

# MISSOURI SOUTHERN STATE UNIVERSITY POLICY

Policy #:		Effective:	July 2017*	Category:	All University Employee Policies
Name:	<b>LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT (FMLA)</b>				

## 1.0 PURPOSE

The purpose of the policy is to provide guidance to University employees regarding the policy below in order to comply with the standards set forth by the University. This policy is necessary in order to maintain an effective and compliant workforce that meets the University mission.

## 2.0 SCOPE

University Employee Policy

## 3.0 POLICY

In accordance with federal law, the University provides to eligible employees a leave of absence pursuant to the provisions under the Family and Medical Leave Act (FMLA). The purpose of this Policy is to set forth details and provide information to University employees regarding FMLA leave.

Under the Family and Medical Leave Act ("FMLA"), eligible employees may be entitled to 12 workweeks of unpaid leave. Leave may be taken for the serious health condition of the employee; the serious health condition of the employee's child, spouse or parent; the birth, adoption or foster care placement of a child; or for qualifying reasons arising out of a covered family member's call to active service ("Qualifying Exigency Leave"). Eligible employees may take up to a total of 26 weeks to care for a covered service member and/or certain covered veterans with a serious injury or illness incurred in or exacerbated in the line of duty on active duty in the Armed Forces ("Military Caregiver Leave").

FMLA leave will be administered on a calendar year basis, unless otherwise prohibited. Leave under federal law to care for a family member who becomes ill or injured in the line of active duty will be administered on a 12-month basis, beginning on a calendar year.

The University will determine when employees are eligible for FMLA leave and will designate leave that qualifies as FMLA leave. If an employee qualifies for state leave and/or federal leave, then the University will count leave under both laws to the extent permitted by applicable law.

In accordance with the FMLA regulations, married couples in which both spouses are employed by the University may be limited to a combined total of 12 or 26 workweeks of leave per year (depending upon the reason for leave) for childbirth, adoption, placement of a foster child, care of a parent with a serious health condition and/or to care for a covered service member with a serious injury or illness.

If an employee suffers a work-related injury that qualifies as a serious health condition, and if permitted by state and federal law, then the leave available under the FMLA will run during any work-related absence.

### Eligibility for Leave

Employees who have been employed for at least 12 months and have worked at least 1,250 hours in the last 12 months may be eligible for family and/or medical leave under federal law. Employees who have previously worked for the University and had a break in service should contact a Human Resource Representative to determine if that prior service counts toward this eligibility requirement.

**A. Birth or Placement of a Child**

FMLA leave may be taken for the birth or placement (through adoption or foster care) of a son or daughter, in addition to incapacity due to pregnancy, prenatal care, or child birth. The entitlement to leave for the birth or placement of a child ends 12 months after the birth or placement.

**B. Serious Health Condition**

Eligible employees may take medical leave for their own serious health condition or to care for a child, spouse, or parent with a serious health condition. Medical leave may be taken all at once, or in smaller increments, on an intermittent or reduced leave schedule if medically necessary.

“Serious Health Condition” is defined as an illness, injury, impairment, or physical or mental condition that involves either of the following:

Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care; or

**Continuing treatment by a health care provider involving:**

Any period of incapacity that requires absence of more than three calendar days and subsequent treatment in connection with such incapacity, that also involves two or more treatments by, under the direction of, or on referral from a healthcare provider. The two treatments by a healthcare provider must occur in-person within 30 days of the first day of incapacity (unless extenuating circumstances exist), and the first in-person treatment must take place within 7 days of incapacity;

Any period of incapacity that requires absence of more than three calendar days and treatment by a healthcare provider on at least one occasion that results in a regimen of continuing treatment under the direction of a healthcare provider. The first treatment must occur in-person within 7 days of the first day of incapacity;

Prenatal care or any period of incapacity due to pregnancy;

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition, which is one that requires periodic treatment (at least two visits for treatment each year) by or under the direction of a health care provider, continues over an extended period of time, and may cause episodic (rather than a continuing pattern) of incapacity (for example, diabetes);

Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, where the patient is under the continuing supervision of a health care provider; or

f. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or under orders of or referral from a health care provider, either for restorative surgery after an injury or accident, 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 (for example, cancer).

### **C. Qualifying reasons arising out of a call to covered active duty (Qualifying Exigency Leave)**

Eligible employees may take leave for qualifying reasons relating to a military member's covered active duty or call to covered active duty in the Armed Forces.

This leave is available to eligible employees whose spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty. This leave may be taken in a continuous period or on an intermittent or reduced leave basis.

Eligible employees may be able to take leave for any of the following reasons:

#### ***1. Short-notice deployment.***

Up to seven days of leave may be taken when a family member receives notice of seven days or less of an impending call or order to active duty.

#### ***2. Military events and related activities.***

Leave may be taken to attend official ceremonies, programs, or events sponsored by the military and relating to the call to active duty. Leave also may be taken to attend support or assistance programs or informational briefings sponsored by the military, a military service organization, or the Red Cross, provided that the briefings or programs are related to the call to active duty.

#### ***3. Child care and school activities.***

Leave may be taken to arrange for alternative child care necessitated by the call to active duty or to provide urgent or immediate care on a short-term basis to the child of a covered member of the military. Leave also may be taken to attend school or daycare meetings or conferences concerning a child of a covered member of the military.

#### ***4. Care of the military member's parent.***

Leave may be taken for Certain activities arising from the military member's covered active duty related to care of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

#### ***5. Financial and legal arrangements.***

Leave may be taken to make legal or financial arrangements relating to the call to active service, including situations in which the employee acts as the representative of a covered member of the military.

## ***6. Counseling.***

Leave is available to attend counseling which is directly related to and arising from the call to active duty.

## ***7. Rest and recuperation.***

Up to fifteen calendar days of leave is available to be with a covered military member who is on a short-term, temporary leave for purposes of rest and recuperation. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.

## ***8. Post-deployment activities.***

Leave is available for activities relating to the termination of active duty status. These activities include reintegration briefings and events, official ceremonies or programs scheduled by the military during the first 90 days following the termination of active status.

## ***9. Other activities relating to the active duty.***

Leave may be available for additional purposes provided the leave is related to the active duty of a covered military member.

## **D. Illness or Injury of a family member in the Armed Forces (Military Caregiver Leave)**

Eligible employees may take FMLA leave to care for a spouse, child, parent or next of kin who is a covered service member and/or certain covered veterans with a serious injury or illness incurred in or exacerbated in the line of duty on active duty. This leave, in combination with all other FMLA leave, may not exceed 26 weeks of leave in a single 12-month period. This leave may be taken on an intermittent basis or through a reduced leave schedule.

A covered service member is: (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.

## **Certification**

Employees requesting FMLA leave for their own serious health condition, the serious health condition of a family member, Qualifying Exigency Leave or Military Caregiver Leave must provide certification of the need for leave. Employees must return a complete and sufficient certification to the Human Resources Department within the designated time after the University requests a certification, unless that deadline is not practicable under the circumstances. An unjustified failure to return a complete and sufficient certification within the designated time can result in the delay or denial of a request for leave.

The University may, in its discretion and at its own expense, require the employee to obtain a second medical opinion and certification. The second healthcare provider will be designated by the University. If the second opinion conflicts with the first opinion, the University may require a third medical opinion, again to be obtained at the expense of the University. This third healthcare provider will be jointly designated or approved by the University and the employee. The opinion of the third healthcare provider will be final and binding on both the University and the employee.

### **Notice Requirements**

An employee who wishes to request FMLA leave must notify his/her supervisor and/or the Human Resources Office as early as possible, as well as provide documentation required by law. Except in an emergency situation, the employee must provide notice of the need for FMLA leave at least thirty (30) days in advance of the requested leave start date. If the leave is not foreseeable, the employee must provide the University as much notice as possible under the circumstances.

Employees are expected to comply with applicable call-in procedures unless they are medically unable to do so.

Employees requesting intermittent or reduced schedule leave for planned medical treatment must make a reasonable effort to schedule leave so it does not unduly disrupt the University's operations. To the extent permitted by law, employees taking leave on an intermittent or reduced schedule basis may be transferred to another position, temporarily, which better accommodates their need for leave.

### **Pay and Benefits During FMLA Leave**

To the extent permitted by applicable law, employees are required to use available accrued paid leave during and concurrent with any otherwise unpaid FMLA leave. When all paid leave has been used, the remainder of the FMLA leave is unpaid.

During an approved family or medical leave, the University will continue to make available the same insurance benefits which are available to employees who are not on leave. It is the employee's responsibility to continue to contribute his or her portion of the cost of any employee-paid premium during leave. If the employee is paid during the leave, then the premium will be deducted from the pay available. During any unpaid period of leave, the employee may elect to make payments during the period of leave or the premium payment will occur first. The failure to make timely premium payments can result in the loss of benefits.

No employee will lose any accrued seniority or benefits while on leave. Employees on leave will not accrue greater employment rights than they would have if they had not taken leave.

### **Returning from FMLA Leave**

Employees returning from family or medical leave should, where possible, give the University at least two weeks written notice of their return if the leave has been longer than one month. Regardless of the length of leave, employees must provide at least two work days' notice.

Any employee who returns from family or medical leave at the end of his/her FMLA leave entitlement, will be reinstated to the same or an equivalent position with equivalent benefits, pay, and other terms

and conditions of employment, unless that employee's employment ends under other circumstances. The University cannot guarantee reinstatement rights to key employees. In addition, the University cannot guarantee reinstatement to employees whose leave extends beyond their entitlement of FMLA leave, except to the extent necessary to comply with applicable state or federal law or University policy. If an employee fails to return to work after FMLA leave has ended, the University may recover health insurance premiums it paid under its group plan during the leave period.

If an employee is on leave for more than 3 days because of the employee's own serious health condition, the University may require that the employee provide a fitness-for-duty certificate before returning to work. The fitness-for-duty requirement is limited to the particular health condition that caused the employee's need for leave and must state whether the employee is able to return to work with or without restrictions. If an employee fails to provide a fitness-for-duty certificate by the end of any medical leave, then the employee may not be eligible for reinstatement.

Please note that Faculty on approved FMLA should also reference the leave recording procedures applicable to them while out on leave. These procedures are available on the HR intranet page.

### **Nursing Mothers**

The University will designate rooms for employees, upon request, who are breastfeeding and need to express milk while at work. To the extent possible, any time spent expressing breastmilk should be coordinated with a supervisor as to minimize any disruption to the ongoing needs of the department.

### **Nondiscrimination and Anti-Retaliation**

The University will not use any protected leave as a negative factor in any employment decision or discharge, discriminate, or otherwise retaliate against any employee because of that employee's use of FMLA leave, opposition of any practice made unlawful by the FMLA, or involvement in any proceeding under or relating to FMLA. In addition, the University will not illegally interfere with, restrain, or deny any employee's right to exercise his/her FMLA rights.

Employees who believe the University has interfered with their rights or otherwise discriminated against them in violation of the FMLA should report the issue to his/her supervisor or the Human Resources Office immediately. Employees may also raise concerns with the U.S. Department of Labor and/or through a private cause of action. In addition, the FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law that provides greater family or medical leave rights.

### **Questions or Inquires**

Employees with questions or inquiries regarding FMLA leave, this Policy, or other related questions should contact the Human Resources Department.

## **4.0 HISTORY**

This policy may be revised, edited, changed or removed at any time with or without notice to applicable individuals.

## 5.0 RELATED DOCUMENTS