Policy Purpose and Background:

The University is committed to providing leave to assist employees with balancing the demands of the workplace, their individual needs, and the needs of their family in ways that accommodate the legitimate interests of the University’s schools and departments.

This policy assists the University in complying with the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 2601 et seq., and Regulations 29 C.F.R Part 825).

Effective January 16, 2009, the U.S. Department of Labor (DOL) issued its new rules for interpreting the Family and Medical Leave Act (FMLA). The new rules serve two primary purposes: 1) to provide greater clarity on several regulations and 2) to implement new FMLA leave available to military family members.

Effective February 2013, the U.S. Department of Labor (DOL) issued new rules for family members of current service members and veterans and providing far greater abilities to attend to personal matters and medical needs related to their family members’ service.

Policy Summary

The Federal Family and Medical Leave Act 1993 (FMLA) provides eligible employees with the right to take job-protected leave with continued medical benefits when you need time off from work to care for yourself or a family member who is seriously ill, to care for a newborn or newly adopted child or to attend to the affairs of a family member who is called to active duty in the military.

Definition of Terms in Statement

Eligible employees: All faculty and staff employed by Clarkson who have been employed by the University for: (1) at least 12 months within the last seven years; and (2) at least 1,250 hours during the 12 months before the start of the leave. (NOTE: The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.)

Employment Benefits: All benefits provided by the University to employees including group life insurance, disability insurance, health insurance, vacation and sick leave, special days, educational benefits, and retirement contributions.

Family and Medical Leave Act (FMLA): A job-protected leave without pay (or use of an employee’s accrued leave with pay) for up to 12 workweeks (or up to 26 weeks for qualified Military leave) during rolling 12 month period for the reasons specified in this policy in conformance with the Federal Family and Medical Leave Act of 1993.

Healthcare Provider: Healthcare providers include: (1) doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice; (2) any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and (3) others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law.

Key Position: A position within the highest paid 10 percent of all the University’s employees, working within 75 miles of the University’s facility.

Leave Plan Year: A rolling 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Parent: Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.
Qualified Exigency Leave: Military leave which may be used for such pressing or urgent situations as:

- short-notice deployment (defined as notice of an impending call or order to active duty within seven days of the date of deployment);
- Veterans, or one who was a member of the Armed Forces (including a member of National Guard or Reserves) at any time during the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy;
- military events and related activities, such as informational briefings, family assistance programs, or official ceremonies and events;
- childcare and school activities, including arranging alternative childcare, caring for children on an immediate, urgent basis, and attending school meetings;
- making financial and legal arrangements, such as executing powers of attorney, obtaining military identification cards, or preparing a will or trust;
- counseling;
- rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave);
- post-deployment activities, including arrival ceremonies, reintegration events, and issues relating to the death of a military family member; and
- other events arising out of a family member's service that may qualify, as long as the employer and employee agree that it qualifies, and agree on the timing and length of leave to be taken.

Spouse: Husband or wife as recognized under the laws for the purpose of marriage.

Serious Health Condition/Illness: A period of incapacity of more than three consecutive days that involves: (1) Treatment 2 or more times; or (2) care of an employee’s spouse, son, daughter, parent, or next of kin who is a covered service member with a serious injury or illness; or the employee’s own serious health condition makes them unable to do his or her job; or the qualifying exigencies of a spouse, son, daughter, or parent who is on active duty or call to active duty status in the National Guard or Reserves.

The University provides an eligible employee with up to 12 weeks (60 workdays; 480 work hours) of unpaid family or medical leave (up to 26 weeks in the case of qualified Military Leave) in a Leave Plan Year for the following reasons:

- the birth of a child (to be taken within 12 months of the child’s birth);
- the placement of a child with the employee for adoption or foster care (to be taken within 12 months of the child’s placement);
- care of an employee’s spouse, son, daughter, parent, or next of kin, who is a covered service member with a serious injury or illness; or
- rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave);
- the employee’s own serious health condition makes them unable to do his or her job; or
- making financial and legal arrangements, such as executing powers of attorney, obtaining military identification cards, or preparing a will or trust;
- rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave);
- post-deployment activities, including arrival ceremonies, reintegration events, and issues relating to the death of a military family member; and
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- the employee’s own serious health condition makes them unable to do his or her job; or
- making financial and legal arrangements, such as executing powers of attorney, obtaining military identification cards, or preparing a will or trust;
- rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave);
- post-deployment activities, including arrival ceremonies, reintegration events, and issues relating to the death of a military family member; and
- other events arising out of a family member’s service that may qualify, as long as the employer and employee agree that it qualifies, and agree on the timing and length of leave to be taken.

Qualified Exigency Leave

An eligible employee may take up to 12 workweeks of unpaid, job-protected leave during any 12-month period for qualifying exigencies that arise when the employee’s spouse, son, daughter, or parent is on covered active duty or has been notified of an impending call or order to covered active duty.

Covered active duty means:

- for members of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
- for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country includes deployment to international waters. Qualifying exigencies for which an employee may take FMLA leave include making alternative child care arrangements for a child of the deployed military member, attending certain military ceremonies and briefings, or making financial or legal arrangements to address the military member’s absence. See Fact Sheet 28M(c), Qualifying Exigency Leave, for additional information about qualifying exigencies under the FMLA.

Military Caregiver Leave

An eligible employee may take up to a total of 26 workweeks of unpaid, job-protected leave during a "single12-month period" to care for a covered service member with a serious injury or illness. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member.

A covered service member is either:

- a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness, or
- a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.

For a current service member, a serious injury or illness is one that renders the veteran medically unfit to perform his or her military duties. For a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform his or her military duties or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran’s ability to work. For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty.
For an eligible part-time employee—actual hours taken will be counted on a prorated basis corresponding to the percentage of hours the employee normally is scheduled to work during a FMLA Leave Plan year.

For an hourly wage employee—actual hours taken will be counted on a prorated basis corresponding to the percentage of hours the employee normally is scheduled to work during the 365-day period prior to the date family and medical leave is scheduled to begin.

An employee does not accrue vacation, special days or sick time when on leave in an unpaid status or during caregiver leave.

Family and Medical leave may not be used for short-term (a period of incapacity requiring absence of less than three calendar days) conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.

When both parents of a child work for the University, the full amount of leave is limited to a combined total of 12 workweeks in a 12-month period when the leave is for the birth, adoption, or foster care placement of a child.

1. Intermittent Leave or Leave on Reduced Schedule:
An employee may take intermittent leave or work a reduced schedule when medically necessary because of an eligible employee’s own serious health condition or the serious health condition of a child, spouse or parent. Under this circumstance, the University may temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule as long as the new position carries equivalent pay and benefits.

An employee may take family or medical leave on an intermittent leave basis or a reduced schedule as indicated:

   a. Intermittent Leave Schedule — A leave schedule permitting the employee to take leave periodically for a few hours a day (fewer than eight hours), or for a few days, on an as-needed basis. Note: Employees may be required to provide medical certification that intermittent leave is necessary.

   b. Reduced Schedule — A leave schedule permitting the employee to reduce his/ her usual number of hours worked per workweek/day.

   An employee who must take intermittent leave or work a reduced schedule or out of cork completely may either use available special days, sick days, and/or vacation days as permitted by each specific leave policy or take unpaid family medical leave.

2. Request for and Certification of Need for Leave:
An employee should submit a written request for family and medical leave or military leave (whether for a “qualified exigency” or to care for a seriously ill or injured covered service member) at least 30 days before the anticipated beginning of the leave, unless emergencies or unforeseen events preclude such advance notice. Prior to granting the leave, the University may require certification for leave that is requested for:

   • an employee’s serious health condition;
   • his or her family member’s serious health condition;
   • military leave for a qualified exigency; or
   • military leave that is requested for a covered service member’s serious health condition.

The certification should include the date when the serious condition began, the probable duration of the condition, and other appropriate facts.

When possible, the employee should provide certification in advance of, or at the commencement of, the requested leave. When that is not possible, certification must be provided reasonably soon after the leave begins.

The University may require an employee to report periodically during the leave period on his or her leave status and intention to return to work and to provide subsequent re-certifications on a reasonable basis (every four to six weeks is considered reasonable).

3. Second and Third Opinions: The University may, at its own expense, obtain a second opinion from its designated or approved healthcare providers. This healthcare provider cannot be one who is employed by the University on a regular basis. When the second opinion differs from the first, the University may, at its own expense, require a third opinion. The opinion of the third healthcare provider shall be considered final and binding upon the University and the employee.

4. Restoration to Position: At the end of family and medical leave (FMLA), an employee normally is reinstated to his or her original position – the position held when the leave began unless the employee held a key position which needed to be filled during the absence. If the original position has been filled, an employee is entitled to restoration to an equivalent position (requires comparability and correspondence to duties, terms, conditions, and privileges of the employee’s previous position.) The University can require certification from a healthcare provider that the employee is able to return to work.

If an employee’s position is determined to be key, he or she may be denied restoration when the:

   • University shows that denying restoration “is necessary to prevent substantial and grievous economic injury” to the University’s operations;
   • University notifies the employee that restoration will be denied at the time the University determines that grievous economic injury would occur; and
   • Employee already has begun the leave and elects not to return to employment within a reasonable time after receiving the University’s notice.

The University will provide notification of its intent to deny restoration for a reason noted above in a timely manner.

5. Status of Employment Benefits during Family, Medical, and Military Leave
The University will continue to:

   a. Contribute to the health insurance premium of a employee who has been approved for FMLA leave as noted:
      i. Sick leave, Special Personal and Vacation - the payroll deduction of the employee’s portion of the premium continues.
      ii. Leave without pay – employee is responsible for premiums payments.
   b. Pay life insurance premiums while an employee is on FMLA.
   c. Make retirement contributions for any pay period in which qualifying compensation has been received by the employee.

6. Responsibilities:
The employee is responsible for:

   • Submitting a written Request for Family and Medical Leave at least 30 days before the anticipated start of the family and medical leave,
unless emergencies or unforeseen events preclude such advance notice to Human Resources Department (HR); and
• Providing the required certification within 15 calendar days if one is requested by the Office of Leave and Benefits.

HR is responsible for:
Acknowledging the employee’s Request for Family and Medical Leave by signing the leave request form; and
• Providing the required certification within 15 calendars days if one is requested by the Office of Leave and Benefits.
• Providing the employee with a summary of their rights under FMLA in the form of an Eligibility and Rights and Responsibilities Notice within 5 business days of receipt of the Request for Family and Medical Leave;
• Determining if there is a need for certification and requesting one if necessary; and
• Providing the employee with notice of approval or disapproval of the leave in the form of a Designation Notice within 5 business days of receiving sufficient information to render a decision on whether or not the leave will be designated FMLA.

To encourage employees to return to work and to give employees who need extended leave for reasons of illness and/or injury a reasonable time to recuperate and recover, the University may extend leave an additional 12 weeks after FMLA is exhausted.

Procedures

Leave Requests - eligible employees interested in FMLA Leave should:

1. Inform the Human Resources department immediately when an employee requests FMLA leave.
2. Request a FMLA Information Packet from the Human Resources department. Supervisors must notify the Human Resources of any employee requesting FMLA leave immediately.
3. The Human Resources department will send the FMLA Information Packet to the employee by U.S. Mail.
4. Employees must complete, along with a physician, the FMLA Leave Certification of Health Care Provider portion of the FMLA Leave Information Packet, and have their physician forward the completed form to the FMLA Administrator by U.S. Mail or in person.

Requirements

1. Employees have worked (a) at least 12 months within the last seven years and (b) at least 1,250 hours during the 12 months before the start of the leave. (NOTE: The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.)
2. All employees have the option to use vacation, sick leave and special personal days during their FMLA leave period. For an employee’s own serious health condition, the employee must apply for Short Term Disability in conjunction with FMLA. Also, under workers compensation, FMLA is in conjunction with the time off for a work related injury.

Response to Leave Requests -
Human Resources department will:

1. Send the employee a FMLA Information Packet by U.S. Mail within two days of being informed by them or their supervisor.
2. Notify the employee and their supervisors in writing, upon receipt of their Certification of Health Care Provider form, of whether or not their leave request has been approved.
3. Maintain all documentation regarding an employee’s FMLA leave in a separate health file.

Employees will:

1. Complete the Certification of Health Care Provider form along with their physician and have their physician send the form directly to Human Resources Office.
2. The employee and their physician will complete a Short Term Disability Form.
3. Provide the required form “Return to Work”.

The Family and Medical Leave Act and Clarkson’s procedures for implementing the Act as detailed in this Section (8.1.13) will not change the University’s current policy as defined in Section 8.1.14 for Caregiver Leave (Birth or Adoption)• Staff and Non-Continuing Faculty, Section 8.1.15 for Temporary Parental Leases•Continuing Faculty, and in Sections 8.3.2.1 and 8.3.3.1 for Maternity Leaves.
Department of Labor at www.dol.gov for regulations and forms.