

Family and Medical Leave (FML) Guidelines for Supervisors and Managers

Family and Medical Leave (FML) is regulated by the Family and Medical Leave Act (FMLA) of 1993 and the California Family Rights Act. The laws require covered employers to provide eligible employees job-protected and unpaid leave for qualified medical and family reasons.

REASONS FOR TAKING FML

Qualifying events for which FML may be taken include:

- A serious health condition that makes the employee unable to perform the essential functions of his or her job.
- To care for the employee's spouse, child, or parent who has a serious health condition.
- The birth of a child and to care for the newborn child within one year of birth.
- The placement with the employee of a child for adoption or foster care for the newly placed child within one year of placement.
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."
- To care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Employees need not mention FML specifically. For example, the following would be adequate notice that an employee is seeking leave for a potentially FML-qualifying reason, provided this information is obtained directly from the employee or employee's spokesperson:

- Employee is in hospital
- Employee is unable to work because of pregnancy
- Employee needs to care for family member who is under a doctor's care

Simply calling in "sick" is not enough.

ELIGIBILITY REQUIREMENTS

In order to be eligible for FML, an employee must meet the following requirements:

1. The employee must have a minimum of 12 months of cumulative University service.
2. The employee must have worked a minimum of 1,250 hours in the 12 month period immediately preceding the start of the requested leave.
3. The employee must not have already exhausted his/her annual entitlement of FML protected hours. See FML Annual Entitlement below.

The FMLA module in ecotime® provides you with FML eligibility data for each employee who has requested FML. Please refer to this data to determine whether an employee meets eligibility requirements and has not exhausted his/her FML entitlement for the current calendar year.

Please Note: Employee eligibility information in the FMLA module may not be accurate until 12 months after the FMLA module implementation date. Until this information is accurate, please consult with the UCDHS Payroll Department to confirm employee eligibility for FML.

ANNUAL LEAVE ENTITLEMENT

Full-time employees who meet FML eligibility requirements are entitled to use up to 480 hours of protected FML per calendar year. If an employee does not work full-time, their annual allotment of protected hours is pro-rated. To determine the number of hours of protected leave a part-time employee is entitled to use, multiply the average weekly hours worked times 12. For example, if the employee works an average of 30 hours per week, multiply 30 times 12. (30 X 12 = 360).

IMPORTANT POINTS

- Eligible employers are required by federal law to approve FML once there is a reasonable belief that leave is needed by an employee and the employee meets FML eligibility requirements.
- Managers may be held personally liable for failing to provide FML.
- FML protects employees from having absences counted against them for adherence to attendance standards.
- Employers are required by law to engage in the Interactive Process with an employee as soon as the employee notifies the employer of a need for intermittent leave, continuous leave, work restrictions, or work limitations. See **The Interactive Process** below.

MEDICAL CERTIFICATION REQUIREMENT

A Medical Certification completed by a health care provider is required from any employee who has a need for intermittent or continuous leave for medical reasons. The following applies with every FML situation:

- Employee must provide medical certification within 15 calendar days of requesting leave.
- If no medical certification is provided, the employee will not be eligible for FML protection for that period of time.
- Cannot require employee to provide medical certification for each absence if intermittent FMLA leave on file.

- Employees must re-certify once per year or when certification expires.

Please Note: If an employee informs you that they may not be able to provide a completed medical certification within 15 calendar days and you feel they are making a reasonable effort to obtain the medical certification, you may allow a little additional time.

MEDICAL CERTIFICATION CONTENT

Federal regulations indicate that certain information is required on a medical certification in order for it to be valid. California law prohibits protected health information from being provided on medical certifications; therefore California employers are provided with less information than in other states. In California, any medical document, including doctor's notes, which contain all of the following information, can be accepted as a **Medical Certification**.

For Employee's Serious Health Condition

1. The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
2. The approximate date on which the serious health condition commenced, and its probable duration;
3. Information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability;
4. If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;
5. If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy that may result in unforeseeable episodes of incapacity information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity.

For the Care of a Family Member with a Serious Health Condition

1. The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
2. The approximate date on which the serious health condition commenced, and its probable duration;
3. Information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member;

4. If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;
5. If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

A Leave of Absence Consultant in Employee and Labor Relations is available to assist you with the review of medical certification forms. Please call 916-703-3652 or 916-734-2924 for assistance.

THE INTERACTIVE PROCESS

Employers are required by law to engage in the Interactive Process with any employee who requires time off from work due to a health condition or any employee who returns to work with work restrictions/limitations.

What is the Interactive Process?

The interactive process includes:

- Consulting with the employee to ascertain the precise job-related limitations and how they might be overcome with a reasonable accommodation.
- Identifying potential accommodations and assessing their effectiveness.

Timely, Good Faith Process

- Employer and employee must communicate directly with each other to determine essential information.
- Neither party can delay or interfere.
- Employer should be able to point to cooperative behavior that promotes the identification of an appropriate accommodation.

What Must Be Considered

- What essential job functions can or can't the employee do?

- What essential job functions does the employer need employee to do?
- What are the gaps?
- Can you “bridge” the gaps?

Six Steps of the Interactive Process

1. Identify the essential job functions.
2. Identify limitations and abilities.
3. Brainstorm on accommodation ideas.
4. Assess the options and make a decision.
5. Implement the accommodation.
6. Follow-up with the employee regularly.

IMPORTANT:

The employer must document all conversations held with the employee and all steps taken as part of the Interactive Process. This documentation should be maintained for a minimum of 3 years.