

Frequently Asked Questions

Family and Medical Leave Act (FMLA)

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SECTION 1: THE BASICS OF FMLA

1. What is the FMLA?

The FMLA is a federal law that requires covered employers to provide eligible employees with time off from work in specific situations. Iowa State University is a covered employer under the FMLA. The FMLA was enacted in 1993 and then later amended.

2. Is there a similar state law in Iowa?

While many states have similar leave laws, Iowa does not have a law like the FMLA, with one exception: Iowa law allows a birth mother to take up to 8 weeks of unpaid leave, as documented by a physician, due to disability caused by pregnancy, childbirth, or related condition.

3. What sorts of situations are covered by the FMLA?

The FMLA covers the following situations:

- a. Birth of a child, and to care for the newborn child;
- b. Placement of a child with the employee for adoption or foster care;
- c. Care for the employee's spouse, registered domestic partner, child or parent with a serious health condition;
- d. A serious health condition that makes the employee unable to perform the functions of the employee's job;
- e. A qualifying exigency as defined by the Department of Labor arising out of the fact that the spouse, son, daughter, or parent (the "servicemember") of the employee is on covered active duty or has been notified of an impending call to order to covered active duty;
- f. To care for a spouse, son, daughter, parent or next of kin (the "servicemember") who is a current member or veteran of the Armed Forces or National Guard or Reserves and who has an illness or injury incurred in the line of duty.

4. Who is eligible for FMLA leave?

Employees who have completed at least 12 months of employment *and* worked at least 1,250 hours in the 12 months preceding the commencement of the leave are eligible. Unpaid leave would not count towards the 1,250 hours requirement. However, if an employee would have worked 1,250 hours but for documented military leave, the employee may be eligible for FMLA.

5. *What types of leave are available under the FMLA?*

The FMLA provides for different types of leave depending on the situation. Leave may be taken in continuous, full-time periods or may be taken intermittently or on a reduced schedule when medically necessary or for a qualifying exigency due to a call to covered active duty.

When intermittent or reduced schedule leave is needed to care for an immediate family member or the employee's own condition, and is for planned medical treatment, the employee must consult with the supervisor and make a reasonable effort to schedule treatment so as not to unduly disrupt the department's work.

Leave for birth or adoption of a child or placement of a foster child must be taken in one continuous period and must be concluded within one year of the birth, adoption or placement of the child. Either parent may ask the department to consider a reduced schedule rather than one continuous leave, but that decision is discretionary with the supervisor based on department needs and employee equity.

6. *Is FMLA paid or unpaid?*

FMLA leave is unpaid. The University requires employees to use, concurrently with FMLA leave, applicable paid leave including sick leave, vacation, or catastrophic leave (if eligible). The paid time used for an FMLA purpose will count toward the 12/26 weeks of FMLA leave entitled under the FMLA. Eligible employees may reserve up to 80 hours of vacation.

7. *What protections does the FMLA provide employees?*

The FMLA provides the eligible employee with protected time off, reinstatement to the same or equivalent position, continued benefits, and the right to be free from discrimination, interference, or retaliation for taking FMLA leave.

8. *What is the maximum leave time allowed under the FMLA leave?*

The FMLA provides "weeks" of leave. If the employee works less than full-time, the amount of leave time is pro-rated according to the employee's appointment. For example, an employee whose work week consists of 30 hours of work may take 12 weeks of leave, counted at 30 hours per week (or 360 hours).

With one exception, the FMLA provides a total of 12 weeks (or 480 hours for a FTE of 1.0) for covered situations. The one exception is that a total of 26 weeks (or 1,040 hours for an FTE of 1.0) is allowed to care for a spouse, son daughter, parent or next of kin (the "servicemember") who is a current member or veteran with illness or injury incurred in the line of duty while in the Armed Forces or National Guard or Reserves. No more than 26 weeks, total, of any type of FMLA may be used during one single 12-month period.

9. Will Iowa State University contribute towards my benefits plans (health, dental retirement, life, disability) during FMLA leave?

Yes, Iowa State University will maintain health and dental insurance during periods of FMLA by paying its share of the insurance premiums. If provisions of the insurance plan require the employee to pay a portion of the monthly premiums, the employee will continue to be responsible for that share of the premiums. The same is true for any life insurance or disability benefits for which the employee is enrolled.

An employee on FMLA has a minimum 30-day grace period in which to make premium payments. If payment is not made timely, the employee's group health insurance may be cancelled, provided the University notifies the employee in writing at least 15 days before the date that the health coverage will lapse, or at our option, we may pay the employee's share of the premiums during FMLA leave, and recover these payments upon return to work.

If the employee is eligible for other benefits, the University will pay its portion of insurance premiums for those benefits (e.g. life insurance, disability insurance, etc) while the employee is on FMLA leave.

Iowa State University will also maintain any retirement benefits in which the employee has been enrolled prior to taking FMLA leave. If FMLA leave is paid, the University will continue to make employer and employee contributions. If FMLA is unpaid, contributions will not be made but will resume when the employee returns to work. The same is true for any life insurance or disability benefits for which the employee is enrolled. If the employee extends his or her leave beyond the FMLA leave, then continued benefits may not be guaranteed. Check with the Benefits Office in that situation.

10. What constitutes a "year" for the purposes of FMLA leave?

The "year" used by the University under the FMLA is a calendar year January 1 to December 31. When using Servicemember Leave to care for an injured or ill servicemember or veteran, the 12-month period begins on the first day of such leave.

11. Is there a new bank of leave each January 1?

Yes. Employees receive a new bank of FMLA leave to use each calendar year, with the exception that no more than 26 weeks may be taken in a 12-month period.

12. What is a "serious health condition"?

"Serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

The term "incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

The term "inpatient care" means an overnight stay in a hospital, hospice, or residential medical care or any subsequent treatment in connection with the inpatient care.

The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

The term “continuing treatment by a health care provider” means any one of the following:

- a. A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30 days, or treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
- b. Any period of incapacity due to pregnancy or prenatal care.
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a health care provider, which continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
- d. Permanent or long-term conditions.
- e. Conditions requiring multiple treatments.

13. What is an “exigency” related to servicemember leave?

Eligible employees may take FMLA leave while the employee’s spouse, son, daughter, or parent (the “covered military member”) is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* (i) To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty in the Armed Forces seven or less calendar days prior to the date of deployment; (ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and (ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member;

(3) *Childcare and school activities.* (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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; (ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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; (iii) To enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and (iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member;

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and (ii) To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member;

(6) *Rest and recuperation.* (i) To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment; (ii) Eligible employees may take up to five days of leave for each instance of rest and recuperation;

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; and (ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;

(8) *Additional activities.* To address other events which arise out of the covered military member's covered active duty or call to covered active duty status provided that the employer and

employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

SECTION 2: DOCUMENTATION AND NOTICE

1. What type of documentation does the FMLA require or allow?

Employee Request for Leave Under the FMLA. This form documents the employee's request for FMLA and notifies the University that leave is needed.

Whose responsibility? The employee must submit this request 30 days before the leave is needed when the leave is known or otherwise foreseeable. If the leave is not known or foreseeable, the employee shall submit the request as soon as possible. A verbal request can suffice but the employee should try to make it clear that leave is needed for a covered reason. An unreasonable delay in requesting leave may result in a delay of approving the time off.

Notice of Employee Eligibility and Rights and Responsibilities. This form tells an employee whether he or she is eligible to take FMLA and also explains the employee's rights and responsibilities when taking such leave.

Whose responsibility? The University will provide this form to the employee at the home address on record.

Certification of Health Care Provider for Employee's Serious Health Condition. This form documents the serious health condition of the employee to determine whether FMLA is warranted.

Whose responsibility? The employee must return the certification to Human Resource Services within 15 calendar days. The medical certification must be complete and sufficient for the University to determine if FMLA is warranted. If any section of the certification is incomplete or insufficient, the employee will need to obtain more information before FMLA can be approved. If the certification confirms that it is medically necessary for the employee to take intermittent leave or leave on a reduced schedule for an FMLA condition, the employee does not need to provide certification for each subsequent absence for that condition. The employee must, however, notify the department of absences and the reason for those absences. If the employee develops additional health conditions, it may be necessary to obtain certification of those conditions to see if they are also covered by FMLA.

Certification of Health Care Provider for Family Member's Serious Health Condition. This form documents the serious health condition of the employee's family member to determine whether FMLA is warranted.

Whose responsibility? The employee must return the certification to Human Resource Services within 15 calendar days. The medical certification must be complete and sufficient for the University to determine if FMLA is warranted. If any section of the certification is incomplete or insufficient, the employee will need to obtain more information before FMLA can be approved. If the certification confirms that it is medically necessary for the employee to take intermittent leave or leave on a reduced schedule for an FMLA condition, the employee does not need to provide certification for each subsequent absence for that condition. The employee must, however, notify the department of absences and the reason for those absences. If the family member

develops additional health conditions, it may be necessary to obtain certification of those conditions to see if they are also covered by FMLA.

Certification of Qualifying Exigency for Servicemember Leave. This form documents the reason for and amount of leave needed for an exigency due to a family member's call to covered active duty.

Whose responsibility? The employee must return this form to Human Resource Services within 15 calendar days.

Certification for Serious Illness or Injury of Covered Servicemember. This form documents the reason for and amount of leave needed to care for a family member or veteran who is injured or ill due to covered active duty.

Whose responsibility? The employee must return this form to Human Resource Services within 15 calendar days.

Designation Notice. This form documents whether FMLA leave has been granted.

Whose responsibility? The University will provide this form to the employee at the home address on record as soon as possible after the need for FMLA leave is determined based on the documentation received.

Second or Third Opinions. These additional medical opinions may be sought if there is concern or question over the employee's Certification of Health Care Provider.

Whose responsibility? The University seeks and pays for a second opinion if needed. If the first and second opinions differ, the University may seek and pay for a third opinion. The third opinion is binding.

Recertification. This medical certification is often used to update an employee's chronic or ongoing condition. The University may request recertification every 30 days unless the original certification specified a certain date when the condition would be healed or updated; however, in all cases the University may request recertification at least annually, or may choose to seek recertification every 6 months even if the certification includes a certain date when the condition would be healed or updated. If the Department learns of new developments that cause the supervisor to question the employee's need for leave or question the accuracy of the original certification, the University may seek recertification in those situations.

Whose responsibility? It is the University's responsibility to request the recertification. It is the employee's responsibility to return the recertification within 15 calendar days.

Release to Return to Work. If an employee has taken continuous FMLA leave for his or her own serious health condition, a return to work release is required prior to returning to work. The employee cannot return to work without the release.

Whose responsibility? It is the employee's responsibility to provide the return to work release prior to returning to work.

SECTION 3: INFORMATION FOR THE EMPLOYEE

1. Must I use paid leave during FMLA leave?

Yes, you must use available paid leave. You may reserve up to 80 hours of vacation leave, however.

2. Will my supervisor return me to my former position after FMLA leave?

Under FMLA, you will be returned to the same or equivalent position upon return from leave. Exceptions might exist if your job would have been lost if you had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal.

3. I was given the essential physical functions and/or description of my position with the Health Care Certification Form. Why do I need these?

You should share this information with your physician as he or she completes the Health Care Certification Form. It is important that he or she evaluate the current condition that you are requesting leave for as it relates to your position and duties at ISU.

4. I was not given an essential physical functions and/or position description with my Health Care Certification Form. Is it required?

If you were not given essential physical functions and/or description for your position, please share with your physician the physical requirements/duties of your position when he or she completes the Health Care Certification Form.

5. What if I am not completely healed at the end of the FMLA leave?

You must present a return to work release to return to work at the end of continuous FMLA leave. The FMLA provides for 12/26 weeks of leave each calendar year. If you are totally or partially unable to return to work at the end of the FMLA leave, you should contact Human Resource Services as soon as possible to discuss what options may be available, such as an extension of leave or initiating the interactive process to determine whether workplace accommodations or modifications may be warranted. If you extend the leave of absence beyond the allowed 12/26 weeks of FMLA, benefits may no longer be continued. Contact the Benefits Office in that situation.

6. If I am off work for a work-related injury covered by workers compensation, does the FMLA apply?

Yes, if the injury or illness meets the definition of a serious health condition.

7. If I am off work for a work-related injury covered by workers compensation, must I accept light duty work?

No. If you are eligible for FMLA, you may choose to take the FMLA leave and reject the light duty work. However, you may risk loss of some workers compensation benefits by rejecting the light duty work – it is best to consult Human Resource Services.

8. What happens if my term or appointment ends while I'm on FMLA?

If you are a term or temporary employee and your term or appointment ends while you are on FMLA leave, your FMLA leave ends as of the last day of your appointment – FMLA does not extend the appointment. You should contact the Benefits Office to determine when your benefits, such as health insurance, will end.

9. What if I give notice of intent not to return? Are my benefits terminated?

Yes, as long as the notice is “unequivocal” or definite. One form of an unequivocal notice is when you submit a written letter for resignation. In that case you would have the options to continue coverage through COBRA following termination of employment.

There is also no right to reinstatement once you have provided “unequivocal” or definite notice that you will not return.

10. Can I be discharged while on FMLA leave?

You cannot be discharged simply because you took FMLA leave. However, termination of employment may occur while you are on approved FMLA leave if your job would have been lost if you had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal.

11. Can I be disciplined while on FMLA leave?

You cannot be disciplined simply because you took FMLA leave. However, a supervisor may discipline you for any legitimate reason that is not related to the FMLA leave. For instance, if you fail to follow established call-in protocol for reporting absences.

12. Can my supervisor transfer me to another position if I am taking FMLA?

A supervisor may temporarily transfer you to an alternative position in order to accommodate intermittent absences or a request for a reduced schedule, provided that it provides “equivalent pay and benefits” and the transfer is permitted by policy or contract.

13. Can I request sick leave or vacation for a serious health condition and NOT count this toward the FMLA period?

No, such a request should automatically count as FMLA leave.

14. Can the University place me on FMLA leave if I did not request FMLA leave?

Yes, the University may place you on FMLA if the University knows or has reason to know you are off work for a qualifying reason.

15. Are there differences in how FMLA leave is administered between Merit, P & S, and Faculty?

No, all groups of employees have the same rights under the FMLA. However, the University leave policies that outline how employees may be paid during their time off may differ depending on the employee category.

16. I am a full-time faculty member on a 9-month appointment. How does the FMLA apply to me?

The FMLA covers you assuming you meet the eligibility criteria set out in the policy. FMLA only governs leaves of absence from time you would otherwise be working – your 9-month appointment. FMLA would not cover the three months you are not employed by ISU. If you are paid by ISU and continue to perform services for ISU over the summer, you should seek clarification as to whether the FMLA might cover you in such a situation.

17. I am on a full-time 9-month faculty appointment and had my baby in June. My appointment requires me to return to work in August. How does the FMLA apply to this situation?

For birth or care of a baby (or placement of a child through foster care or adoption), leave must be taken and completed within the first year of the birth (or placement). You may take FMLA any time

in the 12 months after your baby is born. So even though your baby was born in June, you may still use FMLA when your appointment commences in August.

18. I am on a full-time 9-month faculty appointment and had my baby in June. Another person on a 9-month appointment had her baby in September and was able to use sick leave during her FMLA. Can I use sick leave if I take leave in September?

It depends. Sick leave is typically allowed so long as medically necessary to recover from childbirth. So the employee who had her baby in September can use sick leave as long as her doctor certifies it is medically necessary. But if your baby was born in June and you are no longer restricted by your doctor, sick leave is not an option. You may take the time off to care for your baby, but it will be unpaid leave. If your baby develops a serious health condition, you may be able to use sick leave available under University policy to care for the baby.

19. My partner is pregnant. Do both parents have FMLA time for birth or adoption of child or placement of foster child?

Yes, both parents are eligible for FMLA leave in covered situations. However, the University leave policies that outline how employees may be paid during their time off may differ. For instance, birth mothers typically need time to recover physically from the pregnancy and childbirth, which would be covered by sick leave. Or, if the child developed a serious health condition, either parent could use available sick leave per University policy for such situations. Finally, both parent could take time to care for and bond with a healthy child – that time will either be paid through vacation or unpaid because there is no medical need for the leave.

20. My partner and I both work for ISU. Does that affect our FMLA leave rights?

Each eligible parent shall have FMLA leave independent of each other *except for* the birth or adoption of a child or placement of foster child, or care for a servicemember who was injured or became ill in the line of duty. In those exceptions, the partners share 12/26 weeks. For example, both parents could take 6 weeks to care for their newborn, for a total of 12 weeks. While no more time can be taken under the FMLA for the newborn, each parent has 6 weeks left to use for other FMLA covered situations. Parents may wish to discuss other options with their individual departments.

21. I think I may need some time off for a covered situation. How do I start the FMLA process?

You should submit the Employee Request Form to Human Resource Services and also notify your department that you will need time off. You should also check your paid leave balances to determine whether your FMLA leave will be paid or unpaid. You may wish to contact the Benefits Office for information about what happens to your benefits during your time off.

22. My supervisor is insisting that my time off is FMLA, although I do not want my absence to be called FMLA. Can the University designate my absence as FMLA against my wishes?

Yes. If you are eligible for FMLA and are taking time off for a covered situation, the University can designate the time off as FMLA even if you do not want FMLA. If you do not believe your situation is covered by FMLA, speak with your supervisor or with Human Resource Services.

23. What happens if I do not complete the paperwork?

If you fail to request FMLA leave in advance and you knew you would need the time off, the University may delay the start of your FMLA leave for 30 days. If you fail to submit the required

certification documentation, your FMLA leave may be delayed or even denied. If you fail to submit requested Recertification, future FMLA leave may be delayed or denied. If you fail to submit the return to work release, you will not be able to return to work from continuous leave taken for your own serious health condition.

24. Why do I need to authorize you to speak with my health care provider (on the Certification of Health Care Provider)?

It is not required that you give the University permission to speak with your health care provider; however, it can speed up the review and approval of your request for FMLA leave. Sometimes an employer cannot read or understand the health care provider's comments and clarification is needed. To save everyone's time, we ask that you give permission at the time you are turning in the certification. Otherwise, ISU may need to contact you after receiving the medical certification and obtain your signature – this slows down the review and approval process.

25. Why is the University asking me to recertify a serious health condition when I have already provided medical documentation before?

The University may seek recertification of your need for FMLA leave in a few different situations. First, ongoing conditions can change or heal. The University may request recertification every 30 days unless the original certification specified a certain date when the condition would be healed or updated; however, in all cases the University may request recertification at least annually, or may choose to seek recertification every 6 months even if the certification includes a certain date when the condition would be healed or updated. Second, sometimes the health care provider may incorrectly estimate the length or frequency of your absences. If the Department learns of new developments that cause the supervisor to question your need for leave or question the accuracy of the original certification, the University may seek recertification in those situations.

26. I am approved for intermittent FMLA. Do I need to call in for each absence?

Yes. You need to follow your department's call-in procedures (e.g., when to call, whom to call) for intermittent or unplanned absences. If you do not know those call-in procedures, ask your supervisor.

27. I am approved for intermittent FMLA. Do I need to provide a new certification for each absence?

No, you do not need new medical certification of the condition that causes the intermittent absence if that condition is already approved. However, it may be necessary to document the reason for the absence; that is, that you were out that day for that reason and not some other reason.

28. I am approved for intermittent FMLA. Can my supervisor ask me questions about my absences?

Yes. The supervisor has an obligation to accurately track your absences. The supervisor can ask you for information necessary to determine whether the absence is covered by FMLA. You have an obligation to respond to those questions.

29. Where is my medical information kept?

Human Resource Services is the central storage location for your FMLA and medical information. The information will be kept confidential.

30. I am approved for intermittent leave for treatment (for myself or family member). Do I need to work with my department to make those appointments, or can I schedule them when it is convenient for me?

You must work with your department and make a reasonable effort to schedule those planned appointments at a time that will not disrupt the work of your department.

31. I have a lot of sick leave. Why do I need to go through the FMLA process for my absence?

The University is required to designate and track FMLA leave even if you have sufficient sick leave to cover the leave of absence. Remember that the sick leave and FMLA run together at the same time.

32. Does the collective bargaining agreement provide additional rights?

It can. The AFSCME collective bargaining agreement allows covered eligible employees to request a 90-day Medical Leave Without Pay once they have exhausted their sick leave. This leave could run at the same time as FMLA if FMLA is unpaid, or it could run at the end of FMLA if the employee had paid leave.

33. What are my responsibilities if I am taking FMLA?

Provide advance notice of at least 30 days when you have reason to know you will need FMLA leave from work. If 30 days is not possible or the need for leave was not known, provide notice as soon as possible. You can request FMLA with the Employee Request Form. Return any required certification documentation to Human Resource Services within 15 calendar days. Provide periodic reports on your status and intent to return to work when asked. Provide recertification documentation when asked. Stay in touch with your supervisor and communicate changes in your leave or ability to return to work. If taking intermittent leave, follow department rules for calling in your absence and providing information about your absence. If you do not know the department rules, ask your supervisor. Submit a return to work release prior to returning to work from continuous leave taken for your own serious health condition.

SECTION 4: INFORMATION FOR THE SUPERVISOR/DEPARTMENT

1. Do I have the option to deny FMLA if our department is really busy?

No. If the employee is eligible and approved for FMLA, they must be able to take the leave.

2. Does the employee return to the same position after FMLA leave?

Yes. Under FMLA, the employee is returned to the same or equivalent position upon return from leave. Exceptions might exist if the employee's job would have been lost if he or she had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal.

3. When should I start the FMLA process?

You should contact Human Resource Services to initiate the FMLA process when an employee informs you that she or he needs time off for a reason that may be covered by the FMLA. The employee may not be as clear as to mention the "FMLA" when asking for the time off, but you should be aware that the reason may qualify for FMLA. When in doubt, contact Human Resource Services.

Sometimes an employee may not ask for the time off or you may not immediately know if an absence could be covered by the FMLA. You should monitor your employee's attendance. You should consult with Human Resource Services when an employee is off for his or herself or a covered family member for:

- A period of incapacity of more than three consecutive full calendar days (which can include absences Friday and the following Monday), and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30 days, or treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
- Any period of incapacity due to pregnancy or prenatal care.
- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a health care provider, which continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
- Permanent or long-term conditions
- Conditions requiring multiple treatments
- 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 in connection with or consequent to such inpatient care
- Absence Plus Treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - o Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of , or on referral by, a health care provider, or
 - o Treatment by a health care provider on a least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Pregnancy: Any period of incapacity due to pregnancy or for the prenatal care.
- Chronic Conditions: Requiring Treatments: A chronic condition which
 - o Requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider;
 - o Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - o May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc)
- Permanent/Long-Term Conditions Requiring Supervision: 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. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

- **Multiple Treatments (Non-Chronic Conditions):** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under the orders of, or on referral, by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).
- Care for a covered family member returning from covered active duty with the Armed Forces or a veteran of the Armed Forces that has sustained an injury or illness.

4. *Is it my responsibility to confirm the employee is eligible for FMLA?*

Yes. Human Resource Services will likely need your assistance to determine whether the employee is eligible; that is, has the employee been employed at least 12 months, has the employee worked at least 1,250 hours in the 12-month period preceding the leave, and how many FMLA hours if any have been taken this calendar year by the employee.

5. *I am a supervisor and one of my employees has been out unexpectedly for a week. Is this covered by FMLA?*

It could be. You should try communicating with the employee. You should also contact Human Resource Services so they can send the employee the appropriate paperwork to determine whether the absence is covered by FMLA.

6. *I am a supervisor and one of my employees regularly takes sick leave for appointments and treatment. Is this covered by FMLA?*

It could be if the underlying condition qualifies. You should contact Human Resource Services so they can send the appropriate paperwork to determine whether the absences are covered by FMLA.

7. *Must I allow an employee an extension of leave beyond FMLA?*

There may be instances where it could be reasonable to extend a leave of absence after an employee has used all of the allowable time under the FMLA. Please work with Human Resource Services in these situations. It is best to keep in touch with the employee before the FMLA ends so there are no surprises at the end of the leave.

8. *What if the employee is unable to perform some or all of the position after FMLA leave?*

The FMLA provides only the 12/26 weeks of leave. If the employee is unable to perform his or her position at the end of the FMLA leave, you should engage in an interactive discussion with the employee regarding what limitations the employee has and what would help the employee return to work. Consult with Human Resource Services, as it may be necessary to initiate an accommodation process. An employee who cannot perform the essential functions and/or description of the position with or without accommodation may not be eligible to return to work.

9. *What if I have a temporary light duty position available for the employee – do I still have to allow the FMLA leave?*

Yes. You can certainly offer the light duty work, but if the employee is otherwise eligible for FMLA leave, the employee may choose to take the FMLA leave and not accept the light duty work.

10. What if a faculty or staff member gives notice of intent not to return? Are their benefits terminated?

Yes, as long as the notice is “unequivocal” or definite. One form of an unequivocal notice is when the employee submits a written letter for resignation. The individual has the option to continue coverage through COBRA following termination of employment.

There is also no right to reinstatement once the employee “unequivocally” or definitely gives notice that he or she will not return. Consult with Human Resource Services before concluding on your own that you have received unequivocal notice.

11. Can I discharge an employee who is on FMLA leave?

Yes. Termination of employment may occur while an employee is on approved FMLA leave if the employee’s job would have been lost if he or she had been working, such as through position elimination, layoff, non-renewal, program curtailment, or cause that would otherwise support dismissal. In this situation, consult with Human Resource Services before taking any action. You cannot discharge an employee simply because he or she is taking FMLA leave, or otherwise retaliate against the employee for taking FMLA leave.

12. Can I discipline an employee who is on FMLA leave?

Yes. You may discipline an employee who is on FMLA leave for any legitimate reason that is not related to the FMLA leave. For instance, if the employee fails to follow proper call-in protocol for reporting absences. In this situation, consult with Human Resource Services before taking any action. You cannot discipline an employee simply for taking FMLA leave, or otherwise retaliate against an employee for taking FMLA leave.

13. What about transferring a staff member to another position?

You may consider temporarily transferring a staff member to an alternative position in order to accommodate intermittent absences or a request for a reduced schedule, provided that it provides “equivalent pay and benefits” and the transfer is permitted by policy or contract. Before pursuing this possibility, consult with Human Resource Services to make sure you are not violating any contracts or other policies.

14. Can an employee request sick leave or vacation for a serious health condition and NOT count this toward the FMLA period?

No, such a request should automatically count as FMLA leave. You should record such vacation or sick leave as FMLA if covered.

15. An employee is approved for intermittent leave for treatment (for his/herself or family member). Can I ask the employee to work with me to schedule those appointments, or can he/she schedule them when it is convenient for him/her?

The employee must work with you and make a reasonable effort to schedule those planned appointments at a time that will not disrupt the work of your department.

16. An employee is approved for intermittent FMLA. Does he/she need to call in for each absence?

Yes. The employee needs to follow your department's call-in procedures (e.g., when to call, whom to call) for intermittent or unplanned absences. Make sure these rules are known and evenly applied to everyone.

17. An employee is approved for intermittent FMLA. Does the employee need to provide a new medical certification for each absence?

No, the employee does not need new medical certification of the condition that causes the intermittent absence if that condition is already approved. However, it may be necessary to document the reason for the absence – that is, that the employee was out that day for that reason and not some other reason.

If the employee develops new conditions that require absence from work, you may need to seek certification of that new condition to determine if FMLA will apply. Contact Human Resource Services in that situation.

18. An employee is approved for FMLA. How will I know which absences are for the FMLA-covered reason?

Ask the employee. First, the employee must follow your department's call-in procedure for absences (e.g., when to call, whom to call). Second, when the employee calls in, you need to ask the employee whether the absence is for one or more FMLA-covered reasons. The employee must answer your questions that are reasonably directed to determining whether the absence is covered. You do not need a lot of information, but you do need to know enough to determine whether the absence is FMLA or not (e.g., "are you out today for an FMLA reason?" or "I understand you are unable to work today – is this related to your FMLA leave?").

19. Can the University place an employee on FMLA leave if the employee fails to request the leave?

Yes. If the employee is eligible for FMLA and is taking time off for a covered situation, the University can designate the time off as FMLA even if the employee did not request it. You should not count leave as FMLA if it is not covered.

20. When should an employee's absence be designated as FMLA leave?

Designation of absences as FMLA leave should occur as soon as possible, preferably within two business days. For this reason, it is important that you are working with Human Resource Services to determine that the employee is eligible and that the absence qualifies for FMLA leave. Sometimes, because information has not been shared quickly, the absence can't be designated as FMLA leave until the employee actually returns to work. Otherwise, retroactive designation is discouraged.

21. Can the University deny FMLA leave even if the employee meets the eligibility requirements and has a serious health condition?

No. However, FMLA leave could be delayed or denied if the employee fails to submit the required paperwork.

22. What if the employee's absences are not consistent with the information I received from Human Resource Services (e.g., the employee is absent more often than the health care provider suggested)?

Contact Human Resource Services. It may be necessary to have the employee recertify the FMLA absences if the number or frequency of absences is not what the health care provider suggested. Human Resource Services will not know the amount of absences unless you let them know. Once notified, HRS will send a recertification request to the employee.

23. Can I ask for updates from the employee on leave?

Yes. A supervisor can ask the employee for periodic updates on status and intent to return to work. These are not medical certifications or paperwork, but just informal touching base with the employee.

24. Are there differences in how FMLA leave is administered between Merit, P & S, and Faculty?

No, all groups of employee have the same rights under the FMLA. However, the University leave policies that outline how employees may be paid during their time off may differ depending on the employee category.

25. An employee is a full-time faculty member on a 9-month appointment. How does the FMLA apply?

The FMLA covers the employee assuming he/she meets the eligibility criteria set out in the policy. FMLA only governs leaves of absence from time the employee would otherwise be working – the 9-month appointment. FMLA would not cover the three months the employee is not employed by ISU. If the employee is paid by ISU and continues to perform services for ISU over the summer, seek clarification as to whether the FMLA might cover the employee in such a situation.

26. An employee is on a full-time 9-month faculty appointment and had a baby in June. The appointment requires the employee to return to work in August. How does the FMLA apply to this situation?

For birth or care of a baby (or placement of a child through foster care or adoption), leave must be taken and completed within the first year of the birth (or placement). Either parent may take FMLA any time in the 12 months after the baby is born. So even though the baby was born in June, the employee may still use FMLA when the appointment commences in August.

27. An employee is on a full-time 9-month faculty appointment and had her baby in June. Another person on a 9-month appointment had her baby in September and was able to use sick leave during her FMLA. Can the first employee use sick leave if she takes leave in September?

It depends. Sick leave is typically allowed so long as medically necessary to recover from childbirth. So the employee who had her baby in September can use sick leave as long as her doctor certifies it is medically necessary. But if the first employee's baby was born in June and the employee is no longer restricted by her doctor, sick leave is not an option. She may take the time off to care for care baby, but it will be unpaid leave.

28. An employee's partner is pregnant. Do both parents have FMLA time for birth or adoption of child or placement of foster child?

Yes, both parents are eligible for FMLA leave in covered situations. However, the University leave policies that outline how employees may be paid during their time off may differ. For instance, birth mothers typically need time to recover physically from the pregnancy and childbirth, which would be covered by sick leave. Or, if the child developed a serious health condition, either parent could use available sick leave per University policy for such situations. Finally, both parent could take time to care for and bond with a healthy child – that time will either be paid through vacation or unpaid because there is no medical need for the leave.

29. An employee and his/her partner both work for ISU. Does that affect their FMLA leave rights?

Each eligible parent shall have to 12/26 weeks of FMLA leave independent of each other *except for* the birth or adoption of a child or placement of foster child, or care for a servicemember who was injured or became ill in the line of duty. In those exceptions, the partners share 12/26 weeks. For example, both parents could take 6 weeks to care for their newborn, for a total of 12 weeks. While no more time can be taken under the FMLA for the newborn, each parent has 6 weeks left to use for other FMLA covered situations. Parents may wish to discuss other options with their individual departments.

30. How does an employee start the FMLA process?

The employee should submit the Employee Request Form to Human Resource Services and also notify you that he or she will be needing time off. The employee may also want to check his or her paid leave balances to determine whether his or her FMLA leave will be paid or unpaid. The employee will most likely be asked to provide documentation to certify the need for FMLA.

31. How should FMLA be administered for individuals with ‘potential’ absence due to a disclosed illness (i.e., cancer diagnosed but never missed 3 days).

If you have knowledge that the person may need time off because of their illness or injury, you should contact Human Resource Services so they can send the FMLA paperwork to the employee. The “3-day rule” is just one example of a covered condition under the FMLA – there are other conditions that are covered by FMLA.

32. Where is FMLA paperwork kept?

FMLA paperwork will be kept confidential in Human Resource Services. There should be no medical information in the employee’s personnel file. If you have any medical information, it should be kept separately from the department personnel file.

33. What is the department’s responsibility after FMLA has been approved?

The Department is responsible for tracking the employee’s absences and knowing when the FMLA leave will expire. It is helpful to get in touch with the employee before the FMLA expires so they can plan for their return to work. The Department needs to keep in touch with Human Resource Services regarding absences and leave. The supervisor should receive the employee’s FMLA Return to Work Release before the employee returns. If the release requires work restrictions, please contact Human Resource Services to discuss the restrictions.

The Department should also track the employee’s paid leave status in the event the employee is eligible for 90-day Medical Leave Without Pay (AFSCME only).

34. What happens if the employee doesn't complete the paperwork?

FMLA leave could be delayed or denied if the employee does not complete the necessary paperwork.

35. The employee has a lot of sick leave. Why do he or she need to go through the FMLA process for the absence if the employee has available sick leave to use?

The University is required to designate and track FMLA even if the employee has sufficient sick leave to cover the leave of absence. Remember, the sick leave and FMLA run together at the same time.

36. Should I wait until the employee uses all his or her sick leave before contacting Human Resource Services to start FMLA?

No. FMLA should begin as soon as you know the employee needs leave for a covered reason, even if the employee has paid leave available. Do not wait for the employee to exhaust the paid leave. Paid leave and FMLA leave should run together at the same time.

37. An employee would like to save his or her paid leave for another situation, can FMLA be unpaid?

No, not if the employee has paid leave available to use. The FMLA allows employers to require employees to use paid leave during an FMLA absence. However, merit, P&S, and eligible faculty may reserve up to 80 hours of vacation for later use.

38. Does the collective bargaining agreement provide additional rights?

It can. The ASFSCME collective bargaining agreement allows covered employees to request a 90-day Medical Leave Without Pay once they have exhausted their sick leave. This leave could run at the same time as FMLA if FMLA is unpaid, or it could run at the end of FMLA if the employee had paid leave. In any situation where the employee needs time off and is running out of sick leave, you should offer the Medical Leave Without Pay. Consult with Human Resource Services.

39. Who is responsible for tracking FMLA absences?

You are responsible for tracking an employee's FMLA absences. It is extremely important that the tracking is accurate. This is especially true when an employee is taking intermittent FMLA leave. Human Resource Services will need this information since they will not know about the employee's attendance or absences.

When an employee who is covered by FMLA is absent, you should ask whether the absence is due to the FMLA condition. That is, the person could be certified to take FMLA for chemotherapy sessions, but may be absent for an unrelated illness. Only count FMLA for the absence supported by the FMLA documentation. If the employee develops multiple conditions, each condition needs to be certified as FMLA-qualifying and should be tracked accordingly.

40. What are the supervisor's responsibilities?

Be receptive to requests about FMLA. If you do not know the answer to a question, refer the employee to Human Resource Services. If you have received a request for FMLA, contact Human Resource Services so they can begin the process to determine if the employee is eligible and if

FMLA is warranted under the circumstances. Remember the request may be written or verbal and the employee may not always mention "FMLA."

If an employee is absent from work for reasons you know or suspect to be covered by FMLA, consult Human Resource Services to determine if FMLA is implicated. The "3-day rule" is just one situation that may call for FMLA when the employee is ill or out of work for 3 consecutive calendar days. Explain your expectations to the employee so there are no surprises, especially related to calling in for intermittent or unexpected absences. Keep Human Resource Services updated on absences and whether those absences are consistent with the expected need for leave. If the employee is unable to return to work at the end of the FMLA leave, engage in an interactive discussion with the employee regarding limitations and ability to return.

Review the employee's Release to Return to Work form and consult with Human Resource Services if the health care provider has indicated work restrictions.

SECTION 5: MISCELLANEOUS

2. Can time spent as a student employee be combined with that of a regular appointment to fulfill the eligibility requirement of at least 1,250 hours and twelve months?

Yes, provided all of the employment at issue has been within the University.

3. Is Workers Compensation leave counted simultaneously with that of FMLA leave?

Yes, if the injury or illness meets the definition of a serious health condition.

4. How do you calculate intermittent leave?

To track intermittent leave, hours must be counted. As an example, an employee with a full-time appointment who is on intermittent leave is entitled to the hourly equivalent of 12 weeks at full-time (480 hours).

5. If FMLA leave is taken for the birth or placement of a child, when must the leave conclude?

An employee's FMLA leave taken for the birth or placement of a child must be completed by the end of the 12 month period that begins on the date of the birth or placement.

6. Is there a total of 12 weeks of leave per calendar year, or 12 weeks per situation?

The employee may use 12 weeks, total, during the calendar year regardless of how many qualifying situations exist.

7. May an employee drop optional insurance coverage during FMLA leave?

Yes, an employee may drop optional insurance coverage during FMLA and has the right to be reinstated into such coverage at the end of the FMLA leave.

8. Do temporary employees have any rights under FMLA?

Temporary employees are eligible for FMLA if they meet the same eligibility criteria:

They have worked (anywhere at Iowa State University) for at least 12 months

They have worked at least 1,250 hours in the 12 months immediately preceding the leave.

If otherwise eligible, temporary employees may only use FMLA during their appointment. If the appointment was set to expire or end, the FMLA will not extend the employment.

For additional questions, please contact:

Human Resource Services

Employee and Labor Relations Office

Phone: 515-294-3753 Email: fmla@iastate.edu