



BOISE STATE UNIVERSITY

University Policy 7230

Family and Medical Leave

Effective Date

March 2000

Last Revision Date

December 14, 2022

Responsible Party

Human Resources, (208) 426-1616

Scope and Audience

This policy applies to all Boise State University employees who meet the eligibility requirements under Section 5 of this policy. For the birth or adoption of a child, paid parental leave is available for qualifying employees and must run concurrently with any approved FMLA leave. For paid parental leave, see University Policy 7610 (Paid Parental Leave).

Additional Authority

Family and Medical Leave Act (FMLA)

1. Policy Purpose

To establish policy and procedures for family and medical leave in accordance with the federal Family and Medical Leave Act.

2. Policy Statement

Boise State University is committed to assisting its employees in balancing work and family- life matters by providing unpaid, job-protected leave for qualifying events or circumstances.

This policy is not intended to be all-inclusive. The exceptions and unique situations regarding FMLA leave are too numerous and complex to address in a single policy. Consultation with Human Resources is strongly encouraged.

3. Definitions

3.1 Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves one of the following.

- a. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of Incapacity or subsequent treatment related to or resulting from such inpatient care.
- b. Incapacity Plus Treatment. A period of Incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or period of related Incapacity that also involves:
 - An in-person treatment by a health care provider within seven (7) calendar days of the first day of Incapacity followed by at least one more in-person treatment within thirty (30) calendar days, unless extenuating circumstances exist; or
 - An in-person treatment by a health care provider within seven (7) calendar days of the first day of Incapacity which results in a regimen of Continuing Treatment under the supervision of the health care provider.
 - Whether additional treatment visits or a regimen of Continuing Treatment are necessary within the thirty (30)-day period is to be determined by the health care provider.
- c. Pregnancy (includes prenatal care and any period of Incapacity due to pregnancy or recovery from childbirth).
- d. Chronic Conditions Requiring Treatments. A chronic condition is a condition that:

- Requires periodic visits (minimum two visits per year) for treatment by a healthcare provider, or by a nurse or physician's assistant under a health care provider's direct supervision;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continued period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).
- e. Permanent/Long-term Conditions Requiring Supervision. This is defined as a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's disease, a severe stroke, or the terminal stages of a disease, etc.).
- f. Multiple Treatments (Non-Chronic Conditions). Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).
- g. Treatment for Substance Abuse. FMLA leave may only be taken for treatment for substance abuse that is provided by a health care provider or by a provider of health care services on referral by a health care provider. Absence because of the employee's use of the substance, rather than treatment, does not qualify for FMLA leave. An employee may take FMLA leave to care for a covered family member who is receiving treatment for substance abuse as well.
- h. The FMLA is not intended to cover short-term conditions for which treatment and recovery are very brief. Unless complications arise, the following conditions, including but not limited to, generally would not meet the definition of an FMLA Serious Health Condition: common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease.

4. Reasons for FMLA Leave

4.1 Qualifying Reasons for Up to 12 Workweeks of FMLA Leave

FMLA provides up to 12 workweeks (prorated based on hours worked) of unpaid, job protected leave to eligible employees as outlined below, which must be utilized within 12 months of the qualifying event:

- a. Birth and bonding of a child.
 - FMLA leave to care for or assist in the care of a newborn is available to all employees as long as they are the parents or legal guardians of the child.
 - An expectant mother may take FMLA leave if the pregnancy renders the mother unable to work before the birth of the baby. Under the FMLA, pregnancy and pre-natal care involve Continuing Treatment by a health care provider, and therefore qualify as a Serious Health Condition.
- b. Adoption of a child or placement of a child in foster care.
 - FMLA leave may be taken for events involving the placement of a son or daughter with the employee for adoption or foster care. This includes, but is not limited to pre-placement counseling sessions, court appearances, attorney consultations, and care for the adopted or foster child.
- c. To care for a qualifying family member with a Serious Health Condition.
 - Qualifying family members are limited to the employee's spouse, the employee's children under 18 years of age, the employee's children incapable of self-care due to a mental or physical disability regardless of age, and the employee's parents with a Serious Health Condition. Care for siblings or in-laws with a Serious Health Condition are ineligible for this FMLA provision.
 - If an employee requests FMLA leave to care for a qualifying family member, the University will require a medical certification stating the need for support or care for the family member's illness, as well as the expected duration.
- d. Due to the employee's own Serious Health Condition.

4.2 Qualifying Reasons for Up to 26 Workweeks of FMLA Leave

FMLA provides up to 26 workweeks (prorated based on hours worked) of unpaid, job protected leave to eligible employees as outlined below, which must be utilized within 12 months of the qualifying event:

- a. To attend to a Qualifying Exigency (QE) arising out of the fact that the employee's spouse, parent, son, or daughter is a service member who is "on active duty (or notified of an impending call or order to active duty) in support of a contingency operation." QE leave is

available to family members of active duty Regular Armed Forces, National Guard and Reserve service members. Activities considered to be a Qualifying Exigency may include:

- Short-notice deployment;
- Military events and related activities (in advance of and during deployment);
- Childcare and school activities;
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post deployment activities; and
- Additional activities agreed upon between the University and the employee.

The University may require eligibility verification regarding the QE, including: DOL form WH-384; the service member's orders; and confirmation from third parties (such as a teacher).

- b. To care for a qualifying family member who incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces.
- Family members who qualify are limited to covered service member's spouse, parent, child, or next of kin. "Next of kin" refers to the nearest blood relative of the individual, other than the service members spouse, parent, or child, in the following order of priority: (1) individuals designated in writing by the service member as next of kin for purposes of this provision of the FMLA; (2) blood relatives who have been granted legal custody of the service member by statute or court authority; (3) siblings of the service member; (4) grandparents of the service member; (5) aunts and uncles of the service member; (6) first cousins of the service member.
 - Covered service members include current members of the Armed Forces (Including members of the National Guard or Reserves) or veterans (who were members during the five years preceding their injury or illness); who are undergoing medical treatment, recuperation, or therapy; are otherwise in outpatient status, or are otherwise on the temporary disability retired list for a serious injury or illness.

- All eligible employees are allowed up to 26 work weeks of unpaid, job protected leave during a single twelve (12)-month period at any time during the five years preceding the date of treatment, recuperation, or therapy.
- If an employee's leave qualifies as both military FMLA and non-military FMLA leave, FMLA military leave must be designated first.
- Total FMLA leave allowed during the twelve (12)-month period is 26 work weeks. (For example, an employee may not, in the same twelve (12)-month period, take 26 work weeks of military FMLA leave per this circumstance and also take up to twelve (12) work weeks of FMLA leave due to circumstances a. through d. described above.

5. Employee Eligibility

An employee must meet both of the following criteria to be eligible for FMLA leave:

- a. The employee must have been employed with the University, or at any State of Idaho agency, for at least twelve (12) months.
 - The twelve (12) months do not have to be continuous employment and do not have to be all with the University or at any one State of Idaho agency.
 - An employee on payroll for any part of a week will be credited with a full week toward their total 12 months of employment requirement. This includes part-time or temporary workers.
 - If an employee has a break in service of more than seven (7) years, time worked prior to rehire/reinstatement following that break in service does not count toward the twelve (12)-month eligibility requirement (unless the break in service was due to the employee's National Guard or Reserve military service obligations); and
- b. The employee must have worked at least 1,250 hours during the twelve (12)-month period immediately preceding the leave. The 1,250 hours means "actual time" spent working and does not include paid vacation or sick time, nor periods of unpaid leave during which other benefits (e.g., a group health plan or workers' compensation) continue to be provided by the University.

6. Concurrent Use of Paid Leave

- a. An employee must use any available accrued leave concurrently with their unpaid FMLA leave to maintain a paid status. If the employee does not provide preference for how they

would like their accrued leave assigned, Human Resources will code the employee's timesheet with Paid Parental Leave (if applicable), any accrued sick leave until exhausted, followed by comp-time (if applicable), and then vacation/annual leave. A bona fide illness must exist to use sick leave concurrently with FMLA leave.

- b. If the employee requests and receives any Paid Parental Leave and/or Donated Leave, it must be used concurrently with FMLA leave.
- c. FMLA leave taken after an employee's own accrued leave or available Paid Parental Leave or Donated Leave is exhausted will be unpaid.
- d. Holidays occurring during FMLA leave will be paid in accordance with University Policy (see University Policy 7650 - Compensation).
- e. An employee's short-term disability leave, or Workers' Compensation leave, must run concurrently with FMLA leave.
- f. An employee on FMLA leave, who is concurrently using available accrued leave, will accrue sick and annual/vacation leave at the same rate as if the employee was not on FMLA. However, when an employee uses compensatory time or unpaid FMLA leave, the employee no longer accrues sick or annual/vacation leave.

7. Types of FMLA Leave

7.1 Continuous FMLA Leave

An employee who is off work entirely for a single, qualifying reason is on continuous FMLA leave.

7.2 Intermittent FMLA Leave

- a. An employee who takes time off in separate blocks interspersed with periods of work due to a single, FMLA-qualifying reason is on intermittent FMLA leave.
- b. Intermittent leave to care for or bond with a newborn child or for a newly placed adopted or foster child must be used within 12 months from the birth or placement.
- c. An employee must communicate intermittent FMLA leave absences to their supervisor. When possible, the employee should submit a schedule to their supervisor disclosing their planned leave in advance to minimize work disruptions and to ensure

continuity of business operations. Anticipated leave which was not actually taken will not be counted against the employee's FMLA hours. A supervisor cannot require the employee to make up intermittent FMLA time.

- d. Intermittent leave can be taken in hourly, daily, or weekly increments. Only the amount of leave actually taken may be counted toward the twelve (12) workweeks to which an employee is entitled.
- e. Examples of allowable intermittent FMLA leave include, but are not limited to transporting a family member to a medical care facility, filling in for primary caregivers, making arrangements for changes in care, periodic medical treatments, or episodic chronic illnesses (e.g., chemotherapy treatments).
- f. An employee on intermittent leave may be temporarily transferred to another similar position, if the transfer helps to accommodate the employee's intermittent leave, until the need for intermittent leave no longer exists.

7.3 Reduced-Schedule FMLA Leave

An employee working a reduced amount of hours per day or per week, often to care for a family member or for a single, FMLA-qualifying reason, is on reduced-schedule FMLA leave.

8. Calculating FMLA Hours

The University uses a rolling 12-month period measured backward from the date an employee uses any FMLA-designated leave. Each time an employee takes FMLA leave, the amount of leave taken must be computed and subtracted from the available weeks of leave. The balance remaining is the amount the employee is entitled to take at that time. The number of FMLA hours are prorated based on the employee's scheduled hours.

9. FMLA and Workers' Compensation

- a. If an employee's Serious Health Condition is the result of a work-related injury/disability, any lost time related to the workers' compensation claim must run concurrently with FMLA.
- b. If an employee on workers' compensation leave is approved for modified or light duty work, but remains qualified for FMLA leave, the employee may still choose to not work and instead use FMLA leave. However, refusal of the modified or light duty work may lead to a loss of worker's compensation benefits. In such a situation, the employee retains the right to

continue on protected leave under the FMLA until the employee can return to their position or the FMLA entitlement is exhausted.

10. Requesting FMLA Leave

10.1 Advance Notification Required

An employee who knows in advance of their need to take FMLA leave must notify Human Resources thirty (30) calendar days prior to taking such leave. Notice must include the anticipated start date of the FMLA leave, and the expected duration of the leave. Employees are to use the “FMLA Leave Request” form for this purpose by contacting Human Resources.

10.2 Unplanned Leave

- a. In situations where advance notification is not practicable, the employee must notify Human Resources as soon as feasible. “As soon as feasible” would ordinarily mean the employee provides verbal notification to the University within one (1) University business day of the employee knowing of the need for FMLA leave.
- b. If the employee is unable to complete the “FMLA Leave Request” form to request unforeseen FMLA leave, the supervisor or Human Resources will complete the form on the employee’s behalf to the extent possible.
- c. If an employee is unable to provide notice, an employee’s friend or family member, acting on the employee’s behalf, may notify the University of the employee’s need to take FMLA leave. Such notice may be communicated via phone call, fax, mail, or E-mail. In such situations, the supervisor or Human Resources will complete the “FMLA Leave Request” form on the employee’s behalf.

11. Medical Certification

- a. When an employee requests FMLA leave for their own medical condition, or to care for a family member, the University may require the employee to furnish a medical provider’s statement certifying the medical information necessary to determine the employee’s eligibility for FMLA leave at the time such leave is requested.
- b. Employees are encouraged to furnish the medical provider’s statement with their completed “Medical Certification” form to expedite the processing of the leave request. Ultimately, the employee must return the completed medical documentation within fifteen (15) calendar days from the date of the leave request (unless the 15th day is on a weekend, then the

following University business day is acceptable), unless a request for extension was received and approved. If an employee fails to provide medical documentation, FMLA leave may be denied.

- c. In situations where FMLA leave was unforeseen, Human Resources must request certification within two (2) University business days after the leave commences. The employee then must provide the medical certification within fifteen (15) calendar days of receipt of the request from Human Resources.
- d. In cases where medical certification is required, the certification must be complete and sufficient. If Human Resources finds that the medical certification provided by the employee is incomplete (one or more of the applicable entries have not been completed) or insufficient (the information provided is vague, ambiguous, or inconclusive), Human Resources will notify the employee in writing of the additional information needed to make the certification complete and sufficient. The employee has seven (7) calendar days (unless not practicable despite the employee's diligent efforts) to cure the deficiencies. Failure by the employee to do so may result in denial of FMLA leave.
- e. To determine the extent of an employee's Serious Health Condition, if the first medical certification appears to lack validity, Human Resources may request a second opinion. If the second opinion is different from the first opinion, Human Resources may request a third medical opinion. The third opinion will be binding. If Human Resources requests second and third opinions, the cost is at the University's expense.

12. Eligibility Determination and Response

12.1 Eligibility Notice

- a. Within five (5) University business days of the employee requesting leave, or the University learning an employee's leave may be FMLA eligible, the University will notify the employee in writing whether the employee is eligible for FMLA leave pursuant to Section 5 of this policy, and if not, why the employee is ineligible).
- b. In conjunction with the Eligibility Notice, Human Resources will also provide the employee with written notification of the employee's [rights and responsibilities](#) under the FMLA.

12.2 Designation Notice

- a. Within five (5) University business days of receiving enough information to determine that an employee's leave is FMLA eligible, Human Resources will provide written, official

confirmation of the designation of the employee's leave as FMLA leave and the parameters (i.e., expectations, obligations, and consequences for failure to meet the same) of the FMLA leave using the "FMLA Designation Notice" form. An employee can affirmatively decline to use FMLA leave after receiving written, official confirmation of the employee's eligibility for FMLA leave.

- b. If a "fitness for duty" certification specifically addressing the issue of whether the employee can meet the essential functions of their job will be required for the employee to return to work, Human Resources must provide a list of the essential job functions no later than the date of the Designation Notice. In such a case, the Designation Notice must specifically inform the employee that the certification must address the employee's ability to perform those essential job functions.

13. Returning from Leave

- a. An employee returning from FMLA leave due to their own Serious Health Condition may be required, depending on the health condition and position requirements, to present Human Resources with a return to work release, or fitness for duty, from the employee's healthcare provider prior to returning to work.
- b. The University may require a fitness-for-duty certification up to once every 30 calendar days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform their duties based on the condition for which the leave was taken.
- c. If an employee is no longer qualified for their position because of an inability to attend certain work-related functions or classes as a result of FMLA leave, the University will provide the employee with a reasonable opportunity to fulfill those conditions upon returning to work.

14. Benefits and Employee Rights

- a. An employee's health and dental benefits will remain unchanged while on FMLA leave, and the employee will be responsible for their portion of the monthly health and dental insurance premiums.
- b. An employee who is using accrued leave to receive a full or partial paycheck will have their health and dental insurance premiums deducted from their pay as usual.

- c. An employee's whose paycheck does not cover their portion of health and dental insurance premiums must arrange to pay their premiums with Human Resources.
- d. If an employee does not return to work once released by their healthcare provider, the employee may be required to reimburse the University for any share of health and dental premiums paid by the University while the employee was on FMLA leave..
- e. Upon return from FMLA leave, employees are entitled to be restored to the position held prior to the FMLA leave, or to be restored in a substantially equivalent position with substantially equivalent benefits, pay, and other terms and conditions of employment.
- f. Pursuant to University Policy 1060 (Non-Discrimination and Anti-Harassment) and the Genetic Information Nondiscrimination Act of 2008, an employee on or requesting FMLA leave is protected against discrimination on the basis of the employee's genetic composition.
- g. When FMLA leave is granted for non-tenured tenure-track faculty, a one-year extension of the tenure probationary period will be automatically granted. Faculty may opt out of the automatic extension by requesting to seek tenure and promotion on the original timeline.
- h. Any use of FMLA leave under this policy will not interrupt the service eligibility requirement for faculty sabbatical leave.

15. Supervisor Responsibilities

Supervisors are responsible for the following actions to ensure compliance with the FMLA:

- a. Recognizing an FMLA qualifying event and consulting with and/or referring the employee to Human Resources.
- b. Ensuring the employee's FMLA usage is accurately recorded.
- c. Avoiding communication about work-related matters with an employee who is absent on approved FMLA. Any de minimis work-related communication with the employee should be coordinated in consultation with Human Resources.

16. Retaliation or Interference

- a. A supervisor may not interfere with an employee's right to take leave. An employee must not be disciplined, dismissed from employment, or otherwise retaliated against in any way for requesting or using leave under the FMLA.
- b. An employee who believes their rights under the FMLA have been violated may submit a complaint to the Office of Institutional Compliance and Ethics
<https://www.boisestate.edu/compliance>.
- c. The University processes complaints alleging FMLA retaliation or interference with an employee's right to take leave under the FMLA under the same process utilized in University Policy 1060 (Non-discrimination and Anti-harassment) and conducts investigations under the same framework.
- d. An employee may also submit a complaint to:

U.S. Department of Labor's Wage and Hour Division
1-866-487-9243
www.dol.gov/whd

17. Forms

Notice of Eligibility & Rights and Responsibilities under the FMLA
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>

18. Related Information

Americans with Disabilities Act (ADA)

Title II of the Genetic Information Nondiscrimination Act of 2008

University Policy 7220 (Donated Leave)

University Policy 7570 (Accommodating Disabilities in the Work Environment)

University Policy 7610 (Paid Parental Leave)

University Policy 7620 (Time Away from Work)

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