General Questions

1. **What documentation will an employee need to submit to the department to request FML for herself/himself or to care for a family member?**

An employee needs to:

- Review FML policy and determine if eligible for FMLA-protected leave. Contact supervisor, OHR Leave Administrator or designee if eligibility and/or medical documentation questions exist.

- For foreseeable leave, give notice to supervisor, OHR Leave Administrator or designee, as far in advance as possible, followed by written documentation submitted 30 calendar days before the leave.

- For unforeseeable leave, give notice to supervisor, OHR Leave Administrator or designee as soon as practical.

- Request the health care provider to complete the Medical Certification of Health Care Provider for Employee’s Serious Health Condition form or the Medical Certification of Health Care Provider for Family Member’s Serious Health Condition form. Return the form to OHR Leave Administrator or designee within 15 calendar days.

- Submit a dated health care provider return to work statement to the OHR Leave Administrator or designee and follow fitness-for-duty requirements.

- Submit requests for intermittent or reduced leave in a timely manner and schedule leave in a manner that is least disruptive to the administrative unit.

- For military related certifications:
  - Submit Certification of Qualifying Exigency for Military Family Leave form and written documentation such as duty order, dates of active service and date of commencement of exigency.
  - Submit Certification for Serious Injury or Illness of Covered Servicemember for Military Family form and written documentation confirming the servicemember’s injury or illness was incurred in the line of duty while on active duty and is undergoing treatment for such injury or illness.

2. **Who should an employee contact to request FML?**

An employee may contact their supervisor, HRP, and/or their OHR Leave Administrator or designee. The OHR Leave Administrator or designees are individuals who are responsible for administering FMLA leave. Designees, such as HRPs, Wexner Medical Center Employee Relations, supervisors, are responsible for administering FML in departments that do not have an OHR Leave Administrator.
3. **What is the OHR Leave Administrator or designee required to do?**

- Determine employee eligibility under FMLA.

- Upon notification by the employee of the need to take leave or recognizing an FML event, the unit administrator must issue to the employee within **five business days** the Notice of Eligibility and Rights and Responsibility form of potential eligibility for FML. The letter must include an Application for Leave and one of the following four forms: Medical Certification of Health Care Provider for Employee’s Serious Health Condition, Medical Certification of Health Care Provider for Family Member’s Serious Health Condition, Certification of Qualifying Exigency for Military Family Leave, or Certification for Serious Injury or Illness of Covered Servicemember for Military Family.

- Upon receipt of employee’s medical documentation to support the leave request, the HRP must review the documentation and determine if it meets the criteria for a qualifying event. The HRP must issue an approval or denial Designation Notice (FML) form to employee within **five business days**.

- Ensure that requests for fitness-for-duty certification are included in the letter of designation. If requiring a fitness-for-duty certification, attach a copy of the employee’s position description or physical job requirements sheet. The health care provider will assess the employee’s ability to perform the functions as specified in the position description or physical job requirements sheet. Failure to notify the employee of the need for a fitness-for-duty certification will preclude its requirement.

- Maintain employee records of FML usage and balances. These records include a copy of the written notice provided to the employee, letter of designation, medical documentation to support the absence, the letter approving or denying the leave and the amount of FML used during the benefit year. These records are confidential and must be maintained separately from the personnel file.

- Upon employee’s return to work, place employee in same or equivalent position with equivalent pay, benefits and other terms and conditions of employment.

- Provide current FML balance to the employee upon request.

4. **What is the unit HR professional required to do?**

- Post FMLA rights and responsibilities notice on premises or electronically.

- Upon employee’s return to work, place employee in same or equivalent position with equivalent pay, benefits and other terms and conditions of employment.

- Ensure supervisors are approving and entering timekeeping appropriately in accordance with FML designation approvals.

- Contact the Leave Administrator when an FML event is known or anticipated.

5. **What is my supervisor required to do?**

Currently in the Wexner Medical Center, supervisors are responsible for administering their employees FML requests. Wexner Medical Center employees can also contact Wexner Medical Center Employee and Labor Relations for assistance in administering FML.

- Contact the OHR Leave Administrator when an FML event is known or anticipated.
• Ensure all timekeeping reporting codes are approved and entered in accordance with the FML designation.
• Contact the OHR Leave Administrator if the employee’s absence is not aligned with the approved FML duration.
• Contact the OHR Leave Administrator upon the employee’s return to work.

6. As an employee, do I have to provide written notification of my leave request to a specific person?

Yes, it is preferable that the employee submit written notification of their request for FML to their OHR Leave Administrator or designee. If the employee fails to follow the notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

7. Can supervisors contact the employee’s health care provider directly?

No. The employee’s supervisor is expressly prohibited from contacting an employee’s health care provider. A designated university health care provider, the unit’s HR professional, leave administrator, or management official can contact the employee’s health care provider to clarify or authenticate information.

8. Does my manager have the right to ask about my medical condition?

The OHR Leave Administrator or designee will need to have a description of the medical condition to allow them to designate FML appropriately. The supervisor does have the right to know that their employee is on FML leave, the length of the leave, and/or the frequency and duration of the leave. The supervisor does not have the right to know the details of the employee’s medical condition(s). If the employee is uncomfortable talking to their manager about the situation they can contact the HRP in the unit or Employee and Labor Relations.

9. Can a unit take action against an employee under the unit’s “no fault attendance policy” based on use of FML?

No, the unit cannot discipline an employee for taking FML. If a bonus, award or other payment is based on the achievement of a specified goal (examples: perfect attendance or safety) and an employee has not met the goal due to time spent on FML, then the bonus or payment can be denied as long as other employees on an equivalent leave that does not qualify as FML (vacation or sick) are treated the same.

10. Will the employee continue to have health benefits during the FML period?

If the employee is in a paid leave status their health care premiums will continue to be deducted from their paycheck. If the employee is in an unpaid leave status, the employee is responsible for the payment of benefits, for which they will receive an invoice. See Benefits Continuation while on Approved Leave of Absence for additional information.

11. My health care provider has assigned the physician assistant to care for me. Is that OK?

Yes, the health care provider must be licensed by a state to deliver health care services in order to certify FML. Health care providers may be a doctor of medicine or osteopathy, dentist, clinical psychologist, social worker, physician assistant, optometrist, podiatrist, chiropractor, nurse practitioner, nurse mid-wife, or Christian Science practitioner who certify within the scope of their practice.
12. How does the rolling 12 month period work?

The rolling 12 month period is measured backward from the date FML is scheduled to commence. If the employee has taken some or all of their FML time in the previous 12 months the department must subtract that time from the total 12 week allowance. For example, on March 1, 2014, the employee takes 4 weeks of leave. On June 1, 2014, the employee takes 8 additional weeks of leave. The employee requests FML leave again on February 14, 2015. The leave will be denied because they do not gain back potential FML hours until March 1, 2015. Employees do not gain back FML hours in a lump sum, rather they earn them back day by day, hour by hour based on the rolling 12 month period.

13. How are hours worked calculated for purposes of FML?

An employee may be in an active pay status, however for purposes of calculating hours worked the employee must have physically worked in a regular and/or overtime status. Vacation, sick, and compensatory time do not constitute hours worked.

14. How do multiple approved FML certifications impact an employee’s leave entitlement?

An employee with approved FML certifications is only eligible for up to 12 weeks, 480 hours of FML leave regardless of the number of approved conditions.

15. What if there is no medical end date on the certification?

The OHR Leave Administrator or designee will return the form to the employee and ask the employee to get more specific information and dates from their health care provider.

16. What if an employee has a migraine headache that usually lasts only one day at a time? Are these absences from work covered under FML?

They could be covered if the migraine headaches constitute a serious health condition under FMLA. Typically, the employee’s physician would have to diagnose that the migraine is a serious chronic health condition, which requires periodic visits for treatment; continues over an extended period of time; and may cause episodic rather than continuing period of incapacity. If there appears to be a pattern of absences or other reasons that indicate abuse of FML, the university may ask for further medical documentation and possibly deny FML.

17. What if an employee has a broken ankle that has healed, and they have to go to physical therapy three times a week. Does the supervisor have to let the employee go whenever they want?

If an employee uses FML “intermittently” for purposes such as physical therapy, the supervisor may require the employee to schedule the leave ahead of time and when it is least disruptive to the unit.
18. An employee has intermittent leave for a back injury that is approved for a year and within that approval year the employee needs surgery for an ankle injury, does the employee need to file a new FML claim for the ankle surgery?

Yes, the employee’s ankle surgery is considered a new qualifying condition. The new condition requires complete and sufficient medical certification to be submitted.

19. An employee is requesting FMLA leave for their adult child, can they take FML leave to care for their adult child?

Yes, only if the adult son or daughter is determined to be incapable of self-care because of a disability. In order for a parent to take FML leave to care for an adult child, the son or daughter must also have a serious health condition, and need care because of the serious health condition.

**Serious health condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. (See the FMLA regulations at 29 C.F.R. 825.113-115 for additional information.)

**Needed to care**

A parent may be needed to care for his or her son or daughter if, for example, the adult child is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, because of the serious health condition. “Needed to care” also includes providing psychological comfort and reassurance that would be beneficial to an adult child with a serious health condition who is receiving inpatient or home care.

20. What if the employee states they don’t want their condition covered by FML? Can they save it?

It is the employer’s responsibility to designate leave as FML when there is a known qualifying reason and the employee is eligible for FML. The FML designation is not at the discretion of the employee.

21. What if an employee needs to extend the leave period beyond the specified amount of time designated in the policy (beyond 12 weeks) due to complications?

If the employee has medical documentation that requires them to be off work for a longer period of time than originally designated, the employee may apply for a medical leave of absence and may use paid leave pursuant university policy for the remainder of the time needed. The unit must consult with HR Employee and Labor Relations concerning approval of further leave. The employee may also contact Integrated Absence Management and Vocational Services to determine if accommodations would be appropriate under the Americans with Disabilities Act (ADA).

22. Do holidays count toward the 480 hours of FML?

The fact that a holiday may occur within the week taken as FMLA has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FML in increments of less than one week, the holiday will not count against the employee’s FML entitlement unless the employee was scheduled and expected to work during the holiday.
23. Do holidays count toward the 480 hours of FML if the university closes or employees are not expected to report to work?

If the university closes or employees are not expected to report to work for one or more weeks, the days the university’s activities have ceased do not count against the employee’s FML entitlement.

24. What if I am on workers’ compensation or Short Term Disability (STD)/Long Term Disability (LTD)? Is that also Family Medical Leave?

Yes, it can be. Time spent on workers’ compensation, STD, or LTD will be concurrently designated as FML. For workers’ compensation the time will be designated as FML as long as the illness/injury meets the requirements of an FML qualifying event.

25. What is not covered under Family and Medical Leave?

Family and Medical Leave is not intended to cover short term conditions for which treatment and recovery are very brief (i.e., colds, flu, etc.). Treatment does not include routine physical exams, eye exams, or dental exams. Over-the-counter medications are not considered part of a regimen of treatment.

26. Does the law guarantee paid time off for FML?

No. The Family Medical Leave Act (FMLA) only requires unpaid leave. The university requires employees to take sick leave for their own serious health condition or an immediate family member’s serious health condition. The university also permits an employee to elect to use accrued paid sick and/or vacation leave per the university’s paid leave policies for some or all of the FML period.

27. Can a department take corrective action when an employee requests time off for substance abuse treatment?

A department cannot take action against an employee for exercising her/his FML right to take time off for substance abuse treatment. Nothing in the FMLA regulations protects the employee from discipline, including termination, for violation of an established, consistently enforced, substance abuse policy.

28. What happens if an employee knew about the need for FML leave prior to 30 days before the leave but did not provide notice within 30 days?

When an employee does not provide at least 30 days notice of foreseeable leave, the OHR Leave Administrator or designee or supervisor can ask for a reason and the employee must explain it. If the employee does not comply with the notice requirement, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

29. Is an employee who is out on FML from the university allowed to work outside the university at another job?

This should be reviewed on a case-by-case basis. There may be cases when an individual may not be able to perform the functions of their job at the university but they do have the ability to perform the functions of a second job.
30. What type of documentation can be requested to establish a relationship to an immediate family member?

This documentation may take the form of a written statement from the employee, a child’s birth certificate, a court document, etc.

31. What does authentication of medical information mean?

Authentication is defined as requesting verification that the information on the form is accurate and was authorized by the health care provider who signed it. No additional medical information can be requested and the employee’s permission is not needed to obtain this information.

32. What does clarification of medical information mean?

Clarification generally refers to requests to decipher handwriting or to understand the meaning of a health care provider’s response. No additional information may be obtained. An employee can choose not to allow the OHR Leave Administrator or designee to seek clarification, but then the OHR Leave Administrator or designee may deny the leave if the certification is unclear.

33. Can a department require an employee to submit a re-certification in less than 30 days?

Yes, if circumstances such as duration or frequency of absences, the severity of the condition or complications as described in the previous certification have significantly changed, or if the unit supervisor received information that casts doubt on the reason for the prior certification.

34. Can an employee be required to submit to a fitness for duty certification before returning to work?

Yes, as long as the employee has been advised of this requirement when the OHR Leave Administrator or designee designated the leave as FML.

Leave for qualifying exigency and/or care for covered service member

35. What circumstances constitute a qualifying exigency?

A qualifying exigency arising out of the fact that the employee’s family member (spouse, domestic partner, parent, son, or daughter) is on covered active duty in a foreign country or has been notified of an impending call to active duty in a foreign country. A qualifying exigency includes:

a) Short notice deployment – call/order to covered active duty seven days prior to date of deployment.

b) Military and other activities related to call to covered active duty.

c) Childcare and school activities – e.g. arrange for alternative childcare, enroll child in new school or day care, attend meetings with school or day care staff, and provide childcare on urgent or immediate need basis.

d) Parental care leave – to provide care on an immediate need basis for the military member’s parent who is incapable of self-care, e.g., admitting or transferring the parent to a care facility, attending meetings with staff at a care facility, etc.

e) Make or update financial and legal arrangements.

f) Counseling that arises out of the military service.

g) Rest and recuperation – limited to 15 days per leave to spend with military member on short-term leave.
h) Post-deployment activities – leave to attend post-deployment functions such as arrival ceremonies, reintegration briefings, funeral arrangements that occur within 90 days following termination of covered active duty status.

i) Additional activities – must be agreed to by the supervisor, the employee, and the Office of Human Resources, Employee and Labor Relations in consultation with the Office for Military and Veterans Services.

36. Does leave for a qualified exigency cover active military members?
No. Qualified exigency leave is not available to employees whose family members are already on active duty in the regular U.S. Armed Forces or are National Guard members called to state service.

37. What is a contingency operation?
It is a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the Armed Forces, or any other provision of law during a war or during a national emergency declared by the President or Congress.

38. May an employee use sick time when they take time off due to qualified exigency?
A qualified exigency could involve multiple scenarios. If the reason that the individual needs to be off work is due to a medical reason then they would use their accumulated sick time. If they are requesting the leave to make arrangements for a military leave then they would use vacation.

39. What is included in Armed Forces?
The term “Armed Forces” includes the U. S. Army, Navy, Air Force, Marine Corps, Coast Guard, and the National Guard or Reserves.

40. Do I use vacation or sick leave time for the military portion of this policy?
You may use vacation, unless it is for a medical reason, in which case you would use sick leave.

41. Can I require confirmation of a family relationship if an employee requests leave based on an immediate family member?
Yes. It can take the form of a simple statement from the employee, a child’s birth certificate, a court document, etc. The employee is entitled to the return of the official document after review.

42. What type of documentation should employees submit to support a request for military leave involving an injured/ill servicemember?
An employer must accept International Travel Orders (known as ITOs) and Invitational Travel Authorizations (known as ITAs). These documents permit the family member to join the injured/ill servicemember.
43. If the employee is not the only family member that is available to care for a servicemember that needs care, can the unit deny the leave request?

No. The unit cannot scrutinize the availability of other family members.

**Student Employees**

44. How is FMLA leave handled for student employees with multiple employee appointments on campus?

Ohio State is one employer, so in the event a student employee holds multiple appointments, they must do so in compliance with the Student Employment Policy. If the employee is granted FML leave from the university they may be granted leave for all the appointments held at Ohio State based on the approved medical certification on file.

45. What student employee positions are eligible for FML leave?

Any student employee or graduate associate position is eligible for FML leave if the employee meets the eligibility criteria as set forth in the Family Medical Leave Policy 6.05. Service as a graduate fellow does not constitute university employment and, therefore, does not count towards FML eligibility.

**2015 Policy Revision**

46. I currently have a FML claim that was previously approved through 2015 under the old policy definitions, will I be denied leave when the policy is effective 2/1/2015?

Any employee who has an FML existing claim or who files a FML claim that is approved under the policy prior to the new effective and enforcement date of 2/1/2015 will be grandfathered in until the expiration of their original certification approval date. Any requests for FML leave on or after 2/1/2015 will be approved based on the eligibility requirements of the revised policy.

47. Where can I obtain additional information?

- Read the Family and Medical Leave, Policy 6.05, hr.osu.edu/policy
- Contact Employee and Labor Relations, ohrc@hr.osu.edu, 614-292-2800