

# Family and Medical Leave

## Policy Statement

In accordance with the Family and Medical Leave Act of 1993 (FMLA), P.L. 103-3 and with the Amendments to the FMLA by the National Defense Authorization Act for FY 2010 (NDAA), Public Law 111-84 and the Airline Flight Crew Technical Corrections Act, P.L. 111-119, Marywood University permits employees with at least 12 months of service and with at least 1250 hours of service in the last twelve months calculated as a "rolling" twelve-month period measured backward from the date of any FMLA leave usage. \*Special hours of service eligibility requirements apply to airline flight crew employees.

### *Basic Leave Entitlement*

For incapacity due to pregnancy, prenatal medical care or child birth  
To care for the employee's child after birth, or placement for adoption or foster care  
To care for the employee's spouse, son or daughter, or parent, who has a serious health condition  
For a serious health condition that makes the employee unable to perform his or her job

### *Military Family Leave Entitlement*

Eligible employees with a spouse, son, daughter, or parent on active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. 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.\*

\* The FMLA definitions of a "serious injury or illness for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition."

Family and Medical Leave will run concurrently with any other applicable insurance, benefits, or leaves, including but not limited to short-term disability, workers' compensation, leave of absence, and interruption of service. Salary and benefits due under such insurance, benefits, or leaves are paid before the employee goes on unpaid status. The twelve-week job protection clause of the FMLA will be invoked beginning with the start of any such applicable absence. If an employee is still out of work because of his or her own serious health condition after the twelve-week FMLA has been exhausted, the employee will continue coverage under short-term disability or workers' compensation, as applicable, for up to six months. However, there is no guarantee that the employee's position will be held longer than the twelve weeks provided under FMLA.

An employee's right to a leave for the birth or adoption of a child ends twelve months after the child's birth or placement with the employee.

Spouses who are both employed by Marywood University are limited to a combined total of 26 workweeks in a single 12-month period if the leave is to care for a covered service member or veteran with a serious injury or illness, and to a combined total of 12 workweeks in a 12-month period if the

leave is taken for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

An intermittent or reduced schedule leave is permitted only when medically necessary due to the serious health condition of the employee or a covered family member. Leave due to qualifying exigencies may also be taken on an intermittent basis. If an intermittent leave is requested, the medical certification should also state the expected dates and duration of the treatment. Employees on intermittent or reduced leave will be paid only for the time actually worked. Available paid time off may be used to supplement reduced pay up to the employee's regular weekly earnings. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the University's operations.

Employees are required to give thirty days' notice on foreseeable leaves. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the University's normal call-in procedures.

While the leave is unpaid, employees may elect to use accumulated and unused vacation and/or personal days during this time.

During the leave, employees who are covered under one of the Marywood University health insurance plans will have that coverage continued at the same level and cost to the employee as before the leave. In addition, benefits including dental, vision, life, accidental death and dismemberment, total disability insurances, retirement benefits and tuition benefits will be continued at the same level and cost to the employee as if the employee were not on leave.

If the employee returns from leave within the time constraints specified above, the employee will be reinstated to the same position or to an equivalent position. The employee will retain credit for years of service prior to the leave and use of FMLA will not result in the loss of any employment benefit that accrued prior to the start of a leave. For faculty members, the leave is not counted toward tenure or advancement in rank.

## **Definitions**

***Child*** is defined as a biological, adopted, foster, stepchild, legal ward, or person who is under 18 years of age or who is 18 years of age or older and incapable of self-care because of a mental or physical disability, for whom the employee acts in the capacity of a parent.

***Parent*** is defined as biological as well as a person that acted in the capacity of a parent towards the employee. Siblings and in-laws are not covered by the Act.

***A serious health condition*** is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the his or her job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, ***the continuing treatment requirement*** may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## **Procedures**

Employees must provide sufficient information for the University to reasonably 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 the University 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.

The University will inform employees requesting leave whether they are eligible under FMLA. If they are, the notice will specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the University will provide a reason for ineligibility.

The University will inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the University determines that the leave is not FMLA-protected, the University will notify the employee.

FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under FMLA; or to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. An employee may file a complaint with the US Department of Labor or may initiate legal action.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

See also, *Employee Rights and Responsibilities Under the Family and Medical Leave Act (WHD Publication 1420, Revised February 2013)*, as posted on the Marywood Portal.

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## **Related Policies**

Policy - Long-term Disability Insurance

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## **History of the Policy**

04/16/93 – Approved by the President for implementation 7/01/93

02/13/98 – Revised to clarify relationship of Family and Medical Leave with other policies

08/22/04 – Statement of eligibility in first paragraph was updated to conform to applicable law.

02/01/06 – Cyclical review approved

03/02/09 – Revision approved by the President of the University as recommended by the Policy Committee of the University

12/04/09 - Revision approved by the President of the University to include federally mandated military family leave entitlements signed into law on October 28, 2009

08/30/10 - Revision approved by the President

04/25/12 – Revision approved by the President of the University as recommended by the Policy Committee of the University

09/06/13 – Revision approved by the President of the University to comply with Amendments to the FMLA by the National Defense Authorization Act for FY 2010 (NDAA), Public Law 111-84 and the Airline Flight Crew Technical Corrections Act, P.L. 111-119

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## MARYWOOD UNIVERSITY POLICIES AND PROCEDURES MANUAL

Mary Theresa Gardier Paterson, Esquire  
Secretary of the University and General Counsel  
Phone: (570) 340-6018  
E-mail: paterson@maryu.marywood.edu