

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

Family and Medical Leave Act

**3-035
FISCAL SERVICES
March 2014**

PURPOSE

- 1.01 The Family and Medical Leave Act of 1993 (FMLA) gives certain job protections to employees when balancing work responsibilities with the demands of personal illness or injury, or in caring for family members.
- 1.02 This policy sets forth the essential provisions of FMLA. In the event that additional clarification is needed, the actual Act and regulations issued by the federal government implementing the Act shall prevail.
- 1.03 Depending on individual circumstances of the leave, faculty and staff may also be concurrently eligible for paid sick leave benefits under 3-002 *Attendance and Leave*.

SCOPE

- 2.01 This policy applies to all OSU Institute of Technology (OSUIT) employees, regardless of location.
- 2.02 To be eligible for FMLA leave, an employee must have been employed by the university for twelve months, which need not be consecutive, and must have worked at least 1,250 hours within the previous 12 months as of the date the leave commences.

POLICY AND PROCEDURES

3.01 Qualifying Event

Under FMLA an eligible employee may request up to 12 weeks of unpaid leave for a qualified event:

- A. for the birth and care of a child or placement of a child with the employee for adoption or foster care. Such leave must be taken within 12 months immediately after birth or within 12 months after placement. Leave may begin prior to birth or placement;
- B. for care of a family member (as defined in 3.03) with a serious health condition. The employee must be needed to care for basic needs, psychological comfort, filling in for others, or making arrangements for the relative; or
- C. because an employee's own serious health condition makes the employee unable to do

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

his or her job due to illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatments.

3.02 Definition of Serious Health Condition

- A. Under FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that requires either inpatient care or continuing treatment by a health care provider. A more complete definition can be found as part of the Certification of Health Care Provider form at the end of this policy.
- B. Serious health condition would not include short-term conditions, which require brief treatment and recovery, such as common colds or flu, stomach viruses, non-migraine headaches, and routine pregnancy, or voluntary or cosmetic treatments not considered medically necessary. The above list is not exclusive. Questions regarding specific conditions that would meet the FMLA definition can be referred to the OSUIT Office of Human Resources.

3.03 FMLA Definitions of Family

- A. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage.
- B. Parent means a biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents "in law."
- C. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent, who is under age 18, or incapable of self-care because of a mental or physical disability.
- D. FMLA definitions of family differ from the 3-002 *Attendance and Leave* Policy definitions, Section 1.11. Because OSUIT provides an extended definition of "family," an employee may qualify for sick leave but not Family Medical Leave.

3.04 National Defense Authorization Act Amendment

- A. A spouse, son, daughter, parent, or next of kin may take up to twenty-six (26) workweeks of leave to care for a member of the Armed Forces, National Guard, and Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or on the temporary disability retired list, for a serious injury or illness.
- B. The serious injury or illness is one that was incurred in the line of duty while on active duty.
- C. The next of kin is the nearest blood relative of the injured/sick service member.

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

- D. A covered veteran is an individual 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.

3.05 Employee Notice and Certifications

- A. The employee must provide 30 days advance notice when the leave is "foreseeable." On rare occasions, advance notice might not be possible. These situations will be evaluated on a case-by-case basis.
- B. Medical certification is required prior to approval of leave indicating the employee is needed to provide care or unable to perform his or her job.
- C. Continued medical certification will be required if the situation warrants, but not more frequently than every 30 days unless the department has reason to believe the employee is able to return to work.
- D. Forms for medical certification are available from OSUIT Office of Human Resources and are attached to this policy. This form is also acceptable for documentation of sick leave under Policy and Procedures 3-002 (Attendance and Leave) section 1.11.
- E. Leave may be denied if the employee fails to provide the required medical certification.

3.06 Maximum Leave Entitlement

- A. Up to 12 weeks of absence from assigned duty may be requested within a 12-month period.
- B. In the event both spouses are employed by OSUIT, maximum leave for each eligible spouse is 12 weeks.

3.07 Intermittent and Reduced Leave Schedule

- A. In the event of employee or immediate family member illness only, an employee may request a reduced work schedule. Necessity for the leave must be such a medical need that can best be accommodated through an intermittent or reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt OSUIT's operations.
- B. OSUIT may transfer an employee to an alternative position with equivalent pay and benefits in order to accommodate the request when such a reassignment is available and expedient for the department in question.

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

- C. Leave taken on an intermittent or reduced schedule will be calculated on a pro rata or proportional basis comparing the employee's new schedule to his or her prior schedule.

3.08 Concurrent Use of Accrued Paid Leave

- A. FMLA leave is unpaid leave which may be taken concurrently with other OSUIT leave policies. The employee should be so notified of the leave. Any paid leave remaining after exhaustion of Family and Medical Leave would be taken in accordance with applicable OSUIT leave policies.
- B. An employee with accrued compensatory, annual, or sick leave will take all applicable leave prior to unpaid leave. Paid sick leave is granted only when conditions in OSUIT Policy and Procedures for such leave are met.
- C. A parent meeting the eligibility criteria under the Family and Medical Leave Act may, upon application, use up to five days accrued sick leave for the qualifying event of birth or adoption of his or her child. The twelve-month employment requirement of the Family Medical Leave Act will not apply. Additional accrued leave can be used, as applicable, under the conditions in OSUIT Policy and Procedures.

3.09 Continuation of Benefits during Leave

- A. An employee's coverage in a group health plan will continue under the same conditions that existed prior to family/medical leave. The employer's portion of medical premiums will continue to be paid by OSUIT if the employee is enrolled in medical coverage at the time the leave is requested. The employee portion of medical premiums will be paid by the employee as under normal circumstances.
- B. Employee life insurance and all optional benefits regularly paid by the employee will be paid by the employee while on leave.
- C. Dependent coverage of existing benefits would continue to be paid by the employee as under normal circumstances.
- D. If an employee has exhausted all paid leave available, employee contributions will be made by the employee through the Bursar's Office on a timely basis.
- E. In the event an employee elects to cancel insurance coverage, such cancellation will be effective the end of the month after written notice to the OSUIT Office of Human Resources. No partial premiums will be calculated.

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

- F. If an employee fails to return to work from unpaid leave, except where health conditions will not permit, or death, the employee will be required to reimburse OSU for premiums paid on behalf of the employee during the family/medical leave. The employee will be billed through the Bursar's Office.

3.10 Restoration of Employment

- A. Upon return from FMLA leave, an employee will be restored to his or her original or equivalent position with equivalent pay, benefits, and other terms of employment.
- B. An employee may not be restored to an original or equivalent position if such position has been eliminated through a reduction in force program, or if the original terms of appointment expired during the leave.
- C. Key employees ranking in the top 10% of the highest paid employees at OSUIT may be excluded from the job guarantee provision if there are reasons justifying such an action.
- D. If the reason for leave is personal illness or injury of the employee, medical proof of fitness to return to work will typically be required indicating the employee is able to perform the essential functions of the job.
- E. Time on leave of absence without pay may not count toward credited service for Oklahoma Teachers Retirement (OTR) purposes. The rules of the Oklahoma Teachers Retirement System (OTRS) prevail.

3.11 Restoration of Benefits

- A. OSU-paid benefits such as OSU-paid health care and life insurance will be restored to the employee once returning from leave, and will be equivalent to what the employee would have had without taking the leave. If the employee does not want the insurance during this leave, he or she should cancel the insurance and upon return to work should notify OSUIT Office of Human Resources of his or her desire to reinstate the benefits. If the insurance is reinstated the day the employee returns, proof of insurability will not be required and no pre-existing condition clauses will apply.
- B. Benefits normally paid for by the employee such as dependent coverage, long-term disability, etc., would also be reinstated.
- C. Coverage, long-term disability, etc., would also be reinstated.
- D. Health and dependent care reimbursement accounts will be reinstated once the employee is back on pay status if he or she was enrolled at the time of his or her leave.

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

3.12 Notices to Employees

- A. Notice of the Family and Medical Leave Act is posted in designated buildings on campus and on the university website. Units are responsible for ensuring such notification exists.
- B. Copies of this policy and procedure will be made available to employees upon request.
- C. To request leave, the employee should contact OSUIT Office of Human Resources for rules of eligibility, 12-month period used, medical certification requirement, required substitutions of leave, rules on payment of benefit premiums, liability of employee for repayment, medical certification requirements for return to work, status as a key employee, and right to restoration of original or equivalent position. All forms necessary for application of and medical certification for FMLA are available from OSUIT Office of Human Resources.

3.13 Recordkeeping

- A. OSUIT Human Resources department will maintain adequate up-to-date records for each staff member that accurately reflect the rate and the amount of leave taken, the dates when such leave is used, and the current leave balance.
- B. Units will ensure that any leave taken under FMLA is properly designated on the employee timesheet so accurate leave balances will be maintained on the Human Resource System. Leave used will be reported on the confirmation payroll or biweekly time report.
- C. Documentation for use of leave will be maintained by the Human Resources department for three years.

3.14 Exhaustion of Family and Medical Leave

- A. Once an employee has exhausted the 12 work-week eligibility under this policy and other paid leave does not apply, the employee must return to work immediately or pursue a personal leave of absence.
- B. If no other leave is approved, the employee will be terminated.

3.15 COBRA

- A. If an employee does not return to work after FMLA leave, OSU will offer COBRA as required under the Consolidated Omnibus Benefits Reconciliation Act.
- B. The qualifying event that will trigger an offer of COBRA continuation of coverage occurs on the last day of the employee's FMLA leave. The last day of FMLA leave is

OSU INSTITUTE OF TECHNOLOGY
POLICY & PROCEDURES

the earlier of (1) the date the employee gives resignation notice, (2) the employer gives termination notice, or (3) the last scheduled day of the FMLA leave.

C. Length of the COBRA coverage is measured from the day of the qualifying event.

Adopted: September 1995
Revised: May 2001
Revised: June 2004
Revised: March 2008
Revised: July 2009
Revised: March 2014