



Idaho State University

POLICIES AND PROCEDURES

Family and Medical Leave Policy

ISUPP 3010

POLICY INFORMATION

Policy Section: *Human Resources*

Policy Title: *Family and Medical Leave Policy*

Responsible Executive (RE): *AVP of Human Resources*

Sponsoring Organization (SO): *Human Resources*

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I. POLICY STATEMENT

Idaho State University (ISU) complies with the provisions of the Family and Medical Leave Act (FMLA) of 1993 by providing up to twelve (12) weeks of unpaid, job-protected leave to eligible employees for certain qualifying family and medical reasons. During a period of FMLA leave an employee must elect to use accrued paid leave, which includes sick, vacation or compensatory time, in accordance with ISUPP 3070 *Leave of Absence Policy for Faculty and Staff*.

Amendments to the FMLA by the National Defense Authorization Act for FY 2008, Public Law 110-181, expanded the FMLA to allow eligible employees to take up to twelve (12) weeks of job-protected leave in the applicable twelve (12) month period for certain “qualifying exigencies” arising out of active military duty or call to active duty status. Eligible employees are also entitled to a maximum of twenty-six (26) weeks of unpaid, job protected leave to care for qualifying family members who incur a serious injury or illness in the line of duty while on active duty in the Armed Forces.

This policy is not intended to be all-inclusive. The provisions and unique situations regarding FMLA rights are too numerous and complex to address in a single policy. Consultation with Human Resources is highly recommended.

II. DEFINITIONS

- A. **Serious Health Condition:** A “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:
1. **Hospital 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 related to or resulting from such inpatient care.
 2. **Incapacity Plus Treatment.** A period of incapacity of more than three (3) consecutive calendar days that also involves in-person treatment by a health care provider:
 - a. On at least two (2) occasions that occur within thirty (30) days of the first day of incapacity (unless extenuating circumstances exist) with the initial visit occurring within seven (7) days of the first day of incapacity; or
 - b. Within seven (7) days of the first day of incapacity and resulting in a regimen of continuing treatment under the supervision of the health care provider.
 3. **Pregnancy:** (includes prenatal care and any period of incapacity due to pregnancy or recovery from childbirth).
 4. **Chronic Conditions Requiring Treatments:** A chronic condition is a condition that: (1) requires periodic visits (minimum two (2) visits per year) for treatment by a health care provider, or by a nurse or physician’s assistant under a health care provider’s direct supervision; (2) continues over an extended period of time (including recurring episodes of a single underlying condition); and (3) may cause episodic rather than a continued period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).
 5. **Permanent/Long-term Conditions Requiring Supervision:** This is defined as a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer’s disease, a severe stroke, or the terminal stages of a disease, etc.).
 6. **Multiple Treatments (Non-Chronic Conditions):** This section encompasses absences to receive multiple treatments by a health care provider, or by a provider of health care services under orders of, or on referral by a health care provider, for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).
 7. **Treatment for Substance Abuse:** FMLA leave may only be taken for treatment for substance abuse that is provided by a health care provider or by a provider of health care services on referral by a health care provider. Absence because of the employee’s

use of the substance, rather than treatment, does not qualify for FMLA leave. An employee may take FMLA leave to care for a covered family member who is receiving treatment for substance abuse as well.

8. **Incapacity:** "Incapacity," for purposes of FMLA, is defined to mean inability to perform one or more of the functions of one's job, attend school, or perform other regular daily activities due to the serious health condition, treatment for that condition, or recovery from that condition.
9. **Next of Kin:** "Next of Kin" refers to the nearest blood relative of the individual, other than the service member's spouse, parent, or child, in the following order of priority: (1) individuals designated in writing by the service member as next of kin for purposes of this provision of the FMLA; (2) blood relatives who have been granted legal custody of the service member by statute or court authority; (3) siblings of the service member; (4) grandparents of the service member; (5) aunts and uncles of the service member; (6) first cousins of the service member.

III. AUTHORITY AND RESPONSIBILITIES

A. ISU's Responsibilities

ISU Human Resources (HR) is responsible for informing employees requesting leave whether they are eligible under FMLA. If they are eligible, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the notice must specify the reason for ineligibility.

B. Employee Responsibilities

Employees must provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable. When thirty (30) days' notice is not possible, the employee must provide notice as soon as practicable.

Employees must provide sufficient information for ISU HR to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider; or circumstances supporting the need for military family leave. Employees also must inform their supervisor if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

C. Supervisor Responsibilities

Supervisors are responsible for the following actions to ensure compliance with the FMLA:

1. Recognize an FMLA qualifying event and consult with and/or refer the employee to HR.
2. Ensure the employee's time reporting of FMLA leave is accurately recorded.
3. Avoid communication about work-related matters with an employee who is absent on approved FMLA. Any de minimis work-related communication with the employee should be coordinated in consultation with HR.

D. Retaliation or Interference

1. A supervisor may not interfere with an employee's right to take leave. An employee must not be disciplined, dismissed from employment, or otherwise retaliated against in any way for requesting or using leave under the FMLA.
2. An employee who believes their rights under the FMLA have been violated may submit a complaint to the Office of Equity and Inclusion.
3. The University processes complaints alleging FMLA retaliation or interference with an employee's right to take leave under the FMLA under the same process utilized in ISUPP 3100 *Equal Opportunity, Harassment, and Non-discrimination* and conducts investigations under the same framework.
4. An employee may also submit a complaint to the U.S. Department of Labor's Wage and Hour Division.

IV. GENERAL PROVISIONS

A. Eligibility

Full-time employees are allowed up to twelve (12) weeks (480 hours), this is prorated if the employee is not full-time (1.0 full-time equivalent), of unpaid or paid, job protected leave. Use of accrued time as paid time off while on leave will be consistent with ISUPP 3070, *Leave of Absence Policy for Faculty and Staff*. An employee may take FMLA leave if both of the following criteria are met:

1. Has been employed with the State of Idaho for at least twelve (12) months.
 - a. The twelve (12) months do not have to be continuous employment. In addition, the twelve (12) months do not have to be with just one State agency.

- b. If an employee has a break in service for more than seven (7) years, time worked prior to rehire/reinstatement following the break in service does not count towards the twelve (12) month eligibility requirement (unless the break in service was due to the employee's National Guard or Reserve military service obligations);
- 2. Has worked at least 1250 hours during the preceding twelve (12) month period.
 - a. The 1250 hours must be actual time spent working in any position. It does not include paid vacation or sick time, or periods of unpaid leave during which other benefits continue to be provided by ISU (group health plan or workers compensation).
- B. Purposes for FMLA Leave:
- Leave must be granted for any of the following reasons:
- 1. Birth and bonding of a child.
 - a. FMLA leave to care for or assist in the care of a newborn is available to all employees as long as they are the parents or legal guardians of the child. Use of accrued time as paid time off while on leave will be consistent with ISUPP #3070, Leave of Absence Policy for Faculty and Staff.
 - b. An expectant mother may take FMLA leave if her pregnancy makes her unable to work before the birth of the baby. Under the FMLA, pregnancy and pre-natal care involve continuing treatment by a health care provider and therefore qualify as a serious health condition.
 - c. Limitation An employee's right to take leave for birth and care of a newborn must conclude within twelve (12) months following the birth.
 - d. Intermittent and reduced work schedule leave related to birth and care of a newborn is only available with management approval.
 - e. In cases where intermittent or reduced work schedule FMLA leave is for birth and care of a newborn, use of such FMLA leave cannot exceed a period of six (6) months regardless of the number of FMLA hours used.
 - f. When both parents are University employees, family medical leave taken for childbirth/parenting consists of a single benefit of up to a total of twelve (12) weeks for either parent (but not both parents) or the single benefit may be shared between parents.
 - 2. Adoption of a child or placement of a child in foster care.
 - a. FMLA leave may be taken for events related to the placement of a child with the employee for adoption or foster care. This includes, but is not limited to,

preplacement counseling sessions, court appearances, attorney consultations and care for the adopted or foster child. Use of accrued time as paid time off while on leave will be consistent with ISUPP 3070, Leave of Absence Policy for Faculty and Staff.

- b. Limitation: An employee's right to take leave for placement of a child for adoption or foster care, must conclude within twelve (12) months of birth or placement.
 - c. Intermittent leave or reduced work schedule leave related to adoption or foster care is only available with management approval.
 - d. In cases where intermittent or reduced work schedule FMLA leave is for adoption or foster care, use of intermittent FMLA leave cannot exceed a period of six (6) months regardless of the number of FMLA hours used.
3. Employee's own qualifying serious health condition.
 4. To care for a qualifying family member with a qualifying serious health condition.
 - a. Family members who qualify are limited to the employee's spouse, the employee's children under eighteen (18) years of age, the employee's children incapable of selfcare due to a mental or physical disability regardless of age, and the employee's parents with a serious health condition. Care for siblings or in-laws with a serious health condition are ineligible for this provision of FMLA.
 - b. If an employee requests FMLA leave to care for a qualifying family member, Human Resources may require a medical certification stating the need for support or care for the family member's illness as well as its expected duration.
 5. Eligible family members are entitled to twelve (12) weeks of FMLA leave for qualifying exigency leave arising out of the active duty or call to active duty status in the National Guard or Reserves in the support of a contingency operation of a spouse, son, daughter or parent of an eligible employee.
 - a. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post deployment reintegration briefings.
 - b. Employees may be required to provide eligibility verification regarding the qualifying exigency such as the Department of Labor (DOL) form WH-384, the service members orders, or confirmation from third parties.
 6. Eligible employees are entitled to take up to twenty-six (26) weeks, or 1,040 hours, prorated if not full-time (1.0 FTE), of job protected leave in a twelve (12) month period

to care for a covered service member with a serious illness or injury incurred in the line of duty.

- a. In order to be eligible for military caregiver leave, an employee must be the spouse, son, daughter, parent or Next of Kin of a covered service member who is receiving treatment for a serious injury or illness. At the time of injury or illness, the service member must have been in the line of duty on active duty and the service member must have an illness or injury that renders the member medically unfit to perform his or her duties. This type of leave is not available to care for former members of the Armed Forces, former members of the National Guard and Reserves and members on the permanent disability retired list.
- b. Leave shall only be available during a single twelve (12) month period. An employee may not, in the same twelve (12) month period, take twenty-six (26) weeks of military FMLA leave and also take twelve (12) weeks of FMLA leave.

C. Types of Leave

1. Continuous FMLA Leave. An employee, who is off work entirely for a single qualifying reason, is on continuous FMLA leave.
2. Intermittent or a Reduced Work Schedule. Intermittent or reduced work schedule leave is leave taken in separate blocks of time, interspersed with periods of work due to a single qualifying reason.
 - a. Employees requesting intermittent leave or reduced work hours should schedule their leave so as to disrupt the agency's operations as little as possible. Employees should, when possible, submit a schedule disclosing their planned leave.
 - b. Employees on intermittent leave may be temporarily transferred to another similar position, if the transfer helps to accommodate the employee's intermittent leave, until the need for intermittent leave no longer exists.
 - c. Intermittent leave related to birth, adoption, or foster care is only available with leadership approval. In approving or denying the employee's request for intermittent FMLA leave, leadership should consider the business needs of the unit.

D. Calculating Eligibility

1. For the purposes of calculating the twelve (12) month period, ISU uses a rolling twelve (12) month period measured backward from the date an employee uses any FMLA designated leave. Each time an employee takes FMLA leave, the amount of leave taken shall be computed and subtracted from the available hours/weeks of leave. The balance remaining is the amount the employee is entitled to take at that time.

E. Use of Paid Leave

Eligible employees must use accrued vacation, sick, compensatory leave and/or Paid Parental Leave concurrently with FMLA leave in accordance with State of Idaho policy and ISUPP 3070 *Leave of Absence Policy for Faculty and Staff*, unless the employee is covered by approved worker's compensation.

If the employee does not have enough accrued leave time to cover the expected leave period, the employee may request from HR to code partial hours in order to cover any insurance premiums during their leave. Employees on FMLA leave who are concurrently using available sick or vacation time shall accrue sick and vacation hours at the same rate as if they were not on FMLA. However, employees utilizing compensatory time or unpaid FMLA do not accrue additional leave.

While the employee is on approved FMLA leave, the employee is required to complete appropriate time sheet reporting in accordance with ISU procedures.

F. Job Benefits and Protection

1. For the duration of FMLA leave, the employee's group insurance benefits will remain unchanged. ISU must maintain the employee's insurance coverage under any group insurance plan. The employee will still be responsible for his/her share of the monthly premiums.
2. If an employee does not return to work following leave for a reason other than: continuation, recurrence or onset of a serious health condition which would entitle the employee to other forms of leave in accordance with applicable leave of absence policies or other circumstances beyond the employee's control, the employee may be required to reimburse ISU for the complete cost of health insurance premiums paid on the employee's behalf during his/her leave.
3. Upon return from FMLA leave, employees are entitled to be restored to the position they held prior to the FMLA leave, or to be restored to a substantially equivalent position with substantially equivalent benefits, pay, and other terms and conditions of employment.
4. The use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to prior to the start of using FMLA leave.

G. Enforcement

1. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
2. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law which provides greater family or medical leave rights.

V. PROCEDURES TO IMPLEMENT

A. Notification and Request

1. **Advance Notification Required.** When the employee is able to anticipate the need to take FMLA leave, the employee must give ISU thirty (30) days' notice prior to taking such leave. Notice shall include the anticipated start date of the FMLA leave, and the expected duration of the leave. Employees are asked to use the "FMLA Leave Request" form for this purpose.
2. **Impromptu Leave.** In situations where advance notification is not practicable, the employee shall notify ISU as soon as feasible. "As soon as feasible" would ordinarily mean the employee provides verbal notification to the supervisor within one (1) business day of the employee knowing of the need for FMLA leave.
3. If the employee is unable to complete the "FMLA Leave Request" form to request unforeseen FMLA leave, the supervisor shall complete the form on the employee's behalf.
4. If an employee is unable to provide notice, an employee's representative, acting on the employee's behalf, may notify the supervisor of the employee's need to take FMLA leave. Such notice may be communicated via phone call, fax, mail, or e-mail. In such situations, the supervisor shall complete the "FMLA Leave Request" form on the employee's behalf.

B. Medical Certification. When an employee requests FMLA leave for their own medical condition or to care for family members, Human Resources may require the employee to provide a medical provider's statement certifying the medical information necessary to determine the employee's eligibility for FMLA leave at the time such leave is requested. Along with the medical certification, employees should submit a list of their essential job functions to HR whenever possible. This list should accurately describe the primary duties and responsibilities of the employee's position.

1. To expedite the processing of the leave request, employees are encouraged to furnish the medical certification and list of essential job functions with their completed "FMLA Leave Request" form. Ultimately, the employee must return the completed medical documentation within fifteen (15) calendar days from the date of the leave request, unless a request for extension was submitted, received, and approved. If an employee fails to provide medical documentation, FMLA leave may be denied.

2. In situations where FMLA leave was unforeseen, Human Resources may request medical certification after the leave commences. The employee must then provide the medical certification within fifteen (15) calendar days of receipt of the request.
 3. In cases where medical certification is required, the certification must be complete and sufficient. If Human Resources finds that the medical certification provided by the employee is incomplete (one or more of the applicable entries have not been completed) or insufficient (the information provided is vague, ambiguous, or inconclusive), Human Resources shall notify the employee in writing of the additional information needed to make the certification complete and sufficient. The employee shall have seven (7) days (unless not practicable despite the employee's diligent efforts) to cure the deficiencies. Failure by the employee to do so may result in denial of FMLA leave.
 4. To determine the extent of an employee's serious health condition, if the first medical certification appears to lack validity, Human Resources may request a second opinion. If the second opinion is different from the first opinion, ISU may request a third medical opinion. The third opinion will be binding. If second and third requests are necessary, ISU will pay the expense.
- C. Eligibility Determination and Response. Human Resources is required to provide the employee with an Eligibility Notice and with a Designation Notice once FMLA leave is requested. These Notices may be combined into one Notice.
1. Eligibility Notice. Within five (5) business days of the employee requesting leave or the supervisor learning an employee's leave may be FMLA eligible, Human Resources shall notify the employee in writing whether the employee is eligible or not eligible in accordance with Section II.A. In conjunction with the Eligibility Notice Human Resources shall also provide the employee with written notification of the employee's rights and responsibilities under the FMLA, including the information contained in the "Notice of Eligibility and Rights & Responsibilities" form. This notification can be accessed at <http://isu.edu/hr/forms/> and shall include:
 - a. Whether medical certification is required, and the consequences for failure to provide such medical certification;
 - b. Whether certification to verify a qualifying exigency as described in Section III.B.5.a. is required, and the consequences for failure to provide such certification; and
 - c. Whether a "fitness for duty" certification is required for the employee to return to work, and the consequences for failure to provide such a certification.

2. Designation Notice. Within five (5) business days of receiving enough information to determine that an employee's leave is FMLA eligible, Human Resources shall provide written, official confirmation of the designation of the employee's leave as FMLA leave and the parameters (i.e., expectations, obligations, and consequences for failure to meet the same) of the FMLA leave. If a "fitness for duty" certification specifically addressing the issue of whether the employee can meet the essential functions of his or her job will be required for the employee to return to work, Human Resources in conjunction with the department must provide a list of the essential job functions no later than the date of the Designation Notice. In such a case, the Designation Notice must specifically inform the employee what the certification must address.
3. Completion of Leave. An employee who is returning from FMLA leave may be required to provide a "fitness for duty" certification from his or her medical practitioner, if, due to the nature of the health condition and the job:
 - a. Light duty work or other accommodation is requested; or
 - b. ISU, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others.
 - c. Per ISUPP 3070 *Leave of Absence for Faculty and Staff* section IV.2.e., if an employee is unable to return to their regular work duties (with or without accommodation) after twelve (12) weeks, the employee will be medically laid off. Employees may not use leave without pay, or time spent in a light or alternate duty position, unless approved by Disability Services, to extend the medical layoff date.
4. Benefits and Employee Rights. While on FMLA leave, the employee's group insurance benefits will remain unchanged. Thus, the employee will remain responsible for his or her share of the monthly insurance premiums. Since the employee is required to use sick and/or vacation leave to receive a full or partial paycheck while on FMLA leave, the employee's portion of group insurance premiums will be deducted as usual. However, if the employee is not receiving a sufficient paycheck, they must arrange to pay the employee's portion of group insurance premiums. If the employee does not return to work after FMLA leave for reasons beyond their medical condition, ISU may require the employee to reimburse ISU's share of the insurance premiums paid during the employee's FMLA absence.
 - a. An employee's use of FMLA leave cannot result in the loss of any employment benefits that the employee earned or to which they entitled before using FMLA leave.

- b. Use of FMLA leave cannot be counted against the employee for any disciplinary action regarding attendance.

VI. RELATED LAWS, RULES, AND POLICIES

- A. The Family and Medical Leave Act of 1993, Public Law 103-3, Enacted February 5, 1993.
<https://www.dol.gov/whd/regs/statutes/fmla.htm>
- B. Idaho Division of Human Resources Executive Branch Agency Policies, Section 4: Family and Medical Leave Act (FMLA) Leave,
<https://dhr.idaho.gov/statutes-rules-and-policies/>
- C. Idaho Division of Human Resources Executive Branch Agency Policies, Section 10: Paid Parental Leave,
<https://dhr.idaho.gov/statutes-rules-and-policies/>
- D. ISUPP 3070 *Leave of Absence Policy for Faculty and Staff*
ISUPP 3100 *Equal Opportunity, Harassment, and Non-discrimination*

VII. RELATED FORMS

- A. Family and Medical Leave Act (FMLA) Request Form
<https://www.isu.edu/media/human-resources/documents/health-benefits/FMLARequest-Form.pdf>
- B. WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition,
<https://www.dol.gov/whd/forms/WH-380-E.pdf>
- C. WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition,
<https://www.dol.gov/whd/forms/WH-380-F.pdf>
- D. WH-381 Notice of Eligibility and Rights and Responsibilities,
<https://www.dol.gov/whd/forms/WH-381.pdf>
- E. WH-382 Designation Notice, <https://www.dol.gov/whd/forms/WH-382.pdf>

- F. WH-384 Certification of Qualifying Exigency for Military Family Leave, <https://www.dol.gov/whd/forms/WH-384.pdf>
- G. WH-385 Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave, <https://www.dol.gov/whd/forms/WH-385.pdf>
- H. WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave, <https://www.dol.gov/whd/forms/wh385V.pdf>