FMLA
An Overview for Supervisors
The Family Medical Leave Act of 1993, known as FMLA, is a federal law allowing eligible employees of a covered employer to take job-protected leave for up to a total of **12 work weeks in any 12 months** for:

- Birth of a child.
- Adoption and foster care.
- Care of a spouse, child or parent with a serious health condition.
- Your own serious health condition.
- Care of a spouse, child, parent or next of kin with a serious injury or illness incurred or exacerbated within 5 years of active duty in the Armed Forces **(up to 26 weeks)**.
- Qualifying exigency arising out of the fact that a spouse, child or parent is on active duty in the Armed Forces or is deployed to a foreign country.
FMLA As a Benefit

- FMLA statutes and regulations make it clear that FMLA is not intended to be an additional 12 week leave entitlement stacked on top of an employer’s existing leave policies.

- If an employer knows the reason for the leave as FMLA qualifying, but does not designate it as FMLA, the employee is still afforded FMLA protections under the law (www.dol.gov/elaws/esa/fmla/faq.asp).

- *Neither the employee nor the employer can “waive” or “trade off” their rights under FMLA.*
Eligibility Requirements

- Employed for 12 months *(does not have to be consecutive time).*

- 1,250 actual hours worked preceding the date of the requested leave.

- Available FMLA hours.

- Qualifying condition certified by a health care provider or meeting military family leave entitlement.
A medical condition that renders an employee unable to perform the essential functions of his or her job:

- Incapacity of more than three days with treatment.
- Hospital care.
- Pregnancy.
- Chronic conditions requiring treatment.
- Permanent or long term conditions.
- Multiple treatments.
### FMLA - Types

#### Continuous Leave
- Leave taken in a continuous block of time.
- Date range is specified with a begin and end date for leave.
  - Maximum date range is 12 weeks.
- CareWorks USA release-to-work form must be provided by employee prior to return from their own serious illness.

#### Intermittent Leave
- Leave taken at variable times within a specified date range, within specified frequency and duration.
- Date range is specified with a begin and end date of leave.
  - Maximum date range is generally 6 months.
  - Not automatically renewed.
- Employee must call supervisor and CareWorks for each absence related to intermittent leave.
Scenario – Continuous FMLA

Example: Employee’s own serious health condition due to an auto accident that results in hospitalization, surgery, rehab and employee being fully absent for 12 weeks.

- Employee notifies supervisor & calls CareWorks USA (CW); CW does intake
- Supervisor receives an email from CW stating request & eligibility
- Supervisor reviews employee’s available sick & vacation time
- CW mails packet to employee
- Employee returns completed forms to CW within 15 days
- CW reviews medical certification; approves for 12 weeks (480 hours) consecutively; notifies the employee and the supervisor
- Employee contacts supervisor every 30 days & CW is maintaining contact
- Employee receives CW Return to Work form and health care provider completes
- Employee returns form to CW who sends to supervisor
- Employee returns to work full-time without any restrictions
Scenario – Intermittent FMLA

Example: Employee needs an Intermittent FMLA for their child’s chronic condition that has flare-ups sporadically, requires regular check-ups and periodic visits to the emergency room and hospitalization.

- Employee notifies supervisor & calls CW; CW does intake
- Supervisor receives an email from CW stating request & eligibility
- Supervisor reviews employee’s available sick (5 days) & vacation time
- CW mails packet to employee
- Employee returns completed forms to CW within 15 days
- CW reviews medical certification; approves for a specific frequency & duration up to 12 weeks (480 hours) in next 12 months; notifies the employee and the supervisor
- Employee plans time-off for regular check-ups with supervisor
- Employee contacts supervisor & CW for each and every absence related to FMLA
- Supervisor tracks time and completes necessary forms throughout the year
Supervisor’s Responsibilities

- Refer employee to CareWorks USA if:
  - Absence of more than 3 days for medical reason or family care.
  - Continued absences for the same reason and/or condition.
  - Continued absences for a qualifying family member.
  - Multiple health care provider visits or visits plus treatments.
  - Anything you suspect may be FMLA.

- Know University’s policies and procedures.

- Read CareWorks USA emails and act on them when necessary.

- Work with CareWorks USA and internal resources on returning the employee to work.
Supervisor’s Responsibilities

OK to Ask...

- How long do you expect to be absent?
- Will you or your family member be in the hospital?
- Will your absence require intermittent or periodic time away from work?

Do Not Ask...

- Are you disabled?
- Are you pregnant?
- What condition do you have?
- What have you been diagnosed with?
- What are you seeing the doctor for?
Supervisor’s Responsibilities

Reporting of hours:

• Report staff sick, personal and vacation time used to Payroll Services weekly.
  - Exempt - maintain sick time usage within department; complete Exempt Vacation Report form
  - Non-exempt salaried - weekly Report of Attendance and Overtime form
  - Non-exempt hourly - Ultra-time

• Place staff on unpaid leave once sick and vacation time is exhausted by completing a Leave of Absence form.

• Return staff to work from an unpaid leave by completing a Staff Personnel Action Form.

• Getting any overpayment back from the employee is the supervisor’s responsibility.

Note: The Supervisor’s FMLA Checklist provides specifics on reporting responsibilities.
Resources

- InsideND – HR pages
  - policies
  - checklists for employees & supervisors
  - forms
  - FAQ’s

- HR Consultants & Benefits Associates

- askHR Customer Service Center: 631-5900 or askHR@nd.edu

- CareWorks USA 1-888-436-9530 (for FMLA)