

Staff Personnel Manual (SPP)

SPP 705–02: Family Leave of Absence

Effective: 8/5/1993

Revised: 7/1/2019

Purpose

To allow eligible employees time off under the Family and Medical Leave Act (FMLA) to care for themselves or family members for or due

to:

- a serious health condition
- the birth of and subsequent bonding with a biological child
- pre-adoption or pre-foster care matters
- the placement and subsequent bonding with an adopted or foster child
- or
- a qualified exigency arising out of the fact that the employee's family member is a covered military member on covered active duty.

Sources

Family and Medical Leave Act of 1993 as amended

The National Defense Authorization Act of 2010

Arizona Revised Statutes § 38–781

Arizona Board of Regents Policy Manual - 6-805

Eligibility

The University provides up to 12 work weeks of unpaid, job-protected leave in a "leave year" to all classified staff, university staff, and no-faculty administrators who:

1. have been employed by ASU for at least 12 months; the months do not have to be consecutive. Employment prior to a break in service of seven (7) years or more should not be counted unless the break is due to services covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA)
2. have worked at least 1,250 hours in the 12 months immediately prior to the leave date; and
3. have not already exhausted his/her FMLA entitlement.

For purposes of the basic leave entitlement, a "leave year" is a rolling 12-month period measured backward from the date the FMLA leave begins.

Policy

Eligible employees are allowed FMLA leave as stipulated in this policy.

Types of Family Leave

An eligible employee is entitled to a total of up to 12 weeks of leave during a "leave year."

Employee Care

Leave can be used for the employee's own serious health condition, including a serious illness, injury, impairment, physical or mental condition that renders the employee incapable of performing the essential job functions of their job, and pregnancy.

The time period within which the employee can use FMLA leave for birth/bonding is 12 months after the date of birth.

Family Care

An employee is entitled to a total of up to 12 weeks of leave during a 12-month period to care for a spouse, child, parent, or member of the employee's established household for any combination of the following reasons:

1. **Family Care for a Serious Health Condition.**
2. **Family Care for a Birth, Adoption, or Foster Care.**
 - a. **Birth** The time period within which the employee can use FMLA leave for birth/bonding is 12 months after the date of birth.
The employee cannot use more than 12 weeks total for this reason.
 - b. **Adoption or Foster Care.** The time period within which the employee can use FMLA leave for the placement and bonding of a child for adoption or foster care is 12 months after placement or adoption. The employee cannot use more than 12 weeks total for this reason.

or

3. **Family Care for Married University Employees.**

A combined total leave period of 12 weeks is allowed when two married employees working for the university are requesting leave for the same event of:

- a. a birth and subsequent bonding with the employee
- b. the placement and bonding with the employee of an adopted or foster-care child

or

- c. caring for either employees parent

If the two married employees use only a portion of their individual 12 weeks of leave for one of these purposes, each employee is allowed the difference between the amount they took and their own full FMLA entitlement for other FMLA purposes.

Military Caregiver Leave

An employee is entitled to a total of 26 weeks of leave during a single 12-month period, beginning on the first date FMLA leave is taken, if the covered service member takes leave for the serious health condition of a spouse, child, parent, next of kin, or member of the employee's established household who, as a member of the Armed Forces (including National Guard and reserves), is undergoing medical treatment, recuperation, or therapy, is on out-patient status, or is on temporary disabled retired list duty for a serious illness or injury sustained while on covered active duty. The serious illness or injury may have occurred any time during the five years preceding the date of treatment (even if it did not manifest until after active duty).

For the purpose of the military family leave entitlement, the "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for the covered service member and ends 12 months after that date. FMLA leave for this reason is applied on a per-covered-service member, per-injury basis; however, no more than 26 work weeks of FMLA leave may be taken within a single 12-month period.

While an employee who takes leave to care for a military family member is entitled to a total of 26 weeks of leave during a single 12-month period, if the full 26 weeks are not used for this purpose, only up to 12 of the remaining weeks may be taken for other FMLA qualifying reasons.

When two married employees who both work for the university are requesting leave for the same event, a combined total leave period of 26 weeks is allowed.

Military Qualified Exigency Leave

An employee is entitled to a total of 12 weeks of leave (less other qualified FMLA leave taken) during a year, beginning on the first date FMLA leave is taken, to deal with a qualified exigency caused by a spouse, child, parent, or member of the employee's established household who, as a covered military member, is called to covered active duty status for military deployment to a foreign country.

Scheduling Leave

Leave may be taken on a continuous, intermittent, or reduced work schedule basis. The employee must try to schedule leave so as not to disrupt departmental or university operations. If an employee uses leave intermittently or on a reduced schedule basis, the university may transfer the employee temporarily to an available alternative position for which the employee is qualified, if the alternative position provides the same salary and benefits and better accommodates an intermittent or reduced schedule than the regular position held by the employee.

Approval of intermittent leave for the placement and subsequent bonding with an adopted or foster child is at the supervisor's discretion. However, an employee may take FMLA leave before the actual placement for foster care or adoption of a child if an absence from work is required for the placement to proceed, e.g., required counseling or court appearance.

Requesting Leave

The employee must first review the Leaves of Absence webpage and submit a written request for leave of absence to the appropriate supervisor specifying the purpose and duration for the leave, including the anticipated beginning and ending dates. The request should be submitted at least 30 calendar days before leave is to begin, if the leave is foreseeable, or as far in advance as possible if the leave is not foreseeable.

The employee must provide, within 15 calendar days, a [Certification of Health Care Provider](#) completed by the [health care provider](#) of the employee, spouse, member of the employee's established household, child, or parent, as applicable. The health care provider must verify the health condition that requires use of medical leave and the need for the employee to care for the family member, if applicable. Failure to provide medical certification may delay the commencement of the leave or may result in denial of the leave request.

Note: For intermittent leave for the employee's own health condition, authorization from the health care provider must indicate which essential functions of the job can be performed by the employee.

The university, at its expense, may require the employee to obtain an opinion of a second health care provider selected by ASU, provided the health care provider is not employed by ASU. If the second certification differs from the first certification, the university, at its expense, may require a third certification from a health care provider who is not employed by ASU, approved jointly by ASU and the employee. The opinion of the third care provider is binding.

The university may require the employee to submit additional health care provider recertifications during the leave period.

Military Caregiver Leave

The request must be supported by a certification by an authorized health care provider.

Military Qualified Exigency Leave

The request must be supported by the covered military member's covered active duty orders and when requested supported by a certification, or a copy of the military member's Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

Benefits

Health

While the employee is on FMLA, the university will pay the employer's portion of health insurance premiums whether the employee is in a

pay or non-pay status; the employee is responsible for payment of the employee's portion. When the employee is in a pay status, deductions will be taken from his/her paycheck; while in an unpaid status, the employee will be billed for the premiums due. If the employee's premium payment is more than 30 days late, the university may discontinue coverage retroactive to the last day of the pay period for which coverage had been paid, or, if the employee returns to work, unpaid premiums may be deducted from the employee's active pay.

If the employee does not return to work within 30 days after the expiration of the leave, the university has the right to recover from the employee the university share of the premium payments made during the FMLA period, unless the employee does not return due to the continuation or recurrence of the serious health condition, or other circumstances beyond the employee's control.

Retirement

While an employee is in a paid status, employee retirement contributions will be deducted from his/her pay and the employer's retirement contribution will be paid by the university. No employee or employer contributions will be made during an unpaid leave period.

An employee participating in the Arizona State Retirement System (ASRS) will continue to earn retirement service credit while in a paid leave status. The employee will not earn ASRS service credit during an unpaid period, but may consult with ASRS regarding purchasing service time for that period.

Continuation of Leave

If an employee is unable to return to work at the exhaustion of the FMLA period, the department may continue the leave according to [SPP705-01](#), "Extended Leave of Absence."

Return to Work

In the case of the employee's own serious health condition, the employee must provide a certification from the health care provider confirming that the employee is able to return to work and can perform the essential functions of his or her position, whether on a full-time or part-time basis. Employees without proper authorization will not be allowed to return to work.

Upon return from FMLA leave, an employee will be restored to his or her position or to an equivalent position with equivalent benefits, grade, pay, and terms and conditions of employment, including salary increases that would have been available had the employee not taken leave.

Definitions

Child includes biological, adopted, foster, stepchild, or legal ward, who is under 18 years of age, or 18 years of age or older if the child is incapable of self-care due to a physical or mental disability.

Leave Year is a rolling 12-month period measured backward from the date the FMLA leave begins.

Member of the Established Household is a person who shared the employee's permanent residence prior to the requested leave and who is expected to continue to reside with the employee following the leave. ASU may require written verification to establish the relationship.

Placement for Adoption or Foster Care is the date a child is placed in the employee's home for 24-hour care in substitution for and away from the parents or guardians. An adoption does not have to be from a licensed agency. Foster care must be made by or with an agreement of the state. Placement is defined as either for adoption, or for foster care, not both.

Additional Information

For information on ASU employee benefits plans, refer to the Office of Human Resources, Benefits [Web page](#).

For additional information on ASU's parental leave policy, refer to ASU's parental leave policy, please refer to ASU's Parental Leave Policy [SPP 708](#).

Cross-References

See also [SPP 705-01](#), "Extended Leave of Absence"

For information on salary continuance policies while absent from work, see:

1. [SPP 404-04](#), "Overtime—General Policy"
2. [SPP 701-01](#), "Sick Leave Benefits"

and

3. [SPP 702-01](#), "Vacation Leave Benefits."