

Guidelines to the Implementation of Leaves under the Family and Medical Leave Act (FMLA) for Faculty in the College of Liberal Arts and Sciences

Introduction

The FMLA is designed to balance needs of workers and families in certain challenging situations with the needs of employers. These guidelines, in turn, are intended to outline the rights and responsibilities of faculty members taking FMLA leave, and the procedures by which such leave is implemented for faculty in the College. The following is *not* legal advice. Nor is it meant as a rigid policy, for not only are faculty positions by nature somewhat idiosyncratic, but FMLA-leave situations are also individual by nature, and some flexibility in handling is often appropriate. At the same time, the College must strive to assure equitable treatment among faculty, and protect the interests of key stakeholders, including students, parents, taxpayers, and legislators.

FMLA Basics

The FMLA assures eligible employees of up to 12 weeks of unpaid leave per year in certain specific circumstances, with the assurance that normal benefits (e.g., health insurance) will be maintained during the leave, and that at the end of the leave, employees may return to the same or an equivalent position. The situations in which FMLA leave may be taken are these:

- Birth of a child, and in order to care for that child
- Placement of a dependent child with the employee for adoption or foster care
- A serious health condition that renders the employee incapacitated (unable to perform all the tasks of his or her position) for some period of time
- Need to care for the employee's spouse, child, or parent (but not parent-in-law) suffering from such a serious health condition

Employees who have worked for NIU for the equivalent of at least one year half-time are eligible for FMLA leave. The 12-week limit on FMLA leave applies to the total of all leave(s) for any of the above reasons; the employee is not entitled to 12 weeks of leave for each such circumstance. FMLA requires only that unpaid leave be given; the employee may, but need not, use accumulated sick leave (when applicable) and/or vacation leave (if any) so as to receive salary during the leave. Health insurance and other benefits will be maintained in accordance with CMS (Central Management Services) policies; the employee may be required to pay the customary premiums during the leave. Additional vacation leave (if the employee is eligible) and sick leave will accrue only to the extent that the FMLA leave is paid.

Where the circumstances necessitating FMLA leave are foreseeable (e.g., birth of a child or planned medical treatment), the employee is required to give at least 30 days advance notice. Where so much notice is not feasible (e.g., in a medical emergency), it is to be given as soon as practicable. Where a serious medical condition is involved, medical documentation must be provided, and the university may, at its own expense, require a second opinion (and even a third, if the first two are conflicting). The "FMLA Application Form" and any supporting medical documentation are to be submitted to Human Resource Services (HRS), which will evaluate such documentation – this is *not* the purview of the faculty member's department. (This is both for the protection of the privacy of the faculty member, and in recognition of the fact that the relevant expertise is in HRS, not the academic departments.)

Click [here](#) for a summary of NIU/HRS FMLA policies which include additional information, and the application and medical-certification forms.

[Untenured faculty who may also wish to pursue stopping the tenure clock in an FMLA-leave situation should consult the applicable University policy at www.niu.edu/provost/policies/appm/II29.shtml]

Patterns of FMLA Leave

The employee need not take a full 12 weeks of FMLA leave if this is not necessary to address the situation for which leave is being taken. Often, the leave taken will be continuous and full-time. However, in some circumstances, the leave may be *intermittent* or on a *reduced leave schedule* (i.e., part-time). An example of a situation in which intermittent leave would be appropriate would be one in which the employee is receiving chemotherapy rendering him or her incapacitated for one or two days a week on an irregular basis. A reduced leave schedule might be appropriate to many kinds of illness that rendered the faculty member incapable of working full-time for awhile. The employee has the right to intermittent or reduced-schedule leave *only in a case of serious medical condition of the employee or family member when such a pattern of leave is medically necessary* as certified by a health-care professional; this must be documented with HRS. In cases involving birth or placement of a child, the employee does *not* automatically have the right to take intermittent or reduced-schedule leave, though the department and college *may* choose to agree to this. [Note that FMLA stipulates that in all cases of intermittent or reduced-schedule leave, the employee must attempt to schedule the leave so as to be minimally disruptive to the employer's activities. An employer also has the right to transfer an employee to an alternative position with equivalent pay and benefits to accommodate such a pattern of leave, and the employee cannot refuse this unless it would impose a hardship such as additional commuting time or cost.]

Before the Leave

Where feasible (when the leave is foreseeable), advance planning is helpful to both faculty member and department. In any case of intermittent or reduced-schedule leave, the faculty member's plans for work to be performed during the period over which the leave is taken must be agreed to, in writing, by the department and college. Agreement should also be reached about activities the faculty member will undertake upon return from the leave, if special circumstances will require unusual arrangements.

FMLA guarantees the right to leaves under certain conditions; it does not grant faculty the right to dictate the terms of those leaves. Because a department chair (or division director) has responsibility for faculty workload assignments, the bulk of the discussion of what is feasible/appropriate during and after the leave should occur between the chair/director and the faculty member. However, as it is the College that must ultimately approve any workload credit during the leave (and after, if special arrangements are involved), the chair/director would be well advised to consult with the College at an early stage about what might be approvable, so as not to create unrealistic faculty expectations. During these discussions, several principles should be borne in mind; see "Ground Rules" section below.

During the Leave

The department chair should monitor the faculty member's work activities as appropriate to the pattern of leave being taken and the agreement reached. HRS may request updates of the employee's status and continuing intention to return to work, as well as recertification of a serious medical condition, as applicable. If a faculty member seeks to return to work prior to the originally-scheduled end of the leave, in case of a medical condition, HRS may request certification of the employee's fitness to return to work.

After the Leave

Ideally, the faculty member simply resumes his or her usual assignments, or previously approved alternatives, for the balance of the term. Note, however, that occasionally, there will be an ongoing disability. While ADA and FMLA are completely separate laws, ADA may require accommodations following a faculty member's return from FMLA leave. If a chair/director becomes aware of a likely ADA situation, it would be advisable to contact the College and HRS promptly for guidance.

Ground Rules for FMLA Agreements in LA&S

First, to our external constituencies, the primary responsibility of an NIU faculty member is classroom teaching. Therefore, a faculty member who wishes to be paid during FMLA leave on an intermittent or reduced leave schedule should ordinarily be teaching at some level proportional to the desired compensation. Otherwise, limited paid work time will be credited only if the faculty member has a substantial externally funded grant on which research will be continued during the leave. As one example, consider a faculty member who normally teaches two courses a semester and has a major research grant, arranging a reduced leave schedule to care for a family member with a serious medical condition. That faculty member might teach one course and continue the funded research, these activities together counted as three work days per week; the faculty member could then use two accumulated sick days per week, in order to receive full salary during the period of leave. [The faculty member in this case would be regarded as using only two days per week of FMLA leave, so that these arrangements could be continued for more than twelve weeks. If the faculty member has insufficient sick leave to cover the time not being worked, the two days a week would be unpaid FMLA leave.]

Second, upon return from FMLA leave, the faculty member is normally expected to resume his or her regular spectrum of teaching and other responsibilities. Under FMLA, employees are guaranteed a return to “the same or an equivalent” position, the latter meaning one with the same pay, benefits, and status, involving substantially similar duties and responsibilities, similar skill and authority. However, the employee does not have the option to demand an alternative to the original job; that is the employer’s option in the event the original position is no longer available. Legally, in fact, if the employee is offered the original job back and does not return to it, he or she is considered to have abandoned the job and may be terminated immediately. In rare cases (for example, a faculty member with an ongoing medical condition), it may not be feasible for the faculty member to return to all of his or her usual activities upon return from FMLA leave. In such a case, the College may agree to a set of alternative activities under the “equivalent position” provisions. A faculty member’s position is really “NIU faculty member in the College of Liberal Arts and Sciences.” Thus, the faculty member may reasonably be asked to perform tasks that are within the normal scope of faculty duties in the College and department, even if they are not usual for that individual. For example, the faculty member might arrange to assume additional advising responsibilities; to revise the departmental student handbook; to develop materials for a new course; to serve on additional committees at the department, college, or university level; to prepare a grant proposal; or to engage in other appropriate faculty activities beneficial to the department and/or the College, to make up for regular activities (e.g. teaching) that he or she might be unable to perform. In general, work for which the faculty member expects to be paid in these circumstances should be performed on-premises and should involve a tangible product.

Third, a standard faculty contract runs from August 16 through December 31 for the fall semester, January 1 through May 15 for the spring semester. If the event or condition necessitating FMLA leave arises prior to the start of classes, and especially prior to the start of the contract period, the faculty member should not expect to begin FMLA leave officially only as of the start of classes; one is paid for the period before classes start on the assumption that one is preparing for classes during that time. Similar considerations pertain at the end of a semester (though allowance can be made for university closure periods).

For More on FMLA

The regulations themselves can be found at

http://63.234.227.130/pls/epub/wageindex.download?p_file=F6160/WH-1419web.pdf

and a useful Department of Labor site with FAQs is at

<http://webapps.dol.gov/dolfaq/dolfaq.asp>

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