

LINCOLN UNIVERSITY

Policy:	Leaves and Absences Under the Family And Medical Leave Act (“FMLA”)
Policy Number:	HRM – 111
Effective Date:	January 16, 2009
Inception Date:	1993
Revisions:	August 2011
Next Review Date:	August 2013
Review Officer:	Chief Human Resources Officer
Status:	Approved by President and Active

1. Introduction

- 1.1. It is the policy of Lincoln University to fully comply with, and provide leaves to eligible employees in accordance with, the requirements of the Family and Medical Leave Act of 1993, as amended, and the regulations thereunder (hereinafter collectively referred to as “the FMLA”).
- 1.2. This Lincoln University FMLA policy is not intended to expand or diminish any rights in favor of University employees that are provided for under the FMLA, or to make FMLA leave applicable to any University employee who is not entitled to that leave under the FMLA, but is rather intended to set forth a summary of the University’s general policies and procedures for complying with the FMLA regarding employees who are eligible under the terms of that federal law. In the event of any inconsistency between any term in this policy and the requirements of the actual FMLA, the terms of the federal law will control.
- 1.3. In the event of a conflict between the terms of this policy and a Collective Bargaining Agreement applicable to a particular employee’s bargaining unit, the language in the Collective Bargaining Agreement shall prevail until modified or deleted through the course of collective bargaining.

2. Definitions Applicable to FMLA Leave

- 2.1. **“Family Member”** is defined in the FMLA to include the employee's spouse, son, daughter or parent (but not a “parent-in-law”). A “son” or “daughter” includes a biological, adopted, or foster child, a step-child, a legal ward, or a child for whom the employee is standing in *loco parentis* (i.e., a child the employee supervises on a day-to-day basis and for whom the employee is financially responsible) who either is under age 18, or is 18 or older and incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence. A “parent” is any

biological parent, or any individual who had assumed day-to-day and financial responsibility for the employee when the employee was a child.

- 2.2. A “**Serious Health Condition**” for the purposes of the FMLA is an illness, injury, impairment, or physical or mental condition that involves either an inpatient care in certain types of medical care facilities, 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.

Subject to certain conditions and special rules in the applicable regulations, the continuing treatment requirement may be met by:

- a period of incapacity of more than three (3) consecutive, full calendar days and subsequent treatment by a Health Care Provider in-person two or more times within thirty (30) days of the first day of incapacity
- treatment by a Health Care Provider in-person on at least one (1) occasion which results in a regimen of continuing treatment
- pregnancy and prenatal care
- chronic condition which requires visits at least twice a year for treatment by a Health Care Provider over an extended period of time and may cause episodic rather than a continuing period of incapacity
- permanent or long-term conditions
- conditions requiring multiple treatments by a Health Care Provider including recovery time 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. A Serious Health Condition does not include cosmetic treatments or cosmetic surgery unless hospitalization is required. Common colds, flu, headaches, earaches, routine dental treatments, and similar conditions are not serious health conditions for FMLA purposes. Treatments such as use of over-the-counter medications or bed rest, which can be initiated without visiting a physician, are generally not Serious Health Conditions.

- 2.3. **“Health Care Provider”** is defined as any physician, podiatrist, dentist, clinical psychologist, optometrist, nurse or midwife who is authorized to provide health care and is acting within the scope of his or her duties. The rules also include “any health care provider that is recognized by the employer or accepted by the employer's group health plan (or equivalent program).” Further, the regulations specifically include clinical social workers as Health Care Providers.
- 2.4. **“Active Duty”** means duty under a call or order to active duty of members of the uniformed services as described in section 101(a)(13)(B) of title 10, United States Code.
- 2.5. A **“Contingency Operation”** is an action or operation against an opposing military force as described in section 101(a)(13)(B) of title 10, United States Code.
- 2.6. 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.
- 2.7. A **“Qualifying Exigency”** as defined by the Department of Labor generally includes such things as (1) a short-notice deployment; (2) military events; (3) health care activities; (4) financial/legal arrangements; (5) counseling; (6) rest and recuperation; and (7) post deployment activities relating to Covered Service Members. NOTE: FMLA leave for such a Qualifying Exigency is not available to Family Members of individuals in regular Armed Forces. It is available to families of National Guard and Reserve Covered Service Members.

3. Eligibility

- 3.1. In order to be eligible to take FMLA leave, a University employee must meet all of the following requirements:
 - a. Employee must have been employed by Lincoln University for at least twelve (12) months. For the specific purpose of determining whether this criterion has been met, any portion of the week that the employee is on the payroll counts as a full week.

- b. During the twelve (12) months immediately preceding the first day of the FMLA leave, the employee must have worked at least 1,250 hours for the University. In order to count, these hours generally must be actually worked, and not merely compensated. Paid time off and holiday time do not count toward the 1,250 hours.
- c. The 1,250 work hour requirement also must be met whenever an employee is reapplying for FMLA leave in a new rolling FMLA year.
- d. The employee must work at a Lincoln University location where at least fifty (50) employees are employed by the University within seventy-five (75) miles.
- e. The employee also must not have already used up all weeks of FMLA leave in the current FMLA year. (Note: Unused portions of the FMLA leave bank may not be carried over between FMLA years.)

NOTE: Military service time covered under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) will also count toward satisfying the twelve-month (12) length of employment and 1,250 hours of work requirements to be eligible for an FMLA leave.

4. Length of Leave

- 4.1. Standard FMLA Leave. The FMLA generally allows eligible employees, as defined in that federal law, to take job-protected unpaid leave (or to have appropriate paid leave substituted in accordance with this policy) for a total of twelve (12) work weeks during a twelve-month (12) rolling period for any of the following reasons:
- The birth of a child and to care for the newborn child.
 - The placement of a child with the employee for adoption or foster care.
 - The employee is needed to care for a “Family Member” (child, spouse, or parent) with a “Serious Health Condition.”
 - The employee’s own Serious Health Condition makes the employee unable to perform functions of his or her job, or
 - Any “Qualifying Exigency” (as defined by the U.S. Department of Labor) arising out of the fact that the employee’s spouse, son, daughter or parent is on active duty, or has been notified of an order

or call to active duty, in the Armed Forces in support of a “Contingency Operation.”

- 4.2. Leave to Care for Covered Service Member. In addition to the above reasons triggering a right for an eligible employee to receive job-protected FMLA leave of up to twelve work weeks in a single twelve-month (12) period, the FMLA, as amended by the National Defense Authorization Act for FY 2008, provides eligible employees with a special right to take job-protected unpaid leave (subject to appropriate substitution of paid leave in accordance with this policy) for up to a total of twenty-six (26) weeks in a single twelve-month (12) period to care for a covered military service member with a serious injury or illness.
- 4.3. Effect of Holidays. The occurrence of a holiday during an FMLA leave week will generally have no effect, and the week will be counted as a whole week of FMLA leave. However, if the employee is using FMLA leave in increments of less than one week, the holiday will not be counted against the employee’s FMLA leave entitlement unless the employee was otherwise scheduled to work on the holiday.
- 4.4. Intermittent Leave/Reduced Schedule Leave. If the purpose of the FMLA leave is to care for a sick employee’s own or a Family Member’s Serious Health Condition, the employee may take leave intermittently or by means of a reduced work schedule. Such leaves are subject to the limitations set forth in the FMLA regulations. Leave due to qualifying exigencies may also be taken on an intermittent basis. Under certain circumstances, the University may place employees who are on an intermittent leave or a reduced work schedule in another position with equivalent pay and benefits. Such a placement would be considered a temporary transfer. Employees will be required to make a reasonable effort to schedule any intermittent leave or reduced schedule leave so that it does not disrupt University operations.

5. FMLA Year

- 5.1. For Reasons Other Than Care of Service Member. For FMLA leave for permitted purposes other than to take care of a Covered Service Member with a serious injury or illness, an eligible employee’s FMLA leave entitlement is limited to a total of twelve (12) workweeks in a “rolling” twelve-month period measured backward from the date the employee first uses any FMLA leave (other than leave to care for a Covered Service Member). Under this rolling FMLA year method, each time an employee takes such FMLA leave the remaining leave would be the balance of twelve (12) weeks which has not been used during the immediately

preceding twelve (12) months. For example, an employee who has taken eight (8) weeks during the past twelve (12) months would have a remaining entitlement of an additional four weeks of standard FMLA leave.

- 5.2. For Purpose of Caring For Service Member With Serious Injury/Illness. An eligible employee's FMLA leave entitlement for the specific purpose of caring for a Covered Service Member with a serious injury or illness is limited to a total of twenty-six (26) workweeks of leave during "a single twelve-month period." The University shall determine this single twelve-month period by measuring forward from the date an eligible employee's first FMLA leave to care for a Covered Service Member begins.

6. Proper Notice of Need for FMLA Leave by Employee

- 6.1. Employees must provide at least thirty (30) days advanced notice of a foreseeable FMLA leave. It is understood that in some circumstances it will not be possible to provide thirty (30) days prior notice. In these cases, the employee must provide notice as soon as practicable. A Lincoln University FMLA Leave Request Form is available from the Office of Human Resources for this purpose; however, employees may make a request for an FMLA leave by other reasonable means.
- 6.2. In all cases, employees must provide sufficient information for the University to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, that the Family Member is unable to perform daily activities, that there is a need for hospitalization or continuing treatment by a Health Care Provider, or that there are circumstances otherwise supporting the need for FMLA leave, including for military family leave for a Qualifying Exigency or to care for a Covered Service Member.
- 6.3. Providing proper notice of the need for FMLA leave in accordance with this policy does not eliminate the employee's responsibilities to comply with all normal University or departmental call-in procedures. By the same token, merely calling in sick without providing sufficient information to put the University on notice of a potential qualifying purpose for an FMLA leave will not, by itself, trigger an FMLA review by the University.
- 6.4. If an employee does not timely give proper notice of a foreseeable need for a leave, or does not reasonably cooperate with the University in providing sufficient information for the University to determine if there is a qualifying reason for FMLA leave, this could result in a delay in the employee's receiving any potential FMLA leave.

- 6.5. If the leave is for planned medical treatment of the employee or a Family Member, or requires intermittent or reduced schedule leave, employees may be required to the extent permitted by the FMLA to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the Health Care Provider.

7. Mandatory and Permitted Substitution of Paid Leave

- 7.1. Mandatory Substitution of First Five (5) Accrued Sick Days. To the extent permitted by the FMLA, it is the policy of the University to require the employee to substitute accrued paid sick leave to which the employee would otherwise be entitled under the circumstances, to run concurrently with the FMLA leave; provided, however, that this mandatory substitution of such accrued sick leave shall not be required beyond a maximum of five (5) accrued sick days. As is set forth below in Section 7.2, to the extent the employee has accrued sick leave exceeding five days, the employee, at the employee's sole option, is permitted to substitute such paid sick leave. Beginning with the first day of FMLA leave, the employee must use any accrued paid sick days, up to five sick days, that the employee would otherwise be eligible under the circumstances to receive (i.e., for FMLA leave relating specifically to the employee's Serious Health Condition for a Family Member's Serious Health Condition). The requirement that the employee must use accrued paid sick days up to a maximum of five (5) days to the extent the employee is otherwise entitled under the circumstances to use such paid leave applies to any type of FMLA leave, including a leave that is taken intermittently or through a reduced work schedule.
- 7.2. Permitted substitution of vacation days and/or paid sick leave above five days. After the mandatory substitution, if any, of accrued paid sick days up to five (5) has been credited against the FMLA leave time in accordance with Section 7.1, the employee may, at the employee's election, but is not required to, use any additional accrued paid sick days and/or any accrued vacation days, in such order as is chosen by the employee. Such permitted substitution of paid leave shall run concurrently with the FMLA leave. Prior to the commencement of FMLA leave, an employee may elect in writing to substitute such accrued paid sick days or accrued vacation days for otherwise unpaid FMLA leave (provided that any paid sick leave may only be used in the case of leave for the employee's or Family Member's Serious Health Condition (including childbirth)). The election to substitute permitted paid leave must be provided to the Office of Human Resources.

8. Restoration of Employment After FMLA Leave

- 8.1. Pursuant to the FMLA, eligible employees will be entitled to return to the same or an equivalent position at the conclusion of the FMLA leave, if they are able to perform the essential functions of the position (and comply with proper “Fitness-For-Duty Certification” procedures discussed below in this policy). An employee’s leave under the FMLA will not result in the loss of any accrued employment benefits that the employee had earned prior to the leave, and the FMLA leave will not be counted against the employee as a form of misconduct or documented in the employee’s performance evaluations.

9. Group Health Benefit Continuation during FMLA Leave

- 9.1. Group health plan benefits will be maintained during the FMLA leave so long as the employee intends to return, and actually does return, to work at the end of the FMLA leave. Employees on FMLA leave will be responsible for paying their share of any employee contributions for group health plan coverage in the same manner as when they are working. If applicable, arrangements will need to be made with the Office of Human Resources for the employee to pay his or her share of the group health plan premiums. Contact the Office of Human Resources for additional information. The University reserves the right to recover premiums it paid to maintain group health plan coverage for an employee who fails to return to work at the end of his or her FMLA Leave.

10. Medical Certifications

10.1. For Serious Health Conditions.

- a. In cases where an FMLA leave is due to the Serious Health Condition of the employee or is to care for the Serious Health Condition of a Family Member or Covered Service Member, the employee must provide medical certification on the applicable Medical Certification Form provided by the University. The University should request the certification at the time the employee gives notice of the leave or within five (5) business days thereafter. Once requested, it is the employee’s responsibility to provide the Office of Human Resources with the medical certification within fifteen (15) calendar days.
- b. If the certification is returned to the University incomplete or is unclear, the employee will be given seven (7) additional calendar days to provide more complete information.
- c. If the certification is still insufficient after being further supplemented, the Chief Human Resources Officer (or designee)

which shall not be an immediate supervisor of the employee, may contact the employee's Health Care Provider for clarification and/or authentication of the employee's medical certification.

- d. The University may require a second opinion from a Licensed Health Care Provider designated by the University. The University will pay the cost of any such second opinion, if required.
- e. If, but only if, the medical certification provided on behalf of the employee and the University's second opinion are in conflict, the University may require a third opinion from a mutually agreeable Licensed Health Care Provider, at the expense of the University.
- f. Employees may be asked to recertify the need for FMLA leave in accordance with certain limitations in the FMLA.
- g. When certification or recertification is requested, it shall be the employee's responsibility to ensure that the University is provided with timely, complete and sufficient certifications or recertifications. The failure to do so may result in the delay or denial of FMLA leave.

10.2. Certifications Relating to Qualifying Exigency.

- a. Specifically in cases where an FMLA leave is for the purpose of a Qualifying Exigency, the employee will be asked to complete a Certification of Qualifying Exigency for Military Family Leave Form. The completed form along with documentation required by the University in accordance with the FMLA will be used to determine if the leave request qualifies and the length of the leave. Failure to provide proper certification may result in a delay or denial of this type of FMLA leave.

11. University's Designation and Approval of FMLA Leave

- 11.1. The University shall inform employees requesting leave whether they are eligible under FMLA. If they are, the notice will specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the University will provide a reason for the ineligibility.
- 11.2. The University shall inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the University determines that the leave is not FMLA-protected, the University must notify the employee.

12. Certification of Fitness-for-Duty

- 12.1. As a condition for reinstatement to employment following FMLA leave occasioned by the employee's own Serious Health Condition that made the employee unable to perform the employee's job, the employee shall be required to obtain and present a certification ("Fitness-for-Duty Certification") from the employee's Health Care Provider that the employee is able to resume work and perform the essential functions of the job. The cost of such Fitness-For-Duty Certification shall be borne by the employee.
- 12.2. The University's designation of notice of the employee's leave as FMLA leave shall advise the employee of the Fitness-For-Duty Certification requirements regarding the return to work and whether that Fitness-For-Duty Certification must address the employee's ability to perform the essential functions of the employee's job.
- 12.3. The University shall not require a certification of Fitness-For-Duty for each absence taken on an intermittent or reduced leave schedule. However, the University shall be entitled to a Fitness-for-Duty Certification for such absences up to once every thirty (30) days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the Serious Health Condition for which the employee took such leave.
- 12.4. All Fitness-for-Duty Certification requirements shall be handled by the University in strict conformity with the requirements of the FMLA.

13. Miscellaneous

- 13.1. Time taken against accrued FMLA leave will be charged in whole day increments.
- 13.2. FMLA leave time will be recorded in the employee's attendance record specifically as FMLA leave.
- 13.3. Any employee who fraudulently obtains FMLA leave from the University is subject to disciplinary action, up to and including termination.
- 13.4. If the University fails to timely designate an employee's eligible absence as FMLA leave, it may be retroactively designated by the University as FMLA leave if the employee has been given notice of the intent to make such retroactive designation and either (a) the retroactive designation does not harm the employee, or (b) the University and employee have mutually agreed to the retroactive designation. Such retroactive designation of FMLA leave, however, shall not apply to absences in which

the employee had not given the appropriate amount of prior notice or did not follow the proper call-in procedures.

- 13.5. The University shall not interfere with, restrain, or deny the exercise of any right provided under the FMLA.
- 13.6. The University shall not discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for any employee's involvement in any proceeding under or relating to the FMLA.
- 13.7. Interaction with Fair Labor Standards Act. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act ("FLSA"), the University's providing unpaid FMLA leave to such an employee will not be treated as causing the employee to cease to be treated as an exempt employee for FLSA purposes. In accordance with the applicable regulations under the FMLA, such employees in appropriate circumstances may have their salary reduced for any hours taken as intermittent or reduced FMLA leave within a workweek without affecting the exempt status of the employee.
- 13.8. The University's uniformly applied policies outside of this FMLA leave policy, including but not limited to the University's policies or substance abuse and restricting outside or supplemental employment, shall continue to apply to an employee while on FMLA leave from the University.

14. FMLA Enforcement

- 14.1. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against the University. The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreements which provides greater family or medical leave rights.

Questions about this policy may be addressed to:

***The Office of Human Resources
Lincoln University
1570 Baltimore Pike
Lincoln Hall, 4th Floor
Lincoln University, PA 19352
484-365-8059***