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## FAMILY AND MEDICAL LEAVE

The federal Family and Medical Leave Act (FMLA) requires employers with at least 50 employees within a 75-mile radius, to provide up to 12 workweeks of job-protected unpaid leave for certain events. This document serves as the guidelines for FMLA for employees of Robert Morris University. It outlines the conditions under which an employee may request time off without pay for a limited period with job protection and no loss of accumulated service if the employee returns to work.

### DEFINITION OF FMLA

A Family or Medical Leave of Absence is defined as an approved absence available to eligible employees for up to 12 workweeks of unpaid leave per year (12-month period) under particular circumstances that are critical to the employee or their family members.

Leave may be taken:

- On the birth of an employee's child;
- On the placement of a child for adoption or foster care with an employee;
- When an employee is needed to care for a child, spouse, or parent who has serious health condition; or
- When an employee is unable to perform at least one of the essential functions of his or her position because of the employee's own serious health conditions.
- When the spouse, child or parent of an employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces 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.
  - **Note:** Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves or a retired member of the regular armed forces or reserve. This entitlement does not extend to employees who have family members of military members in the Regular Armed Forces.

Leave for the birth of an employee's child or placement of a child for adoption or foster care must be completed within the 12-month period beginning with the child's birth or placement.

An employee may be entitled to up to twenty-six (26) weeks of unpaid leave during a single 12-month period to care for the covered service member who is a spouse, child, parent or next of kin. A "covered service member" is 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 an outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.



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Robert Morris University will use a "rolling" 12 month period measured forward, beginning on the date an employee starts FMLA for the purposes of counting and tracking leave.

## ELIGIBILITY

To be eligible for leave under this policy, an employee must have been employed full-time at Robert Morris University for:

1. at least 12 months;
2. must have worked at least 1,250 hours during the 12-month period immediately preceding the leave;
3. been employed at a worksite that has 50 or more employees within a 75-mile radius.

Having met those provisions, upon return to work from a requested leave, the University will make every effort to place an employee in his or her former position or an equivalent to the one held when the employee began the leave, subject to any extenuating circumstances which may occur to the University's operations during the leave and which would have affected the employee had he or she not been on leave.

**Exception:** Highly compensated employees (i.e., highest paid 10% of University employees at a work site or a within 75-mile radius of that work site) may not be returned to their former or equivalent position following a leave, if restoration of employment would result in substantial and grievous economic injury to the University. This type of fact specific determination will be made on a case by case basis. You will be notified by the University if you qualify as a "highly compensated" employee if the University intends to deny reinstatement, and of your rights in such instances.

## DEFINITION OF SERIOUS HEALTH 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 the employee's job, or prevents the qualified family member from participating in school or other daily activities. (See Definitions Below)

## BASIC REQUIREMENTS AND CONDITIONS OF LEAVE

**Medical Certification.** The University will require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse, or parent. You may obtain Medical Certification forms from the Human Resources Department. When you request leave, the University will notify you of the requirement for medical certification and when it is due (no more than 15 days after you request leave). If you provide at least 30 days notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave or result in a denial of a continuation of FMLA leave until it is provided.



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The University, at its expense, may require an examination by a second health care provider designated by the University, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the University, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The University may require subsequent medical recertification. Failure to provide requested certification within 15 days, except in extraordinary circumstances, may result in delay of further leave until it is provided.

**Intermittent or reduced leave.** Leave may be taken on an intermittent (in separate blocks of time due to a single health condition) or reduced-leave schedule (reducing the usual number of hours you work per workweek or workday) if it is medically necessary for a serious health condition of the employee or his or her spouse, child, or parent.

FMLA leave may be taken intermittently whenever medically necessary to care for a covered service member with a serious injury or illness. Leave due to qualifying exigencies arising out of the active duty status or call to active duty of a covered military member may also be taken on an intermittent basis. If leave is unpaid, the University will reduce your salary based on the amount of time actually worked. If leave is requested on that basis, however, the University may require the employee to transfer temporarily to an available alternative position that better accommodates his or her recurring leave. The alternative position will have equivalent pay and benefits.

**Spouses' combined leave.** Spouses who are both employed by the University are entitled to a total of 12 weeks of unpaid leave (rather than 12 weeks for each spouse) for the birth or placement in adoption or foster care or a child or for the care of a sick family member. Likewise, spouses who are both employed by the University are limited to a combined total of 26 weeks leave in a single 12 month period if the leave is to care for a covered service member with a serious injury or illness.

**Leave is unpaid.** Family medical leave is unpaid leave (although you may be eligible for short-or long term disability payments and/or workers' compensation benefits under those insurance plans). If you request leave because of birth, adoption, or foster care placement of a child, or because of your own serious health condition, to care for a covered relation with a serious health condition, or care for a covered service member, any accrued paid time off will first be substituted for any unpaid family and medical leave time. The substitution of paid leave time for unpaid leave does not extend the 12-week or 26-week period. The paid time is used in conjunction with unpaid family medical leave time. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receipt of more than 100 percent of your salary. Your family medical leave runs concurrently with other types of leave, including but not limited to, Paid Time Off (PTO), disability leave, and/or leave while on workers' compensation.

## NOTIFICATION AND REPORTING REQUIREMENTS

**Notification.** When the need for leave is foreseeable, such as the birth of a child, the placement in adoption or foster care of a child, or planned medical treatment, the employee must provide reasonable advanced notice, meaning, 30 days notice when possible, and make a reasonable effort to schedule leave so that it does not unduly



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disrupt University operations. If this is not possible, you must at least give notice as soon as practicable and in accordance with normal call-in procedures. Failure to provide such notice may be reason for delay of leave.

If an employee is entitled to both FMLA leave and paid leave under another benefit plan or policy, and the other plan or policy has a less stringent advance notice requirement or none at all, the employee must still provide reasonable advance notice as part of this family and medical leave policy.

The University has "Request for Family and Medical Leave" forms available from the Human Resources Department. Eligible employees are to request a FMLA leave of absence in writing to their department manager, who will forward the request to Human Resources.

**Reporting while on leave.** If you take leave because of your own serious health condition or to care for a covered relation, you must contact the University within 15 days regarding the status of the condition and your intention to return to work. In addition, you must give notice as soon as practicable if the date(s) of the leave change or are extended or were initially unknown.

## STATUS OF EMPLOYEE BENEFITS DURING LEAVE OF ABSENCE

**Health Insurance.** Group health care coverage will continue for employees on family and medical leave as if you continued to be actively employed during the entire FMLA period. Employees who are granted an approved leave of absence under this policy are advised to arrange to pay their share of premiums during the absence. If the leave is paid, premiums will continue to be paid through payroll deductions. If the leave is unpaid, employees are responsible for making sure Robert Morris University receives premium payments by the last day of every month. The employee will be provided a schedule of payment amounts and due dates at the beginning of any unpaid leave of absence.

If your payment is more than 15 days late, a letter will be sent to you reminding you of payment due. If payment is not received within 15 days of the letter, your coverage may cease.

**Recovery of premiums.** If an employee chooses not to return to work for at least 30 calendar days at the end of the leave period, you will be required to reimburse the University the cost of any premiums paid to maintain coverage during your unpaid leave, unless the failure to return is because of a serious health condition or reasons beyond the employee's control.

## PROCEDURES

**Request form.** The employee must fill out a "Request for Family and Medical Leave of Absence" form. This form must be completed in detail, signed by the employee, submitted to the immediate supervisor for proper approvals. If possible, the form should be submitted 30 days before the effective date of the leave. If circumstances arise that an employee cannot formally request a leave, then constructive notice of leave necessity will suffice as notification to Robert Morris University.



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All requests for family and medical leaves of absence due to illness must include sufficient medical certification stating:

The date on which the serious health condition began;

The probable duration of the condition; and

The appropriate medical facts that the health care provider knows about the condition.

In addition, for leave to care for a child, spouse, or parent, the certificate must include an estimate of the amount of time that the employee will need to provide care.

For leave for an employee's own illness, the certificate must state that the employee is unable to perform at least one of the essential functions of his or her position.

For certification for intermittent leave or leave on a reduced-leave schedule for planned medical treatment, the certificate must state the dates on which such treatment is expected to be given and the duration of the treatment.

Requests for military leave entitlements will include the circumstances supporting the need for military family leave.

Employees must inform the employer if the requested leave is for a reason for which FMLA leave as previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## RETURN TO WORK

**Return from leave.** If an employee fails to return to work from a leave on the agreed upon date, except for reasons beyond his or her control, the University will assume that the employee resigned and terminate the employee's employment.

When family and medical leave is due to an employee's own serious health condition, then an employee will be required to present medical verification showing that the employee is fit to resume work. Towards this purpose, the employee will be required to sign an authorization form granting his or her doctors' permission to release protected health information to the University. Employees failing to provide the medical verification will not be able to resume work until it is provided.

## UNLAWFUL ACTS AND ENFORCEMENT

FMLA makes it unlawful for any employer to: 1) Interfere with, restrain, or deny the exercise of any right provided under FMLA; 2) 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. FMLA does not affect any Federal or State law



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prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights. For additional information: [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

2.1 This policy applies to full-time and regular part-time employees, where identified.

## DEFINITIONS

The following terms have the same meaning as given to them in the FMLA regulations:

**"Spouse"** means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

**"Parent"** means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

**"Son" or "Daughter"** means the biological, adopted, foster children, stepchildren, legal wards, and other persons for whom an employee acts in the capacity of a parent and who is under 18 years of age or over 18 years of age but incapable of caring for themselves.

**"Covered relations"** means an employee's spouse, son, daughter, or parent.

**"Next of Kin"** means the nearest blood relative, 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 service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, first cousins.

**"Serious health condition"** means an illness, injury, impairment, or physical or mental condition that involves either: 1) inpatient care (i.e. overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or** 2) continuing treatment by a health care provider, which includes: 1) A period of incapacity lasting more than 3 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 by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
- One treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); **or**

2) Any period of incapacity related to pregnancy or for prenatal 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 (at least twice a year) to a health care provider, 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



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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 for a condition that would likely result in a period of incapacity of more than three days if not treated.

**"Chronic serious health condition"** means a serious health condition which (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

**"Continuing treatment"** means a serious health condition involving continuing treatment by a health care provider and including any one or more of the following: (1) A period of incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves (1) treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (2) Any period of incapacity due to pregnancy or for prenatal care; (3) Any period of incapacity or treatment for such incapacity due to a Chronic Serious Health Condition; (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease; or (5) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**"Health care provider"** means one of the following: (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; (2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; (3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law; (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; (5) Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or (6) A health care provider as defined above who practices in a country other than the US, who is licensed to practice in accordance with the laws and regulations of that country.

**"Needed to care for"** a family member encompasses: (1) physical and psychological care; and (2) where the employee is needed to fill in for others providing care or to arrange for third party care of the family member.



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**"Qualifying exigencies"** include: issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification; military events and related activities; childcare and related activities; financial and legal arrangements; counseling; rest and recuperation; and post-deployment activities. Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves or a retired member of the Regular Armed Forces or Reserve. This entitlement does not extend to employees who have family members in the Regular Armed Forces.

**"Unable to perform the functions of the job"** means an employee is (1) unable to work at all or (2) unable to perform any of the essential functions of his/her position. The term "essential functions" means "the fundamental job duties of the employment position" and does not include the marginal functions of the position.

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