

# **FAMILY AND MEDICAL LEAVE POLICY**

## **Preamble**

Wittenberg University (“Wittenberg” or the “University”), related to the Evangelical Lutheran Church in America, seeks to manifest its Christian commitment and Lutheran heritage, encourages an environment of respect for all people, and recognizes the obligation to care for the well-being of members of the family.

The Family and Medical Leave Act of 1993 (FMLA) is a federal law intended to provide employees with extended unpaid leave opportunities for childbirth, child care and serious illnesses.

In many cases, Wittenberg’s policies are more generous than those outlined by the FMLA. It is the university’s intent to support fully faculty and staff in balancing the demands of family and work while maintaining minimal disruptions in the classroom and university operations during a family leave.

Much of the language and detail outlined in this policy is required by law. The appendix includes a definition section that will help you understand the terms contained in this policy. You should contact Human Resources if you have any questions about the definitions or any other aspect of this policy or its application to you.

## **I. General Provisions**

### **A. Covered Leave**

To be eligible for leave under this policy, an employee must have been employed by the University for at least twelve months and must have worked at least 1250 hours during the twelve-month period preceding the beginning of the leave. In calculating the date that a "leave year" begins, the University uses a rolling twelve-month period measured back from the date a requested/designated leave is to begin. An employee who has worked less than 12 months during a current stint of employment may still be eligible if, during the prior seven years, the employee worked a total of 12 months. Eligible employees are allowed up to twelve weeks of unpaid leave in a twelve-month "leave year" period for the qualifying circumstances outlined below.

Please note that FMLA leave will be designated and run concurrently with paid short-term-disability leave, parental leave, and absences for work-related injuries or occupational disease (workers’ compensation absences), when the circumstances of those absences constitute qualifying FMLA absences.

**Qualifying Leave Circumstances:** (The definition of the terms used to describe the circumstances that qualify for an FMLA leave can be found in the Appendix and should be given special attention.)

1. The birth or adoption of a child or the foster care placement of a child;
2. The care of a seriously ill spouse, domestic partner, child or parent (as defined herein); or
3. A serious health condition of the employee that renders the employee unable to perform job functions.
4. Any qualifying exigency arising out of the fact that the spouse, or a son, daughter, parent or next of kin of the employee is on (or has been notified of an impending call to) “covered active duty” in the Armed Forces.
5. Employees on an approved FMLA leave will be required to take any accrued, earned vacation, personal leave, or other paid leave concurrent with any FMLA leave. To the extent an employee on an approved FMLA leave is eligible for sick leave or disability leave under the University's existing policies, employees will first be required to take any sick/disability leave concurrently with FMLA leave. Employees on an approved FMLA leave due to a serious health condition of a family member will be required to take up to one month of accrued sick leave concurrently with FMLA leave. If the employee exhausts his or her paid leave options or if the employee is not eligible for paid leave, the FMLA leave will be unpaid. In other words, the leave may be unpaid, paid, or a combination of unpaid and paid depending on the circumstances as specified in this policy.

In all cases except the military caregiver leave provision, the leave may not exceed a total of 12 weeks over a rolling 12-month period measured backward from the current date that leave is requested and must be properly documented. The military caregiver leave provision may not exceed 26 weeks over a rolling 12-month period begins on the first day an eligible employee takes military caregiver leave and ending 12 months after that date.

## **B. Types of FMLA Leave**

### 1. Medically Necessary

If the leave is medically necessary for an employee's illness or that of a family member, it may be taken:

- \* in 12 consecutive weeks;
- \* intermittently, such as taking a day periodically, when needed, during the 12-month period; or
- \* under certain circumstances, by reducing the work week or work day, resulting in a reduced hour schedule.

However, to minimize disruption of the classroom, generally faculty may not take intermittent or reduced schedule leave for planned medical treatment that would take them out of the classroom more than 20 percent of the time. There are also different rules for faculty who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term, which can require faculty to continue their leave until the end of the term. The faculty member must plan leave in consultation with the provost. The provost will make the final determination and has the option to require faculty either to take continuous leave for the entire treatment period or to transfer temporarily to another position with equivalent pay and benefits.

## 2. Birth, Adoption, Foster Care

FMLA leave for the birth, adoption or foster care placement of a child is permitted to be taken in a 12-consecutive-week period. Entitlement to this leave expires 12 months after the birth or placement. If a husband and wife both work for the university and are eligible for leave, they are together entitled to a total of 12 work weeks of FMLA leave during a 12-month period if the leave is taken for birth, placement for adoption or foster care.

For faculty members, leave without pay is available for one semester or for an academic year, immediately following the birth or adoption, and runs concurrently with the FMLA benefit. Faculty teaching responsibilities and the relation of leaves to tenure eligibility justify supplemental provision to the FMLA policy for childbirth and adoption leaves for faculty members – refer to the maternity leave policy for faculty.

Requests for intermittent or reduced schedule (part-time) FMLA leave after the birth, adoption or foster care placement of a child will be considered on a case-by-case basis. The request should be made, in writing, to the Human Resources department and the department supervisor. Part-time arrangements or intermittent leave will be granted whenever possible as follows:

- \* for a maximum of 12 months after birth, adoption or foster care placement;
- \* subject to the approval of the employee's supervisor and the supervisor's ability to ensure that work is completed through scheduling changes or job-sharing; and
- \* subject to the employee's prior agreement to alter his/her schedule or work longer hours on an as needed basis during the 12-month period, such as when co-workers are out sick.

Wittenberg reserves the right to refuse leave or to cancel an intermittent leave or reduced schedule for birth, adoption or foster care with 30 days notice, if the university concludes that the employee's presence is required on a full-time basis to meet the essential functions of the position. A father, as well as a mother, can take family leave for the birth, adoption or foster care of a child.

Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care if her condition makes her unable to work. FMLA leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement to proceed. The source

of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

### 3. Provisions Relating to Intermittent Leave

To reduce disruption, in all cases of intermittent and reduced-schedule leaves, including part-time work after the birth or adoption, Wittenberg reserves the right to require the employee to transfer to another position with equivalent pay and benefits even if it does not have equivalent responsibilities. This decision is at the sole discretion of Wittenberg University.

Wittenberg reserves the right to transfer an employee to another position whenever an employee's use of leave for one or more qualifying reasons is so frequent and intermittent that it is impossible to predict and schedule coverage.

## **II. Procedures for Requesting FMLA Leave**

### **A. Requests for FMLA Leave**

Employees requesting leave under this policy must complete and submit the FMLA request form available in the Human Resources department. If the leave is not foreseeable, employees must call to advise their supervisor(s) or the associate vice president for human resources, as soon as they can after the need for FMLA leave arises, and must complete and submit the FMLA request form as soon as possible after such notice is given. Supervisors must promptly report to the associate vice president for human resources or designee receipt of notice of an employee's FMLA leave.

When an employee plans to take leave under this policy, the employee must give the university 30-days notice. If it is not possible to give 30-days notice, the employee must give as much notice as is practicable. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the university's operations. Employees may be required by their supervisors to adjust their work hours to conform to the needs of the university and/or to reschedule appointments or treatments when necessary, if possible.

If an employee fails to provide 30-days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the university receives notice.

When an employee's need for leave for a qualifying exigency or servicemember family leave is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as is reasonable and practicable.

While on FMLA medical leave, employees are requested to report periodically to the associate vice president for human resources or designee regarding the status of the medical condition, and their intent to return to work.

## **B. Verification**

### **1. Medical Certification**

Proof of necessity for FMLA leave by a health-care provider or other appropriate professional is generally required. Employees must respond to such a request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. The associate vice president for human resources or designee may directly contact an employee's health care provider to authenticate or to obtain a clarification of information required by a certification form. Supervisors are prohibited from making these inquiries,

### **2. Second Opinions**

Wittenberg may require the employee to get a second opinion from an independent medical provider selected by the university. The university will pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by Wittenberg and the employee, which shall be considered final and binding. The university will pay for the third opinion.

## **C. Confidentiality**

FMLA leave information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to the Human Resources department and should not retain any copies in their files. Supervisors are not permitted to directly contact an employee's health care provider.

## **III. Benefits**

### **A. Health Benefits**

While an employee is on FMLA leave, Wittenberg will continue the employee's health benefits at the same level and under the same conditions as if the employee had continued to work. The employee is required to continue to pay the employee's portion of any health insurance premiums normally deducted from the employee's paycheck and shall pay such amounts at the time contributions are normally deducted by tendering a check payable to Wittenberg University to the Human Resources department. Prepayment of premiums through increased payroll deductions or other methods is allowed.

### **B. Other Benefits**

In accordance with existing employee policies on unpaid leave, employees will not earn vacation pay, sick leave, or personal leave while on unpaid FMLA leave. Employees on an intermittent or reduced schedule leave will earn vacation or other leave at the same rate as part-time employees working similar schedules.

Other benefits normally provided to an employee will continue if permitted under the terms of the particular plan, and all of the plan's requirements have been met.

### **C. Salaried Employees**

Salaried employees will have their pay docked only if they take leave in increments of one or more days, and if the total number of hours worked by the employee for that week is less than full time, as is certified by the employee's supervisor in writing to the director of human resources.

## **IV. Return to Work**

### **A. General**

An employee taking leave under this policy will be returned to the employee's same position or equivalent position with equivalent status, pay, benefits and other employment terms unless the employee would have been terminated whether or not leave had not been taken (e.g., layoff, downsizing or termination of a temporary job). Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

The University may require written certification from a physician that the employee is able to return to work, and setting forth any work restrictions.

### **B. Key Employee Exception**

Wittenberg reserves the right not to reinstate key employees if it is necessary to prevent substantial and grievous economic injury to university operations. Key employees are those whose gross income is within the top 10 percent of university employees during the calendar year in which leave is taken. The Human Resources department is required to inform the employee of key employee status at the time that leave is requested and also to explain that restoration may be denied. If the university determines during the employee's leave that the employee is not to be restored to employment, the employee will be notified immediately and given the opportunity to return from leave and be restored to his or her position. A key employee who elects not to return to work will continue to receive 12 weeks of employer-provided health benefits. If the employee does not return from leave, the employee can petition for reinstatement at the end of the leave period and will be notified, by certified mail, if the employee will not be restored because doing so would cause the university substantial and grievous harm. If not restored to employment, the employee shall be responsible for paying the university the normal employee contribution for benefits provided while on FMLA leave.

## **V. Failure to Return to Work**

If the employee does not return to work at the end of FMLA leave, the employee shall owe the university the cost of any benefits provided by the university during leave unless the reason the employee does not return is because of a continuation, recurrence or onset of a serious health condition, which would entitle the employee to leave under the FMLA, or because of other circumstances beyond the employee's control.

Examples of circumstances beyond the employee's control include the following situations:

1. the unexpected transfer of an employee's spouse to a job location more than 75 miles from Springfield;
2. the employee's obligation to care for a relative or other individual other than an immediate family member;
3. the layoff of an employee while on leave; or
4. the decision of a key employee not to return to work after notification that the university will not restore the position because of substantial and grievous economic injury to the university.

Examples of circumstances that are within the employee's control include a parent's decision not to return to work in order to stay home with a newborn child or a situation in which an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care.

When an employee fails to return to work because of the continuation, recurrence or onset of a serious health condition, the employee must submit medical certification of the employee's or the family member's serious health condition within 30 days of the date the employee was to return to work. If the employee does not provide such certification within 30 days of the date he or she was to return to work, the employee shall owe the cost of any benefits provided by the university during FMLA leave.

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment. The employee shall be entitled to continuation of health and other benefits only in accordance with the provisions of the benefit plans.

If any employee does not return to work under circumstances where repayment is required, the employee must repay all premiums within 60 days after receiving notice of the amount owed. After that time, the amount owed will be collected as a debt, which may result in legal action.

## APPENDIX

### Definitions

#### A. Spouse, Parent, Son or Daughter

1. Spouse means a husband or wife as defined or recognized under state law for purposes of marriage.
2. Domestic Partners are defined as two individuals of the same sex who, together, each meet all of the criteria listed in the university's domestic partner policy.
3. Parent means a biological parent or an individual who stands or stood *in loco parentis*, i.e., assumed day-to-day and financial responsibility for the employee when the employee was a child. This term does not include parent "in-law."
4. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability." For purposes of "Military Caregiver Leave" son or daughter is defined the same as for other types of FMLA leave, except a son or daughter can be of any age.

#### B. Serious Health Condition

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves:

1. any period of incapacity or treatment in connection with, or consequent to, in-patient care (i.e., an overnight stay) in a hospital, hospice or residential medical-care facility;
2. any period of incapacity requiring absence from work for more than three (3) consecutive calendar days and requiring treatment two (2) or more times by a health-care provider;
3. any period of incapacity requiring absence from work for more than three (3) consecutive calendar days and will require treatment one (1) time by a health-care provider plus a regimen of continuing treatment;
4. pregnancy or pre-natal care;
5. any period of incapacity or treatment for a chronic condition extending over a significant period of time, which involves periodic visits to a health-care provider and may be episodic in nature;
6. any period of incapacity due to a permanent or long-term condition for which treatment might not be effective;
7. any condition requiring multiple treatments without which the employee would be unable to work for more than three (3) days or reconstructive surgery;



The term “serious health condition” is not intended to cover short-term conditions for which treatment and recovery are very brief. Short-term conditions are provided for in the university’s sick leave policy.

### **C. Health-Care Provider**

Health-care providers who qualify to provide certification of a serious health condition for an employee or a family member include:

- \* doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or,
- \* podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice under state law; or,
- \* nurse practitioners and nurse-midwives authorized to practice under state law and performing within the scope of their practice as defined under state law; or,
- \* Christian Science practitioners listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

### **D. Qualifying Exigency**

A qualifying exigency includes: (1) short-notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, and (8) additional activities to address other events which arise out of the covered military member’s active duty or call to active duty status, provided the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

### **E. Active Duty**

The term "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.

### **F. Contingency Operation**

The term “contingency operation” has the same meaning given such term in section 101(a)(13) of title 10, United States Code.

## **G. Covered Servicemember**

The term “covered servicemember” is 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 incurred in the line of active duty. The term “covered servicemember” also includes veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness within five years of leaving active military service in the Armed Forces (including the National Guard or Reserves).

## **H. Outpatient Status**

The term “outpatient status,” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to:

- (A) a military medical treatment facility as an outpatient; or
- (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

## **I. Next of Kin**

The term “next of kin,” used with respect to an individual, means the nearest blood relative of that individual. With respect to a covered servicemember, the term “next of kin,” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember; siblings; grandparents; aunts and uncles; and first cousins. A covered servicemember may specifically designate in writing a blood relative to serve as his or her **only** next of kin for purposes of military caregiver leave.

## **J. Serious Injury or Illness**

The term “serious injury or illness,” in the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, amended by the 2010 NDAA to include not only a serious injury or illness that was incurred by the member in line of duty on active duty but also a serious injury or illness that “existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces” that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. For a veteran, a “serious injury or illness” is defined as “a qualifying injury or illness that was incurred by the member in 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.”