

# DEPAUL UNIVERSITY



## Family and Medical Leave Act (FMLA)

**Category:** Human Resources

**Responsible Department:** Benefits

**Responsible Officer:** Vice President, Human Resources

**Effective Date:** 01/03/2019

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### Policy Summary

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Except where otherwise specified, this policy provides for a maximum of 12 weeks of unpaid job-protected leave for the family and medical purposes in accordance with the Family and Medical Leave Act (FMLA).

For information related to taking a leave of absence due to service, voluntary or involuntary, in the uniformed services of the United States, refer to the [Military Leave of Absence policy](#).

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### Scope

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This policy affects the following groups of the University:

- Full-Time Staff
- Part-Time Staff
- Full-Time Faculty
- Part-Time Faculty
- Student Employees

This policy applies to all of the above employees who have completed one (1) year of service (consecutive or non-consecutive) and have worked a minimum of 1250 hours during the 12-month period immediately preceding the start of the leave. This policy does not apply to anyone who is not an employee pursuant to the FMLA. To qualify for FMLA leave, an employee must work at a site with 50 employees within a 75 mile radius. Any time spent fulfilling an employee's military service obligations must be counted toward the employee's 1250-hour and 12-month employment requirements for FMLA-eligibility purposes. Any service prior to a break in service of seven years or more will not be counted towards the one-year service requirement.

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## Policy

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This policy complies with the provisions of the Family and Medical Leave Act (FMLA) and any other relevant federal and state government regulations. Eligible employees may be entitled to up to twelve (12) weeks of unpaid job-protected leave under the FMLA for specified family and medical reasons, including:

- The employee's serious health condition that makes the employee unable to perform the employee's job;
- The serious health condition of the employee's child, spouse, or parent;
- The birth and care of a child, or the placement of a child with an employee for adoption or foster care;
- A qualifying exigency (i.e. emergency) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is a regular Armed Forces service member or a Reserve or National Guard member who is on covered active duty in a foreign country (or has been notified of an impending call or order to active duty in a foreign country)

A serious health condition is defined as 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 health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirements may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two (2) visits to a health care provider or one (1) 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.

Eligible employees may take up to twelve (12) weeks of qualifying unpaid FMLA leave during the twelve (12) month period measured forward from the date an employee's first FMLA leave date begins. The next twelve (12) month period would begin the first time FMLA leave is taken after completion of a previous twelve (12) month period. As an example, if an employee takes FMLA leave starting February 1 of the current year, the employee would not be eligible to take another FMLA leave until the next February 1, which is the twelve (12) month period following the date of the employee's first FMLA leave date.

An eligible employee may apply for a FMLA leave of absence to care for a covered family member (spouse, son, daughter, parent or next of kin) who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank or rating. This also includes injuries or illnesses that existed before a service member's active duty started and were aggravated by service in the line of duty on active duty in the Armed Forces. "Next of kin" is defined as the closest blood relative of the injured or recovering service member. This leave may extend to up to twenty-six (26) weeks in a single twelve (12) month period for up to five (5) years after the employee leaves military service.

In general, upon returning from approved FMLA leave, an employee, with the exception of a “key employee”, has the right to be restored to the same job or an equivalent position, subject to the terms of this policy, limitations and exceptions provided by law. Details regarding reinstatement to an employee’s former position are outlined in item 5 of section VII. Procedures.

This policy is intended to comply with the requirements of the FMLA. Nothing in this policy is intended to contradict the requirements of the FMLA or to grant any rights or leave in excess of the requirements of the FMLA.

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## **Procedures**

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### **1. Notification and FMLA Request Process**

#### Employee Responsibilities

1. The employee should provide his or her manager a minimum of thirty (30) days advance notice for leave requests when the need is foreseeable. In case of an emergency, the employee should notify the manager as soon as possible, preferably within four (4) hours of the start of the work day on which the first absence occurs. In most cases this means that the employee should be able to provide notice of the need for leave either the same day or the next business day after the need for leave becomes known. The employee must provide information indicating that the leave is needed for an FMLA-qualifying reason, as well as the anticipated duration of the absence if known. If the manager is unavailable, the employee should contact the Benefits Department of Human Resources.
2. The employee must contact Liberty Mutual, DePaul’s leave of absence administrator, at 1-800-341-0593 or through the Liberty Mutual portal (Go to [myHR](#) and then select Self Service > Benefits > Liberty Mutual) to initiate the leave of absence process.
3. The employee must submit all required paperwork to Liberty Mutual within fifteen (15) calendar days from the date on which the employee receives the paperwork from Liberty Mutual. This includes a completed Certification of Health Care Provider and other documentation necessary in order to certify the need for FMLA leave. Failure to provide this documentation on a timely basis may result in a delay or denial of the leave request which may affect compensation and employment.

FMLA leave requests received beyond thirty (30) days from the initial date of absence generally will not be approved on a retroactive basis.

The university may require subsequent recertification of medical condition in connection with an absence for pregnancy, chronic or permanent/long-term conditions. Failure to provide requested certification within fifteen (15) days may result in delay of further leave until it is provided. DePaul reserves the right to require certification from a covered military member’s health care provider if an employee is requesting military caregiver leave and certification in connection with military exigency leave.

DePaul may require an examination by a second health care provider designated and paid for by DePaul. If the second health care provider’s opinion conflicts with the original medical certification,

DePaul, may require a third health care provider (also paid for by DePaul) to conduct an examination and provide a final and binding opinion.

If the leave is requested due to an adoption or foster care placement, the employee must submit documentation of the placement as part of the leave request process.

### Manager Responsibilities

An employee's manager is responsible for complying with DePaul's FMLA policy and applicable federal, state, and local laws. The manager will also be responsible for informing eligible employees of the availability of FMLA, instructing employees to contact Liberty Mutual to initiate the leave of absence process, and not soliciting medical information from the employee.

### Human Resources' Responsibilities

Human Resources is responsible for assisting an employee and the employee's manager through the FMLA process, notifying the employee of any impact to benefits (if applicable), and assisting with coordination of any paid time off the employee may receive during an approved FMLA leave.

## **2. Length of FMLA Leave and Intermittent FMLA Leave**

Eligible employees may take up to twelve (12) weeks of qualifying unpaid FMLA leave during a twelve (12) month period commencing with the first day of the qualified leave. Eligible employees may take up to twenty-six (26) weeks for an approved leave for the purpose of caring for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces.

FMLA leave may be requested in one (1) consecutive block of time or on an intermittent basis or reduced work schedule, if medically necessary. All such leaves whether intermittent or consecutive block, must conclude within twelve (12) months. Intermittent leave may involve occasional full or partial days for medical appointments or therapy, or several days/weeks at a time. Reduced work schedules may involve a reduction in the number of working hours per week or hours per workday.

If the purpose of the requested leave is the birth and care of a child or the placement of a child with an employee for adoption or foster care and if both parents are employed by the university and both are eligible for FMLA leave, they may each take any remaining FMLA leave during the twelve (12) month period following the birth or placement for adoption or foster care of the child, provided that the leave is approved and subject to the other limits set in this policy. If the purpose of the leave is to care for a child with a serious health condition and both parents work for DePaul University, each parent (if otherwise eligible under the provisions of this policy) may be entitled to up to twelve (12) weeks of FMLA leave of absence.

All qualifying time off, whether intermittent, reduced hours or in a consecutive block of time, must be reported to the Benefits Department of Human Resources and Liberty Mutual and applied toward the appropriate twelve (12) or twenty-six (26) week limit. University paid holidays are not counted towards FMLA days and are unpaid if they occur during an FMLA leave

In the case of planned, ongoing medical treatment requiring leave time, employees should consult with their manager and make reasonable efforts to schedule the treatment so as not to unduly disrupt staffing and operations of the department, subject to the approval of their health care provider.

During the course of an approved FMLA leave, the university may require the employee to temporarily transfer to an available alternative position for which the employee is qualified that will better accommodate the need for intermittent leave or a reduced work schedule. An alternative position does not require equivalent duties but must have equivalent pay and benefits.

### **3. Benefits Continuation During FMLA**

This section summarizes key benefit issues during FMLA leave. Vacation and sick time continues to accrue during an FMLA leave of absence. Coverage under the university benefit plans may continue during a qualified FMLA leave of absence if employee contributions (where applicable) are paid, with the exception of the Dependent Care Flexible Spending Account (DCFSA). The DCFSA will automatically cease as of the date the leave of absence begins. To re-enroll in the DCFSA upon return from leave, the employee must notify the Benefits Department of Human Resources within thirty-one (31) days of returning from the leave.

#### Unpaid Leave

If an employee on FMLA leave is not eligible to receive pay under any of the university policies for paid sick time, short-term disability, parental leave or vacation, the leave will be unpaid and the employee is responsible for paying the employee contribution amount for those benefits that require an employee contribution. This can be done by arranging pre-payment via pre-tax (if appropriate) deductions prior to the leave or on an after-tax basis by personal check and forwarding such payment to the Benefits Department of Human Resources during the leave.

An employee has the option of terminating participation in any of the benefit plans at the beginning of the leave and reinstating coverage upon return from the leave.

If an employee discontinues benefits coverage during a leave and wishes to resume coverage upon return, the employee must re-enroll within thirty-one (31) days of returning from the leave. Otherwise, the employee must experience a qualifying event or wait until the open enrollment period to re-enroll. If an employee experiences a qualifying event during the leave of absence, the employee may increase or decrease coverage in accordance with that event. If an employee does not proactively elect to discontinue benefits, participation will continue during the unpaid leave and the employee is responsible for paying contributions due for the period of the leave.

If an employee discontinues participation in the Health Care Flexible Spending Account while on leave, the employee who returns in the same plan year may either:

- Resume monthly contributions in effect before the leave (resulting in a reduction from the annual election); or
- Increase monthly contributions from those in effect prior to the leave (to an amount resulting in the same annual election in effect before the leave).

If the employee does not select one of these options, contributions will automatically be recalculated based on the employee's annual election made at the beginning of the year.

Contributions to the 403(b) retirement plan, transportation program and health savings account will be automatically suspended during an unpaid FMLA leave. Upon return from unpaid leave, contributions that have been suspended by Human Resources will re-start automatically. During an unpaid FMLA leave, an employee may make post-tax contributions directly to his or her health savings account (HSA).

#### Paid Leave

If an employee on FMLA leave is eligible to receive pay under any of the university policies for paid sick time, short-term disability, parental leave or vacation, some or all of the FMLA leave may be paid (see Section 6 "Coordination with Paid Leave and Concurrent Leaves"). If the employee is receiving adequate pay, coverage will continue in all of the above-mentioned plans in which the employee is enrolled. All regular payroll deductions will continue as well as applicable plan contributions.

An employee has the option of terminating participation in any of the benefit plans at the beginning of the leave and reinstating coverage upon return from the leave.

If an employee discontinues coverage during a leave and wishes to resume coverage upon return, the employee must re-enroll within thirty-one (31) days of returning from the leave. Otherwise, the employee must experience a qualifying event or wait until the open enrollment period to re-enroll. If an employee experiences a qualifying event during the leave of absence, the employee may increase or decrease coverage in accordance with that event.

Employee contributions to the 403(b) retirement plan, transportation plans and health savings account continue during paid leave. Faculty and staff can change or stop these contributions at any time.

#### Sick Time and Short Term Disability

If an employee takes FMLA for the employee's own serious health condition, FMLA leave will run concurrently with short term disability. If the reason for an FMLA leave of absence is not the employee's own serious health condition, sick time benefits are not available during the FMLA leave, except as otherwise provided under the University [Sick Time and Short Term Disability Policy](#). In such instances, accrued vacation, parental leave, and floating holiday benefits may be available.

### **4. Performance Appraisal and Merit Increases**

If an employee is on a continuous FMLA leave of absence, scheduled performance review and merit salary increase (if any) will be postponed as necessary until the employee has returned to active work and will be made prospectively.

### **5. Return from Leave**

In general, upon returning from approved FMLA leave, an employee, with the exception of a "key employee", has the right to be restored to the same job or an equivalent position, subject to the terms of this policy, limitations and exceptions provided by law. However, an employee on leave can be affected by decisions or actions of the university, such as changes to benefit plans or revisions in university policy, just as if the employee had remained at work.

Employees must contact their manager and Liberty Mutual one (1) week prior to the expiration of their leave to indicate their intent to return to work. Employees must contact their manager and Liberty Mutual if circumstances change such that an early return to work is likely. Failure to return to work at the expiration of a leave or failure to notify Liberty Mutual and the manager of a needed extension of leave may result in termination of employment.

Reinstatement to the former position is not required for “key employees” in the following situations:

- If the employee is notified of status as a “key employee” prior to the leave;
- If the employee is notified of the employer’s intention not to reinstate;
- If the employee is among the ten (10) percent highest paid of salaried employees within a seventy-five (75) mile radius;
- If reinstatement would result in a “substantial and grievous economic injury to operations”.

The “key employee” determination is fact-specific and will be made by DePaul’s President/Executive Vice President/Provost on a case-by-case basis. DePaul will notify an employee if the employee qualifies as a key employee and if DePaul intends to deny reinstatement and of the employee rights in such instances.

## **6. Coordination with Paid Leave and Concurrent Leaves**

If an employee on FMLA leave for a serious health condition is eligible for pay under the university’s [Sick Time, Short and Long-Term Disability policy](#), payment will be made under the terms of the policy concurrent with the FMLA leave. FMLA leave and short-term disability will run concurrently so that each day or portion of a day in which an employee receives pay under the short-term disability plan will count toward the twelve (12) week FMLA limit.

If the employee is not eligible for Sick Time or Short Term Disability payment, accrued vacation time may be used in whole or in part during the leave for the purpose of caring for an immediate family member with a serious health condition, or caring for a newborn child, or a child placed for adoption, or foster care.

- If an employee uses accrued vacation for part or all of an approved FMLA leave, the FMLA leave and vacation days will run concurrently so that each day or portion of a day in which the employee receives vacation time will count toward the twelve (12) week FMLA limit.

Any leave that is covered under both the FMLA and by local or state law will run concurrently and cannot be used consecutively, unless otherwise provided by law. A Workers Compensation claim that results in time away from work will run concurrently with FMLA.

## **7. Applying For an FMLA Leave of Absence**

Specific procedures for applying for an FMLA leave of absence are posted on the [Human Resources website](#).

The FMLA prohibits employers from interfering with, restraining or denying employee rights under the FMLA and from discriminating or retaliating against any individual who asserts rights under the FMLA or opposes unlawful practices under the FMLA.

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## **Divisional Collaborations**

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None.

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## **Contact Information**

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### **Office of Human Resources**

#### **Mailing Address:**

1 East Jackson Boulevard  
Chicago, Illinois 60604

#### **Office Location:**

14 East Jackson Boulevard  
13th Floor  
Chicago, Illinois 60604  
(312) 362-8500

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## **Appendices**

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- [DePaul Leave of Absence Website](#)
- [FMLA Poster](#)
- [Department of Labor FMLA Employee Guide](#)

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## **History/Revisions**

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