

Family and Medical Leave (FMLA)

The UJS grants family and medical leave to eligible state-level UJS employees as required by the federal Family and Medical Leave Act of 1993, as amended, and the Military Family Medical Leave Act. The FMLA offers job-protection and healthcare benefit rights to eligible employees who require leave for family care and personal medical reasons.

This section provides a general description of the judiciary's FMLA-related policies, but is not intended to address all specific FMLA situations. Additional information can be found on the federal Department of Labor's website at www.dol.gov/whd/fmla/index.htm. In the event of any conflict between this policy and applicable law, employees will be afforded all FMLA rights required by law.

Eligibility Requirements

To be eligible for FMLA leave, an employee must have 1) worked in a state-level UJS position for at least 12 months; *and* 2) worked at least 1,250 hours in a state-level UJS position during the 12-month period immediately preceding the commencement of the FMLA leave. Hours on paid or unpaid leave (holidays, vacations, etc.) during this 12-month period do not count toward the 1,250 hour requirement.

Eligible employees may take up to 12 weeks of FMLA leave (26 weeks for Military Caregiver Leave) during any 12-month period, provided they submit proper notice and required documentation. The 12-month period is based on a "rolling year" measured backward from the date an employee first uses any FMLA leave under this policy. Under the "rolling" 12-month period, each time an employee takes FMLA leave, their remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Once eligible, federal law makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any employee's rights provided under FMLA. Any effort to interfere with such rights will be promptly addressed by the UJS.

Impact of FMLA on Benefits and Accrued Leave

Employees on FMLA leave will first be required to concurrently use accrued leave as specified in this section to remain in a paid status before being placed on FMLA leave without pay status.

FMLA Leave With Pay – employees using accrued leave to remain in a paid status during a FMLA absence will maintain the same benefits they had prior to commencing the leave.

While using accrued leave during a FMLA absence, employees will continue to 1) accrue annual, sick, and disability leave, 2) earn service credit for annual leave accrual purposes, and 3) earn retirement service credit in the State Employees' Retirement System (SERS). The payroll anniversary date of an employee in this situation will not change due to the absence.

FMLA Leave Without Pay – employees who are in leave without pay status during a FMLA absence may remain enrolled in the UJS health insurance program, provided they continue to pay the applicable cost-share. Enrollment in other UJS provided and voluntary fringe benefit programs will continue as allowed by the provisions of each program.

While in leave without pay status during a FMLA absence, employees *will not* 1) accrue annual, sick, or disability leave, 2) earn service credit for annual leave accrual purposes, or 3) earn SERS retirement service credit. The payroll anniversary date of an employee in this situation will be deferred by the number of calendar days in leave without pay status.

Personal Medical Leave

An eligible employee may take up 12 weeks of FMLA leave in any 12-month period for their own serious health condition which renders them unable to perform the functions of their position.

Serious Health Condition – under the FMLA, a serious health condition is “an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a healthcare provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualifying family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a healthcare provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.”

Notice and Certification Requirements – employees requesting FMLA leave for personal medical reasons must provide at least 30 days advance notice when the need for leave is foreseeable and must submit appropriate documentation from a healthcare provider certifying the need for the leave within 15 days of receiving a request from the judiciary. If timely notice and/or medical certification are not practicable, the employee must provide justification for the delay. Employees using FMLA leave for personal medical reasons will be required to annually re-certify the need for such, and may be required to re-certify more frequently if the circumstances that led to the leave change significantly.

If the medical certification provided is insufficient or unclear, an employee may be required to secure a second medical opinion, or in the event of conflicting information, a third medical opinion to document their need for personal medical leave. The cost of such opinions will be paid by the UJS.

Employer Designated FMLA Leave – FMLA-eligible employees who request certain leave types must submit appropriate documentation from a healthcare provider certifying the need for the leave within 15 days of receiving a request from the judiciary, *even if they did not request FMLA leave in advance*. The entire absence will be designated as FMLA leave when an employee requests the use of:

- ten consecutive days of accrued sick leave;
- advanced sick leave;
- accrued disability leave;
- leave without pay for personal medical reasons; or
- leave available under the sick leave sharing plan.

Use of Accrued Leave during FMLA Personal Medical Leave – employees are required to use accrued leave to remain in a paid status during a FMLA absence prior to commencing FMLA leave without pay. For personal medical leave situations, accrued leave must be used in the following sequence: sick leave, disability leave, compensatory leave, and annual leave. In the event an employee does not have enough accrued sick leave to reach the ten-day threshold before disability leave may be used, they may request the use of other available leave as necessary to reach the threshold. If available, employees may retain up to 5 days of annual leave before FMLA leave without pay begins.

When an employee’s accrued leave is exhausted during a FMLA absence, they may request the use of advanced sick leave and, if enrolled, leave available under the sick leave sharing program as allowed by the UJS leave policies. If these leave options are not available or the employee does not request their use, the employee will be placed on leave without pay for the remainder of their absence up to the end of their 12-week FMLA eligibility period.

Pregnancy-Related FMLA Absences – FMLA leave for any period of incapacity due to pregnancy, or for prenatal care, will be based on a healthcare provider’s certification; up to the FMLA 12-week maximum period. If any portion of the 12-week period is still available after the employee recovers from the birth of the

child, they may request family care leave as described under “Family Care Leave” below, to care for the child for the remainder of their 12-week FMLA allowance.

Returning to Work Following FMLA Personal Medical Leave – before returning to work following a period of FMLA leave for personal medical reasons, employees will be required to provide certification from a health care provider that they are able to perform the functions of their position. Upon receipt of the certification, employees on FMLA leave will have the right to return to the same position they held prior to their leave, or to an equivalent position with respect to pay, benefits, and other employment terms.

If an employee exhausts their 12-week FMLA eligibility period and is still unable to return to work due to their personal serious health condition, they may request additional leave as a reasonable accommodation under the Americans with Disabilities Act (ADA). Such requests require a health care provider’s certification of the need for an accommodation and will be reviewed on a case by case basis to determine an appropriate course of action based on operational needs.

Employees Not Eligible for FMLA Leave – employees who need to be absent for personal medical reasons covered by the FMLA, but who do not meet the FMLA eligibility requirements at the time the leave is needed, may request the use of leave as a reasonable accommodation under the ADA. Such requests require a health care provider’s certification of the need for an accommodation and will be reviewed on a case by case basis to determine an appropriate course of action based on operational needs. If an employee becomes eligible for FMLA while absent due to an approved ADA accommodation, they will be placed on FMLA leave on the date their eligibility begins.

Family Care Leave

An eligible employee may take up to 12 weeks of FMLA leave in any 12-month period to care for an immediate family member with a serious health condition as defined above or to care for the employee’s child following their birth, or placement of a child for adoption or foster care. For the purposes of this section, an immediate family member is defined as the employee’s spouse, son or daughter, or parent.

Under the FMLA, “son or daughter” includes a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. “Parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee. This term does not include parents-in-law.

Notice and Certification Requirements – employees requesting FMLA leave to care for an immediate family member with a serious health condition must provide at least 30 days advance notice when the need for leave is foreseeable and must submit appropriate documentation from a healthcare provider certifying the family member’s condition, and supporting need for the leave, within 15 days of receiving a request from the judiciary. If timely notice and/or medical certification are not practicable, the employee must provide justification for the delay. Employees using FMLA leave for this purpose will be required to annually re-certify the need for family care leave, and may be required to re-certify more frequently if the circumstances that led to the leave change significantly.

If the medical certification describing the family member’s serious health condition is insufficient or unclear, the family member may be required to secure a second medical opinion, or in the event of conflicting information, a third medical opinion to document the employee’s need for family care leave. The cost of such opinions will be paid by the UJS.

Employees requesting FMLA leave to care for their newborn child following birth, or placement of a child for adoption or foster care must provide at least 30 days advance notice when the need for leave is foreseeable and must submit appropriate documentation (e.g. birth certificate, adoption papers, etc.) to certify the need for FMLA leave. If timely notice and/or certification are not practicable, the employee must provide justification for the delay.

Use of Accrued Leave during FMLA Family Care Leave – employees are required to use accrued leave to remain in a paid status during a FMLA absence for family care reasons prior to commencing FMLA leave without pay. For family care situations, accrued leave must be used in the following sequence: up to 5 days of sick leave-family (if available), compensatory leave, and annual leave. If available, employees may retain up to 5 days of annual leave before leave without pay begins. Accrued disability leave may not be used for this type of FMLA leave.

When an employee's accrued leave is exhausted during a family care FMLA absence, the employee will be placed on leave without pay for the remainder of their 12-week FMLA eligibility period.

FMLA family care leave taken due to the birth of the employee's child may not end later than one year after the date of the child's birth. Family care leave for adoption or foster care purposes may not begin more than one month prior to the expected date of placement, and may not end later than one year after the date of the child's placement.

Employees Not Eligible for FMLA – employees who need to be absent for FMLA-covered family care reasons, but who do not meet the FMLA eligibility requirements at the time the leave is needed, may request a Family/Medical Leave of Absence with Benefits. Such requests require similar documentation to the FMLA. Requests will be reviewed on a case by case basis to determine an appropriate course of action based on operational needs and approval is not guaranteed. If an employee becomes eligible for FMLA while absent due to an approved family/medical leave of absence with benefits, they will be placed on FMLA leave on the date their eligibility begins.

If a family/medical leave of absence with benefits is approved for a family care situation, accrued leave must be used in the following sequence: up to 5 days of sick leave-family (if available), compensatory leave, and annual leave. If available, employees may retain up to 5 days of annual leave before leave without pay begins. Accrued disability leave may not be used for this type of leave.

When an employee's accrued leave is exhausted during a family/medical leave of absence, the employee will be placed on leave without pay for the duration of their approved absence up to a maximum period of 12 weeks.

Use of Intermittent Leave for FMLA Absences

Employees may request the use of FMLA leave on an intermittent basis, provided they submit certification from a healthcare provider that such leave use is medically necessary. The total leave used on an intermittent basis may not exceed 12 weeks (26 weeks for military caregiver leave) in any 12-month period.

Spouses who are Both UJS Employees

If two spouses are both UJS employees, and both need to request FMLA leave for personal medical reasons or to care for an immediate family member with a serious health condition, each spouse will be separately eligible for up to 12 weeks of FMLA leave in any 12-month period.

If two spouses are both UJS employees, and both request FMLA leave to care for the employee's child after birth, or placement for adoption or foster care, the sum of their respective periods of FMLA leave may not exceed 12 weeks in any 12-month period beginning as of the first date on which either spouse takes leave for this purpose.