth of a Child: For the birth of a child, an employee may choose to exhaust all or a portion of available vacation leave, bonus leave, comp time, voluntary shared leave, and/or sick leave, or go on leave without pay. These options are available to both parents. However, sick leave and/or donated voluntary shared leave may be used by the parent(s) only during the period of the mother's physical disability prior to and following the birth of a child. An employee shall, if at all possible, give their supervisor at least 30-days' advance notice of the need for leave, subject to the actual date of birth. If 30-days' notice is not possible, an employee should give written notice of the need for leave as soon as possible.

Adoption: For the adoption of a child, an employee may choose to exhaust all or a portion of available vacation leave, bonus leave, comp time, and/or may choose to exhaust up to 30 days of sick leave, or go on leave without pay. Voluntary shared leave donations are not allowed for adoptions. An employee shall, if at all possible, give their supervisor at least 30-days' advance notice of the need for leave, subject to the actual date of adoption. If 30-days' notice is not possible, an employee should give written notice of the need for leave as soon as possible.

Foster Care of a Child: For the foster care of a child, an employee may choose to exhaust all or a portion of available vacation leave, bonus leave, and/or comp time, or go on leave without pay. Use of sick leave and/or shared leave donations are not allowed for foster care placements. An employee shall, if at all possible, give their supervisor at least 30-days' advance notice of the need for leave, subject to the actual date of adoption. If 30-days' notice is not possible, an employee should give written notice of the need for leave as soon as possible.

Serious Health Condition of an Employee's Child, Spouse or Parent (Other than Birth): For the serious health condition of an eligible employee's child, spouse or parent, an employee may choose to exhaust all or a portion of available sick leave, vacation leave, comp time, and/or bonus leave, or go on leave without pay. For planned medical treatment necessitated by the child's, spouse's, or parent's serious health condition, the employee should make a reasonable effort to schedule treatment to minimize the disruption to the department's operational needs. If practicable, an employee should give at least 30 days advance notice of the need for leave.

Serious Health Condition of an Employee: For the serious health condition of an eligible employee, the employee must exhaust all comp time and/or sick leave before going on leave without pay. The employee may choose to exhaust available vacation/bonus leave, or any portion of it, before going on leave without pay. If an employee's absence extends beyond the required 60-day waiting period for short-term disability and the employee is eligible for and has been approved for the Disability Income Plan of North Carolina, then the employee may choose to exhaust the balance of their available leave or begin drawing short-term disability benefits. For planned medical treatment necessitated by the employee's serious health condition, the employee should make a reasonable effort when scheduling treatment to minimize disruption to the department's operational needs. If practicable, employees should give at least 30 days advance notice of the need for leave.

NOTE: When an employee is out due to illness or other apparent qualifying condition but has not given notice of the need for FMLA, the supervisor shall, after a period of 10 workdays, contact the FMLA/Benefits Consultant, who can request sufficient information from the employee to determine if the leave qualifies under FMLA. This requirement does not preclude the FMLA/Benefits Consultant, after being notified by the supervisor, from requesting the information sooner or at any time when extended leave is requested.

Reduced or Intermittent Work Schedule:

The employee's supervisor, in consultation with FMLA/Benefits Consultant, must approve an employee's request for a reduced or intermittent work schedule if the serious health condition for which the request was made is a serious health condition as defined in the Family & Medical Leave policy.

Reduced Work Schedule: A work schedule of fewer hours than an employee is regularly scheduled to work. For example: A full-time employee requests a schedule of 30 hours a week, rather than 40 hours a week, for a certain period of time.

Intermittent Work Schedule: A work schedule in which an employee is not at work every scheduled work day, but works on an irregular basis, usually to accommodate some form of regularly scheduled medical treatment or for a chronic serious health condition.

If a reduced or intermittent work schedule is foreseeable based on planned medical treatment, the supervisor may temporarily reassign an employee to a vacant position with the same pay and benefits that better accommodates the reduced or intermittent work schedule. The employee is entitled to be reinstated to their former position, or equivalent, once the reduced or intermittent work schedule and/or temporary reassignment ends.

If an employee works a temporarily-reduced or intermittent work schedule and does not use paid leave to bring the number of paid hours up to the normal schedule, the department must reduce the employee's pay each week for hours not covered by leave. The Comments section must indicate that this reduction is being processed under the Family & Medical Leave policy, and if applicable, that the employee is to remain covered by the State Health Plan.

The FMLA/Benefits Consultant must inform the employee that a reduced or intermittent work schedule in which paid leave does not bring the employee up to his/her regular schedule of hours worked will result in the employee earning leave at a reduced rate.

VI. Notice of Eligibility of FMLA Leave

When an employee requests FMLA leave, or when UNC-GA knows that an employee's leave may be for an FMLA-qualifying reason, the employee must be notified of the employee's eligibility to take FMLA leave within five business days of receipt by the FMLA/Benefits Consultant, absent extenuating circumstances. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave, and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible. Notification of eligibility may be oral or in writing.

Notifications referred to in this section are generated by the FMLA/Benefits Consultant and sent via email and mailed to the employee's home address.

If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed, then UNC-GA must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

The FMLA/Benefits Consultant shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

1. That the leave may be designated and counted against the employee's annual FMLA leave entitlement;
2. Requirements for the employee to furnish certifications;
3. The employee's right to substitute paid leave;
4. Requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments;
5. The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and
6. The employee's potential liability for payment of health insurance premiums paid by the agency during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

VII. Designation of FMLA Leave

It is the responsibility of the FMLA/Benefits Consultant to:

1. Determine that the employee is eligible for FMLA leave;
2. Determine that leave requested is for a FMLA qualifying reason, and
3. Notify the supervisor, who will work with the Payroll & Leave Coordinator to designate leave, whether paid or unpaid, as FMLA leave even when an employee would rather not use any of the FMLA entitlement.

Notifications referred to in this section are generated by the FMLA/Benefits Consultant and sent via email and mailed to the employee's home address.

The FMLA/Benefits Consultant must give notice of the designation to the employee within five business days absent extenuating circumstances. The notice may be oral or in writing, but must be confirmed in writing no later than the following payday.

If the FMLA/Benefits Consultant determines that the leave will not be designated as FMLA-qualifying (e.g., the employee is not eligible, the leave is not for a reason covered by FMLA, or the FMLA leave entitlement has been exhausted), then UNC-GA must notify the employee of that determination.

Designating FMLA leave is based on the certified reason(s) for the leave, not the employee's election or reluctance to use FMLA leave or use all, some, or none of their accrued leave. UNC-GA's designation must be based on information obtained from the employee or an employee's representative (e.g., spouse, parent, physician, etc.).

If UNC-GA requires the employee to present a fitness-for-duty certification to be restored to employment, then the FMLA/Benefits Consultant must provide notice of such requirement with the designation notice.

The FMLA/Benefits Consultant must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. UNC-GA may retroactively designate leave as FMLA leave with appropriate notice to the employee provided that UNC-GA's failure to timely designate leave does not cause harm or injury to the employee. In all cases where past leave would qualify for FMLA protections, UNC-GA has the discretion to designate leave as FMLA leave retroactively.

When an employee is out due to illness or other apparent qualifying condition but has not given notice of the need for FMLA, the supervisor shall, after a period of 10 workdays, contact the FMLA/Benefits Consultant, who can request sufficient information from the employee to determine if the leave qualifies under FMLA. This requirement does not preclude the FMLA/Benefits Consultant, after being notified by the supervisor, from requesting the information sooner or at any time when extended leave is requested.

If an eligible employee's absence that begins as something other than FMLA leave but later develops into an FMLA-qualifying absence, then the entire portion of the leave period that qualifies under FMLA will be counted as FMLA leave.

VIII. Procedure

An eligible employee and their supervisor should review the Family & Medical Leave, Family Illness Leave, Voluntary Shared Leave, and Leave without Pay policies to understand the applicability of these programs to the employee's specific situation.

In order to apply for FMLA leave:

1. The employee must complete a "Medical Leave Request Form." This form must be reviewed and signed by the supervisor (and second-level supervisor if appropriate).
2. The "Medical Certification Form" does not require supervisor review or signature and should come directly to the FMLA/Benefits Consultant once completed.

Send both forms to the FMLA/Benefits Consultant, UNC General Administration Human Resources, 140 Friday Center Drive, Chapel Hill, NC 27517.

The FMLA/Benefits Consultant will review the documents for completeness and adherence to policy. If voluntary shared leave donations have been requested, then the FMLA/Benefits Consultant will work with the UNC-GA Payroll & Leave Coordinator to notify the employee and supervisor of approved donations as they occur.

The supervisor shall monitor the day-to-day leave tracking for the employee and promptly notify the FMLA/Benefits Consultant and the UNC-GA Payroll & Leave Coordinator once the employee has returned to work. The employee will have to code all FMLA leave (paid or unpaid) appropriately in TIM or work closely with the Payroll & Leave Coordinator to have the leave (paid or unpaid) coded as FMLA.

FMLA leave for adoption or foster care placement requested under this policy must be supported by reasonable proof (e.g., documentation from the licensed adoption agency or relevant court documents).

When a reduced or intermittent work schedule is requested due to planned medical treatment or due to a chronic serious health condition, the tentative date(s) on which treatment is to be given, the approximate duration of treatment and its possible effects on the employee, and/or the circumstances under which the chronic condition will necessitate leave must be included in the physician's certification.

To make changes or additions to an already submitted medical leave request, complete a new Medical Leave Request Form and check the box marked "Supplement to Previous Request."

IX. Additional Medical Certification

In the event department management has reason to doubt the validity of the employee's first medical certification or believes additional information is needed, the department may, after consultation with the FMLA/Benefits Consultant, require the employee to submit to a second medical examination. The second physician shall be designated and paid by the department.

If the second opinion differs from the first, the department shall require an employee to be available for a third medical examination. The third physician shall be designated by both the employee and the department and paid at the department's expense. The third physician's opinion is final and binding on the department and the employee.

The department, after consultation with the FMLA/Benefits Consultant, may require, on a reasonable basis, subsequent re-certifications, at its expense, during the period of leave. Recertification of a continuing condition may be required at the employee's expense for periods of leave in a new eligibility period.

The employee's failure to provide certification or recertification reasonably required by UNC-GA may result in denial of the employee's request for FMLA leave and/or the employee's dismissal for unacceptable personal conduct or separation due to continued unavailability for work. Prior to any further action, Employee Relations must be contacted.

X. Return to Work

During the period of FMLA leave, the department, after consultation with the FMLA/Benefits Consultant, may require reports from the employee at reasonable intervals (generally 30 calendar days or more) on their status and intention to return to work. Employees should notify their supervisor in writing if they will not be returning from leave as planned. Failure to return to work at the end of the scheduled leave may be considered a voluntary resignation.

The “Medical Leave – Return to Work Form” must be completed when the employee returns to work or when it is determined that the employee will not return to work. Send the completed form to: FMLA/Benefits Consultant, UNC General Administration Human Resources, 140 Friday Center Drive, Chapel Hill, NC 27517.

In some cases, department management, after consultation with FMLA/Benefits Consultant, may require additional medical certification as provided above to certify that the employee is able to return to work and perform the essential functions of the position. Department management should consult with Employee Relations in making this determination.

If a permanent employee’s position has been abolished during the period of Family & Medical Leave due to a reduction-in-force, then the employee is not entitled to reinstatement. However, a permanent employee may be eligible for severance pay and layoff priority as provided in the Layoff Policy. The supervisor must contact the affected employee as soon as it is known that an employee’s position is being eliminated.

If an employee has more than 240 hours of vacation leave (pro-rated for part-time employees) when beginning FMLA Leave and returns to work in a new calendar year with a vacation leave balance in excess of 240 hours (pro-rated for part-time employees), the excess will be converted to sick leave upon the employee’s return to work.

If an employee returns to work and remains at work for at least 30 calendar days following the end of their FMLA leave, the employee will not be required to repay the health insurance premiums provided by UNC-GA during the leave. If an employee fails to return at the end of the period of leave or does not remain at work for at least 30 calendar days, UNC-GA may recover its portion of the health insurance premiums paid on the employee’s behalf unless the failure to return is due to the continuation, recurrence, or onset of a serious health condition, or other circumstances determined to be beyond the employee’s control.

XI. Recordkeeping

FMLA leave shall be accounted for separate from Family Illness Leave or any other type of leave or leave without pay. Human Resources, in consultation with the supervisor, is responsible for monitoring the length, use, and continuing eligibility of FMLA leave for the employee.

When an employee transfers to another State agency or to another UNC System institution, Human Resources shall record and forward the dates and amount of FMLA leave taken to the hiring agency or institution.

All medical documentation, along with a copy of the employee's application for FMLA leave under this policy, will be kept in the Benefits Office in the Division of Human Resources. Medical documentation under this policy is kept separate from employee personnel files and is confidential. The employee's department may retain a copy of the "Medical Leave Request Form" but must not retain a copy of the employee's "Medical Certification" Form.

XII. Questions

If you have any questions about the policy or your benefits coverage related to medical leave, please contact the FMLA/Benefits Consultant at 919-843-5186.

Specific questions about leave balances should be directed to the UNC-GA Payroll & Leave Coordinator at 919-843-5674.