

	Policy: Family and Medical Leave	
	Department Responsible: HR-People and Culture	Date Approved: 06/26/2018
	Effective Date: 05/26/2020	Next Review Date: 06/26/2021

PURPOSE:

XXXX Health provides leave under the Family and Medical Leave Act (FMLA) to assist employees in their efforts to balance the operational needs of the workplace and personal needs.

POLICY:

It is the policy of XXXX Health to comply with the provisions of the Family and Medical Leave Act of 1993 (the “FMLA”).

DEFINITIONS:

- **Family and Medical Leave Act (FMLA) of 1993** provides eligible employees with a right to take up to 12 weeks of unpaid leave for qualifying events and is considered a job-protected leave.
- **Intermittent family or medical leave** may be taken immediately if medically necessary. If recurring periods of leave are needed and are foreseeable, XXXX Health may require the employee to transfer to an equivalent position that will better accommodate the need for such intermittent leave. The temporary position will have pay and benefits equivalent to the employee’s regular job.
- **Military caregiver leave** is a leave to care for an ill or injured service member, including a veteran who was discharged (other than dishonorable discharge) within the last five (5) years.
- **Qualifying event:** The birth of the employee’s child or to care for the newborn; the placement of a child with the employee for adoption or foster care or to care for the newly placed child; to care for the employee’s spouse, child (under the age of 18 or over 18 and incapable of self-care), or parent (but not in-law) with a serious health condition; the employee’s own serious health condition that makes the employee unable to perform the essential functions of his/her job; or qualifying military exigencies as a result of the employee’s spouse, child, or parent being active duty or called to active duty in a foreign country.
- **Qualifying exigency leave:** This leave is for the family of service members in any branch of the armed services, including National Guard and Reserves, who are on active duty or called to active duty in a foreign country. An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to active military duty in a foreign county or who is already on active duty in a foreign country may take up to 12 weeks of leave, which can be intermittent. Examples include short notice deployment (7 or fewer calendar days’ notice); military events/activities; child care/school activities; care for parent of deployed service member (if parent is incapable of self-care); financial and legal arrangements; counseling, rest and recuperation (with a covered military member, up to 15 days); post-deployment activities; and additional activities that arise out of active duty.
- **Serious health condition:** An illness, injury, impairment, or physical or mental condition verified by the certification of a health care provider.

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*Employees with questions regarding the information provided above are encouraged to contact the external leave administrator or the XXXX Health Leave and Disability Management Team. See the [Leave Management](#) page on XXXX Connects.

POLICY:

Employee Eligibility:

To be eligible for FMLA leave, an employee must:

- have been employed by XXXX Health for at least 12 months (which need not be consecutive); and
- have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- report to a worksite (a) with 50 or more employees; OR (b) where 50 or more employees are located within 75 miles of the worksite.

If the employee is otherwise eligible, FMLA leave is required to be used concurrently with Workers' Compensation, short-term and/or long-term disability, or any other leave afforded as a result of a serious health condition or other FMLA qualifying circumstances.

Leave Entitlement:

The FMLA "Year":

An eligible employee may take up to 12 weeks of FMLA for any qualifying reason in a rolling 12-month period, measured backward from the date the employee takes any FMLA leave.

Military Caregiver Leave:

Military caregiver leave is time away from work to provide care for an ill or injured service member, including a veteran who was discharged (other than dishonorable discharge) within the last five (5) years. This leave, combined with any other FMLA leave for the year, may be up to 26 weeks in a single 12-month period (measured forward from the beginning date of any such leave). The service member must be a spouse, child (regardless of age), parent (not in-law), or next of kin and must have a serious illness or injury incurred or aggravated in the line of active duty and which rendered the service member medically unfit to perform the duties of his or her office, grade, rank or rating. The service member must be undergoing medical treatment, recuperation, or therapy for that injury or illness; be in outpatient status as a result of that injury or illness; or be on a temporary disability retired list due to that injury or illness.

Covered service members include any veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness if the veteran was a member of the armed forces at any time during the 5 years period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy. A serious injury or illness may manifest itself before or after the member became a veteran. Therefore, this leave may cover conditions that do not manifest until after the veteran has left military service.

The military caregiver leave is on a per-covered service member, per-injury basis such that an eligible employee may take more than one period of 26 weeks of leave only if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or

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illness, except that no more than 26 weeks of leave may be taken within any single 12-month period.

“Next of kin” is defined as the closest blood relative of the injured or recovering service member other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

Husband and Wife Employed:

Eligible spouses who both work for XXXX Health are limited to a combined total of 12 weeks of leave in a 12-month period for the following FMLA-qualifying reasons:

- the birth of a son or daughter and bonding with the newborn child
- the placement of a son or daughter with the employee for adoption or foster care and bonding with the newly placed child, and
- the care of a parent with a serious health condition

*When military caregiver leave is involved, the 12-week allotment expands to 26 weeks combined.

Where the spouses both use a portion of the total 12-week FMLA leave entitlement for the reasons listed above, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12-weeks of FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a newborn, each could use an additional six weeks due to his or her own serious health condition.

Intermittent Family or Medical Leave:

FMLA leave may be taken intermittently when medically necessary and proper certification is received. In order for an absence to qualify as an FMLA absence, employees taking intermittent leave must follow the call-out procedure as specified in XXXX Health’s Attendance policy, as well as follow their departmental call-out procedures to report their absence their leader, and must report their absence to the external leave administrator as soon as learning of the need for leave. Absences not reported to the external leave administrator within 48 hours may not be approved. Reasons for absences should be recorded on the Call-Out/Absence Documentations form or in the Safety Zone Portal (where applicable). Failure to do so may result in loss of FMLA eligibility, unexcused absence, and progressive corrective action.

Requests for FMLA Leave/Notice:

An employee should request FMLA leave by contacting the external leave administrator. Failure to do so may result in loss of FMLA eligibility, unexcused absences, and progressive corrective action.

When leave is foreseeable (e.g., for childbirth, placement of a child, or planned medical treatment for the employee’s or family member’s serious health condition), the employee must provide XXXX Health with at least 30 days advance notice, or such shorter notice as is practicable (i.e., within one or two business days of learning of the need for leave). If the leave is based on planned medical treatment, an employee shall make reasonable efforts to schedule the treatment so as not to disrupt department services, subject to the approval of the attending health care provider.

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When the need for leave is not foreseeable, the employee must provide notice of the need for leave as soon as practicable (i.e., generally within one or two business days of learning of the need for the leave).

Following receipt of the request, the external leave administrator will provide the employee with a Notice of Eligibility and Rights & Responsibilities Form (WH-381).

Medical Certifications and Recertifications:

An employee on FMLA leave involving a serious health condition may be required to furnish a medical certification form fully completed and executed by the attending health care provider at the employee's expense within 15 days of such a request. A note from the health care provider is generally not sufficient. Please request a Certification of Health Care Provider form from the external leave administrator for this purpose. It is the responsibility of the employee to ensure that the medical certification is completed and returned to the external leave administrator within 15 days. Failure to submit the required medical certification may result in delay or denial of FMLA leave and may be considered an unexcused absence.

The external leave administrator will notify an employee requesting FMLA leave if a medical certification is incomplete or if additional information is required in order to process the leave request. The employee will be afforded up to seven (7) additional days to secure information needed to complete the certification form.

In addition, XXXX Health may require a recertification at the start of each new FMLA year, every six months (in connection with an absence), when the period provided in the initial medical certification lapses and an extension of leave is sought or, if no period is provided, every thirty days (in connection with an absence).

At any point, however, when circumstances described in the previous certification have changed significantly, or information casts doubt on the continuing need for leave or on the validity of the previous certification, then recertification may be requested. XXXX Health may also request medical information necessary to comply with the Americans with Disabilities Act (ADA) or any other applicable law or policy.

XXXX Health may seek clarification of a medical certification provided by a health care provider. In no instance, however, will an employee's supervisor contact the employee's health care provider. The contact may be from either the external leave administrator, XXXX Health's Leave and Disability Management Team, an Employee Health physician or a member of the Employee Partnership Team. In some cases, a second medical certification from a health care provider selected by XXXX Health may be required. If the first and second medical opinions differ, XXXX Health may require a third medical opinion from a health care provider jointly approved by XXXX Health and the employee. The medical opinion of the third health care provider shall be binding. The initial certification shall be at the employee's expense. The second and third medical opinion (and any associated travel expense), if required, will be paid for by XXXX Health.

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Completion of the medical certification form by anyone other than the health care provider constitutes falsification of an employment related document. Falsification of an employment related document may result in corrective action up to and including separation of employment.

XXXX Health may require an employee on FMLA leave to report periodically on his or her status and intention to return to work. An employee taking leave due to the employee's own serious health condition is required to present certification from a health care provider confirming that the employee is able to resume work prior to returning from any FMLA leave. This certification should be provided to the external leave administrator up to five (5) business days prior to the scheduled return to work date.

FMLA Designation:

Once an employee has provided a medical certification (if requested) or other supporting documentation, XXXX Health and/or the external leave administrator will decide whether the requested leave will be approved as FMLA leave. A Designation Notice (Form WH-382) will be used to communicate this decision to the employee.

Returning from FMLA Leave:

Upon return from FMLA leave, XXXX Health will reinstate the employee to the same position the employee held before the leave or in an equivalent position with equivalent pay, benefits, and other employment terms.

In accordance with the Americans with Disabilities Act, when FMLA leave ceases or is exhausted, XXXX Health will investigate reasonable accommodation(s) for any disabled employee unable to perform the essential functions of the position held.

An employee is entitled to reinstatement only if the employee would have continued to be employed had FMLA leave not been taken. XXXX Health reserves the right to deny reinstatement as provided by the FMLA for situations including but not limited to:

- An employee whose position has been eliminated (or changed such that employee suffers a job loss) and would have been eliminated or changed (such that employee would have suffered a job loss) even if the employee had not been on FMLA leave.
- An employee whose employment is terminated for reasons related to conduct, discipline, or performance that would have resulted in the termination of employment even if the employee had not been on FMLA leave.
- An employee who is unable to perform an essential function of the position to which he or she has the right to be restored, assuming obligations, if any, under the Americans with Disabilities Act are met.
- An employee who has fraudulently obtained FMLA leave.
- An employee who fails to return following the approved end date of the medically certified leave.
- An employee who resigns while on leave.
- An employee who fails to meet the restoration requirements.

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An employee whose FMLA leave is based on his or her own serious health condition will be required, at his/her expense, to provide a health care provider's medical certification that he or she is fit to return to work, including details of any restrictions needed, up to five (5) business days prior to returning to work. If the employee is returning from a period of intermittent leave, XXXX Health may seek certification of fitness to return to duty for absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties.

Extended Leave

Following exhaustion of available FMLA time, an employee who is unable to return to work due to his or her own serious health condition may apply for an extended leave through the Americans with Disabilities Act accommodations process. Please see the Accommodating Disabilities policy for more information. Depending on the circumstances, an approved leave may no longer be job protected.

Failure to Return from Leave of Absence:

XXXX Health may seek to recover any benefit premiums paid on the employee's behalf during the period of leave, including the portion ordinarily paid by XXXX Health, if an employee fails to return at the expiration of a FMLA leave for a reason other than the continuation, recurrence, or onset of a serious health condition of the employee or employee's covered family member which would otherwise entitle the employee to leave under FMLA. (Medical certification of such circumstances may be required).

Leadership Accountability:

- Refer employee with a need for leave of absence of greater than 3 days to the external leave administrator.
- Record paid annual leave (PAL)/ Weekend Option Allowance (WOA) and catastrophic sick bank/sick usage in Kronos.
- Share any updates on employee's return to work status with external leave administrator.
- Notify the external leave administrator of the employee's return to work and send any Return to Work notes to the external leave administrator.

Employee Accountability:

- When the need is foreseeable, apply for FMLA leave at least 30 days before the leave is to start or as soon as possible if 30 days' notice is not possible or practicable.
- When the need for leave is not foreseeable, the employee must provide notice of the need for leave as soon as practicable (i.e., generally within one or two business days of learning of the need for leave).
- Complete and submit any and all requested information, including medical certifications and recertification's, to the external leave administrator in a timely manner.
- When foreseeable leave is needed, consult with leadership and make a reasonable effort to schedule time away from work in order to prevent disruption of XXXX Health's operations.
- Complete [PAL Calculator](#) and submit to department leadership.
- For intermittent leave, follow the call-out procedures as specified in the Attendance policy, follow any departmental call-out procedures, and report the absence to the external leave administrator upon learning of the need for leave. When calling out to XXXX Health, the employee must state that the absence is in connection with an approved FMLA leave.

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- An employee may be required to report periodically on his/her status and intention to return to work.
- If on FMLA leave for one's own serious health condition, provide necessary Return to Work certification forms to the external leave administrator up to 5 days prior to returning to work.

No Interference or Retaliation:

XXXX Health will not interfere with, restrain, or deny the exercise of any right provided under FMLA. XXXX Health also will not discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for participating in any proceeding relating to FMLA. XXXX Health will prominently display the appropriate FMLA poster, to which employees may refer for more information. Links for the poster (in both English and Spanish) are below. Other languages are available. Contact the external leave administrator or the XXXX Health Leave of Absence and Disability Management Team for more information.

Confidentiality:

Medical information shared with XXXX Health for FMLA purposes will be treated as confidential, with restricted access, and maintained separately from the employee's personnel documents. In accordance with the Genetic Information Nondiscrimination Act of 2008 (GINA), records and documents containing family medical history or genetic information as defined in GINA will be maintained in accordance with the confidentiality requirements of Title II of GINA, which permits such information to be disclosed only when the disclosure is consistent with the requirements of FMLA. If the ADA is also applicable, such records will be maintained in conformance with ADA confidentiality requirements, keeping in mind that:

- Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- Government officials investigating compliance with FMLA (or other pertinent laws) shall be provided relevant information upon request.

Additional Information:

For further information or clarification about FMLA leave, please contact the external leave administrator, the XXXX Health Leave and Disability Management Team, the Leave Management page on XXXX Connects, or see the referenced information from the United States Department of Labor: [FMLA poster](#).

REFERENCE DOCUMENTS/LINKS:

- [Attendance](#) policy
- [FMLA poster](#) from the Department of Labor
- [Leaves of Absences of Absence](#) policy
- [Leave Management](#) page on XXXX Connects
- [Paid Annual Leave \(PAL\)](#) policy
- [PAL Utilization Worksheet](#)