

# FMLA Employee Guide

## The Family and Medical Leave Act

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This guide is for University of Colorado employees seeking guidance on the Family and Medical Leave Act (FMLA) and how to take leave under FMLA. The Employee Services (ES) Leave Team coordinates CU leave programs and will work with employees to understand the FMLA and coordinate with other applicable leave programs.

Introduction .....	2
Eligibility .....	2
Classified Staff Eligibility .....	2
Faculty and University Staff Eligibility .....	2
Qualifying Events .....	3
Medical Certification and Required Documentation .....	3
Consecutive and Intermittent Leave .....	3
Requesting Leave Under FMLA .....	4
Application Process for Leave Under FMLA .....	5
Benefits Considerations During Leave Under FMLA .....	5
Continuing Benefits .....	5
Discontinuing Benefits .....	5
Adding a Dependent .....	6
Returning to Work from Leave Under FMLA .....	6
FMLA and Other Leave .....	7
CU Family and Medical Leave Insurance (FAMLI) .....	7
On-the-Job Injury Leave (OJI) .....	7
Parental Leave (PPL) .....	7
Short-Term Disability (STD) .....	7
Vacation and Sick Leave .....	8
Out-of-State Employees .....	8
Resources .....	8
Contact Information .....	8
Glossary .....	9

## Introduction

The Family and Medical Leave Act (FMLA) was passed in 1993, and it requires covered employers to provide employees with unpaid job-protected leave for qualifying individual and family reasons. Leave under the FMLA was intended "to balance the demands of the workplace with the needs of families."

- Leave under the FMLA is unpaid, although employees can use paid leave, such as sick and vacation time, concurrently with FMLA coverage.
- There are many reasons that one may qualify for leave, including birth, adoption or foster care placement of a child, a serious illness, caring for a family member with a serious illness, or military leave.
- The FMLA is administered by the Wage and Hour Division of the United States Department of Labor. Additional information is available on the [Family and Medical Leave Act](https://www.dol.gov/agencies/whd/fmla) website (<https://www.dol.gov/agencies/whd/fmla>).
- Employees must meet certain criteria to be eligible for leave under the FMLA.

## Eligibility

In order to take leave under the FMLA, an employee must meet certain eligibility requirements. This eligibility falls into two categories: employment eligibility and qualifying events. The application process involves a medical certification and other required documentation that support options for an employee to take their leave on an intermittent, consecutive or reduced schedule basis.

### Classified Staff Eligibility

Classified staff eligibility is determined by the State Personnel Board Rules. View the [State Personnel Board Rules website](https://spb.colorado.gov/board-rules) (<https://spb.colorado.gov/board-rules>) for more information.

A classified employee may qualify for up to 12 weeks (480 hours) of leave under the FMLA per a rolling 12-month basis, so long as that employee has one year of total state service as of the date leave will begin. Additionally, classified employees are eligible for one additional week (40 hours) of State family medical leave subsequent to the use of leave under the FMLA. These leave amounts are prorated for part-time employees.

### Faculty and University Staff Eligibility

Faculty and university staff eligibility is determined by the Department of Labor. Visit the [Department of Labor website](https://www.dol.gov/agencies/whd/fmla) (<https://www.dol.gov/agencies/whd/fmla>) to learn more.

University staff, 9- and 12-month faculty, and research faculty may qualify for up to 12 weeks (480 hours) of leave under the FMLA per 12-month period, so long as they have been employed by the university for at least 12 months within the past seven years and have worked at least 1,250 hours during the most recent 12-month period prior to the start of leave. Part-time, FLSA-exempt employees with an FTE of 50% or greater are presumed to have met the 1,250 hours requirement, provided they have at least one year of university service.

This presumption will be lost if the employee has taken leave under the FMLA and/or any extended period of leave in the 12 months prior to requesting leave under the FMLA. The 12 weeks of family medical leave (FML) are prorated for eligible part-time staff.

## Qualifying Events

- the birth and care of a newborn child
- the placement and care of a child for adoption/foster care
- a serious health condition of an employee or their spouse, child, or parent
- care for a covered servicemember with a serious injury or illness (26 weeks)
- a qualifying exigency when a parent, child, spouse, civil union partner, or domestic partner is called up for active military duty

## Medical Certification and Required Documentation

The university may require the employee to obtain a medical certification to certify the need for leave for a serious health condition of the employee or the employee's family member. The university will allow the employee at least 15 calendar days to obtain the medical certification.

Additionally, when an employee returns to work from a period of consecutive leave related to their own serious health condition, the university may require the employee to submit a fitness-to-return certification before returning to work.

For leave that is not related to a medical condition, the university may require other types of documentation to certify the need for leave (i.e., adoption/foster care paperwork, military orders, etc.).

## Consecutive and Intermittent Leave

Based on the information provided on the medical certification or related documentation, FML can be taken on a consecutive, intermittent or reduced schedule basis.

**Consecutive leave** is a continuous period of time in which an employee will be out of work due to their FMLA-qualifying reason.

**Example:** Susan had surgery and is taking 6 weeks of leave under the FMLA for her recovery, per her approved medical certification.

**Intermittent leave** is taken in separate blocks of time for a single illness or injury. Intermittent leave may be unpredictable in nature.

**Example:** John has medical treatment 2 times per week for 2 hours each appointment. John will need 4 hours of intermittent leave under the FMLA per week per his approved medical certification.

**A reduced schedule** reduces an employee's usual number of working hours per workweek or hours per workday. It is a set change in the employee's schedule for a specific period of time. Employees must show the medical necessity for intermittent leave or a reduced schedule.

**Example:** Randy needs to care for his wife during her scheduled chemotherapy treatments every Tuesday. Randy needs 8 hours of FMLA each week, reducing his schedule to 32 hours per week.

## Requesting Leave Under FMLA

Employees may request leave that falls into two categories: foreseeable and unforeseeable leave.

- **Foreseeable Leave:** If the leave is foreseeable, a request must be submitted to the Employee Services (ES) Leave Team at least 30 days before the leave is to begin.
- **Unforeseeable Leave:** If the need for leave is urgent and not foreseeable, the request must be submitted as soon as practical and generally must comply with the department's normal call-in procedures.

### Notice of Eligibility and Notice of Rights and Responsibilities

Within five business days of an employee's request for leave (or notice that an employee's leave may be for an FMLA-qualifying reason), the university will notify the employee of whether they are eligible to take FMLA, and if not, at least one reason why the employee is ineligible.

Additionally, the university will notify the employee of the specific expectations and obligations associated with the leave and the consequences of failure to meet these obligations.

### Medical Certification

Once an employee is provided with information regarding their FMLA eligibility, they will be given at least 15 calendar days to obtain a medical certification or related documentation as outlined by the ES Leave Team.

If a medical certification form or other related documentation is incomplete or insufficient, the ES Leave Team will return it to the employee, requesting additional information from the medical provider or employee as needed.

A medical certification is considered insufficient if it contains vague, ambiguous or non-responsive information. The medical provider must include the anticipated timing and duration of the leave.

### Designation Decision

Once the ES Leave Team has sufficient documentation to determine whether an employee's leave qualifies under the FMLA, they have five business days (absent extenuating circumstances) to provide the employee with a decision regarding their leave request. The designation decision will be based only on information received from the medical provider or relevant documents. If the leave is not eligible under the FMLA, the ES Leave Team will contact the employee to determine alternative options and next steps.

### Uncertainty in Documentation

If the university has reason to doubt the validity of the initial medical certification, a second opinion, at CU's expense, from an independent medical provider selected by CU, may be required. If the two

opinions conflict, the conflict may be resolved by a third opinion, at the university's expense, by an agreed-upon provider which shall be considered final. The employee must authorize the release of relevant medical information to the second or third opinion health care provider, pertaining to the condition for which leave is being sought, if requested by that health care provider. Failure to authorize the release of this information is grounds for denying leave under the FMLA.

## Application Process for Leave Under FMLA

To apply for FML, employees must complete an application form and provide all required documentation. Once the application is received, Employee Services will process the application, notify the employee of approval status and guide them through their entire leave.

- **Login** to [employee portal](https://my.cu.edu/) (<https://my.cu.edu/>).
- **Select Forms** from the *CU Resources Home* dropdown menu.
- **Select** the *Collaborative HR Services* tile.
- **Select** the *CU leave benefits* tile.
- **Select** the *Apply for leave benefits* tile.
- **Complete** the secure unity form.
- Employees will receive a confirmation email once their application has been successfully submitted.
- The Employee Services (ES) Leave Team will reach out to the employee to discuss eligibility and next steps.

## Benefits Considerations During Leave Under FMLA

When employees take leave, their benefits may be affected. This section will cover continuing benefits and adding a dependent to your benefit plan when on leave without pay. This information should help employees understand when action is needed or not.

### Continuing Benefits

When an employee has exhausted all paid leave and is on leave without pay, they may elect to continue or discontinue benefits. If the employee elects to continue health plan benefits while on leave without pay, no action is needed. The university will maintain health plan coverage, and the university will continue to pay its share of the premiums as long as the employee maintains their share. The employee will receive a bill for their premiums during this time. If Employee Services does not receive payment from the employee to pay their share of the premiums, Employee Services will deduct the balances from the first paycheck the employee receives after an unpaid leave under the FMLA ends.

### Discontinuing Benefits

An employee may choose not to retain the university's health insurance program during leave without pay. If faculty, university staff or classified staff wish to suspend their benefit coverage, they will need to complete a [Leave Without Pay \(LWOP\) Form](#) - Benefits Authorization for their correct employment classification. The completed form should be submitted to Employee Services Benefits Administration

for processing. If they are suspending their coverage, Employee Services must receive the completed form within 31 days after the leave has begun. If coverage is to be suspended that month, it must be received before the 10th of the month. The department must have the approved form in the system before any coverage will be suspended. Benefits Administration does not back-date any suspended coverage.

## Adding a Dependent

When an employee takes leave for the birth or adoption of a child, they may want to add this child to their benefit plan. In this case, the employee has 31 days from the date of birth or adoption to submit the following documents to Employee Services Benefits Administration (Benefits): Benefit Enrollment Change Form, the child's full name, and the child's date of birth. The employee also has to state which benefits the dependent should receive, such as medical, dental and vision. Finally, supplemental documents (i.e. birth certificate or proof of adoption) should be submitted as soon as possible. Because of possible delays involved with obtaining these documents, they do not have to be submitted within the 31-day window but should be submitted to Benefits as soon as possible. Once the dependent is added to the employee's benefit plan, the benefits will be retroactive to the date of birth or adoption.

## Returning to Work from Leave Under FMLA

**Same or Equivalent Position:** Upon return from leave under the FMLA, the employee will be returned to the same position they held when the leave began or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

**Fitness-to-Return Certification:** A Fitness-to-Return certification (FTR) shall be required of any employee who is on consecutive leave under the FMLA due to their own serious health condition. This FTR may be required of employees taking intermittent leave under the FMLA up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties. Return to work may be delayed until the required FTR is provided. Any additional medical inquiry will be governed in accordance with the ADA.

## FMLA and Other Leave

FMLA may either run concurrently or in conjunction with other leave programs.

### CU Family and Medical Leave Insurance (FAMLI)

CU FAMLI provides up to 12 weeks per 12-month period of partial wage replacement and job protection benefits for eligible employees who work in the State of Colorado. FML will run concurrently with FAMLI when the need for leave meets the FMLA requirements. Visit the [CU FAMLI website](#) to learn more.

### On-the-Job Injury Leave (OJI)

University staff and faculty on 12-month appointments who suffer an injury or illness in the line of duty covered by workers' compensation are granted up to ninety (90) workdays of paid injury leave. These benefits replace the more limited coverage of workers' compensation insurance which is waived by the employee during the ninety (90) days of injury leave.

If an employee is unable to return to work after that time, the employee is eligible to take accrued vacation and sick leave in addition to workers' compensation. Workers' compensation and OJI leave run concurrently with FML when the need for leave meets the FMLA requirements.

### Parental Leave (PPL)

Parental Leave is offered as a benefit for eligible CU employees. Specific information regarding the Parental Leave Policy can be found at the [Office of Policy and Efficiency website](#) (<https://www.cu.edu/ope/aps/5062>).

CU's Parental Leave Policy runs concurrently with FMLA and does not add to the amount of leave an employee receives. Parental leave policies and procedures may vary by campus. For more information about Parental Leave on your campus, please visit campus policy websites:

- [CU Boulder](https://www.colorado.edu/policies/paid-parental-leave) (<https://www.colorado.edu/policies/paid-parental-leave>)
- [CU Colorado Springs](https://hr.uccs.edu/current-employees/leave/parental-leave) (<https://hr.uccs.edu/current-employees/leave/parental-leave>)
- [CU Denver | Anschutz Medical Campus](https://www.ucdenver.edu/docs/librariesprovider284/default-document-library/4001.pdf?sfvrsn=5eb086b9_0) ([https://www.ucdenver.edu/docs/librariesprovider284/default-document-library/4001.pdf?sfvrsn=5eb086b9\\_0](https://www.ucdenver.edu/docs/librariesprovider284/default-document-library/4001.pdf?sfvrsn=5eb086b9_0))
- [CU System](https://www.cu.edu/node/285451) (<https://www.cu.edu/node/285451>)

### Short-Term Disability (STD)

The short-term disability plan offers compensation for employees on short-term disability leave. If enrolled in short-term disability, it will run concurrently with FAMLI and FMLA. Visit the [CU Short-Term Disability website](#) to learn more.

## Vacation and Sick Leave

Vacation and Sick Leave are accrued throughout employment for eligible employees. These leave types can be used in conjunction with CU FAMLI, FMLA and parental leave as the employee desires. Visit the [CU Vacation and Sick Time Leave website](#) to learn more.

## Out-of-State Employees

Out-of-state employees may be eligible for FML when the need for leave meets FMLA requirements. Employees should note that they are likely not eligible for CU FAMLI, but that their state may have applicable paid leave laws for which they are eligible. All requests for other state-paid leave should be made directly to the state.

## Resources

[APS #5062 Leave](https://www.cu.edu/ope/aps/5062) (<https://www.cu.edu/ope/aps/5062>)

[Boulder Campus Contact and Information](https://www.colorado.edu/hr/leave) (<https://www.colorado.edu/hr/leave>)

[Colorado Springs Campus Contact and Information](https://hr.uccs.edu/current-employees/leave/family-medical-leave) (<https://hr.uccs.edu/current-employees/leave/family-medical-leave>)

[CU Short-Term Disability Plan website](https://www.cu.edu/node/153136) (<https://www.cu.edu/node/153136>)

[CU Vacation and Sick Time Leave website](https://www.cu.edu/node/285450) (<https://www.cu.edu/node/285450>)

[Denver and Anschutz Campuses Contact and Information](http://www.ucdenver.edu/about/departments/HR/Documents/WhoContactForAssistance.pdf)

(<http://www.ucdenver.edu/about/departments/HR/Documents/WhoContactForAssistance.pdf>)

[Employee Services CU FAMLI website](https://www.cu.edu/node/324038) (<https://www.cu.edu/node/324038>)

[Family and Medical Leave Act](https://www.dol.gov/agencies/whd/fmla) website (<https://www.dol.gov/agencies/whd/fmla>)

[Employee Services CU FAMLI](https://www.cu.edu/node/324038) website (<https://www.cu.edu/node/324038>)

## Contact Information

Website:

ES Leave Team email: [leave@cu.edu](mailto:leave@cu.edu)



## Glossary

**Child:** A biological, adopted or foster child, a stepchild or a legal ward who is either under the age of 18 or 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (ADA). Example: A male, aged 22, is unable to care for himself and is under the care of his mother.

**Civil Union Partner:** The employee's partner in a civil union, as defined in section 14-15-103(5) C.R.S. You can read more about Colorado civil union requirements at this website [link to: <http://www.one-colorado.org/your-rights/civil-unions/> ].

**Covered Active Duty:** "Covered active duty" for members of a **regular** component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. "Covered active duty" for members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code.

**Covered Servicemember:** (1) A current 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; or (2) a veteran who was discharged or released under conditions other than dishonorable and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**Domestic Partner:** Domestic partners are two people who have signed an affidavit swearing that they are (1) in a relationship of mutual support, care, and commitment and intend to remain in such a relationship; (2) each other's sole domestic partner; (3) both at least 18 years of age and competent to contract; (4) share a life and home together; (5) not related by kinship closer than would bar marriage in the State of Colorado; (6) not married.

**Equivalent Position:** A position that is the same or equivalent to the employee's former position in terms of pay, benefits, and working conditions, including privileges, prerequisites and status.

**Medical Provider:** For a list of approved medical providers as defined by the FMLA, please visit the [Department of Labor](#) website.

**Parent:** A biological parent or an individual who stands or stood in loco parentis to an employee when they were a child. A parent does not include a parent-in-law. In loco parentis refers to a person who takes on the responsibility of a parent but is not a child's biological parent.

**Qualifying Exigency Leave:** For a full list of qualifying exigency leave categories, please visit the Department of Labor website. (<https://www.dol.gov/agencies/whd/fact-sheets/28mc-fmla-exigency-leave>)

**Spouse:** A partner or significant other is 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. Colorado law recognizes common law marriages. Note that in Colorado, there is no requirement for how long a couple has lived together in order for their marriage to be considered a common law marriage. You can read more about Colorado common law marriage requirements at this website [link to: <https://www.colorado-family-law.com/common-law-marriage/colorado-common-law-marriage-requirements.htm>].