

Policy 1308
Family and Medical Leave

Date of Current Version: March 2023
Responsible Office: Director of Human Resources

1. PURPOSE

It is the objective of James Madison University to fully comply with the Family and Medical Leave Act (FMLA) and provide eligible employees with up to 12 workweeks (60 workdays; 480 work hours) of job-protected, unpaid family or medical leave per rolling 12-month period because of their own serious health condition or the serious health condition of an eligible family member, or up to 26 workweeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin (closest living blood relative) of the service member.

Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under family and medical leave. Group health insurance coverage will continue provided the employee uses paid leave, or if paid leave balances have been exhausted, the employee must pay the employee portion of the group health insurance premium.

Eligible employees are entitled to:

Twelve workweeks of unpaid or paid (when using paid leave), job-protected family or medical leave in a 12-month period:

- for the birth of a child (to be taken within 12 months of the child's birth).
- for the placement of a child with the employee for adoption or foster care (to be taken within 12 months of date of placement).
- to care for a family member (spouse, child, or parent) with a serious health condition.
- due to a serious personal health condition/ illness that renders an employee unable to perform the functions of the employee's position. The university may request certification that the employee is unable to work or is unable to perform any of the essential functions of the employee's position within the guidelines of the Americans with Disabilities Act (ADA).
- or any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is called to active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATIONS

The Family and Medical Leave Act, 29 USC 2601, et seq.; 29 CFR Part 825.

3. DEFINITIONS

Active Duty

Duty under a call or order to active duty for members of uniformed services under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

Child

Person with whom an eligible employee has a parental relationship and 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 at the time that leave is to commence. A parental relationship may be biological, adoptive, step, foster, or standing in place of the parent. Age does not apply for a child who is a military service member, National Guard, or active reservist.

Covered Servicemember

A 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 a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Eligible Employee

A part-time or full-time employee who has been employed by the university for at least 12 months and worked at least 1,250 hours during the 12 months prior to 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 date. Paid and unpaid leave does not count towards hours worked.

Health Care Providers

- Doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice.
- Any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.
- Others capable of providing health care services to include only chiropractors, clinical psychologists, clinical social workers, dentists, podiatrists, optometrists, nurse-midwives and nurse practitioners authorized to practice in the state and who are performing within the scope of their practice as defined under state law, as well as any other health care provider accepted by the group health plan. This also includes Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, although an employee or family member may be required to submit to a medical examination for a second or third opinion (not treatment) from a non-Christian Science practitioner.

Intermittent Leave Schedule

A leave schedule permitting the employee to take leave periodically for an hour or more (perhaps for a medical appointment) to several weeks, on an as-needed basis.

FMLA Measurement Period

The Department of Human Resource Management (DHRM) has established the FMLA Measurement period as a rolling 12-month period.

Military Caregiver

An eligible employee who is the spouse, child, parent, or “next of kin” (closest living blood relative) of a covered veteran with a serious injury or illness who provides care for the veteran.

Military Caregiver Leave

Twenty-six weeks of unpaid leave during a single 12-month period to provide care for a covered service member.

Parent

Biological, adoptive, step or foster parent, or any other individual who stood in place of the parent of the employee when the employee was a child and was charged with the duties and responsibilities of the parent. This term does not include parents “in law”.

Rolling 12-Month Period

The rolling 12-month period looks back 12 months prior to the requested period of FMLA leave. The University will calculate the amount of FMLA taken during the previous 12-month period; and determine the amount of FMLA available for the current request.

The amount of FMLA leave available to the employee is determined by the amount of FMLA taken during the previous 12-months. Each time an employee uses FMLA leave, the remaining unused balance of the 480 work hours is adjusted.

Qualifying Exigency

A reason for taking FMLA leave, arising out of the fact that the employee’s spouse, son, daughter or parent is on, or has been notified of an impending call or order to active duty in the Armed Forces. Qualifying exigencies fall into 8 categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) postdeployment activities, and 8) additional activities which arise out of active duty, or call to active duty, provided that the employee and agency agree.

Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves inpatient care or either:

1. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - Treatment two or more times within 30 days by or under the supervision of a health care provider the first of which must occur within seven days of the first day of incapacity; or
 - One treatment by a health care provider, within the first seven days of incapacity, with a continuing regimen of treatment; or
2. Any period of incapacity related to pregnancy or parental care. A visit to the health care provider is not necessary for each absence; or
3. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider

at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

5. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Single Twelve-month Period

The single 12-month period for military caregiver and family medical leave related birth or placement of a child begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons.

Spouse

Husband or wife as recognized in accordance with Executive Order #30, Marriage Equality in the Commonwealth of Virginia.

4. APPLICABILITY

This policy applies to all eligible university employees.

5. POLICY

The university provides job-protected, unpaid leave to eligible employees for a qualifying condition under certain circumstances described in accordance with the Family and Medical Leave Act.

6. PROCEDURES

6.1 When requesting family and medical leave for a qualifying condition, the university requires employees to:

- a. provide as much notice to the employer (Human Resources and supervisor) as is reasonable and practicable. A 30-day advance notice is reasonable when the need for leave is foreseeable.
- b. provide a health care provider's certification of the medical condition of the person affected, to include contact information for the health care provider, the date when the serious condition/qualifying event began, the probable duration of the serious health condition, appropriate medical facts about the condition, and recommended leave type (intermittent/reduced schedule or continuous).

6.2 Second and Third Opinions

- a. The university may require, at its own expense, a second opinion from its designated or approved health care providers (this health care provider cannot be one who is employed by the university on a regular basis).
- b. When the second opinion differs from the first, the university may, at its own expense, require a third opinion from a health care provider designated or approved jointly by the employee and the university.
- c. The opinion of the third health care provider shall be considered final and binding upon the employer and the employee.

6.3 Recertification of Current Leave and Periodic Reporting

- a. JMU reserves the right to review each current FMLA case on an individual basis to determine if recertification is necessary when:
 1. the employee requests an extension to the currently approved leave period.
 2. the circumstances for which the previous certification was issued have changed significantly.
 3. credible information provided casts doubt on the employee's stated reason for the absences.
- b. Long-term or chronic illness will require a new medical certification at the conclusion of each 12-month FMLA request. The university can require employees to report periodically on their status and intent to return to work and can require certification from health care providers that employees are able to return to work.

6.4 Restoration to Position

Upon return from FMLA leave, an employee must be restored to the employee's original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

6.5 Status of Benefits during Periods of Family and Medical Leave

- a. Health Insurance
 1. The university will continue to pay the employer portion of the health insurance premiums of salaried employees who are using paid leave as appropriate, under each particular leave policy, for absences covered by the provisions of FMLA. An employee who is on paid leave under FMLA will pay the same portion of their health insurance premiums as they would have if they were not on leave.
 2. The university will continue to pay the employer portion of the health insurance premiums of salaried employees who are on leave without pay under the provisions of FMLA. The employee's premium contributions will be handled as if they were on leave without pay for other reasons. Premiums are due to the university by the first day of each month of coverage. If the employee fails to make premium payments, the university will follow the same procedures to terminate coverage as they would if employees failed to pay premiums while on leave without pay for other reasons.
 3. If an employee fails to return to work at the end of leave under FMLA, the university may recover from the employee the employer portion of premiums paid during the period of leave without pay. However, there will be no recovery of the employer portion of premiums if the employee fails to return to work as a result of the onset, recurrence, or continuation of serious health conditions that entitled the employee to leave to care for themselves or a family member, or other circumstances beyond the employee's control.

EXAMPLES:

- If an employee fails to return to work at the end of FMLA leave because of his or her acceptance of other employment, the university has the authority to seek recovery of the university's contributions for health insurance premiums during the period of leave.
 - If an employee fails to return to work due to a disabling condition, the university will not seek reimbursement for the employer paid portion of health insurance premiums during the period of leave.
- b. Performance Increases
Employee eligibility for performance increases will be determined in accordance with performance policies or enabling legislation.
- c. Life Insurance
The university will continue to pay group life insurance premiums while employees are on family and medical leave. Purchased Optional Life coverage can continue during the absence but only if the employee pays the premium. If choosing not to pay, the coverage can/will be re-instated upon return of the unpaid leave.
- d. Leave Accrual
Employees will not accrue annual or sick leave hours during any period of leave without pay, or after 90 calendar days on leave with pay.
- e. Retirement
Retirement contributions (including the component to fund the retiree health credit) will be made for any pay period in which qualifying compensation has been received by the employee. Retirement contributions will not be made for any pay period in which no qualifying compensation has been received by the employee (i.e., the employee was on leave without pay for the entire pay period).
- f. Classified Employee Next Annual Leave Anniversary
When more than 14 consecutive calendar days of unpaid family and medical leave have been taken, employees will be placed on inactive service status and their next annual leave anniversary dates will be advanced according to the length of time taken on unpaid family and medical leave.

6.6 Time Frames for Use of FMLA

- a. Eligible full-time employees may take up to 12 workweeks (26 workweeks if the provisions of section b apply) (60/130 workdays; 480/1040 hours) of family and medical leave in the 12-month period with the exception of the birth/placement of a child, which has to be taken within 12 months of the event. The time missed from work for FMLA leave cannot exceed 12 or 26 weeks in the 12-month period.
- b. Eligible full-time employees as military caregivers may take up to 26 weeks (130 workdays; 1,040 work hours) of leave to care for a child, spouse, parent or nearest blood relative with an illness or injury incurred in the line of duty while active in the Armed Forces in a single 12-month period.
- c. FMLA for Eligible Part-Time Employees
Eligible part-time employees may take up to 12 weeks (480 work hours) of family and medical leave in the FMLA year for the reasons listed in 6.6.1. Eligible part-time employees may take up to 26 weeks of family and medical leave in a single 12-month period for the reasons listed in 6.6.1(a). Actual hours taken will be counted on a prorated basis corresponding to the percentage of hours the employees normally are scheduled to work during the 365-day period prior to the date family and medical leave is to begin.

EXAMPLE: A part-time employee works 25 hours per week year-round. During any 12-week period, the employee works a total of 300 hours. Therefore, if

intermittent leave is taken, the employee may take up to 300 hours of family and medical leave in a 12-month period.

6.7 Restricted Use of Family and Medical Leave

- a. Family and Medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and outpatient 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.
- b. When both spouses work for the university, the full amount of leave may be limited to a combined total of 12 workweeks, if the leave is taken for the birth of the employee's child or to care for the child after birth; for placement of a child with the employee for adoption or foster care, or to care for the child after placement, or to care for the employee's parent with a serious health condition; or because of any qualifying exigency (as defined the Department of Labor) arising out of the fact that the child, spouse or parent of the employee is called to active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.
 - o When both spouses use a portion of the total 12-week FMLA leave entitlement for one of the above purposes, the spouse would each be entitled to the difference between the amounts each has taken individually and 12 weeks for FMLA leave for a purpose other than those listed in this section. The mother may incur a period of disability in the case of pregnancy and childbirth. This period would be considered FMLA leave for her own serious health condition and would not be subject to the combined limit.
- c. When both spouses work for the university, the full amount of leave may be limited to a combined total of 26 weeks to care for a child, parent or nearest blood relative with an illness or injury incurred in the line of duty while active in the Armed Forces.

6.8 Paid Leave

Full-time employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under family and medical leave (except in cases of intermittent or reduced schedule, see 6.9). The university may designate such leave as family and medical leave if it meets the conditions described above.

- a. Classified employees who are approved for FMLA leave may use up to 33% of their personal sick leave hours held at the beginning of the FMLA leave to care for a spouse, child or parent. Consistent with existing policy, agencies may require certification of need before granting family and medical leave.
- b. Classified employees who are enrolled in the traditional sick leave program must use the first 48 hours of sick family leave before using 33% of their remaining sick leave balance for the care of a spouse, child, or parent.
- c. If classified employees use their accrued paid leave balances for purposes described in this policy, then the university is required to provide only the number of unpaid work days that, when combined with the number of days of other leave taken, equal a total of 60/130 work days or 480/1040 work hours.
 - o Non-VSDP EXAMPLE: A classified employee uses 6 days of sick leave and 15 days of annual leave to care for a parent who has a serious health condition. The university must allow the employee to take 39 days of unpaid leave.
- d. Instructional, administrative & professional and eligible part-time faculty members not participating in VSDP are eligible to receive 12 weeks of paid time off under the provisions of the Faculty Sickness and Disability Program for the conditions listed above. See Policy [1338](#) – Faculty Leave.

6.9 Intermittent Leave or Reduced Schedule

Employees may take intermittent leave or work a reduced schedule not to exceed 480/ 1040 hours for full-time employees as follows:

- a. When medically necessary because of an eligible employee's own serious health condition/illness or the serious health condition/illness of a child, spouse or parent, or other qualifying event an employee may take family or medical leave on an intermittent leave basis or a reduced schedule as indicated below:
 1. Intermittent Leave Schedule: A leave schedule permitting the employee to take leave periodically for a few hours a day (less 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.
 2. Reduced Schedule: A leave schedule permitting the employee to reduce the typical number of hours worked per workweek or per workday.
- b. Classified employees who must take intermittent leave or work a reduced schedule must first use their available paid leave balances as permitted by each specific leave policy or take unpaid family and medical leave once all accrued leave has been exhausted.
- c. Classified employees do not accrue leave when they fall into a time loss status during intermittent family and medical leave.
- d. When an employee takes leave to care for a newborn child, or because of the placement of a child with them for adoption or foster care, the employee may take leave intermittently or on a reduced schedule, if university management agrees on such an arrangement beforehand.
- e. When the conditions noted in this policy are applicable, the university can 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.
- f. Eligible employees may take up to 26 weeks (130 work days, 1,040 hours) of FMLA for reasons listed in 6.6.b.

7. RESPONSIBILITIES

Supervisors who receive FMLA leave requests from employees must immediately refer the employee to a Human Resources benefits specialist for FMLA consultation and guidance.

Employees are responsible for requesting family and medical leave at least 30 days before the anticipated beginning of the family and medical leave, unless emergencies or unforeseen events preclude such advance notice to his/ her supervisor. Employees are responsible for providing all necessary forms and documentation.

Human Resources is responsible for:

- reviewing all requests for the eligibility to take up to 12 or 26 workweeks of family leave during a 12-month period for the reasons stated in this policy.
- completing the [Notice of Eligibility and Rights and Responsibilities form](#)
- determining whether a physician's certification must be required for leave that is requested for an employee's serious health condition.
- qualifying a family member's serious health condition or Military Caregiver leave before granting family and medical leave.
- notifying key employees before they begin family and medical leave that they may be denied restoration to their positions.

- informing supervisors and managers regarding necessary restrictions on work duties and necessary accommodations where appropriate.
- providing information, where appropriate, to government officials investigating compliance with FMLA (or other pertinent laws).
- keeping and preserving records pertaining to obligations under FMLA.
 - Records must be kept for at least three years.
 - Required records must include the following:
 - Basic payroll and identifying employee data including: name, address and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
 - Leave designated as FMLA leave, both paid and unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)
 - Copies of employees' notices of leave furnished to the university.
 - Any documents (including written and electronic records) describing employee benefits or university policies and practices regarding the taking of paid and unpaid leaves.
 - Records of premium payments.
 - Records of any dispute between the university and an employee regarding designation of leave as FMLA leave, including any written statement from the university or employee of the reasons for the designation and for the disagreement.
 - Records relating to medical certifications, recertification or medical histories of employees or employees' family members are to be maintained in separate files and treated as confidential medical records, except in the following instances:
 1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
 2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
 3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

All departments, offices and employees that generate, receive or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination. This includes employees who willfully attempt to take family and medical leave for conditions other than those allowed by this policy as well as supervisors who do not adhere specifically to this policy when dealing with FMLA related matters.

9. EXCLUSIONS

Certain employees, as described above, are not covered by the Family and Medical Leave Act. These ineligible employees include, for instance, employees who have been employed at the university for less than 12 months.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the director of human resources.

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