



# Washington and Lee University

## Family and Medical Leave Policy

<b>Approved By:</b> <u>Amy Barnes, Executive Director</u> <u>of Human Resources</u>	<b>Related Policies:</b> <u>Parental Leave, Combined</u> <u>Time Off, Tenure &amp; Promotion Extension</u>
<b>History:</b> Issued – <u>1997</u> Revised – <u>January 16, 2009</u>	<b>Additional References:</b> _____ <b>Responsible Office:</b> <u>Human Resources</u>

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### I. INTRODUCTION

#### **Policy Statement**

Washington and Lee University offers family and medical leave in accordance with the Family and Medical Leave Act of 1993 (FMLA), representing the minimum leave to which each eligible employee is entitled for qualifying circumstances. Consistent with federal law, the employee and faculty handbooks summarize the basic provisions of the University FMLA leave policy.

#### **Applicability**

This policy applies to all faculty and staff employees of Washington and Lee University, subject to the eligibility requirements contained herein.

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### II. DEFINITIONS

*Any applicable definitions are explained within the body of this policy.*

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### III. POLICY

#### **A. Eligibility**

To be eligible for leave under this policy, an employee must have been employed by the University for at least twelve months (which need not be consecutive) and must have worked at least 1250 hours during the twelve-month period immediately preceding the beginning of the leave. The University will not consider employment prior to a seven year or longer break in service in counting the twelve months of total employment for eligibility. Periods of time away from work for military service will be counted toward the twelve months of employment, as well as the 1250 hours of work in the previous twelve-months (based on the employee's pre-service work schedule).

#### **B. Effect of FMLA Leave on Other Available Leaves**

Please note that FMLA leave will be designated and run concurrently with paid combined time off, sick leave reserve, the University's extended sick leave for up to six

months, parental leave, and absences for work-related injuries or occupational disease (workers' compensation absences), when the circumstances of those absences constitute qualifying FMLA absences. Although not required, employees may apply available paid combined time off to any remaining period of unpaid FMLA leave.

**C. "Standard" FMLA Leave Qualifying Circumstances**

Eligible employees are allowed up to twelve weeks of unpaid leave in a twelve-month "leave year" period under the following qualifying circumstances:

1. The birth and care of an employee's child (entitlement expires twelve months after birth);
2. The placement of a child for adoption or foster care with an employee (entitlement covers required pre-placement/adoption absences and expires twelve months after placement/adoption);
3. When an employee is needed to care for a child, spouse or parent (as those terms are defined under Section 825.122 of the FMLA regulations) who has a serious health condition (as that term is defined under Section 825.113 of the FMLA regulations);
4. When an employee is unable to work at all or unable to perform any one of the essential functions of his/ her position because of the employee's own serious health condition (as that term is defined under Section 825.113 of the FMLA regulations); or
5. When a "qualifying exigency" arises out of the fact that an employee's spouse, son, daughter, or parent is on active duty (or has been notified of an impending Federal call or Federal order to active duty) in the Armed Forces as defined in Section 825.126 of the FMLA regulations, as either a member of the reserve components or a retired member of the Regular Armed Forces or Reserves. [Note: an employee whose family member is on active duty as a member of the Regular Armed Forces is not eligible for this type of FMLA leave.] Specific circumstances constituting a "qualifying exigency" are as follows: (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities (including time and duration of such leave) agreed to between the employee and the University. Section 825.126 of the FMLA regulations provide specific limits on certain of these "qualifying exigency" circumstances.

In determining the "leave year" in which an eligible employee is entitled to the twelve weeks of leave described in this section, the University uses a rolling twelve-month period measured back from the date the employee uses any FMLA leave.

**D. "Covered Servicemember Care" Leave Qualifying Circumstances**

Eligible employees may take up to twenty-six weeks of unpaid leave in a "single twelve-month period" if they are the spouse, son, daughter, parent, or next of kin (as that term

is defined in Section 825.122 of the FMLA regulations) who is the primary caregiver for: (1) a current member of the Armed Forces (including the National Guard or Reserves); (2) who has incurred an injury or illness in the line of duty while on active duty; and 3) has been rendered medically unfit to perform duties of the member's office, grade, rank or rating. This leave may only be used in one "single twelve-month period" beginning on the date the employee takes FMLA leave to care for the covered servicemember. Any remaining part of the twenty-six weeks is forfeited if not used in that twelve-month period. Leave for the circumstances outlined in this section should be designated as "Covered Servicemember Care" FMLA leave, not leave under Section III(C)(3) of this policy to care for a family member with a serious health condition.

#### **E. Combined Leave Total**

During a single "leave year," an individual eligible employee is entitled to a maximum of twelve weeks of unpaid leave even if the employee has multiple circumstances under Section III(C) above that qualify for FMLA leave, provided the employee does not also qualify for "covered servicemember care" leave.

Where an employee qualifies for "covered servicemember care" leave, the employee is entitled to a maximum of twenty-six weeks of unpaid leave during the "single twelve-month period" beginning on the date the employee begins "covered servicemember care" leave. However, in such a circumstance, the employee is entitled to only twelve weeks total of unpaid leave during that twenty-six weeks for any and all FMLA qualifying circumstances outlined in Section III(C) of this policy.

When both parents of a newborn, adopted, or foster child are employed by the university, the FMLA entitles the two employees to a combined total of twelve weeks of FMLA leave per "leave year" for circumstances related to the birth, care, or placement of a healthy child ("birth/care/placement leave"), as specified in Section III(C)(1) and (2) of this policy, and/or circumstances related to the care of a parent with a serious health condition ("parental serious health condition leave"), as specified in Section III(C)(3) of this policy. When "combined total" leave is taken by a husband or wife under this paragraph, (s)he retains the balance of any remaining individual leave entitlement (*i.e.* the maximum available individual leave, minus any "combined total" leave taken) for the applicable "leave year."

When both a husband and wife are employed by the University, they may be limited to a combined total of twenty-six weeks of leave per "single twelve-month period" (that period available for covered servicemember leave described in Section III(D) of this policy) for birth/care/placement leave, parental serious health condition leave, and/or covered servicemember leave (with a maximum of twelve weeks for birth/care/placement and/or parental serious health condition leave). Under the circumstances of this paragraph, neither the husband or wife retain the balance of any remaining individual leave entitlement after the combined total of twenty-six weeks has been taken in the single twelve-month period.

## **F. Notification and Certification**

When the need for leave is foreseeable and due to a “qualifying exigency” involving military duty as described in Section III(C)(5), the employee must notify the University as soon as reasonable and practicable. For all other instances in which the need for leave is foreseeable, employees are to provide the University at least thirty days prior notice. When the need for leave is not foreseeable, employees are to notify the University as soon as practicable. Failure to provide required notice may result in delay of FMLA leave depending on the particular facts and circumstances.

Employees must provide sufficient information for the University to reasonably determine whether FMLA applies to the leave request. Employees have an obligation to respond to University inquiries intended to determine whether an absence is FMLA qualifying.

A complete and sufficient medical certification (and recertification(s) in certain circumstances) may be required for leaves of absence due to serious health conditions of the employee, spouse, parent or child. Appropriate certification may also be required for leave taken because of a “qualifying exigency” involving military duty as described in Section III(C)(5) and for “covered servicemember care” leave described in Section III(D). In all cases where certification is required, failure to provide a complete and sufficient certification may result in denial or delay of leave until appropriate certification is provided.

The University may require an employee on FMLA leave to report periodically on his/her status and intent to return to work. If an employee is returning from a medical leave for his or her own serious health condition, the employee will be required to provide a complete and sufficient certification from his or her health care provider that the employee is capable of returning to work. Such a certification must address the employee’s ability to perform the essential functions of the employee’s job.

## **G. Intermittent or Reduced-Schedule Leave**

Leave may be taken on an intermittent or reduced-schedule basis if medically necessary because of an employee’s own serious health condition, to care for a parent/spouse/child with a serious health condition, or to care for a covered servicemember with a serious illness or injury. Employees must make reasonable efforts to schedule intermittent/reduced-schedule leave so as not to unduly disrupt University operations.

Intermittent or reduced-schedule leave may also be taken for a qualifying exigency as described in Section III(C) above.

Where leave is for the birth, care or adoption/foster placement of a healthy child, intermittent or reduced-schedule leave may only be taken with the permission of the University.

When intermittent/reduced-schedule leave is required, the University may require the employee to transfer temporarily to an alternative position for which the employee is qualified and which better allows for recurring periods of leave.

#### **H. Effect on Insurance Benefits and 403(b) Plan Eligibility**

During an approved family/medical leave, the University will maintain an employee's group health insurance, dental insurance, flexible spending account, and other health benefit coverage (collectively, "health benefits") as if the employee had not taken FMLA leave and had continued actively working. If an employee has substituted available paid leave for unpaid family and medical leave, the employee's share of health benefits premiums/account contributions will be handled by payroll deduction. If an employee is taking unpaid leave, the Office of Human Resources will notify the employee of the amount and date that the employee's portion of health benefits premium/account contribution payments are due while on leave. Continuation of other University benefits during leave and payment of premiums for other benefits will be treated as with other forms of leave (paid or unpaid, as appropriate).

Any period of unpaid FMLA leave will not be counted towards a break in service for purposes of eligibility to participate in the University's 403(b) plans, but such time will not be treated as credited service for purposes of such eligibility. If an employee has substituted paid leave for unpaid FMLA leave, that leave period will be treated as credited service for purposes of 403(b) plan eligibility.

#### **I. Return from FMLA Leave**

Upon return from FMLA leave, an employee will be reinstated to the same or an equivalent position as before the leave in accordance with FMLA regulations. However, employees have no greater right to reinstatement or to other benefits of continued employment than if they had been continuously employed during FMLA leave.

#### **J. Tenure Probationary Period Extension for Faculty Taking FMLA Leave**

An untenured faculty member qualifying for FMLA leave for the birth or adoption of a child during the tenure probationary period shall be entitled to a one-year extension of the probationary period. An untenured faculty member who experiences other circumstances qualifying for FMLA leave that seriously interrupt the performance of professional duties during the tenure probationary period shall be entitled to a one-year extension of the probationary period. An untenured faculty member is entitled to only a single one-year extension under this policy regardless of the number of qualifying circumstances the faculty member experiences during the tenure probationary period. Thus, for example, the maximum probationary period for an untenured undergraduate faculty member who qualifies for an extension under this policy is seven (7) years rather than the usual six (6). An untenured faculty member who may qualify for an extension shall notify the school Dean as soon as the need for an extension becomes apparent, but in no event later than June 30 of the year prior to the academic year in which the tenure

review would otherwise occur. Such requests will be addressed in accordance with the general policy on requests for extension set forth in the faculty handbook.

Further information regarding the University's FMLA policy, as well as procedures to be followed when requesting family and medical leave, is available from the Office of Human Resources.

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#### **IV. ANNOTATED REVISION HISTORY**

*Revised 01/16/2009 to reflect changes to the FMLA under revised regulations, issued November 16, 2008, 29 CFR Part 825, to include relevant tenure extension language as it appears in Faculty Parental Leave Policy and to convert to new policy format.*

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