All universities of the University of Maine System are covered under the federal Family and Medical Leave Act (FMLA) and the Maine Family Medical Leave Act (which are together referred to as the FMLA).

**Your Rights under Federal Law**

The federal FMLA provides unpaid, job-protected leave and continuing health insurance to employees who have worked for the University for at least 12 months and worked at least 1,250 hours in the last 12 months. Eligible employees are entitled to up to 12 weeks of leave in any one-year period for the birth or adoption of a child or the serious health condition of the employee or an immediate family member.

Eligible employees with a family member in the National Guard or Reserves who is on or called to active duty may use their 12-week entitlement for certain qualifying circumstances, such as attending military events, briefings, or counseling, arranging for alternative childcare, or making financial and legal arrangements. Eligible employees are entitled to up to 26 weeks of leave in any one-year period to care for a family member who incurred a serious illness or injury in the line of duty in the Armed Services, including the National Guard or Reserves. Employees are entitled to a maximum of 26 weeks of leave for all FMLA qualifying reasons in the one-year period.

The one-year period begins when a family/medical leave begins. After 12 months, employees are eligible for another 12 weeks of leave. Under federal regulations, full-time faculty with academic year or less than twelve-month appointments are considered to have met the 1,250 hours of service test. The University System policy allows these faculty to split their FMLA leave, if necessary, due to the summer months. For example, a faculty member with an academic year appointment who starts an FMLA leave three weeks before the academic year ends for the summer has available the remaining nine weeks when the academic year begins in the fall. The faculty member does not need to use those nine weeks during the summer, a time that is outside the academic work year.

The law defines a serious health condition as one involving hospitalization or other institutionalization or continuing treatment by a health care provider. The immediate family includes:

- spouse,
- child under 18, or incapable of self-care if over 18 – this includes step and foster children, other legal wards, and any child for whom the employee provides daily care and/or financial support, regardless of legal or biological parent status, or
- parent (including a person who has acted as a parent, such as a grandparent).
A serious illness or injury for military caregiver leave is one that makes the servicemember unfit for duty.

When the leave is for a serious health condition or a qualifying circumstance related to military service, it does not have to be taken in one block of time. The leave may be taken intermittently or in the form of reduced hours, if that is medically necessary. When the leave is for birth or adoption, the University does not have to approve intermittent leave or reduced hours. If intermittent leave or reduced hours are approved, you may be transferred to a different position with equivalent pay and benefits which will better accommodate the leave.

Leaves due to birth or adoption must be during the first 12 months following the event. Placement of a foster child is treated like adoption.

**Your Rights under State Law**

Employees who have worked for the University for at least 12 consecutive months are eligible for leave under the Maine FMLA. The University must approve up to ten weeks of leave in any two-year period. Under the Maine FMLA (but not under federal law), immediate family member includes an employee’s sibling, domestic partner and children of a domestic partner. An employee is eligible for family medical leave to care for a sibling only if the employee and the sibling are jointly responsible for each other’s common welfare as evidenced by joint living arrangements and joint financial arrangements or the sibling is a member of the Armed Forces, including the National Guard and Reserves, and incurs a serious health condition or dies while on active duty. An employee who requests leave to care for a sibling will be asked to provide documentation of joint living and financial arrangements. An employee who requests leave to care for a domestic partner or child of a domestic partner must complete an Affidavit of Domestic Partnership.

**More about Your Rights**

When a leave is covered by both federal and state laws, you may not take separate leaves under each law in order to extend the 12-week period. However, if a leave is covered solely by the state law, you remain eligible for federal FMLA leave.

Available accrued paid leave (both disability leave and annual leave) must be used before you may take an unpaid family/medical leave, except that you may reserve up to one week of annual leave and may use, but are not required to use, accrued leave if you are receiving Short-Term Disability benefits. The use of paid disability leave, whether for your own illness or for family illness, is still subject to University policy and contract provisions. At the end of the leave, you must be allowed to return to your former job or to an equivalent position. The entire leave, including any paid leave as well as unpaid leave, is considered family/medical leave and is counted toward the 12 or 26 week entitlement.
During an approved FMLA leave, you continue in the group health and dental plans on the same terms as similar employees who are on active status. You are also able to continue using the Health Care Flexible Spending Account. Health coverage during any unpaid leave that extends beyond FMLA limits (federal: 12 or 26 weeks; state: 10 weeks) is at your expense. Only health and dental coverage are provided during an unpaid family/medical leave; all other benefits are covered by University policies regarding leave without pay.

If both you and your spouse work for the University, the two of you together are entitled by federal law to up to 12 weeks of leave for birth or adoption, or a qualifying military circumstance, and up to 26 weeks of leave for military caregiving. If your domestic partner is also an employee, the employee who is the birth parent qualifies for 12 weeks of federal FMLA leave. Under Maine law the other parent may qualify for a separate leave of up to ten weeks.

If you are not eligible for FMLA leave, the University will notify you of the reason.

Under the FMLA, an employer cannot retaliate against an employee for requesting or using FMLA leave. An employee who believes he or she has been improperly denied FMLA leave or experienced retaliation may file a complaint with the U.S. Department of Labor or may file a private lawsuit.

**Your Responsibilities**

When a leave can be foreseen or planned (as in the case of childbirth or scheduled surgery), employees must provide at least 30 days notice. The University may delay the leave if such notice is not given. In medical emergencies the 30-day notice is not required, but an employee should request the leave as early as possible. The law requires employees to make a reasonable effort to schedule leave so as not to unduly disrupt University operations.

The University requires employees to provide certification of the medical necessity of the FMLA leave and may require (and will pay for) a second opinion. In compliance with Federal law, health care providers are informed not to provide genetic information. Certification forms are also required for military exigency leave and military caregiver leave. Employees may also be required to provide evidence of birth, adoption, or foster care placement. Certification forms are available from the Human Resources office. Completed certification forms are treated as confidential medical records. For pregnancy, chronic, or long-term medical conditions, the University may request recertification, with some limitations.

You will also be asked to provide medical certification that you are able to return to work when a leave for your own medical condition lasts 20 work days or more, or when there is any objective reason to believe you cannot safely perform the essential functions of your job. However, when a leave is for a woman’s disability due to childbirth, a medical certification will not be required to return to work unless a disability leave exceeds six weeks following the birth.

A Request for Family or Medical Leave form is available at the campus Human Resources office. You must complete a form if you wish to take unpaid or paid leave for a reason covered by law. The University may designate a leave as FMLA leave whether or not you specifically
request a leave under the law, so long as the leave is for reasons covered by the law. Any use of
disability leave for two weeks or more or for intermittent leave lasting at least 80 hours requires
completion of the FMLA Request form.

NOTE: Any leave beyond 12 weeks (26 weeks for military caregiver leave) in a one-year period
is still at the University’s discretion and is governed by the appropriate collective bargaining
agreement or employee handbook.

Further Information

This is a summary of a complex law. For further information about leaves, talk to your campus
Human Resources Office.

Rev. OHR 03/11