

North Dakota State University

Policy Manual

SECTION 135

FAMILY MEDICAL LEAVE

SOURCE: NDUS Human Resource Policy Manual, Section 22,
NDSU President

1. Family leave is an unpaid leave of absence available to all eligible employees for the birth, adoption, or foster placement of a child; for the serious health condition of the employee, the employee's parent, child or spouse; for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation; or for military caregiver leave for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty that is a spouse, son, daughter, parent or next of kin (This entitles the employee to up to 26 weeks of leave in a single 12 month period). Consistent with applicable law and upon notice to the employee by the employing entity, family leave will be concurrent with paid sick or annual leave.

- 1.1 Eligible employees are those individuals employed by the state for at least twelve months, and who have worked at least one thousand two hundred fifty hours for the state over the previous twelve months. Eligibility is determined as of the date FMLA leave commences.

Under the terms of the Family Medical Leave Act of 1993 (29 U.S.C. 2611), qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; however, it does not extend to family members of regular active-duty service members. "Qualifying exigencies" include such instances as: short-notice deployment; military events and related activities; certain childcare and related activities resulting from active duty or call to active duty; making or updating financial and legal arrangements to address a covered military member's absence; short-term, rest and recuperation leave during deployment; or attending to certain post-deployment activities.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or is a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date the veteran undergoes that medical treatment, recuperation or therapy. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 week total may be for a FMLA-qualifying reason other than to care for a covered service member.)

- 1.2 Family leave used for the birth, adoption, or foster care placement of a child must begin within 12 months of the event.
- 1.3 Medical certification may be required by NDSU to verify the existence of a serious health condition including date of commencement and probable duration of illness. *If medical certification is requested it must be returned to NDSU within 15 days of the request unless it is not practical under the circumstances to do so despite diligent good faith efforts. If medical certification is not provided in a timely manner, NDSU may deny Family Medical Leave of Absence (FMLOA) until the certification has been provided.*
- 1.4 The maximum length of *total uncompensated* Family Medical Leave for eligible *full time* employees is twelve weeks within a 12-month period that begins with the first day of leave (26 weeks in a single 12 month period for the care of a covered service member). Leave for birth or adoption of a child may be taken intermittently if approved by the employing entity; leave because of the serious health condition of the employee, a parent, child or spouse may be taken intermittently if medically necessary. A married couple is not limited to a total of twelve weeks if both are employed by the state; each is entitled to twelve weeks. Reasonable and practical notice must be provided to the agency.
- 1.5 *If NDSU has questions regarding a health care provider's certification, a second opinion may be required at NDSU's expense.*
- 1.6 *While on FMLOA leave, a status report regarding intent to return to work upon conclusion of the leave must be given to the manager or supervisor.*
- 1.7 *While on FMLOA, holidays are uncompensated unless the employee works the day before and the day after the holiday.*
- 1.8 *If the FMLOA is due to an employee's serious health condition which makes them unable to perform their job, NDSU requires certification from the health care provider that she/he is able to return to work. The beginning of an employee's FMLOA and returning from an employee's FMLOA leave are considered a "change in family status" for flex plan purposes. A 30-day window from the date of the change is allowed to change election on an employee's flex plan.*
- 1.9 When leave is completed, the employee must be returned to the same position, or a position with equivalent compensation and benefits. If a reduction in force would have caused the position to be eliminated, this reinstatement requirement does not apply.
- 1.10 Employees utilizing family leave will be provided health benefits at the same level and as if the employee had not taken leave.
- 1.11 All leave taken for an approved event or condition will be designated as FMLA. Unless the employee elects to preserve hours as indicated in Policy 130 (15) and/or Policy 143 (15), an employee is required to use applicable, accrued paid and donated leave and compensatory time before authorized unpaid FMLA leave. An employee who has exhausted all types of paid leave shall be provided unpaid leave to fulfill the authorized period of family leave.
- 1.12 *Contact the Office of HR/Payroll to request family medical leave paperwork. Once completed, return paperwork to Office of HR/Payroll for processing. After eligibility is determined, notice will be sent to employee and supervisor.*

HISTORY:

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