



CU Boulder FMLA Guidelines

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What is the Family Medical Leave Act (FMLA)?

The Family Medical Leave Act (FMLA) is a federal employment law that requires eligible employers to provide eligible employees the right to take job-protected, unpaid leave for specified family and medical reasons with continuation of health insurance coverage** under the same terms and conditions as if the employee had not taken leave. Eligible employees may take FMLA for the following qualifying reasons:

- The birth and care of your newborn child***
- The placement and care of a child from adoption or foster care
- To care for a spouse, civil union partner, domestic partner, child, or parent with a serious health condition
- For your own serious health condition
- For an employee to care for a parent, spouse, civil union partner, domestic partner, child or next of kin who is an injured servicemember
- Due to a qualifying exigency when a parent, child, spouse, civil union partner, or domestic partner is called up for active military duty

**Employees should note that there may be exceptions to the general rule that they will be restored to work. These exceptions include layoffs, shift elimination, fraudulently obtaining leave, and occasions when the employee is unable to perform essential job functions.*

***An employee who fraudulently obtains Family and Medical Leave from the University of Colorado is not protected by the FMLA's job restoration or maintenance of health benefits provisions. In addition, the University of Colorado will take all available appropriate disciplinary action against such employee due to such fraud.*

****For an employee who has pregnancy status and is not eligible for FMLA, the employee may be entitled to leave as an [accommodation](#) under the Colorado pregnancy law. Central HR advises that employees who pregnant and are not eligible for FMLA or Parental Leave should be granted a minimum of 6-8 weeks of unpaid administrative leave to medically recover from childbirth.*

Provisions

FMLA Leave Entitlement

Eligible employees are entitled to up to 12 workweeks of FMLA during a “rolling back” 12-month period if leave is requested for any one or more of the following qualifying reasons:

- The birth and care of a newborn child (leave must be taken and completed within 12 months of the date of birth).
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child (leave must be taken and completed within 12 months of the date of placement).
- To care for the employee’s spouse, civil union partner, domestic partner, child, or parent with a serious health condition.
- The employee’s own serious health condition. *See definition of serious health condition.*

Military Family Leave Entitlement [1]

- **Injured Servicemember Leave:** Eligible employees are entitled to up to a total of 26 work weeks of leave during a 12-month period to care for an injured covered servicemember who is the employee’s spouse, civil union partner, domestic partner, parent, child or relative for whom the employee is the “next of kin.” This leave is based on a single 12-month period and begins with the first day the employee takes leave. This leave is applied on a per-covered-servicemember, per-injury basis. Regardless of the type of FMLA leave, employees are entitled to no more than 26 weeks in a single 12-month period.
- **Qualifying Exigency Leave:** Eligible employees may take up to a total of 12 weeks of leave while the employee’s spouse, son, daughter, or parent (covered military member) is on active duty or called to active duty status due to a qualifying exigency.

[1] University employees injured while on active duty are covered under the Administrative Policy Statement (APS) on Military Leave for all University Staff including Faculty. Pursuant to section III.4 of the APS, Employees who are hospitalized or convalescing from an illness or injury incurred in, or aggravated during, the performance of military service must report to the University at the end of the period necessary to recover from such illness or injury. Such recovery period may not exceed two years. However, the two-year period shall be extended by the minimum time required to accommodate circumstances beyond the employee’s control, which make reporting to the University impossible or unreasonable.

Determination of Eligibility

- A request for leave is contingent upon a determination that the individual is eligible for FMLA. To be eligible for FMLA, an employee must have been employed by the University for at least 12 months and have worked at least 1,250 hours during the most recent 12-month period.
 - The university uses a 7-year lookback period to determine if an employee meets the 12-month service requirement.
- Eligibility also includes compliance with the requirements of these Guidelines.
- For purposes of confirmation of family relationship, the University may require the individual to provide reasonable documentation or statement of family relationship.

Family Medical Leave and Paid Leave

FMLA is federally mandated job protected and unpaid leave and it runs concurrently with all types of paid leave and compensatory time (if applicable). Therefore, for an employee to receive compensation while on FMLA, they must use some form of paid leave (sick, vacation, injury leave, etc.) or be receiving Short Term Disability (STD), or use compensatory time. Employees receiving paid leave while on FMLA will continue to accrue sick and vacation leave. When an employee is on leave without pay, the employee does not accrue sick or vacation leave.

- **Sick Leave:** If the purpose of the leave is the serious health condition of the employee, they may be required to use accrued sick leave while on FMLA.
- **Vacation Leave:** If the purpose of the leave is the serious health condition of the employee, they may be required to use accrued vacation leave once sick leave is exhausted unless the employee is on leave without pay while receiving STD.
- **Short Term Disability (if applicable):** FMLA runs concurrently with any type of leave without pay taken while an employee is receiving STD benefits, including any waiting period before STD begins.
- **Job related Injury or Illness:** A serious health condition may result from a job-related injury or illness. Paid on-the-job injury leave runs concurrently with FMLA.

No Spousal Limitation

Eligible spouses working for the same department or administrative unit are both entitled to receive up to 12 weeks of FMLA, which they may take concurrently or consecutively.

Intermittent or Reduced Leave Schedule

An employee taking leave for their own serious health condition, to care for a spouse, civil union partner, domestic partner, parent or child with a serious health condition, to care for an injured servicemember or due to a qualifying exigency, need not take FMLA continuously. FMLA may be taken intermittently or on a reduced leave schedule if the employee provides certification of medical necessity. Employees needing intermittent leave or leave on a reduced leave schedule must make a reasonable effort to schedule their leave so as not to disrupt the operations of their department. If the leave is for planned medical treatment or for intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider. A supervisor may temporarily assign the employee to an alternative position with equivalent pay and benefits during the period of the intermittent or reduced leave schedule for which the individual is qualified and which better accommodates recurring periods of leave. If not medically necessary, an employee taking leave for birth or placement of a child may take leave intermittently or on a reduced leave schedule only with the approval of a supervisor.

Process

Request for FMLA

An employee must comply with the department's usual and customary procedure for requesting leave, absent unusual circumstances. An employee may request FMLA pursuant to the "How Do I Pursue FMLA?" section of the HR Leave website or an employee's compliance with the department's leave procedures may trigger FMLA. Failure to comply with the department's leave procedures can be grounds for delaying or denying an employee's FMLA.

Notice to the Employer & Supervisor

If the need for FMLA is foreseeable, the employee must provide notice to the supervisor or FMLA Administrator at least 30 days before leave is to begin. If the need for FMLA is not foreseeable, the request must be submitted as soon as possible and generally must comply with the department's normal call-in procedures. Employees must provide a sufficient medical certification or other related documentation for the employer to determine if the leave may qualify for FMLA protection as well as the anticipated timing and duration of the leave.

Notice of Eligibility and Rights & Responsibilities

Upon receiving notice from the employee of the possible need for FMLA, the FMLA Administrator for the employee's department will provide the employee with a Notice of Eligibility and Rights & Responsibilities Form and Medical Certification (if applicable) within 5 business days (absent extenuating circumstances). If the employee is not eligible for FMLA, the department FMLA Administrator must provide a reason for the ineligibility.

Designation Notice

Once the FMLA Administrator has sufficient documentation to determine whether an employee's leave qualifies under the FMLA, the employer has five business days (absent extenuating circumstances) to provide the employee with a Designation Notice. The designation decision will be based only on information received from the employee and medical provider (or designee). If the medical certification needs clarification or authentication, it should be resolved through discussions between the employer and the employee and in consultation with Employee Relations (for university staff, officers and nine and 12-month faculty). Such discussions and resolution shall be documented. If the FMLA Administrator determines that the leave is not FMLA protected, the employee will be notified in writing of the decision.

Types of Certifications

Certification of Health Care Provider for Employee's Serious Health Condition/Certification of Health Care Provider for Family Member's Serious Health Condition

For leave to care for a parent, child, spouse, civil union partner, or domestic partner with a serious health condition or for leave due to the employee's own serious health condition (including childbirth), the employee should submit the medical certification form to their FMLA Administrator before leave begins if leave is foreseeable.* If the leave is unforeseeable, the medical certification form must be submitted no later than 15 calendar days from the date the leave request is made, unless it is not practicable under the particular circumstances. If a medical certification form is incomplete or insufficient, the FMLA Administrator should contact Employee Relations. A certification is considered insufficient if it contains information that is vague, ambiguous or non-responsive.

If the employer has reason to doubt the validity of the initial medical certification, a second opinion, at the University's expense, from an independent medical provider selected by the University, may be required. If the two opinions conflict, the conflict may be resolved by a third opinion, at the University's expense, by an agreed upon provider which shall be considered final. The employee must authorize the release of relevant medical information pertaining to the condition for which leave is being sought to the second/third opinion health care provider, if so requested by that health care provider. Failure to authorize the release of this information is grounds for denying FMLA.

**Employees who are requesting leave for the birth of a child should submit the medical certification no later than 15 calendar days after the date of birth.*

Certification of Qualifying Exigency for Military Family Leave

For Qualifying Exigency leave, the employee should submit the Certification of Qualifying Exigency for Military Family Leave form to their FMLA Administrator before the leave begins. The employer may ask for copies of the military member's duty orders or other military documentation, facts regarding the exigency, dates of the military member's active duty service, and date of commencement of exigency. If the employee's request for exigency leave is for an intermittent/reduced leave schedule, they may be asked to give beginning and ending dates, as well as an estimate of the frequency or duration of the Qualifying Exigency. If the employee is meeting with a third party (i.e. to arrange for childcare or make financial arrangements), the employee must supply detailed information about the third party and nature of meeting so the employer can verify need for leave.

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

For leave to care for an injured servicemember, the employee should submit a Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave completed by the servicemember's healthcare provider to their FMLA Administrator before leave begins. The employer may obtain details about the servicemember's medical condition, such as whether the injury occurred in the line of duty, when it occurred, its probable duration, and the amount of the time the servicemember will require care. The employee may be required to provide confirmation of their relationship to the injured or ill servicemember. Neither the provisions relating to obtaining second/third opinions or recertification apply with respect to leave to care for an injured servicemember.

Periodic Reporting and Recertification

Employees on FMLA are required to report on their status and intent to return as defined by the designation notice given to them by the FMLA administrator. During FMLA, the employer may also require a new medical certification no more than every 30 days and only in connection with an absence, unless the minimum duration of the condition is more than 30 days. Recertification may be requested in less than 30 days if the following circumstances exist:

- When the employer obtains information that casts doubt on the continuing validity of the original certification;
- When the individual requests an extension of leave; or
- When the employee's circumstances have changed.

Returning From FMLA

Job Restoration

Upon returning from FMLA, the employee will be returned to the same position they held when the leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An individual has no greater right to reinstatement or to other benefits and conditions of employment than if they had been continuously employed during the period.

Fitness-to-Return Certification (FTR)

An employee returning to work from FMLA because of their own serious health condition may be required to present written documentation from their health care provider that they are able to return to work. An FTR shall be required of any individual who is on FMLA for more than 30 days due to their own serious health condition. An FTR may be required for leaves of less than 30 days when it is a business necessity given the nature of the condition in relation to the assignment. The FTR shall only address the particular health condition that caused the individual's need for FMLA. The employee's return to work may be delayed until the required FTR is provided. Any additional medical inquiry will be governed in accordance with the Americans with Disabilities Act (ADA).

An employee taking intermittent FMLA leave may be required to provide a Fitness-to-Return Certification no more than once every 30 days if a reasonable safety concern exists, based on the serious health condition for which the employee is taking leave.

Continuation of Health Plan and Premium Payments

When an employee is on FMLA leave, all benefit elections will remain the same. When an employee has exhausted all paid leave and is on leave without pay, they will continue to have health plan benefits and will need to contact Employee Services to arrange the employee portion of premium payments. An employee should contact Employee Services prior to taking FMLA leave, if the leave is foreseeable. The University will maintain health plan coverage and the University will continue to pay its share of the premiums. If an employee has questions regarding their benefits, please contact Employee Services at 303-860-4200.

Coordination with the University Parental Leave Policy

The provisions of these Guidelines are interpreted and implemented in a manner consistent with the requirements of the Administrative Policy Statement on Parental Leave Benefits for Faculty and Staff. Any FMLA taken to care for the birth or adoption of a child runs concurrently with any leave taken under the [Parental Leave Policy](#).

Definitions

Spouse: A husband or wife is recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Colorado law recognizes common law marriages.

Civil Union Partner: The employee's partner in a civil union, as defined in section 14-15-103(5) C.R.S.

Domestic Partner: The employee has a domestic partner and: (1) has registered the domestic partnership with the municipality in which the person resides or with the state, if applicable; or is recognized by the employer as the employee's domestic partner.

Parent: A biological parent or an individual who stands or stood *in loco parentis* to an employee when they were a child. Parent does not include parent-in-law.

Child: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (ADA).

Next of kin of a covered servicemember: The servicemember's nearest blood relative other than the covered servicemember's spouse, civil union partner, domestic partner, parent, son or daughter, as defined by the Federal Regulations.

Covered Servicemember: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Military member: An employee's spouse, civil union partner, domestic partner, son, daughter or parent on covered active duty or called to covered active duty who is enlisted in the Regular Armed Forces including the National Guard or Reserves.

Covered Active Duty: Duty during deployment of the military member to a foreign country.

Qualifying Exigency: Short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post deployment activities and additional activities not encompassed in other categories, but agreed to by the employer and employee.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves one of the following:

- *Inpatient 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 and recovery in connection with or consequent to such inpatient care.
- *Continuing Treatment by a Health Care Provider:* A period of incapacity of more than three consecutive full calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:

- Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse 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
- Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
- Treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment must take place within seven days of the first day of incapacity.
- *Pregnancy*: Any period of incapacity due to pregnancy, including prenatal care.
- *Chronic Conditions Requiring Treatment*: Any condition requiring periodic visits at least twice a year to a health care provider, or a nurse or physician's assistant under the direct supervision of a health care provider; AND continues over an extended period of time (including recurring episodes of a single underlying condition); AND 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 patient must be under continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, terminal stages of a disease).
- *Multiple Treatments (Non-Chronic Condition)*: Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under 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).
 - Note: Cosmetic treatments (e.g., most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition.

Health Care Provider: Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, physician's assistant, nurse midwife and clinical social worker performing within the scope of their practice as defined under State law. Chiropractors and Christian Science practitioners are health care providers to the extent defined under FMLA regulations. Also included is any health care provider recognized by the University of Colorado group health plan for reimbursement of services.

Equivalent Position: A position that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, prerequisites and status.

"Rolling back" 12-month Period: Under the "rolling back" method, the employer will look back over the past 12 months of employment, add up all of the FMLA time that the employee has previously used, and subtracts that total from the employee's 12-week leave allotment.

Contacts and Resources

<p style="text-align: center;">Family and Medical Leave (FMLA) at CU Boulder</p> <p style="text-align: center;">Parental Leave</p>	<p style="text-align: center;">Employee Relations Central HR 303-492-4693 HRmail@colorado.edu</p>	<p style="text-align: center;">Administrative Research Center 3100 Marine St. 3rd Floor Boulder, CO 80309</p>
<p style="text-align: center;">Short-term Disability and Benefits</p>	<p style="text-align: center;">Employee Services 303-860-4200 employeeservices@cu.edu</p>	<p style="text-align: center;">1800 Grant St. Suite 400 Denver, CO 80203</p>
<p style="text-align: center;">On-the-Job Injury and Workers' Compensation</p>	<p style="text-align: center;">Risk Management urmucbdirs@cu.edu</p>	<p style="text-align: center;">Marine St. Science Center 3215 Marine St. Boulder, CO 80303</p>
<p style="text-align: center;">Americans with Disabilities Act (ADA)</p>	<p style="text-align: center;">ADA Compliance Unit ADA Coordinator 303-492-9725 ADAcoordinator@Colorado.edu</p>	<p style="text-align: center;">Administrative Research Center 3100 Marine St. 2nd Floor Boulder, CO 80309</p>