

**Policy Title:** Family and Medical Leave

**Policy Summary:** Providing Eligible Employees Up To 12 Work Weeks of Job Protected Unpaid Leave Per 12 Month Period

**Policy Category:** Human Resources

**Policy Owner:** Human Resources

### Policy Summary

The Family and Medical Leave Act (FMLA) requires most employers to provide up to 12 workweeks of job protected, unpaid leave per 12-month period of eligible employment for: 1) the birth or adoption or foster care placement of a child; 2) to care for a family member with a serious health condition; or 3) the employee's own serious health condition.

### Purpose

Drake University has developed the following policy as a guideline for complying with the FMLA. Because this policy is designed to ensure compliance with the FMLA, many of its provisions reflect the language and terminology of the statute.

### Scope

Individuals employed for at least 12 months or 52 weeks (need not be consecutive) by Drake University and who have worked at least 1,250 hours for Drake University during the 12-month period immediately preceding the commencement of the leave are eligible for FMLA leave. In the case of exempt (salaried) employees, the University will assume that any employee employed full-time for seven and one-half months during the twelve-month period immediately preceding the commencement of leave satisfies the 1,250 hours requirement.

### Definitions

**Family Member**—"Family member" is defined in the FMLA as an employee's spouse, son, daughter, or parent (but not a parent "in-law"). For purposes of Drake's Family and Medical Leave Policy, 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, or a partner of an employee who is eligible for other spousal/partner benefits of the University. Partners (domestic partners) are unmarried same sex partners as attested to in a domestic partner affidavit. Parent means an employee's biological parent or an individual who assumed day-to-day and financial responsibility for the employee when the employee was a son or daughter.

Son or daughter means the employee's biological, adopted, or foster child, a stepchild, a legal ward, or a child whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible. A son or daughter must either be under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

For purposes of confirmation of family relationship, the University may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee,

or a child's birth certificate, a court document, or other appropriate documentation.

**Serious Health Condition**—"Serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves one of the following:

- **Hospital Care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.
- **Absence Plus Treatment:** A period of incapacity<sup>[1]</sup> of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
  1. Treatment<sup>[2]</sup> 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.
  2. Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment<sup>[3]</sup> under the supervision of the health care provider.
- **Pregnancy:** Any period of incapacity due to pregnancy, or for prenatal care.
- **Chronic Conditions Requiring Treatments:** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which meets one or more of the following criteria:
  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).
  3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
- **Permanent/Long-term Conditions Requiring Supervision:** 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.
- **Multiple Treatments (Non-Chronic Conditions):** Any period of absence to receive multiple treatments (including any period of recovery from such treatment) 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).

Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for family and medical leave.

Substance abuse may be a serious health condition if the conditions of this term are otherwise met. However, family and medical leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

For more information on other programs available to Drake employees who need time away from work to care for themselves or an immediate family member, see the applicable Sick Leave Policy.

**Health Care Provider**—A "health care provider" includes, but is not limited to, a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or a podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (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; or a nurse practitioner, nurse-midwife or clinical social worker who is authorized to practice under State law and who is performing within the scope of their practice as defined under State law. A Christian Science practitioner is a health care provider to the extent defined under regulations issued by the U.S. Department of Labor.

**Covered Active Duty**—Active duty, used with respect to service members, means duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 103(a)(13)(B). Covered active duty also requires deployment to a foreign country (Amended 2013, § 825.126).

**Contingency Operation**—Contingency operation, used with respect to service members, means a military operation that:

- (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- (B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of this title, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

**Next of Kin**—"Next of kin," used with respect to service members, means the nearest blood relative of that individual.

**Covered Service Member**—Covered service member means a member of the Armed Forces,

including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in “outpatient status,” or is otherwise on the temporarily disabled retired list, for a serious injury or illness.

**Covered Veterans** – Service member also includes covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness. This individual was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**Outpatient Status**—Outpatient status, used with respect to service members, means the status of a member of the Armed Forces assigned to—

- (A) a military medical treatment facility as an outpatient, or
- (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Serious Injury or Illness**—“Serious injury or illness,” used with respect to service members, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. This also includes injuries or illnesses that existed before the beginning of the member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank, or rating; OR
2. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such FASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; OR
3. A physical or mental condition that substantially impairs the veteran’s ability to secure or follow substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR
4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

## Policy

### **FAMILY AND MEDICAL LEAVE**

The Family and Medical Leave Act of 1993 (FMLA) as amended by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, requires most employers to provide up to 12 workweeks of job protected, unpaid leave per 12-month period to eligible employees for:

- the birth or adoption or foster care placement of a child
- to care for a family member with a serious health condition
- the employee's own serious health condition
- a "qualifying exigency" arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered 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"

Drake University has developed the following guidelines for complying with the FMLA. Because this policy is designed to ensure compliance with the FMLA, many of its provisions reflect the language and terminology of the statute.

#### **I. Eligibility**

Individuals employed for at least 12 months or 52 weeks (need not be consecutive) by Drake University and who have worked at least 1,250 hours for Drake University during the 12-month period immediately preceding the commencement of the leave are eligible for FMLA leave.

Hours are calculated based upon actual hours that the employee worked, including overtime.

To determine eligibility, the University will use its records of hours worked for non-exempt (hourly) employees. In the case of exempt (salaried) employees, the University will assume that any employee employed full-time for seven and one-half months during the twelve-month period immediately preceding the commencement of leave satisfies the 1,250 hours requirement. The fact that an exempt (salaried) employee has not worked full-time for seven and one-half months during this period does not automatically make the employee ineligible under the FMLA or this policy.

#### **Work Site Exception**

The University will attempt to accommodate all leave requests, regardless of the number of employees at a particular work site. However, if the University employs fewer than 50 employees within 75 miles of the employee's work site, the FMLA does not apply. Therefore, unless a different state law applies, the University may deny a leave request from an employee at a work site that does not meet this 50-employees-within-75-miles test, if granting the leave would adversely affect the operations of that site.

#### **II. Reasons for FMLA Leave**

The University will grant an eligible employee unpaid leave for up to 12 workweeks during a 12-month period for any of the following reasons:

1. Due to the birth of a child of the employee, in order to care for that child
2. Due to the placement of a child with the employee for adoption or foster care
3. In order to care for a "family member" if that family member has a serious health condition
4. Due to the employee's own "serious health condition" which makes the employee unable to perform the functions of their position
5. Due to a "qualifying exigency" arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on 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"
6. Eligible employees may take leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty

Employees are limited to a maximum of 12 workweeks unpaid leave for any of these purposes. For example, an employee cannot take 12 workweeks parental leave and 12 workweeks sick leave during the same 12 month period. If the leave is for the birth of a child or placement of a child for adoption or foster care, the leave must be completed within 12 months of the date of birth or placement.

### **Service Member Family Leave**

The University will grant an eligible employee who is the spouse, son, daughter, parent, or "next of kin" of a "covered service member" up to 26 workweeks of leave during a 12-month period to care for the service member, subject to the following:

The leave described in this paragraph shall only be available during a *single* 12-month period, and during the single 12-month period just mentioned, an eligible employee is only entitled to a combined total of 26 workweeks of leave for service member leave and other FMLA leave. For example, an employee cannot take 26 weeks of service member family leave, plus 12 weeks of parental leave in a single 12-month period.

### **Military Caregiver Leave**

Eligible employees may take leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.

### **The 12-Month Period**

Available leave is calculated by determining the amount of leave used by an employee for the 12 months prior to each day for which leave is requested and subtracting that number from the total number of days equal to 12 workweeks. This is referred to as the "rolling" or "looking back" method of calculation.

Example: An employee who is eligible for 12 workweeks of FMLA leave uses 4 weeks of leave in June of 2019, another 4 weeks of FMLA leave in November of 2019, and 4 weeks in February of 2020. At that point, all allotted 12 workweeks of FMLA leave have been used. If no additional FMLA leave is taken, at the end of June of 2020, the employee will have 4 weeks of FMLA leave available, as the 4 weeks used in June of 2019 will no longer be counted. Assuming no additional FMLA usage, the employee would pick up 4 more weeks of FMLA leave eligibility by the end of November 2020, and be back to 12 weeks of FMLA leave available as of the end of February of 2021.

### **Spousal Exception**

If a husband and wife both work for the University, and are eligible for leave, the aggregate number of workweeks of leave to which both are entitled is limited to 12 workweeks during any 12 month period for leave taken for a child's birth or placement for adoption or foster care, or to care for a sick parent. The aggregate 12 workweeks will be calculated in the same manner as leave for an individual employee.

In the case of service member family leave, the aggregate number of workweeks of leave to which both the husband and wife are entitled is limited to 26 weeks.

### **Intermittent Leave**

An employee taking leave for (1) their own serious health condition; or (2) the serious health condition of a family member; or (3) because of a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is on 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" may take leave on an intermittent basis, or by reducing the employee's scheduled work hours, if the employee provides certification from the health care provider confirming that such leave is medically necessary, or from the military branch of the covered service member, as appropriate. The total amount of leave to which the employee is entitled will be reduced by the amount of leave actually taken on an intermittent basis or pursuant to a reduced work schedule. The University may require an employee to temporarily transfer to an alternative position with equivalent pay and benefits that better accommodates recurring periods of leave.

### **III. Paid/Unpaid Leave**

The FMLA requires certain employers to provide eligible employees up to 12 workweeks (26 in the case of leave to care for service members) of unpaid leave for circumstances described above. At Drake, however, an employee on FMLA leave may continue in a paid status by using accrued time-off benefits. Employees must utilize all available paid leave during the FMLA leave, except for five vacation days, which may be saved by the employee for non-FMLA use. **The employee must indicate in writing a desire to exempt up to five days of accrued vacation at the time the request for FMLA qualified leave is made.**

For example, accrued sick leave pay must be used when an employee is unable to work due to the employee's own serious health condition. If the employee uses all of their accrued sick time, the employee will be required to use their unused personal day(s) and then all unused vacation benefits, **except that up to five days may be saved for later use as described above.** Any FMLA leave remaining, after sick leave pay, personal day(s) and accrued vacation benefits have been exhausted, will be without pay.

Exempt employees, who have exhausted their paid time off during the FMLA period, receive a reduction in pay if they take leave in increments of one or more days.

### **IV. Procedures for Requesting Leave**

#### **Procedure**

An employee may request family or medical leave by contacting their immediate supervisor to inform them that they are making a request for FMLA leave through Human Resources. This will

assist the University in working out appropriate schedules. For faculty members, Human Resources will coordinate leave approval with the Provost's Office and/or the appropriate Dean's Office.

### **Foreseeable Leave**

If the need for family or medical leave is foreseeable, the employee must, to the extent practicable, give notice to the University of their intention to take leave at least 30 days before the date the leave is to begin. If a 30-day notice is impracticable, the employee shall provide as much advance notice as is practicable. Leave may be denied for failure to give such notice unless there is a reasonable excuse for the failure to give notice. If leave is denied for lack of notice, the employee may designate leave to start 30 days after notice is given.

In the case of leave due to a "qualifying exigency" arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on 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," the employee shall provide reasonable notice to the University as soon as practicable.

### **Scheduling**

If the leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced schedule leave, employees should consult with the University and make a reasonable effort to schedule their leave so as to not unduly disrupt University or departmental operations. Employees are ordinarily expected to consult with the University prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the University and the employee. Employees should discuss with their manager intermittent leave schedules, prior to the start of such schedule or arrangement. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the University to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the University's operations, the University may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider. An employee on intermittent leave may be transferred temporarily to an available position with equal pay and benefits that better accommodates reoccurring periods of leave.

### **Unforeseeable Leaves**

If the need for family or medical leave is not foreseeable, the employee must give notice as soon as possible and practicable. Except in the case of extreme medical emergencies, employees are expected to call to advise their supervisor and Human Resources as soon as they know of the need for and expected duration of leave. In emergencies, the employee or a family member should contact the University and give the same information by telephone, fax, or by leaving a telephone or e-mail message, and a number where the employee or their representative can be reached.

### **Additional Information**

After receiving a request for leave, Human Resources will provide additional information regarding the procedures for obtaining leave.

## **V. Medical Certification**



## **Medical Certification**

Drake University requires the timely submission of a medical certification form by an appropriate health care provider for leave due to the serious health condition of a family member (including next of kin in the case of service member family leave) or the employee's own serious health condition. Drake requires that a form provided by Human Resources be used and include the following:

- The date on which the serious health condition commenced;
- The probable duration of the condition;
- Which part of the definition of "serious health condition" applies, and the appropriate medical facts regarding the condition;
- An estimate of the amount of time that the employee is needed to care for a family member, or a statement that the employee is unable to perform their job functions; and
- In cases of medical leave, an explanation of the extent to which the employee is unable to perform the function of the employee's position.

Certifications must be submitted within 15 calendar days of the date requested by the University, unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts. Where an employee fails to provide the required certification, FMLA leave may be delayed or denied, in which case time off work will be considered unexcused absences.

Re-certifications will be required by the University as allowed by federal regulation at the employees' expense. The employee must provide the requested re-certification within 15 calendar days after the University requests re-certification, unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts. Where an employee fails to provide the requested re-certification, FMLA leave may be delayed or denied, in which case time off work will be considered unexcused absences.

If intermittent leave or leave on a reduced hours basis is requested, the certification also must contain:

- The dates of any planned medical treatment;
- A statement of the medical necessity for and expected duration of intermittent leave or leave on a reduced hours basis; and
- In the case of leave to care for a family member, a statement that intermittent leave or leave on a reduced hours basis is necessary for the family member's care or to assist in their recovery, and the expected duration and schedule of the requested leave.

## **Second Opinions**

When the University has reason to doubt the validity of a medical certification, the University may require a second opinion from an independent medical provider selected by the University. The University will pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by the University and the employee. The third opinion will control the FMLA eligibility determination. The University will pay for the third opinion.

### **Re-certification / Periodic Reporting**

Employees on leave may be required to report periodically (i.e. weekly, monthly) on their status and intent to return to work. During leave, the University may request re-certification in connection with an employee's leave under the FMLA. Depending on the circumstances, re-certification may be required every 30 days, or if the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, then whenever that minimum duration has passed. Re-certification may be requested even sooner than the periods identified above if:

1. The University obtains information that casts doubt on the continuing validity of the employee's original certification;
2. The employee requests an extension of their leave during leave that was supposed to last a specified length of time; or
3. Circumstances described in the original certification have changed significantly.

For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider, the University will request re-certification no more often than every thirty days and only in connection with an absence by the employee, unless either condition (1) or (3) identified above are satisfied. For intermittent leave, the anticipated duration of the need for intermittent leave must be specified on the Certification of Health Care Provider form. Re-certification of the need for FMLA qualified intermittent leave will be required when the anticipated duration of the need for intermittent leave specified on the Certification of Health Care Provider form has passed, or sooner if any of the conditions (a, b, or c) identified above are satisfied. If no anticipated duration of need for intermittent leave is specified on the Certification of Health Care Provider form (i.e. the anticipated duration is reported as indefinite) then re-certification will be required every six months, or sooner if any of the conditions (a, b, or c) identified above are satisfied

### **Part-Time or Intermittent Leave after Birth, Adoption, or Foster Care Placement**

Requests for reduced schedule (part-time or intermittent) leave after the birth, adoption, or foster care placement of a child not required by medical necessity, will be considered on a case-by-case basis. The request should be made to the employee's manager. As a general rule, reduced schedule arrangements, if granted, are:

- for a maximum of twelve months after birth, adoption, or foster care placement;
- for leaves in increments of four hours or one day (such as five four-hour days or three eight-hour days);
- subject to the ability of the employee's manager to ensure that work is completed through scheduling changes or job-sharing; and
- subject to the employee's consent to alter schedules or work longer hours on an emergency basis, such as when other employees are out sick.

Reduced schedule arrangements may be cancelled or changed by the University as operational needs require.

### **Leave is Contingent on Eligibility**

All employee requests for FMLA leave are contingent upon a determination by the University that the employee is eligible for FMLA leave and has complied with the provisions of this policy.

Leave is also contingent on any second or third opinions that may be required. Because these procedures may take time, it is possible that a final determination may not be made until after the employee is on leave or has returned to work.

### **Confidentiality**

The University will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors will submit all medical information to Human Resources and should not retain any copies in their files or should retain them in separate medical files.

## **VI. Benefits**

### **Health Benefits**

Subject to the conditions of this policy, Drake will maintain the employee's coverage for health and dental benefits for the duration of the FMLA leave. The employee continues to pay the employee's contribution for any health and dental benefits normally deducted from the employee's paycheck. If the employee is in a paid status, the employee's contribution will continue to be made through payroll reduction. If the employee is in an unpaid status the employee:

- Must submit their contributions to Human Resources no later than the date of their regular payday, by tendering a check payable to Drake University. If the employee fails to make the required payments for health and/or dental coverage within 30 days of the date that such payments are due, coverage may be discontinued. The University will provide written notice to the employee that the payment has not been received. Such notice will be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. The University may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the University maintains health coverage by paying the employee's share after the premium payment is missed. Such amounts may be recovered by deducting them from the employee's pay upon return if the employee submits a written request authorizing Drake to withhold such amounts from their paychecks. Upon return to work, employees must contact Human Resources to work out an appropriate repayment schedule for any employee premiums or co-payments made by the University during leave; or
- May elect to prepay employee contributions for health and/or dental coverage that will become due during their FMLA leave by submitting a written request authorizing Drake to withhold such contributions from the pay period(s) prior to the leave. Prepayment of employee contributions may be made for the length of the FMLA qualified leave period only.

### **Other Benefits**

An employee's entitlement to benefits other than health and dental benefits during a period of FMLA leave will be determined by the University's established policy for providing such benefits when the employee is on other comparable forms of leave. Generally, other benefits normally provided to an employee shall be provided to the employee only if permitted by the plan document governing the provision of benefits and in accordance with the provisions of the

written document, and the employee makes any required co-payments.

Consistent with the University's policy for providing such benefits when the employee is on other forms of unpaid leave, unused benefits that accrued before the date unpaid leave began will be retained, but the employee will accrue no seniority or employee benefits that would have otherwise accrued during the period of unpaid family and medical leave.

The University may, upon the employee's return from leave, deny reinstatement to any benefit or condition of employment that has been discontinued.

## **VII. Reinstatement**

### **General**

Subject to limitations provided by applicable law, an employee returning from leave taken under this policy will be restored to the employee's same position or to an equivalent position, at the election of the University, unless the employee would have been terminated in the absence of any leave. Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

### **Fitness-For-Duty Examinations**

The University will require a fitness-for-duty certification prior to restoration for all employees taking leave for their own serious health condition. Such certification will not be required where the employee takes intermittent leave. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. An employee who fails to return to work or contact the University regarding their status following the conclusion of FMLA leave will be considered to have voluntarily quit their employment as of the conclusion of the FMLA leave. The University reserves the right to make additional medical inquiries and/or require follow-up examinations, at its expense, to ensure that employees can safely perform all the functions of the position.

### **Key Employee Exception**

If a salaried eligible employee has gross income that is within the top 10% of the University's employees within 75 miles of the employee's work site during the calendar year in which leave is taken, the University reserves the right not to restore the employee to their prior position with the University if the University will suffer substantial and grievous economic injury because of the restoration.

At the time that leave is granted under this policy, the University will inform the employee that the employee is within the top 10% and also explain the possible consequence that restoration may be denied.

If the University determines during the employee's leave that the employee is not to be restored to employment, the employee will be notified immediately and given the opportunity to return from leave and be restored to their position. Such notice will be in writing and served either in person or by certified mail. If the employee does not return from leave, the employee can petition for reinstatement at the end of the leave period and will be notified, by certified mail, whether the employee will not be restored because doing so would cause the University

substantial and grievous economic injury.

### **Consolidated Omnibus Budget Reconciliation Act (COBRA)**

When an employee notifies the University that they are not returning from leave, the University shall terminate the employee's health and/or dental benefits and they shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health and/or dental benefits only in accordance with COBRA and the provisions of the health and/or dental plan.

### **Repayment of Premiums**

If the employee **(1)** gives notice that they is not returning to work with the University, **(2)** simply fails to return to work with the University, or **(3)** returns to work but remains employed for fewer than 30 days after leave has ended, then the employee shall owe the University the cost of any benefits provided during leave, including both the University and any employee premiums and co-payments for health benefits. No such amount shall be owed if there is a continuation, recurrence or onset of a serious health condition, or in the opinion of the University, there is a change of circumstances beyond the employee's control. The benefits of a key employee who is not restored shall not be terminated prior to the end of leave unless the employee gives notice that they no longer wishes to return to work. Moreover, the key employee who is not restored shall not be responsible to the University for such benefits other than the normal employee contribution.

If repayment can be required due to the employee's failure to return to work, the employee must repay all premiums within 60 days after receiving notice from the University of the amount owed.

### **Failure to Return to Work**

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment.

## **VII. Miscellaneous Provisions**

### **Administrator**

Drake University is the sole administrator of this policy and, as such, is the exclusive interpreter of its terms. All provisions of this policy shall be interpreted consistent with the Family and Medical Leave Act of 1993 as amended by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181 and the 2013 Regulations pertaining to Family and Medical Leave.

### **Changes**

Drake University reserves the right to modify or terminate this policy at any time.

### **No Employment Rights**

This policy does not create any employment rights to any individual other than specifically stated in the policy.

### **Limitations**

Except as otherwise stated, this policy is not intended to create any rights greater than that conferred on employees by the Family and Medical Leave Act of 1993 as amended by the

National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, and the 2013 Regulations pertaining to Family and Medical Leave.

### **Rights and Obligations**

Employees and employers have various rights and obligations under FMLA. For further information, contact the Human Resources Department.

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[1] Incapacity is defined to mean inability to work, attend school or perform other regular daily activities due to the serious condition, treatment for such condition, or recovery from such condition or treatment.

[2] Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

[3] A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

**To request a leave, complete the applicable [Faculty FMLA Leave Request Form](#) or [Staff FMLA Leave Request Form](#) and obtain the applicable [Health Care Provider Certification for Employee Serious Health Condition](#) or [Health Care Provider Certification for Family Member Serious Health Condition](#).**

**Last Review Date:** January 2021

**Effective Date:** July 2016

### **Resources and Related University Policies:**

- [Family and Medical Leave Forms](#)
- [Community Service Leave Forms](#)
- [Flex Hours Enrollment Forms](#)