

# YESHIVA UNIVERSITY

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## MEMORANDUM

Date: March 11, 2009  
To: All Faculty and Staff  
From: Michael Bloom, Director University Benefits  
Re: Family and Medical Leave Act ("FMLA") Procedures

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The information provided in this memo is intended only as a general summary of the steps that should be taken if you need to request a leave of absence that may qualify under the Family and Medical Leave Act (FMLA). For more specific information concerning the University's policies regarding FMLA leaves, please go to our website [www.yu.edu/hr](http://www.yu.edu/hr) and click on Employee Rights & Policies, FMLA Leaves.

The Family and Medical Leave Act (FMLA) provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible, covered employees for the following reasons: 1) birth of a child, or placement for foster care or adoption of a child with the employee; 2) for the employee's own serious health condition, or 3) to care for a child, spouse or parent who has a serious health condition. The FMLA was recently amended to address Military Family Leave Entitlements that allow eligible employees with a spouse, son, daughter or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation to request a leave for up to 12 weeks for qualifying exigencies. In addition, a special leave entitlement of up to 26 weeks is available to eligible employees to care for a covered service member who incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces. FMLA leaves can be requested as continuous leaves, intermittent leaves or as a reduced work schedule leaves.

FMLA also requires that employee's group health benefits be maintained during the leave. The FMLA is administered by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor.

*If you are eligible for FMLA under the law, you may request a leave of absence that may qualify for protection under FMLA. If you do not specifically request an FMLA leave but your manager or supervisor is aware that the reason for your absence may qualify under FMLA, your leave will be designated as an FMLA Leave until proven otherwise.*

If you are a represented employee, please consult with the Human Resources Department or the applicable collective bargaining agreement to determine what benefits you may be entitled to.

## ***Applying for a FMLA Leave***

In order for your absence to be covered under FMLA (1) you must meet all of the eligibility requirements and (2) the reason for your leave must qualify under FMLA. (See the [Employee Eligibility](#) and [Qualifying Reason](#) sections of this document for more information).

To apply for FMLA for a new 12-month period, complete the *FMLA Leave Request Form* indicating the qualifying reason for your leave request. You can also download the appropriate certification forms that will need to be submitted to determine whether your absence qualifies as FMLA leave and submit the certification along with your request form if you so choose. Otherwise, once we receive your request form, we will send you the appropriate certification that will need to be completed and returned to us in order for your leave to be approved. Please see section below entitled ***Certification Requirements for Qualifying Leaves under FMLA*** which specifies which type of certification form is needed for each type of leave requested. If you have any questions about completing the form or if you are uncertain whether the reason for your absence would qualify under FMLA please call Geniene Jones at 718-430-2566. *Return the completed forms to Geniene Jones in the Benefits Office, Belfer Building, Room 1203.*

The Benefits Office will review your completed form and within 5 days of receipt or initiation, you will receive a ***Notice of Eligibility and Rights & Responsibilities*** that will inform you whether or not you are *eligible* for the FMLA leave.

If you are eligible for the FMLA leave, the Benefits Office may still need to determine whether your absence qualifies as FMLA leave, so you *may* be asked to return supporting documentation or medical certification depending on the reason for your leave.

### ***Certification Requirements for Qualifying Leaves under FMLA***

#### ***1. If your leave is for the Birth, or Placement of a Child for Foster Care or Adoption***

If your absence is for the birth of the child of the employee, spouse as defined by New York law, or placement of a child for foster care or adoption (with the employee) you do not have to submit medical certification, however, non-medical certification (such as a birth certificate) may be necessary to substantiate your claim.

#### ***2. If your leave request is for your own “[Serious health condition](#)”***

If you are requesting a leave for your own serious health condition, you will also receive the following forms which must be completed and sent back to the Benefits Office ***before*** your leave can be approved and your rights under FMLA can be protected.

- ***Certification of Health Care Provider for Employee’s Serious Health Condition*** which must be fully completed by the health care provider.

*Before* you are permitted to return to work, you must provide certification from a health care provider that you are medically able to resume work.

3. ***If your leave request is to care for a child, spouse or parent who has a “[Serious health condition](#)”***

If you are requesting a leave to care for a child, spouse or parent with a serious health condition, you will also receive the following form which must be completed and sent back to the Benefits Office **before** your leave can be approved and your rights under FMLA can be protected.

- ***Certification of Health Care Provider for Family Member’s Serious Health Condition*** which must be fully completed by the health care provider.

4. ***If your leave request is for a “[qualifying exigency](#)” that occurs because your spouse, son, daughter or parent who is serving in the National Guard or Reserves is serving on or has been called to active duty in the U.S. Armed Forces***

If you are requesting a leave for a qualifying exigency that occurs because your spouse, son, daughter or parent who is serving in the National Guard or Reserves is serving on or has been called to active duty in the U.S. Armed Forces, you will also receive the following form which must be returned to the Benefits Office **before** your leave can be approved and your rights under FMLA can be protected.

- ***Certification of Qualifying Exigency for Military Family Leave***, you must complete Section II of this form.

5. ***If your leave request is to care for your spouse, child, parent or next-of-kin (nearest blood relative) who is also a covered service member of the U.S. Armed Forces with a serious injury or illness***

If you are requesting a leave to care for your spouse, child, parent or next-of-kin (nearest blood relative) who incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces you will also receive the following form which must be returned to the Benefits Office **before** your leave can be approved and your rights under FMLA can be protected.

- ***Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave***. You must complete Section II of this form.

You can download the FMLA Leave Request Form and all the appropriate certification forms by clicking on the following link, [www.yu.edu/hr/employeeights&policies](http://www.yu.edu/hr/employeeights&policies).

Regardless of the reason for your leave, if supporting documentation is sent to you for completion, once you have returned the information and certification that is requested, you will receive a **Designation Notice** which will indicate whether your leave has been **approved** or not.

Additional information and definitions:

### ***Employee Eligibility***

In order to be eligible for FMLA benefits, you **must**:

- Be employed at Yeshiva University for at least 12 months. Any portion of a week that the employee is on the payroll counts as a full week toward FMLA eligibility. Employment does not have to have been continuous, except that separate periods of employment in which the break in service exceeds 7 years are not used to determine FMLA eligibility.
- Worked at least 1,250 actual work hours during the 12-month period prior to the first day of the leave. Use only time actually worked in the calculations. Time paid but not worked (such as vacation, sick, etc.) does not count toward the 1,250 hours.

An eligible employee is entitled to take up to 12 workweeks of unpaid FMLA leave during a 12-month rolling period. A rolling 12-month period means that the University will measure backward 12 months from the date an employee seeks to use FMLA leave to determine whether that employee has exhausted his/her 12 week entitlement in that 12-month period.

Note: Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count towards fulfilling the length of employment and hours of work requirements to be eligible for an FMLA leave. The 7-year break in service rule does not apply to military service.

***Qualifying Reasons*** – *If you are uncertain whether the reason or relationship is a qualifying one, contact the Benefits Office for assistance.*

- Birth of a child and to care for a newborn child of the employee, spouse as defined by New York law.
- Placement with the employee of a child through adoption or foster care.

*The following qualifying reasons must be supported by a certification from a health care provider.*

- Care for any of the following who has a “[\*serious health condition\*](#)” the employee’s spouse, the employee’s child under 18, or the employee’s parent.
- Care for the employee’s child 18 or older who has a “[\*serious health condition\*](#)” and is incapable of self-care because of a mental or physical disability.
- A serious health condition that renders the employee unable to perform the functions of his or her job.
- A qualifying exigency which occurs while the employee’s spouse, child, or parent is a member of a Reserve component or a retired member of the Regular Armed Forces or Reserves and is on active duty or on a Federal call to active duty.
- Care for a covered service member who has suffered a serious injury or illness in the line of duty if the employee has a qualified family relationship with the covered service member. A qualified family relationship is a spouse, parent, child, or next of kin. Contact the Benefits Office to determine if a qualified family relationship exists as defined in the DOL form.

A “**Serious health condition**” means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:
  - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
    - treatment two or more times by or under the 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 (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
  - (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; **or**
  - (3) Any period of incapacity or treatment for a chronic serious health condition which 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; **or**
  - (4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
  - (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.

*A “qualifying exigency” means*

The Department of Labor has developed a list of qualifying exigencies that encompass a wide range of specific activities in the following broad categories. Qualifying exigencies include:

- Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) 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;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member’s absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member’s active duty status, and addressing issues arising from the death of a covered military member; and
- Any other event that the employee and employer agree is a qualifying exigency.