



FMLA FAQ FOR FACULTY

What is FMLA?

The Family and Medical Leave Act (FMLA) of 1993 is a federal law that entitles eligible employees of covered employers, such as UD, to take unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Although the federal law defines FMLA as an unpaid leave, it is the University's practice to provide faculty members with full pay during the period of FMLA leave. In addition, faculty members are entitled to the continuation of benefits during FMLA leave under the same terms and conditions as if they had continued to work.

Who is eligible to receive FMLA at UD?

An eligible employee is one who:

- ◆ Has worked for UD for at least 12 months; and
- ◆ Has at least 1,250 hours of service for UD during the 12-month period immediately preceding the leave.

What is my leave entitlement period under FMLA?

Eligible employees may take up to 12 work weeks of leave in a 12-month period for one or more of the following reasons:

- ◆ For a serious physical or mental health condition that makes the employee unable to perform the essential functions of their job;
- ◆ The birth of a child and to bond with the newborn child within one year of birth or placement of a child with the faculty member for adoption or foster care and to bond with the newly placed child within one year of placement;
- ◆ To care for a spouse, child or parent who has a serious physical or mental health condition; or
- ◆ For any qualifying exigency arising out of the fact that a spouse, child or parent is a military member on covered active duty or called to covered active duty status.

An eligible employee may also take up to 26 work weeks of leave during a "single 12-month period" to care for a covered military service member with a serious injury or illness when the employee is the spouse, child, parent or next of kin of the service member.

What documentation do I need to provide Human Resources in support of my FMLA leave?

In order for Human Resources to designate your leave as FMLA leave, you will be required to provide a medical certification from a qualified healthcare provider in support of your FMLA leave. The US Department of Labor's WH-380 forms list all the information that must be provided in a medical certificate and the information on the form must relate only to the serious health condition for which the current need for leave exists. If you fail to provide Human Resources with the required medical certification for a foreseeable FMLA leave, UD may deny your request for leave or delay the start of your leave until you provide the required information. Additionally, if you do not provide medical certification, your leave may not be subject to the protections of the FMLA, such as job protection and maintenance of your health insurance benefits.

I want to take FMLA leave for my own medical needs. How do I know if my medical problem qualifies as a "serious health condition" under the FMLA?

A "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

- ◆ Any period of time during which you are unable to work (that is, incapacitated) or receiving treatment connected with inpatient care (for example, an overnight stay) in a hospital, hospice or residential medical care facility; or
- ◆ A period of incapacity that leaves you unable to work for three or more full calendar days and also involves continuing treatment by (or under the supervision of) a healthcare provider or

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- ◆ any period of incapacity due to pregnancy, or for prenatal care; or
- ◆ any period of incapacity due to a chronic serious health condition or for treatment of a chronic serious health condition (for example, asthma, diabetes or epilepsy); or
- ◆ a period of incapacity that is due to a condition for which treatment may not be effective (for example, Alzheimer's, stroke or a terminal disease); or,
- ◆ any absences to receive multiple treatments (including necessary periods of recovery from treatments) when the treatments are made by a healthcare provider or following a referral by a healthcare provider for a condition that likely would result in incapacity of more than three consecutive days if it was left untreated (for example, chemotherapy for cancer or dialysis for kidney disease).

I have been diagnosed with a mental health condition by my healthcare provider, who is recommending that I switch to a part-time teaching schedule for a semester. Does the FMLA only apply to physical conditions, or may I take FMLA leave for a mental condition?

FMLA regulations acknowledge that mental health conditions may constitute serious health conditions. If you are under the care of a qualified healthcare provider who diagnoses you as too incapacitated to work full-time or who thinks your treatment requires part-time work, and you are under a regime of continuing treatment by a healthcare provider (for example, medication or psychological counseling), then your mental health condition may qualify as a serious health condition entitling you to FMLA leave.

I am able to do a substantial amount of my work (like writing lectures, grading and conducting research) at home. I was in an automobile accident, and for the time being, I cannot stand, walk, or drive. However, I am able to sit and work on my laptop computer at home. How do I know if I have a serious health condition that leaves me incapacitated for three or more days? When defining a serious health condition does “incapacitated” mean not being able to do any work, or just not being able to do work on campus?

You are incapacitated under the FMLA if your medical condition makes you unable to perform one or more of the essential functions of your job. The University may designate which functions of your position are “essential,” and your healthcare provider may use this list to designate which of these essential functions you are unable to perform. If you are able to work from home but cannot travel to campus, you may still be incapacitated if an essential part of your job is attending meetings, instructing classes, supervising students and staff in labs, etc.

What are the types of FMLA leave options available to me?

There are three types of FMLA leave that a faculty member may take: continuous, intermittent and reduced schedule.

1. Continuous leave
Continuous leave under FMLA means the faculty member will be out between three days and 12 weeks.
2. Intermittent leave
In this case, a faculty member's blocks of leave alternate with blocks of time in which the professor works full time, with a single qualifying reason necessitating the need for leave.
3. Reduced-schedule leave
Reduced-schedule leave means the faculty member needs to work fewer hours than the standard work week due to their own serious health condition or that of a spouse, child or parent.

When leave is needed for planned medical treatment, the faculty member must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption or foster placement of a child, use of intermittent or reduced-schedule leave requires the employer's approval.

What is the difference between FMLA leave and an administered workload?

An administered workload is a formal agreement between the department chair and the faculty member to adjust the allocation of 100% of workload effort among the three categories of faculty activity (teaching, research/creative activity, and service). An administered workload must be documented, must take into account the needs of the faculty member and the unit as a whole, and must be accounted for in the annual appraisal and award of merit pay. An administered workload may apply in non-FMLA qualifying situations.

FMLA leave, by contrast, is for situations in which a faculty member is unable to perform any or all of the essential functions of the job. FMLA relieves a faculty member of some or all of their workload expectations, depending upon the circumstances, and guarantees job protection and, for faculty at UD, full pay and benefits. A continuous FMLA leave requires a complete relief from all work obligations. An intermittent or reduced-schedule FMLA leave requires a reduction in total workload allocation. FMLA leave is a federally guaranteed right and does not require the consent of the chair or entail any obligation to make up for the leave period upon one's return to work.

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My spouse and I both work at UD. Are we both entitled to FMLA benefits?

Yes, as long as both of you have been employed at UD for at least twelve months and you have each individually worked at least 1,250 hours in the twelve months preceding the commencement of the FMLA leave you are taking. In general, faculty members who take FMLA for the birth or adoption of a child are each offered to up to 15 weeks (length of a typical UD semester) of paid leave time. Within those 15 weeks, each faculty member is eligible for up to a total of 12 concurrent weeks of FMLA. The FMLA is divided between recovery and bonding time and it is up to the birthing and non-birthing parent to determine how this time will be split.

I am a foreign national with a work visa and teach full time at UD. I need to take FMLA leave to care for my parent who has a serious health condition and who lives outside of the US. May I take FMLA leave?

If you have worked for at least 1,250 hours at UD in the last year and been employed here for at least twelve months, you are eligible for FMLA leave for a qualifying reason (for example, to care for a parent with a serious health condition). Your entitlement to leave does not depend on the geographic location of your parent. However, we will require a medical certification of your parent's condition from a healthcare provider who is treating your parent. You may be held responsible for ensuring that the certification is provided in English or that there is an English translation of the certification.

Whom do I notify at UD of my need for leave?

The faculty member must give Human Resources at least 30 days advance notice of the need to take FMLA leave when he or she knows about the need for the leave in advance and it is possible and practical to do so. If 30 days' advance notice is not possible, the faculty member must provide notice of the need for leave as soon as possible and practical. The faculty member should discuss the anticipated period of leave with the Department Chair in order to allow for departmental planning purposes, though the faculty member need not explain the reason for the leave.

I took twelve weeks of FMLA leave from October 1 through early December to care for a family member. Just two weeks into January, another family member was diagnosed with a serious medical condition. When will I be eligible to take FMLA leave again?

At UD, the FMLA leave year is defined as a rolling twelve-month period measured backward from the date a faculty member's first FMLA leave begins. Given that you used all twelve weeks of your entitlement would mean that you would have to wait until October 1 to take additional FMLA leave.

Can I apply for FMLA leave prior to the completion of 12 months of employment and 1,250 hours of work at UD?

Yes, you may apply for FMLA prior to your 12 months of employment and 1,250 hours of work at UD. Your eligibility for FMLA leave is determined by your status on the first day you will utilize leave, not by your status on the date when you notify your employer about your need for leave. If an employee will cross the twelve-month/1,250-hour threshold prior to the first day of planned leave, the employee is entitled to take leave for any FMLA-qualifying condition.

I have experienced a medical condition that left me unable to work for three successive calendar days. I understand that to be classified as having a "serious health condition" I also need to receive "continuing treatment" by (or under the supervision of) a healthcare provider. What constitutes "continuing treatment"?

Continuing treatment requires an in-person visit to a qualified healthcare provider or someone under the qualified provider's supervision (e.g., a physician assistant a physical or occupational therapist).

Emails, text messages, or phone conversations do not count as in-person visits. Continuing treatment maybe defined as at least one visit to a qualified healthcare provider with a regimen of continuing medical care (for example, prescription medication or physical therapy). The requirement to receive continuing treatment may also be satisfied by making two in-person visits to a qualified healthcare provider within thirty days of the first day of incapacity unless extenuating circumstances beyond the employee's control prevent a follow-up visit within the thirty-day period. In both types of "continuing treatment," the first (or only) in-person visit must occur within seven days of the first day of incapacity. The decisions made during this visit regarding the need for additional treatment visits or a continuing regimen of medical treatments are left to you and your healthcare provider.

My doctor diagnosed me as having the flu and recommended that I stay home from work for a week. Is the flu a serious health condition under the FMLA?

Typically, conditions such as the flu, common cold, earaches, upset stomachs, minor ulcers, headaches (other than migraine), and routine dental or orthodontia problems do not constitute serious health conditions under the FMLA. However, if you have complications (for example, respiratory problems) from the flu that require an overnight stay in a hospital, or your flu is serious enough to leave you incapacitated for three or more calendar days and you are under treatment of a healthcare provider, then your ailment may constitute a serious health condition under the FMLA.

I am having a difficult pregnancy. Is it possible for me to take some FMLA leave before my baby is born?

Yes. The FMLA allows for any medically necessary pregnancy-related leave. This may include any period of time you are unable to work due to a pregnancy complication or for prenatal care (for example, for both routine and other doctor's visits, medical testing, and so on). Both the leave you take before and after your baby's birth will count toward your twelve weeks of FMLA leave.

I am the Principal Investigator (PI) on an externally sponsored grant and plan to take FMLA leave next semester. This leave will affect my ability to meet my research commitment for the project budget period on the grant. What should I do?

Please contact your department grant personnel or your Research Office Contract & Grants Specialist to notify them about the FMLA leave prior to the leave, if possible. You do not need to specify the reason for the leave. However, do inform them of the length of the leave period so that they can assist you with options related to fulfilling your research commitments on active externally sponsored grants.

Examples of such options include reallocation of PI effort; re-budgeting of existing grant funding to pay for additional research support; or in some unique circumstances requesting an administrative supplement from the funding agency.

During my FMLA leave last spring, I did not teach my usual two courses. I have been informed that I must teach one extra course during the fall and spring semesters of the coming academic year to "make up" those courses. Is that true?

No. Such a policy would violate the FMLA provision prohibiting retaliation against those who have exercised their FMLA rights. Additionally, if your normal course load is four courses a year, upon your return from FMLA leave you would return to the same or an equivalent position, so that would be teaching four courses a year.

I am coming up for my two-year peer review and have applied for FMLA leave. Must I count my time on leave as part of my review period?

The FMLA, by itself, neither requires nor prohibits counting the time you are on FMLA leave as time toward your next peer review. However, the Faculty Handbook does provide provisions on "stopping the clock" as a result of your FMLA leave.

Information related to "stopping the tenure clock" for Tenure Track faculty is available in section [4.4.15](#) of the Faculty Handbook. Information related to "stopping the review clock" for Continuing Track faculty, is available in section [4.1.6](#) of the Faculty Handbook.

I am scheduled to take a sabbatical leave starting next semester. Will my FMLA leave this semester cause a delay in my ability to take the sabbatical leave?

Your FMLA leave does not impact your sabbatical leave eligibility. You may proceed with your sabbatical leave as scheduled.

These questions and responses have been formulated based on information in the DOL FMLA Fact Sheet #28, the AAUPFMLA Questions and Answers Guidebook, and the DOL Employer's Guide to the Family and Medical Leave Act.