



## KENTUCKY STATE UNIVERSITY

### Policies and Regulations

---

#### **POLICY TITLE:**

**Family and Medical Leave**

#### **APPLIES TO:**

**Faculty  
Staff**

#### **ADMINISTRATIVE AUTHORITY:**

**Office of Human Resources**

#### **APPROVED BY:**

**Kentucky State University Board of Regents**

#### **EFFECTIVE DATE:**

**August 9, 2024**

#### **NEXT REVIEW DATE:**

**August 9, 2027**

---

#### **POLICY STATEMENT:**

In accordance with the Family Medical Leave Act of 1993, as amended, Kentucky State University (KSU) provides eligible employees with up to 12 weeks of unpaid job-protected leave during a rolling 12-month period in the event of a family or personal medical condition or qualifying exigency related to active military duty. KSU also provides up to 26 weeks of unpaid leave during a 12-month period for certain circumstances relating to the care for covered servicemembers and veterans.

#### **DEFINITIONS:**

##### **Active Duty**

Active duty is defined as duty under a call or order under a provision of law referred to within section 101(a)(13)(B) of Title 10, United States Code.

## **Child**

A child is defined as any individual under the age of 18 who is the biological, adopted, foster, or step child, or legal ward, of a person standing *in loco parentis*. A child is also defined as any individual 18 years of age or older who is the biological, adopted, foster, or step child, or legal ward, of a person standing *in loco parentis*, if he or she is incapable of self-care because of a mental or physical disability. A child can also be 18 years of age or older for the purposes of covered servicemember leave and qualifying exigency leave.

## **Contingency Operation**

A contingency operation is a military operation that:

- 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 or hostilities against any enemy of the United States or against an opposing military force; or
- results in the call or order to, or retention on, active duty of members of the uniformed services under subsections 688, 12301(a), 12302, 12304, 12305, or 12406 of section 101(a)(13) of Title 10 of the United States Code, chapter 15 of that Title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

## **Covered Servicemember**

A covered servicemember is defined as 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 outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty while on active duty or one that existed before the beginning of the member's active duty and that was aggravated by service in the line of active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

The definition of covered servicemember also includes veterans who were members of the armed forces, including the National Guard or Reserves, at any point in time within five (5) years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy. In the case of veteran covered servicemembers, a "serious health condition" includes any injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the armed forces) and that manifested itself before or after the member became a veteran.

## **Covered Servicemember Leave**

Covered servicemember leave is defined as the leave that must be granted to an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness. Eligible employees must be granted up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember. The single 12-month period for leave to care for a covered servicemember with a serious injury or illness begins on the first day the eligible employee takes leave and ends 12 months later, regardless of the 12-month period established for other types of FMLA leave. An eligible employee is limited to a combined total of 26 weeks of leave for any FMLA-qualifying reason during the single 12-month period.

### **Eligible Employee**

For the purposes of this policy, an eligible employee is defined as any full-time KSU employee who has worked at KSU for at least 12 months and for at least 1,250 hours during the most recent 12-month period.

### **Healthcare Provider**

For the purposes of this policy, a healthcare provider is defined as follows:

- a doctor of medicine or osteopathy who is authorized to practice medicine by the state in which the doctor of medicine or osteopathy practices;
- a podiatrist, dentist, clinical psychologist, optometrist, or in very limited cases, chiropractor authorized to practice in the state in which he or she practices;
- a nurse practitioner, nurse-midwife, or clinical social worker who is authorized to practice in the state in which he or she practices;
- a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- any other person determined by the United States Secretary of Labor to be capable of providing healthcare services.

### **Intermittent Leave or Reduced Work Schedule**

Intermittent leave is leave taken in separate blocks of time rather than during one continuous period of leave. A reduced leave schedule is a leave schedule that reduces an eligible employee's regular number of working days per week or hours per workday.

### **Military Member**

A military member is an individual who is on active duty or has been notified of an impending call or order to be on active duty in support of a contingency operation.

### **Next of Kin**

The term "next of kin" is used to refer to the nearest blood relative of a particular individual.

### **Outpatient Status**

The term "outpatient status" is used to refer to the status of a member of the armed services who is assigned to:

- a military medical treatment facility as an outpatient; or
- a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients.

### **Parent**

A parent is either the biological parent of an eligible employee or an individual who stood *in loco parentis* to an eligible employee when the eligible employee was a child.

### **Qualifying Exigency**

The term qualifying exigency refers to:

- issues arising from a military member's short notice deployment (i.e., deployment on notice of seven days or less) for a period of seven days from the date of notification;
- military events and related activities such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active-duty status of a military member;
- certain childcare and related activities arising from the active duty or call to active-duty status of a military members, such as arranging for alternative childcare, providing childcare on a non-routine, urgent need basis, enrolling or transferring a child to a new school or daycare facility, and attending certain meetings at a school or daycare facility if they are necessary due to circumstances arising from the active duty or call to active duty of the military member;
- making or updating financial and legal arrangements to address a military member's absence;
- attending counseling provided by someone other than a healthcare provider for oneself, the military member, or the child of the military member, the need for which arises from the active duty or call to active-duty status of the military member; or
- taking up to five (5) days of leave to spend time with a covered military member who is on short-term rest and recuperation leave during deployment.

### **Serious Health Condition**

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a healthcare provider.

### **Veteran**

For the purpose of this policy, a veteran is defined as an individual who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the armed forces, including the National Guard or Reserves, at any time during the five (5) years preceding the date on which said individual undergoes medical treatment, recuperation, or therapy.

## **QUALIFYING EVENTS FOR LEAVE:**

An eligible employee may take Family and Medical Leave for any of the following reasons:

- The birth and care of a biological child;
- The placement of a child for adoption or foster care with employee;
- To care for an immediate family member (i.e., a spouse, parent, or child) who has a serious health condition;  
or
- To care for his or her own serious health condition.

An eligible employee may take Covered Servicemember Leave for the following reason:

- To care for a covered servicemember, if the eligible employee is the covered servicemember's spouse, child, parent, or next of kin.

An eligible employee may take Qualifying Exigency Leave for the following reason:

- For any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the eligible 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.

## **AMOUNT OF LEAVE AVAILABLE:**

### **Family and Medical Leave**

Eligible employees are entitled to 12 weeks' worth of leave during a rolling 12-month period. The entitlement of 12 workweeks for the birth or placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement.

### **Covered Servicemember Leave**

Eligible employees are entitled to 26 weeks' worth of leave during a single rolling 12-month period.

### **Qualifying Exigency Leave**

Eligible employees are entitled to 12 weeks' worth of leave during a rolling 12-month period.

## **PROCESS:**

### **Notification of Leave**

An eligible employee must notify his or her immediate supervisor and the Office of Human Resources (HR) when he or she has a qualifying event for taking leave. If the need for leave is foreseeable, the eligible employee must provide KSU at least 30 days' prior written notice of the intent to take leave. However, if the need for leave is unforeseeable, the eligible employee must provide KSU written notice as soon as is practicable. Failure to provide adequate notice may lead to delayed leave.

Once an eligible employee has notified HR of his or her request to take leave, HR will promptly review the request. Following the review, HR will inform the eligible employee if he or she is indeed eligible under the FMLA. If he or she is, HR will provide the necessary paperwork for the eligible employee to fill out and return. HR will also notify the employee if any additional information is required and inform the employee of his or her rights and responsibilities. If HR confirms that an employee is not actually eligible under the FMLA, HR will provide the reason for the ineligibility in writing.

### **Certification of Leave**

Eligible employees must provide HR certification of their requested leaves. For FMLA leave and covered servicemembers leave, an eligible employee must provide healthcare provider certification.

Leave for a qualifying exigency must be supported by a copy of the covered military member's active-duty orders and certification providing the appropriate facts relating to the particular qualifying exigency for which leave is being sought, including contact information if the leave involves meeting with a third party.

Generally, if an eligible employee takes leave, he or she should contact KSU on the first and third Tuesday of each month to provide a report on the status of his or her leave, but only if such contact is reasonable considering the employee's condition or the nature of the leave. HR will set other reasonable reporting expectations if an employee's condition or leave warrants different requirements. Such reports must include an update on the employee's intent to return to work as well as his or her fitness for duty. If the dates of leave need to be changed, the employee must give KSU notice as soon as is practicable.

### **Pay Status**

Eligible employees must use any accumulated sick or vacation leave to remain in a paid status during their leaves. Any unused sick or vacation leave shall be used before an eligible employee is placed on a non-paid status. Once paid leave ends, the remainder of the leave shall be unpaid.

### **Benefits**

During an approved leave, KSU shall maintain an eligible employee's health benefits as if the employee were actively working. KSU shall therefore continue to make contributions to the employee's group health, dental, and other insurance coverage in accordance with employee's specific plan.

If the employee uses paid leave, the KSU will deduct the employee's portion of the insurance premiums as a regular payroll deduction. However, once an employee enters a period of unpaid leave, he or she must pay his or her portion of the premiums through a direct payment to the insurance carrier. Failure to make such payments may result in termination of the employee's policies.

Eligible employees will remain eligible to receive paid holidays that occur while they are on their leaves. Additionally, eligible employees will continue to accumulate vacation and sick time for as long as they remain in a paid status while on leave.

### **Returning to Work**

If an eligible employee wishes to return to work before his or her approved leave ends, he or she must contact HR. If an eligible employee took leave due to his or her own serious health condition, he or she must provide HR with certification from a healthcare provider that confirms he or she is able to safely resume work.

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

If an eligible employee does not return to work following the conclusion of any leave under this policy, the employee will be considered to have voluntarily resigned, and KSU shall be entitled to seek reimbursement of any amounts it paid toward the employee's premiums during the leave.

However, a failure to return to work will not be considered job abandonment if caused by:

- the continuation, reoccurrence, or onset of a serious health conditions that would entitle the employee to FMLA leave;
- other circumstances beyond the employee's control, including but not limited to, caring for a relative or individual who has a serious health condition; or
- the need to care for a covered servicemember.

### **Right to Return to the Same or Equivalent Position**

An eligible employee who takes approved leave will be reinstated to the same or an equivalent position, with the same pay and benefits previously received, once he or she returns to work.

However, salaried employees who are among the top ten (10) percent of highest paid employees employed within 75 miles of KSU may not be able to return to their former positions—or equivalent positions—following their return from leave. KSU will strive to return such employees to their former positions, but it may be required to deny restoration of employment in the same or an equivalent position if doing so would cause severe economic harm. This fact-specific determination will be made by KSU on a case-by-case basis and always in compliance with the Family and Medical Leave Act.

### **Intermittent and Reduced Schedule Leave**

An eligible employee has the right to take leave under this policy on an intermittent or reduced schedule leave if:

- the leave is due to the employee's serious health condition or the serious health condition of a member of the employee's spouse, parent, or child;
- a physician determines that the intermittent or reduced schedule leave is medically necessary; or
- the employee is caring for a covered servicemember pursuant to active-duty qualifying exigency leave.

Intermittent or reduced schedule leave must be scheduled in a manner that does not cause disruptions to KSU work operations. Therefore, KSU reserves the right to transfer an employee taking such leave to an alternative position to better accommodate the requested leave.

### **ADDITIONAL PROVISIONS:**

- Under an exception to the Fair Labor Standards Act ("FLSA") in the FMLA regulations, hourly amounts may be deducted for unpaid leave from the salaries of executive, administrative, and professional employees; outside sales representatives; certain highly skilled computer professionals; and certain highly compensated employees who are exempt from the minimum wage and overtime requirements of the FLSA, without affecting the employees' exempt status. This special exception to the "salary basis" requirements for the FLSA's exemptions extends only to eligible employees' use of FMLA leave.
- Employees may not perform work for self-employment or for any other employer during an approved leave of absence, except when the leave is for military or public service or when KSU has approved the employment in accordance with its outside employment policy, and only if an employee's reason for FMLA leave does not preclude the outside employment.
- The FMLA makes it unlawful for any employer (1) to interfere with, restrain, or deny the exercise of any right provided under the FMLA or (2) to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for his or her involvement in any proceeding under or relating to the FMLA.

### **REFERENCES AND RELATED MATERIALS:**

- Military Leave
- Sick Leave
- Vacation Leave
- Family and Medical Leave Act of 1993
- National Defense Authorization Act and National Defense Authorization Act for FY 2008 and FY 2010

### **CONTACTS:**

Subject	Office	Telephone	E-mail
Policy questions	Human Resources	(502) 597-6667	<a href="mailto:Human.Resources@kysu.edu">Human.Resources@kysu.edu</a>

## HISTORY:

Revision Type	Date of Issuance/Revision	Drafter(s)/Editor(s)
Issued (New Policy) (HR Policy Manual)	March 2013	Unknown
Revised	August 9, 2024	Zach Atwell
Minor, Non-substantive Revisions	July 20, 2025	Zach Atwell

---