



Angelo State University
Operating Policy and Procedure

OP 52.16: Family Medical Leave Act (FMLA)

DATE: April 1, 2019

PURPOSE: The purpose of the Operation Policy/Procedure (OP) is to establish policy and procedures for leave under the Family Medical Leave Act (FMLA).

REVIEW: This OP will be reviewed in July of odd-numbered years by the director of human resources with recommended revisions forwarded through the vice president for finance and administration to the president by August 15 of the same year.

POLICY/PROCEDURE

1. Policy

The Family and Medical Leave Act (FMLA) entitles eligible employees of Angelo State University to take unpaid, job-protected leave for serious health conditions and/or specified family and medical reasons. FMLA protects an employee's job and benefits for up to 12 work weeks in the event that time off is taken because of certain medical or family-related reasons.

2. Eligibility

To be eligible for FMLA benefits, the employee must meet all of the following requirements

- a. Must have been employed by the state for at least 12 months **and**
- b. Must have worked at least 1,250 hours during the 12 months preceding the first date of requested leave.

While the 12 months of employment do not need to be consecutive, employment periods prior to a break in service of seven years or more will not be counted unless the break is occasioned by the employees' fulfillment of his/her uniformed rights (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement exists concerning the employers intention to rehire the employee after a break in service. With this exception, all state employment will count toward eligibility. The 1,250 hours refer to hours actually worked and do not include any paid time off.

Employees who are not eligible for FMLA leave may be eligible to use Parental Leave for the birth or adoption of a child. Refer to the ASU Operating Policies and Procedures [OP 52.59](#) [Miscellaneous Time Away from Work](#), for more information.

3. Rolling Calendar Year

The 12-month period noted in this policy is a "rolling" 12-month period measured backward from the first date an employee uses any FML. Each time an employee takes FML, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the 12 months preceding the leave begin date.

4. Family and Medical Leave Entitlements

Under FMLA, employees are eligible for a total of 12 weeks of unpaid leave during a 12 month period for one or more of the following reasons:

- a. The birth and subsequent care of a newborn child within one year of birth;
- b. The placement of a child into the home of an employee or with the employee for adoption or foster care;
- c. The need to care for the employees spouse, child, or parent with a serious health condition (a child includes a biological, adopted, or fostered child, step child, a legal ward, or child of a person standing in loco parentis. A parent is defined as a biological, adoptive, step, or foster parent, or individual who stood in loco parentis to an employee when the employee was a child).
- d. A serious health condition that renders the employee unable to work.
- e. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

If the leave is for the birth and care of a child, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of a child. For adoption of a child or foster care placement, the employee must submit the FMLA application and the Adoption or Foster Care Placement Certification at least 30 days in advance if the leave is foreseeable.

When an employee is taking leave to care for a family member or due to his or her own serious health condition, the employee may be required to support the leave request with a medical certification from the health care provider. If the university does not agree with the medical certification, a second opinion at the university's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at the expense of the university and that opinion will be the final determination.

If the FMLA leave is for the birth or adoption of a child, the employee has 30 days from the qualifying event to enroll newly eligible dependents in the university's medical plans.

5. Eligible Family Member

An employee may take FMLA time off to care for the serious health condition of a spouse, dependent child, or parent.

a. Spouse

A spouse, means husband or wife. This definition includes an individual in a same-sex or common law marriage. Unmarried domestic partners are not qualified.

b. Son or Daughter (Child)

For purposes of FMLA leave taken for birth or adoption or to take care of a family member with a serious health condition, a son or daughter refers to the biological, adopted, foster child, stepchild, legal ward of an employee, or the child of an employee standing in loco parentis, who is either under 18 years of age, or 18 years of age or older and is incapable of self-care because of a mental or physical disability at the time FMLA is to commence. Incapable of self-care is defined as requiring active assistance or supervision to provide daily self-care in three or more activities of daily living.

c. Parent

A “parent” is broadly defined as a biological, adoptive, step, foster parent, or an individual who stood in loco parentis to an employee of an employee when the employee was a child. An employee’s parents-in-law are not included in the definition of “parent” for purposes of FMLA.

d. Next of Kin of a Covered Service Member

“Next of kin of a covered service member” is the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter. This provision is only applicable for military family leave to care for a member of the Armed Forces for a serious injury or illness incurred in the line of duty. Proof of next of kin should be provided as required by law.

6. Married Employees Working for the University

For married employees who work for the university, the total combined amount of FMLA leave between the two employees cannot exceed 12 weeks. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness or injury, this limitation does not apply.

For married employees who work for Angelo State, the total combined amount of FMLA leave between the two employees cannot exceed 26 weeks for the care of a covered military family member.

7. Definition of “Serious Health Condition”

According to the FMLA, a “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

a. Physical or Mental Disability

A physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

b. Incapable of Self-care

Incapable of self-care is defined as requiring active assistance or supervision to provide daily self-care in three or more activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, paying bills, maintaining a residence, using telephones and directories, using a post office, and so forth.

c. Inpatient Care

Inpatient care refers to an overnight stay in a hospital, hospice, or residential medical-care facility including any period of incapacity or any subsequent treatment in connection with the inpatient care; or

d. Continuing Treatment by a health care provider, which includes any of the following scenarios:

(1) Any period of incapacity as a result of a health condition lasting more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also includes treatment two (2) or more times by or under supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity), or one treatment by a health care provider with a continuing regimen of treatment (e.g., prescription medication, physical therapy).

(2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence.

(3) Any period of incapacity or treatment for a chronic serious health condition that continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence.

(4) A period of incapacity or treatment for a chronic serious health condition that continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity.

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

e. Treatment of substance abuse may be included under FMLA where a stay at an inpatient treatment facility is required. However, absences due to an employee's use of a substance without undergoing treatment, does not qualify for FMLA time off. The inclusion of substance abuse under the serious health condition definition does not prevent the university from taking any employment action against an employee who is unable to perform the essential functions of the job provided the institution

complies with the Americans with Disabilities Act and does not take action against the employee because such employee exercises his or her rights under the FMLA.

The FMLA is not intended to cover short-term conditions for which treatment and recovery are brief. It should also be noted that the FMLA does not restrict or modify any federal or state antidiscrimination rules or Angelo State University's obligation to comply with the Americans with Disabilities Act.

8. Exclusions from the Definition of Serious Health Conditions

Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" unless complications develop and inpatient hospital care is required.

Ordinarily, unless complications arise, the common cold, flu, earaches, upper stomach, minor ulcers, headaches other than migraine, routine dental or orthodontic problems, periodontal disease, etc., do not meet the definition of serious health condition and do not qualify for FMLA leave.

9. Intermittent Leave

Intermittent Leave may be taken intermittently or on a reduced schedule due to a qualifying reason. If an employee needs leave intermittently or a reduced schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operations. In addition, employees are also expected to give reasonable notice before scheduled treatment.

Some examples of serious health conditions include:

- Medical appointments
- Chemotherapy
- Prenatal examinations
- Severe morning sickness
- Asthma attack
- Migraine headache

There is no minimum limitation on the number of hours of intermittent leave that may be taken, i.e., the leave may be taken in increments of two hours, four hours, etc., provided that proper notice has been given if the need for the leave is foreseeable. The accumulated time taken on intermittent basis may not exceed the 12 weeks.

When an employee has requested intermittent leave, the department may transfer the employee to another position with equivalent pay and benefits if the employee is qualified for the position and if it better accommodates the recurring periods of leave more so than the employee's current position.

Intermittent leave to take care of a newborn child who does not have a serious health condition is not a right under FMLA. However, departments do have the discretion to allow their employees to take FMLA on an intermittent basis to take care of a newborn child who does not have a serious health condition.

10. Military Family Leave Entitlements

a. Military Caregiver Leave

Eligible employees, who are a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, may take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member 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 incurred in the line of duty on active duty. Notice must be provided as is reasonable and practicable. A covered service member is either one of the following:

- (1) A current member of the armed forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
- (2) A veteran of the armed forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.

b. Qualifying Exigency Leave

Eligible employees may receive up to 12 weeks of FMLA leave in a single 12-month period while the employee's spouse, son, daughter, or parent is on active duty or called to active duty for one or more of the following qualifying exigencies:

- (1) Short notice deployment- Call to duty on seven days or less notice;
- (2) Military and related events- Official military events and ceremonies and other military-sponsored programs or briefings related to the covered military member;
- (3) Child care duties and school activities- To arrange or provide childcare on an urgent or immediately needed basis (not routine, regular, or everyday child care), and to arrange for school and attend school-related meetings for a covered military member's child;
- (4) Financial and legal arrangements- To make financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty or to act as the covered military member's representative before a government agency for purposes of obtaining, arranging, or appealing military service benefits while on active duty or for 90 days following termination from active duty;
- (5) Counseling- To attend counseling for the covered military member or his/her child;

- (6) Rest and recuperation- An employee may take up to five days leave to spend time with a covered military member on short term or temporary rest and recuperation leave;
- (7) Post-deployment activities- To attend ceremonies or events related to the covered military member's termination from active duty status or to address issues that arise from the death of a covered military member;
- (8) Additional activities- To address or attend other events that arise out of the covered military member's active duty or call to active duty, provided that Angelo State and the employee agree that the leave shall qualify as an exigency and agree to the timing and duration of the leave;

11. Workers' Compensation

FMLA-eligible employees will be placed on FMLA by the Office of Human Resources in conjunction with any Workers' Compensation Insurance (WCI) leave resulting from a work-related injury or disease. Please refer to [OP 52.58 Workers' Compensation Insurance](#) for more information regarding work-related injury or illness.

12. Outside Employment and Other Activities

An employee who is on FML, including FML for workers' compensation leave is prohibited from attending work related educational and training classes, or performing work with an outside employer when the functions of that position are outside of the restrictions stated by the healthcare provider.

13. Leave Administration under FMLA

In accordance with the law, the university will allow an employee to take up to 12 work weeks of time off in a 12-month period. The 12 month period begins from the date of the employee's first FMLA-related date of absence or the date that the Office of Human Resources approves the time off under FMLA, whichever is later. The medical certification provided by the employee must include the date on which the condition began, and probable duration.

During the FMLA period, employees are required to first use their available paid leave (sick and vacation), if any, and then will be placed on a non-paid status (leave without pay) for the remainder of the 12 week FMLA leave entitlement, if necessary. The exception is for Workers' Compensation cases where the employee has an option to use or not use accrued leave.

The FMLA regulations state that if an employer provides more benefits than required by the Act, the FMLA will not restrict those benefits. Therefore, benefits such as the Sick Leave Pool or workers' compensation may be used in conjunction with and count towards the 12 weeks of FMLA leave. Also, employees may continue to use the balance of their leave entitlements, even if such balance exceeds the 12 week period allowed by FMLA.

The university is not permitted to count paid leave that was not for an FMLA reason against an employee's FMLA leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, flu, or condition that is not an extended illness, those days may

not be counted towards the 12 week entitlement for a bona fide FMLA reason. If, however, the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, the university may require the employee to use their sick and vacation leave and limit the total amount of time away from work to a total of 12 weeks.

A holiday that occurs during a week off under FMLA is counted as part of FMLA leave. However, if the university closes for a few days (due to inclement weather or emergency closure, for example), then that period would not count toward an employee's FMLA leave.

If at the end of the FMLA period an employee has not returned to work and has exhausted all of his or her leave and FMLA entitlements, employment with the university may be terminated.

14. Procedures for Employees Requesting FMLA Time Off

- a. All FMLA leave requests must be presented by the employee to the Office of Human Resources. It is not required that the request specifically mention FMLA. The request can be either verbal or in writing. The request must be made with at least a 30 day advance notification before the time off commences. If the event is not foreseeable, the request should be made as soon as possible within one to two business days of when the employee learns of the need for time off. Upon notification of the employee's intent to use FMLA leave, the Office of Human Resources will provide the employee the form *Notice of Eligibility and Rights and Responsibilities (FMLA)*.
- b. A medical certification from the employee's treating physician can accompany the request, or, the Office of Human Resources may request a medical certification. If requested, the employee has 15 days from the date of the human resources' request to provide a medical certification. If a medical certification is necessary, employees may use the form, *FMLA Certification of Health Care Provider for Employee's Serious Health Condition or Certification of Health Care Provider for Family Member's Serious Health Condition*.

15. Procedures for Departments for Responding To and Placing Employees under FMLA

The Office of Human Resources is responsible for determining eligibility and for responding to the employee's request for time off under FMLA. Human resources is also responsible for continued communication with the employee and complying with the recordkeeping requirements of the law.

- a. The Office of Human Resources shall determine the eligibility of the employee to qualify for FMLA time off and the eligibility of the qualifying event for the FMLA leave request. If the employee and qualifying event are eligible under FMLA leave, the employee shall be granted the leave. If eligible, human resources will notify the employee of the approved FMLA time off within two (2) working days of the employee's request. Human resources' response will be made using the forms, *Designation Notice (FMLA)*. If granted, the FMLA time off will be effective from the date of the employee's initial FMLA-related absence or the date that human resources approves the time off under FMLA, whichever is later. The original form(s) will be given to the employee with a copy sent to the employee's supervisor and a copy kept in the Office of Human Resources.

All related forms and procedures are available in the Office of Human Resources or online at: http://www.angelo.edu/dept/human_resources/

In some situations, the Office of Human Resources will initiate commencement of FMLA. For example, if the employee is involved in a car accident and is incapacitated and cannot request FMLA, or if the employee suffers a work-related injury, then the department can notify human resources about the potential for an FMLA situation. Please refer to [OP 52.58 Workers' Compensation Insurance](#) for more information regarding work-related injury or illness.

Should a dispute arise between the employee and the employee's department, with regard to the requested FMLA leave or the terms and conditions of the leave, either the employee or the department may appeal such disputes to the director of human resources. The decision of the director of human resources shall be final in the resolution of such disputes.

16. Recordkeeping

Federal recordkeeping policies require that all FMLA leave be indicated as such on time and leave records and other documents. It shall be the responsibility of the Office of Human Resources to maintain leave records for any employee on FMLA leave. The leave time taken by the employee shall be recorded on institutional records as leave with pay under FMLA (using the employee's available leave entitlements) or leave without pay under FMLA. Paid leave under FMLA is taken from the employee's leave balances and must be recorded in the institutional records. Unpaid leave under FMLA will be entered in the institutional records as leave without pay.

All original requests for FMLA must be maintained by the Office of Human Resources. The following information must be kept regarding FMLA time off:

- a. Records of no less than three years which contain the basic payroll and identifying employee data, including name, address, occupation, rate of pay, terms of compensation, hours worked, additions and deductions to wages, and total compensation. This information is kept in the institutional human resource management system.
- b. The dates that family leave is taken by an employee. The leave must be designated in the records as leave taken under FMLA. This information is kept by the Office of Human Resources.
- c. Documentation of leave taken under FMLA in increments of less than one full day (intermittent leave), as well as hours of the leave. This information is kept by the Office of Human Resources
- d. Copies of employee notices of leave furnished to the department or human resources under FMLA, if in writing, and copies of all general and specific notices given to employees under FMLA and copies of the regulations. This information is kept by human resources.
- e. Any documents describing employee benefits or university policies. This information is kept by human resources. Also, written and electronic records regarding the taking of paid and unpaid leave. This information is kept by the department and human resources.

- f. Premium payments of employee benefits
- g. Records of any dispute between the employee and the department regarding any designation of leave as FMLA leave, including any written statements from the department or the employee and the reasons for the designation and disagreement. This information is kept by human resources.

It should be noted that records and documents relating to medical certifications, recertification, and medical histories of the employee or the employee's family members will be maintained in separate files and treated as medical records. The medical information may be disclosed to: supervisors and managers, if needed, regarding work restrictions; the first aid and safety personnel if the employee's physical and medical conditions require medical treatment; and governmental officials investigating compliance with FMLA.

17. Benefit Status and Health Insurance Coverage/Premium Payments during FMLA

Employees on paid leave under FMLA will continue their health insurance coverage on a shared cost basis between the university and the employee, if applicable. The employee's share of the cost, if any, will be deducted from the employee's paycheck.

When an employee is on unpaid leave under FMLA, the university will continue to contribute its share of premium sharing for medical insurance and the employee will pay his or her share of the cost, if any, through the Employee Retirement System (ERS). For example, if the employee has family medical coverage, the university will continue sharing the cost of the premiums with the employee at the "employee plus family" rate. The full-time or part-time employee, on unpaid leave, may choose to pay his or her out of pocket cost of the premiums for the current insurance coverage. Should a full-time employee choose not to continue the current coverage or fails to pay his or her cost, the level of coverage will be reduced to no less than employee-only coverage.

The employee has 30 days from the due date to pay his or her insurance premium. If a full-time employee does not make payment within 30 days, the university will reduce the employee's current coverage to no less than employee-only coverage effective the first date of the month for which the payment was due. Prior to expiration of the 30 day period, the university will notify the employee of the cancellation of insurance coverage.

If the university discontinues health coverage as a result of non-payment of insurance premiums and the employee returns from FMLA time off, the employee's benefits must be restored to at least the same level and terms as were in place when the FMLA period commenced. Therefore, the returning employee shall not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements, when the employee has failed to continue health coverage for non-payment of premiums.

In accordance with FMLA regulations, the university may be entitled to recover its share of the cost of non-health care benefits, such as life insurance, short-term disability, etc., from the employee who returns to work from FMLA time off.

Employees on FMLA leave are not entitled to accrue state service credit for any full calendar month(s) of FMLA leave without pay and shall not accrue vacation or sick leave for such months. Furthermore, any full calendar months of FMLA leave without pay shall not be

included in the calculation of the six continuous months of employment set forth under vacation leave.

18. Employee Responsibility

It is the employee's responsibility to provide all requested documentation to the Office of Human Resources in a timely manner as described above.

Once on FMLA leave, the employee must keep the Office of Human Resources informed of his/her status at least once every two weeks. If an employee does not contact his/her supervisor at least every two weeks to report their status, the employee may be contacted by a representative of Angelo State University for this purpose. A family member may call in for the employee only if the employee is medically unable to do so.

Employees granted FMLA leave are not permitted to perform work during regular working hours for another employer, attend training opportunities, or attend educational classes during regular working hours.

19. Returning to Work

When an employee returns to work after taking leave under FMLA, he or she is entitled to be restored to the same position held when the leave started or to an equivalent position with equivalent pay within the provisions and limitations of the law. An equivalent position is one that has the same pay, benefits, and working conditions and involves the same or substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility, and authority.

The university may require the returning employee to provide a work release notification from the employee's physician before being allowed to work.

20. Termination of Employment

Upon exhaustion of all leave and FMLA entitlements or if the employee fails to return to work upon expiration of the FMLA period, an employee may be terminated from employment with the university. All other university employment policies apply to employees regardless of FMLA status.

21. Employee Rights

Employees who exercise their rights under the FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by the institution. The university may not discriminate against an individual for having filed complaints, initiated any proceeding under or related to the FMLA, or given any information in connection with an inquiry or proceeding regarding the FMLA. Should a dispute arise between the employee and the department with regard to the requested FMLA leave or the terms and conditions of the leave, either the employee or the department may appeal such disputes to the director of human resources. The decision of the director of human resources shall be final in the resolution of such disputes.

If an employee's rights may have been violated, he or she should first consult human resources and/or file a grievance in accordance with the grievance policy. The FMLA

provides that an employee may file a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief if an employee's FMLA rights have been violated.

22. Notice Requirements

- a. Angelo State University is required to post a notice where it can be seen by employees and applicants that explains an employee's rights and responsibilities under the FMLA. The text must be fully legible and in languages in which significant portions of the workers are literate. Electronic posting is sufficient as long as it meets all requirements. A prototype notice is available on the Department of Labor website. The notice is available at all system member human resources offices.
- b. Angelo State must also provide this notice to each employee to ensure that the employee is aware of FMLA obligations. New employees will be provided a copy of the general notice upon hire. Distribution may be accomplished electronically.

23. Forms and Procedures

All related forms and procedures are available on the Office of Human Resources website at: http://www.angelo.edu/dept/human_resources/