

# D.7 Leaves of Absence Policy

## Date

1/20

Occasionally, an employee may need to be absent from work for an extended period because of illness, disability, or other compelling reasons. To request a leave of absence, an employee should complete a Leave of Absence Request form and submit the form to the Human Resources Department. (Sabbatical leave requests should be handled as outlined in the Faculty Section, III.55)

### A. Sick Leave

Employees who are absent from work due to illness or disability for more than five consecutive working days will be placed on a Medical Leave of Absence. The employee must submit to Human Resources a medical certification from a health care provider within the designated timeframe (either under Family and Medical Leave Act requirements below or under the University's Personal Leave of Absence described in section F of this policy). If an employee is hospitalized in-patient for any length of time or if the employee is absent due to illness or injury for five or more consecutive days, the employee must also, before returning to work, submit a medical release (also called fitness-for-duty certificate) from a medical provider to the Human Resources Department. Refer to Section D.6, Sick Time Policy for additional information; refer to part B below in this policy for information regarding medically related illnesses covered under the Family and Medical Leave Act or as a Personal Leave of Absence.

### B. Family and Medical Leave

The Family and Medical Leave Act (FMLA) of 1993 as amended through 2008 provides up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family, medical, and military reasons. For all FMLA leaves except for military caregiver leaves (see 2.d below), the leave is up to 12 weeks during any rolling 12-month period measured backwards from when the employee uses leave under this policy.

The 12-week leave period begins the first day FMLA leave begins. Under the "rolling" 12-month look-back measurement method, 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. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken.

Additionally, please note that the FMLA leave period includes paid and unpaid leave time, as FMLA leaves of absence run concurrently with other applicable time off policies.

#### 1. Eligibility

Faculty, administrators, and staff are eligible for FMLA leave if employed by the University for at least 12 months and if they have worked at least 1,250 hours during the 12-month period before the leave commences.

Part-time, temporary, and seasonal employees who have been employed at least 12 months and who have worked at least 1,250 hours during the past 12 months also are eligible to take FMLA leave. FMLA leave may only be claimed during active assignments (i.e., unpaid sabbatical leaves and summer, for those on academic year assignments, are not included).

The 12 months or 52 weeks of employment do not need to be consecutive (i.e., a rehired employee's prior service may be included). Military service, including National Guard or Reserve obligations, covered under USERRA will count toward the service and hours of work requirements to be eligible for FMLA leave.

#### 2. Family and/or Medical Leave Qualifying Provisions

- a. For the birth of the employee's child or to care for the newborn child or child placed with the employee for adoption or foster care.  
FMLA leave for a newborn child or for the adoption or foster care placement of a child must be consecutive and completed within 12 months of the birth, adoption, or placement.

The employee must first use all applicable sick time, compensatory time, and earned vacation, in that order, prior to being placed in a non-pay status. For information regarding the University Parental Leave Policy, please refer to Handbook Section D.13.

When both mother and father of the newborn or newly placed child are employed by the University, they are entitled to a combined total of 12 weeks of FMLA leave.

When the leave is for a newborn child of a female employee, a portion of the leave may be used toward the "employee's own serious medical condition" as indicated in item b.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the director of Human Resources.

- b. **For the employee's own serious medical condition**

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 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.

In order to be eligible for FMLA under this provision, medical certification from the employee's health care provider will be required within 15 calendar days, unless it is not practical to do so under the circumstances. The appropriate certification form, available from Human Resources, must be completed and submitted to Human Resources. At Human Resources' request and expense, a second or third opinion may be required. A new Certification Form may be required after 30 calendar days as a means of updating the University on the status of the employee's FMLA leave.

For the employee's own serious health condition, the employee must first use all accumulated sick leave, compensatory time, and earned vacation prior to being placed in a non-pay status.

Intermittent or reduced schedule leave may be permitted and must be recorded on an hour for hour basis regardless of the employee's status. Please note that this includes salaried employees.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to make a reasonable effort to schedule the treatment so as to create minimum disruption of the employing department. The University reserves the right to move an employee who is on intermittent or reduced schedule leave for planned medical treatment to an alternative position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the director of Human Resources.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the director of Human Resources.

- c. **For the serious health condition of a spouse, child, or parent (but not parent-in-law) of the employee.**

In order to be eligible for FMLA under this provision, an employee need only show that he can provide physical care or "psychological comfort and reassurance which would be beneficial" to the family

member suffering from a “serious health condition,” even if the family member is receiving professional, in-patient care. 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 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.

The certification of Health Care Provider form, available from Human Resources, must be completed and submitted to Human Resources within 15 calendar days of the beginning of the FMLA leave, unless it is not practical to do so under the circumstances. A new Certification Form may be required after 30 calendar days as a means of updating USI on the status of the employee’s leave.

When an employee is on a paid leave to care for an ill family member, and a death of a family member occurs during the approved leave, the employee may be granted normal time off for funeral/bereavement as described in the paid time off policy of the University.

When a husband and wife both work for the University and both are eligible for FMLA leave, they are limited to a combined total of 12 weeks of leave during any 12-month period, if the leave is to care for the employee’s parent with a serious health condition.

Intermittent or reduced schedule leave may be permitted with the approval of the Human Resources Department and must be recorded on an hour for hour basis regardless of the employee’s status. Please note that this includes salaried employees.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to schedule the treatment so as to create minimum disruption of the office or department. USI reserves the right to move an employee who is on intermittent or reduced schedule leave to an alternate position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the employee’s supervisor and the Human Resources Department.

At the exhaustion of the 12-week FMLA provision, the employee may apply for a personal leave of absence, subject to the approval of the employee’s supervisor and the Human Resources Department.

The National Defense Authorization Act for Fiscal Year 2008 (NDAA) provides additional leave protections to employees with family members in the armed services.

**d. For qualifying exigencies arising from a covered family member’s active duty or call to active duty as a member of the National Guard or Reserves.**

An employee with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include short-notice deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, rest and recuperation, and attending post-deployment reintegration briefings. The leave may commence as soon as the individual receives the call-up notice. This type of leave would count toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

Employees requesting this type of FMLA leave must provide certification of the qualifying reason for the leave and proof of the qualifying family member’s call-up or active military service. Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person does not have to be a minor.

**e. For military caregiver leave, to care for a covered service member with a serious injury or illness.**

Military caregiver leave is for employees who are the spouse, son, daughter, parent, or next-of-kin of a covered service member. Military caregiver leave provides 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 that begins with the first day of the leave. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Employees requesting this type of FMLA leave must provide certification of the covered service member's serious injury or illness. Leave to care for an injured or ill service member, when combined with other FMLA qualifying leave, may not exceed 26 weeks in a single 12-month period. Military family leave runs concurrent with other leave entitlements provided under federal, state, and local law.

When a husband and wife both work for the University, are eligible for FMLA, and each wishes to take leave to care for a covered injured or ill service member, they may only take a combined total of 26 weeks of leave during a single 12-month period.

If the FMLA leave is for planned medical treatment and will be taken on an intermittent basis or reduced schedule, the employee is expected to schedule the treatment so as to create minimum disruption of the office or department. USI reserves the right to move an employee who is on intermittent or reduced schedule leave to an alternate position that can better accommodate such scheduling, if necessary. Such moves must receive the approval of the employee's supervisor and the Human Resources Department.

### **3. Requesting a Leave under FMLA**

Employees requesting a foreseeable FMLA leave are expected to provide verbal (or written) notice to their immediate supervisor at least 30 days prior to the requested leave or as soon as practicable after the need for leave is known. In emergency situations/leaves, supervisors or employees should contact Human Resources immediately to initiate the FMLA process. Failure of the employee to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave. Leave request forms and certification forms are available from a benefits representative in the Human Resources Department. Leave request documentation is subject to approval by the executive director of Human Resources or designee.

The University will provide within five business days an individualized Notice of Eligibility and Rights and Responsibilities to each employee requesting FMLA leave and will respond with requests for further information or a designation of leave approval within five business days of receiving other requested leave documentation. For employees on intermittent or recurring leave for the same incident, such notice will be provided every six months.

If an employee fails to provide 30-days' notice for foreseeable leave with no reasonable excuse for the delay, except for military leaves, the leave request may be denied until at least 30 days from the date the University receives notice. For military leaves, the leave may commence as soon as the individual receives the call-up notice; however, failure to give advance notice when such notice was possible for such a leave, may affect reemployment and benefit continuation rights.

While on leave, an employee is requested to report periodically to the University regarding the status of the medical condition and his or her intent to return to work.

### **4. Continuation of Benefits during FMLA Leave**

An employee who is a current participant in an existing insurance plan and who is placed on FMLA leave will be entitled to continue insurance benefits during the leave. During an FMLA leave the University will continue to pay its portion of the premium for insurance coverage, and the employee will be responsible for his or her employee contribution.

For insurance benefits during any paid portion of an FMLA leave, up to the maximum of 26 weeks, employee contributions will be collected in the same way as if actively at work (e.g., through payroll deductions). During an unpaid leave, the employee will be billed in monthly increments for the employee's share of the premium and must make timely payments to maintain insurance coverage.

Participation in a health care flexible spending account will continue during a leave unless the employee notifies a benefits representative that he or she wishes to discontinue contributions. IRS regulations require that dependent care flexible spending account contributions cease when the employee is not actively at work due to a leave of absence, and that no dependent care claims with a date of service that falls during the leave can be reimbursed. Upon return to work, the employee may re-elect participation in either type of flexible spending account.

When feasible, the employee may choose to prepay insurance premiums (e.g., through increased payroll deductions or other arrangements) when the need for unpaid FMLA leave is foreseeable. Failure to pay the employee portion of the premiums normally deducted while on leave may result in cancellation of insurance coverages.

Under normal circumstances, benefits will be fully reinstated when the employee returns to work. If the employee does not return to work after the FMLA leave for reasons other than health conditions or some other reason beyond the employee's control (if the decision not to return to work is essentially voluntary), the University may charge the employee retroactively for the University's portion of the health care premium paid during the unpaid portion of the FMLA leave. In addition, the employee's notification of his or her intent not to return will be the COBRA qualifying event for continuation of health insurance. The employee is considered to have returned to work after FMLA leave once he or she has been actively working for at least 30 calendar days. Contributions to TIAA-CREF, PERF and STRF retirement plans will be adjusted for any unpaid leave time.

## **5. Employment and Benefits Protection**

Upon return to active employment from an FMLA leave, the employee will be returned to the same or an equivalent position and employment benefits as long as he or she is able to perform the essential functions of the position. Sick time and vacation will accrue while the employee is on University-paid leave. Unpaid leave time will not count as time accrued for the purpose of eligibility for the TIAA- CREF retirement plan and the long-term disability plan.

## **C. Military Leave and Uniformed Services Employment and Reemployment Rights Act (USERRA)**

The University is committed to protecting the rights of employees who serve in the uniformed services of the United States, including their right to military leaves. In accordance with federal and state law, it is the University's policy that no employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any of the uniformed services of the United States. Specifically, no person will be denied employment, reemployment, promotion, or other benefits of employment on the basis of such membership. Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under this policy. For more information about rights under USERRA, contact a Human Resources representative or refer to the USERRA posting located on the bulletin board outside the Human Resources department.

### **1. Eligibility**

All employees who need leave to perform military duty in the uniformed services on a voluntary or involuntary basis are eligible for military leave. Employees are eligible for civilian job protection from the commencement of employment at the University. A timely application for reemployment, available in the Human Resources department or on the University website, must be submitted for reemployment.

## **2. Requesting Leave under USERRA**

Written or oral notice must be provided in advance by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. As much advance notice as possible is requested. Advance notice may not be required when impossible, unreasonable, or precluded by military necessity. Notice may be submitted in writing to the dean/department head, accompanied by a copy of the orders, if available, and should then be submitted to the director of Human Resources.

The employee is entitled to reemployment and maintenance of benefits as long as the following conditions are met:

- The employee gave advance notice of the military leave;
- The period of service does not exceed five years;
- The employee is released from service under “honorable conditions”; and
- The employee reports back to the University for employment in a timely manner or has submitted a timely application for reemployment.

## **3. Employment and Benefits Protection under USERRA**

After a military leave, the employee may be returned to the same or an equivalent position and employment benefits, ordinarily subject to timely application for reemployment. Timely application for reemployment is defined by USERRA based on the length of active service and is ordinarily limited to five years: for service of 30 days or less, by the next scheduled work day after an eight hour rest period; for service of 31 to 180 days, within 14 days or as soon as possible; for service of more than 180 days, within 90 days or as soon as possible. An employee who serves for more than 180 days and applies timely for reemployment is protected from discharge without cause for one year after reemployment; if service was for more than 30 days but less than 180 days, the employee is protected from discharge without cause for 180 days after reemployment. Further conditions apply; please contact the Human Resources department for more information.

## **4. Pay during Military Leave**

For military leaves, payment of accrued vacation is at the employee's election.

Eligible employees required to report for annual reserve training or for active duty are allowed to receive up to 15 days leave of absence with pay per fiscal year. In the event the training or active duty overlaps two fiscal years, no more than 30 days leave of absence with pay will be permitted in a two- year period. Eligible employees ordered to active duty receive the balance (if any) of the 15 days pay. Employees who are not eligible for benefits and participate in annual reserve training or begin active duty service will be placed on a leave without pay.

## **5. Benefits Continuation during and Reinstatement after Military Leave**

Sick time and vacation will accrue while the employee is on paid leave.

An employee who is a current participant in an existing health insurance plan and who is placed on USERRA leave will be entitled to continue health insurance benefits for up to 24 months, as long as insurance continuation is elected by the employee. For the first six months of the leave (the maximum length of other leaves' benefit continuation), the University will continue to pay its portion of the premium for health and dental insurance. After the University contribution ends, health insurance may continue as long as the employee makes a written election and pays 102 percent of the premium (i.e., the COBRA rate). Life/AD&D and long-term disability insurance provided by the University ends with the first day of military leave.

For insurance benefits during any paid portion of a USERRA leave, employee contributions will be collected in the same way as if actively at work (e.g., through payroll deductions). For insurance benefits to continue during an unpaid leave, the employee will be billed in monthly increments for the employee's share of the premium. When feasible, the employee may choose to prepay insurance premiums (e.g., through increased payroll deductions or other arrangements) when the need for unpaid leave is foreseeable.

Failure to pay the health insurance premiums while on leave may result in cancellation of insurance coverages. However, under USERRA, retroactive reinstatement of health insurance may be available upon payment of all amounts due.

Under normal circumstances, benefits will be fully reinstated when the employee returns to work. If the employee does not return to work after the USERRA leave for reasons other than health conditions or some other reason beyond the employee's control (that is, the decision not to return to work is essentially voluntary), the University may charge the employee retroactively for the University's portion of the health care premium paid during the unpaid portion of the USERRA leave. For this purpose, the employee is considered as having returned to work after military leave once he or she has been actively working for at least 30 calendar days.

In addition, the employee's notification of his or her intent not to return will be the COBRA qualifying event for continuation of health insurance.

Returning service members are treated as continuously employed for the purposes of TIAA-CREF, PERF and STRF retirement plan participation, vesting, and accrual of benefits. Subject to timely reemployment, contributions to retirement plans will be adjusted for any unpaid leave time.

#### **D. Indiana Military Family Leave**

The State of Indiana provides military family leave, similar to the FMLA/NDAA exigency leave discussed in section 2.d. above. Contact the Human Resources Department for additional information.

#### **E. Sabbatical/Related Leaves**

Sabbatical/related leaves of absence for professional development may be granted to faculty and administrative staff under certain conditions. Refer to Section III.55, Faculty and Academic Policies for specific information.

#### **F. Personal Time Off or Leaves without Pay**

Any regular staff member may request personal time off, including in a non-pay status for a valid reason. Unless otherwise required by law, the anticipated time off is at least five days, the employee must submit a written request for the leave of absence. The employee may also be required to submit other requested documentation (e.g., medical certificate) to Human Resources. A leave of absence may be of any duration from at least five days up to 30 days; if longer duration is anticipated, it should be in maximum periods of 30 days. Indefinite leaves are not granted.

A Leave of Absence Request should be sent to the Human Resources Department with the reason and the period of time requested and should be signed by the employee's department head. This must be submitted to the Human Resources Department prior to any unpaid time. A leave of absence should not be requested if the employee does not intend to return to work at the University. If no further employment is planned, or if the employee is resigning or dismissed, then termination of the employee is in order rather than a leave of absence. Employees who are on a leave of absence without pay do not earn vacation or sick time during such a leave period. In addition, University contributions to the various retirement plans are not made during periods of unpaid leave.

All accrued vacation time or compensatory time must be used prior to beginning any personal time off without pay. All leaves of absence must be approved by the department head and Human Resources.

Unless business necessity dictates otherwise, the University will hold open the position of an employee who is on an approved leave of absence during the first 90 days of the leave. Positions for faculty members may be held on a semester-by-semester basis.

Except for tenured faculty, an employee on a personal leave of absence without pay for longer than 90 days not ordinarily be guaranteed the right to return to the same job; however, an effort will be made to place the employee in a similar position. The employee's length of service will not permit the displacement of another employee. In the event that a similar position is not available within a reasonable period after the employee's scheduled return to work date, or the employee refuses to accept an offer of employment for a similar position, employment with the University may be terminated.

During a leave of absence without pay, employees may continue elected benefits coverages if the required employee contributions are paid when due. Under normal circumstances, benefits will be fully reinstated when the employee returns to work. If the employee does not return to work after the personal leave for reasons other than health conditions or some other reason beyond the employee's control (if the decision not to return to work is essentially voluntary), the University may charge the employee retroactively for the University's portion of the health care premium paid during the unpaid portion of the personal leave. In addition, the employee's notification of his or her intent not to return will be the COBRA qualifying event for continuation of health insurance. The employee is considered to have returned to work after a personal leave once he or she has been actively working for at least 30 calendar days.