



New Jersey Institute of Technology
University Policies and Procedures

Date of Issue: July 2019

Subject: HUMAN RESOURCES – FAMILY AND MEDICAL LEAVE

The university has long recognized the importance of family and medical issues as an integral component of a responsive human resource environment. It has provided a number of benefits including leaves of absence for personal and family reasons. As the state and federal government has specifically legislated in this area affording unpaid and paid leave to employees under certain specific circumstances, the university adopts the following Family and Medical Leave Policy. This Policy shall be interpreted consistent with applicable state and federal law, and shall be interpreted consistent with the university's other standing leave policies, including applicable collective bargaining agreement.

I. Available Leave

A. Family and Medical Leave Act (FMLA)

Under prescribed parameters as set out hereafter, an eligible employee may take a leave of absence from employment for up to twelve (12) weeks during a defined twelve (12) month period under the Family and Medical Leave Act (FMLA), with the exception of military Caregiver Leave as described in I. A. 6., below, for any one of the following reasons:

1. The birth of a child and to bond with the newborn child within one year of birth.
2. The placement with the employee of a child for adoption or foster care and to bond with the newly-placed child within one year of placement.
3. A serious health condition that makes the employee unable to perform the functions of his or her job.
4. To care for the employee's spouse, son, daughter, or parent who has a serious health condition. A "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.
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.

6. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (Military Caregiver Leave).

As to leave under I. A. 6., above, under prescribed parameters as set out hereafter, and in the Family and Medical Leave Act of 1993 (FMLA), as amended, an eligible employee may take a leave of absence from employment for up to 26 weeks of leave in a single 12-month period to care for a covered service-member. A covered service-member is (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 at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.* Eligible employees may be entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.

*Note: The FMLA definitions of “serious injury or illness” for current service-members and veterans are distinct from the FMLA definition of “serious health condition.” For more information contact the Department of Human Resources.

B. New Jersey Family Leave Act (FLA)

Under prescribed parameters as set out hereafter, an eligible employee may take a leave of absence from employment for up to twelve (12) weeks during a defined twenty-four (24) month period under the New Jersey Family Leave Act (FLA), to provide care made necessary by reason of:

1. The birth of a child (including one conceived using a gestational carrier agreement) of the employee.
2. The placement of a child for adoption or into foster care with the employee.
3. The serious health condition of a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, civil union partner, or any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship.

II. Twelve Week Period (Parameters)

- A. While the university may, under other provisions of employment or of its own discretion, authorize leaves of absence greater than twelve weeks and for other purposes, under this policy a maximum of twelve weeks of leave for any and all enabling reasons, (with the exception of Military Caregiver Leave as described in I. A. 6., above, which allows a total of 26 weeks of leave in a single 12-month period,) may be taken during the same twelve month period for leaves pursuant to I. A. 1., 2. or 3., Available Leave, above. One twelve week leave pursuant to I. A. 4. or I. A. 5. above may also be taken in each defined twelve month period. The twelve month period is defined in provision V., Leave Year, below.

- B. For leaves taken pursuant to I. A. 1., I. A. 2., I. B. 1., or I. B. 2., Available Leave, above, the maximum twelve week period must commence prior to the child's first year following birth (I. A. 1. or I. B. 1., Available Leave) or prior to the first anniversary date of an adoption or foster care placement (I. A. 2. or I. B. 2., Available Leave).
- C. The twelve week period amounts to sixty (60) work days that may be taken as set out below.
- D. The leave may be taken on a consecutive week, intermittent weeks or reduced time basis as follows:
 - 1. Intermittent leave consists of leave taken in separate blocks of time, and may include leave of periods from one hour or more to at least one (1) week intervals that are not necessarily consecutive, and within the twelve (12) month period. Intermittent leave may only be scheduled and taken with the consent of the university when invoking leave under provisions I. A. 1. or I. A. 2., Available Leave, above.
 - 2. Reduced time leave consists of a work reporting schedule that allows a shortened work day or shortened work week. Reduced time leave may only be scheduled and taken with the consent of university when invoking provisions I. A. 1. or I. A. 2., Available Leave, above. An employee on reduced time leave may, at the discretion of the university, be transferred for the term of leave, to another position of equivalent pay and benefits that better accommodates the university. Leave under this provision shall be accounted for and charged on an hour for hour basis.
 - 3. Requests for reduced time leave or intermittent leave under provisions I. A. 1. or I. A. 2., Available Leave, above, shall be forwarded to the Department of Human Resources for a case by case review and determination following consultation with the department head or other appropriate supervisor of the applicant.
 - 4. All leaves, for all reasons, are predicated upon the employee providing the university as much notice as possible. Absent extraordinary circumstances, at least thirty (30) days advance notice of leave is required, except where an employee is seeking intermittent leave under I. B. 3., in which event fifteen (15) days advance notice of leave is required. Failure to provide such notice except where appropriately waived, shall result in a delay in commencement of leave, if otherwise entitled, for the requisite fifteen (15) day period.
- E. To the extent an employee's need for leave qualifies under both I. A. and I. B., Available Leave, the leave will run concurrently and be counted under both the FMLA and the FLA.

III. Leave Validation

Each leave, as set out in provision I., Available Leave, above, is subject to the prerequisite validation as follows:

- A. Leave under I. B. 1. & I. B. 2., Available Leave, above, must be validated by a written certification from the employee attesting that such employee is taking family leave for the birth, adoption, or placement into foster care of a child, or by a certification issued by a duly-licensed health care provider stating the date of birth or date of placement of the child.
- B. Leave, under I. A. 4. & I. B. 3., Available Leave, above, must be validated by a written certification from a qualified, licensed, health care provider stating the date on which the serious health condition commenced, the probable duration of the condition, the medical facts within the provider's knowledge regarding the condition, and a statement of the care needed..
- C. Leave, under I. A. 3., Available Leave, above, must be validated by a written certification by a qualified, licensed health care provider stating the date on which the serious health condition commenced, the probable duration of the condition, the medical facts within the provider's knowledge regarding the condition, and information showing that the employee cannot perform the essential functions of the job.
- D. Under leave enabling provisions I. A. 3., I. A. 4., I. A. 6., & I. B., Available Leave, above, when the university reasonably believes a submitted certification is suspect, in significant degree, it may require a second opinion from a licensed health care provider who is qualified in the field of the contended disability/illness. An opinion concurring with the employee's submitted validation shall result in leave validation. An opinion dissenting from a suspect/faulty validation shall result in referral, as set out hereunder, to a third, independent health care provider, qualified in the field of the contended disability/illness, for final, binding opinion either validating or invalidating the leave.
 - 1. Referral for a third, binding health care professional's opinion shall be by agreement of the employee selected health care provider and the university selected health care provider. Failing agreement, referral shall be by agreement of the employee and the university. Failing secondary agreement, referral shall be made by the university.
 - 2. Both second and third health care provider's opinions shall be arranged and paid for by the university.
 - 3. Failure by an employee to provide a certification which, on its face, purports to meet the primary validation requirements set out above, shall result in denial of leave and its benefits, and not a second or third opinion, as the original certification is the sole responsibility of the employee as prerequisite to either any leave entitlement or a second or third opinion by a licensed health care

provider.

- E. Whenever an employee seeks to take a leave and may be eligible for FMLA leave rights under I. A. 4., NJIT may designate a representative (such as a Department of Human Resources employee, Office of the General Counsel employee, or a health care provider), who is not the employee's direct supervisor, to contact the health care provider who provided any submitted medical certification supporting the employee's application for leave, for the purposes of authenticating and/or clarifying the medical certification. The employee must provide a HIPAA-compliant release to NJIT allowing such communication with the health care provider. NJIT may deny FMLA leave if the employee fails to provide such a release or if a medical certification is not otherwise authenticated and/or clarified.
- F. While an employee is on Family Leave, pursuant to provisions I. A. 3., I. A. 4., I. A. 6., or I. B., Available Leave, above, the university may request and is then entitled to periodic formal updates or re-certifications as appropriate to the original certification parameters. The university imposed requirement for update or re-certification hereunder shall not be unreasonably applied, and the university will consider, in good faith, the necessity and frequency of update or revalidation unique to each individual leave based upon the nature and parameters of the original certification and any factual change in individual circumstance.
- G. Prior to an employee's return to the university from leave provided pursuant to provision I. A. 4., Available Leave, above, the university may request a "fitness for duty" certification from the employee's health care provider showing that the employee is able to resume work and perform the essential functions of his or her job.

Where an employee is on intermittent FMLA leave, NJIT may, where reasonable job safety concerns exist, request and receive health care provided certification, that the employee is able to perform the essential functions of his job. NJIT may only request such health care provided certification up to once every thirty (30) days.
- H. All medical records provided in accordance with policy and consistent with law shall remain confidential with the university and within the university, shall remain disclosable only to the Department of Human Resources or those officers and/or employees of the university with a need to know the certified rationale, including by way of illustration, the President, the Vice President for Human Resources and the General Counsel. The employee may choose to disclose the health condition diagnosis to his/her immediate supervisor or others in which case the legal confidentiality of the information is waived with respect to such agents to which such information is disclosed or to which disclosure is reasonably to be anticipated by the employee's disclosure.

IV. Leave Prerequisites

- A. Within the leave parameters set forth in I. A. Available Leave, above, the prerequisites to FMLA leave are as follows: An employee must have been employed by NJIT for 12 months and worked a minimum of 1,250 hours in the year (12 consecutive months) immediately preceding the leave. The time of the employment need not be consecutive nor need it be full-time.
- B. Within the leave parameters set forth in I. B. Available Leave, above, the prerequisites to FLA leave are as follows: An employee must have been employed by NJIT for 12 months and worked a minimum of 1,000 hours in the year (12 consecutive months) immediately preceding the leave.
- C. The hours prerequisites set out above refer to actual hours worked at the university and do not refer to excused or unexcused absences.
- D. FLSA exempt employees (professional/administrative staff and faculty) will be presumed to have worked the requisite number of hours if they have met the twelve (12) months of prior employment requirement. The presumption is rebuttable. The burden of rebuttal is with the university.

V. Leave Year

The university will calculate available leave by the "rolling" method. This means that when requesting otherwise available leave under this policy, the university will calculate the amount of leave used within the immediately preceding twelve (12) months of employment and subtract that number from the total number of days equal to twelve (12) work weeks (60 days). Each leave year is then unique to each employee of the university.

VI. Leave Entitlements

A. Compensation

Family and/or medical leave is, of itself, an unpaid leave.

1. Employees may apply to the State of New Jersey for family leave insurance (FLI) benefits, which provide wage replacement benefits to employees on family leave. To be eligible, employees must have worked at least 20 calendar weeks and earned at least \$172/week or at least \$8,600 in the year before taking leave. Qualified employees may receive up to six (6) weeks of income replacement, up to two-thirds of his or her regular weekly pay rate up to a maximum weekly benefit.
2. For leave under provisions I. A. 1., I. A. 2., I. A. 5., I. B. 1., or I. B. 2, Available Leave, above, an employee will be afforded an option to charge accrued vacation and/or administrative day leave for the absence. In the event an employee seeks leave under I. A. 1., I. A. 2., or I. B., Available Leave, above, and receives Family Leave Insurance (FLI) through the State of New Jersey, NJIT will not require the employee to charge any accrued leave (vacation and personal) during any leave time.

3. For leave under provisions I. A. 3., I. A. 4., I. A. 6., or I. B. 3, Available Leave, above, an employee will be required to charge any and all accrued sick leave, until exhausted, as prerequisite to taking unpaid leave under this policy. Additionally, an employee may elect to charge accrued vacation and/or administrative day leave for leave invoked under these provisions once sick time has been exhausted. However, in the event an employee receives FLI, NJIT will not require the employee to charge any accrued leave (sick) during any leave time.
4. Charged vacation, administrative day or sick leave banked accruals will be taken in hour for hour increments of time taken to time charged for FLSA non-exempt employees. For FLSA exempt employees the charge will be to the nearest half day. (For example, a professional staff employee who takes four full days and one five hour day leave in one week will be charged five full days as accrued 35 hours of banked time).
5. Elected or required utilization of paid vacation, administrative day, or sick leave accruals does not extend family or medical leave or otherwise modify those other leaves available to employees of the university.

B. Health Benefits

The health benefits coverage in effect and covering the employee immediately prior to leave shall be maintained throughout the period of family or medical leave subject only to program participation and parameters alteration as appropriately negotiated and/or implemented, consistent with law. Required health benefit contributions shall be continued during the family or medical leave period, unless the leave is unpaid, in which case the employee shall make arrangements for payment of the employee share of health care premiums.

C. Other Benefits

Other benefits available to employees on leave shall be governed by the provision applicable to the leave. If for example, the employee is drawing paid sick leave while depleting Family Leave, the provisions of sick leave policy not inconsistent with this policy shall govern, while the provisions of unpaid leave policy that are not inconsistent with this policy shall govern an unpaid Family Leave or any portion thereof.

D. Worker's Compensation

Time away from regular employment reporting appropriately governed by Worker's Compensation Law and program regulation is, if and when all enabling prerequisites are met, not chargeable as medical leave pursuant to enabling provision I. A. 3. above.

E. Reinstatement

An employee ready and able to return to his/her position of employment immediately

following exhaustion of family or medical leave will be returned to his/her position or, at the university's discretion, to an equivalent position with equivalent pay and benefits unless the employee would have been terminated in the absence of any leave (e.g., layoff, contractual non-reappointment, or natural term expiration of a terminal or temporary position of employment).

F. Key Employee Exception

1. Employees of the university who, during a period of family leave taken pursuant to I. B., Available Leave, above, are within the top 5% of the university's employees with respect to gross income paid by the university, are "Key Employees" and may be denied leave as set out above if such leave will, as can be established by the university, cause substantial and grievous economic or other organizational harm to the university.
2. Employees of the university who, during a period of family or medical leave taken under any enabling provision, are within the top 10% of the university's employees with respect to gross income paid by the university are also "Key Employees" and may be denied reinstatement as set out above, if such reinstatement will, as can be established by the university, cause substantial and grievous economic or other organizational harm to the university.
3. Key Employees must be individually noticed by the university, prior to taking leave, that they are Key Employees and that leave and/or position restoration may be denied them depending upon their Key Employee status and type of leave desired.
4. An employee on leave who, during the leave, becomes a Key Employee or a Key Employee who failed to receive such notice prior to commencement of leave and who would not otherwise be entitled to leave or would not otherwise be reinstated pursuant to this provision, will be notified by the university immediately and given an opportunity to immediately return from leave with full restoration to his/her position prior to denial of further leave or denial of reinstatement.

VII. Definitions

- A. Child: For leave under I. A., a child is 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 at the time leave is to commence. For leave under I. B., a child is the biological, adopted or formally placed foster care child, resource family child, stepchild or legal ward of the employee requesting leave, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier.
- B. Parent: For leave under I. A., a parent is a biological, adoptive, step or foster father

or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. For leave under I. B., a parent is the biological, adoptive, foster, or resource family parent, stepparent, parent-in-law, legal guardian, or legally recognized parent of a child, including one who became the parent of a child pursuant to a valid written agreement between the parent and a gestational carrier.

- C. Spouse: A spouse is the legally recognized, married partner of the employee requesting leave or the registered domestic partner or civil union partner, as recognized and defined by applicable New Jersey law.
- D. Next of Kin: Next of kin of a covered service-member for the purposes of I.F (Military Caregiver Leave) shall be defined as determined under federal rules and regulations governing family leave and shall include the nearest blood relative other than the covered service-member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service-member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service-member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave under the FMLA.
- E. Serious Illness or Health Related Condition: This is defined as an illness, injury or physical or mental impairment that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three (3) days' absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable.
- F. Health Care Provider: A "health care provider" is defined as determined under state and federal rules and regulations and shall include any doctor of medicine or osteopathy, podiatry, optometry, or psychiatry or any nurse practitioner or psychologist performing within the scope of their licensed practice as defined under law.

VIII. Jurisdiction

This policy applies to all employees of the university and shall be administered consistent with other university policies, including collectively negotiated policies, and the law.

REVIEW:

Holly C Stern 7/10/19
Date
Holly C. Stern, Esq.
General Counsel/Vice President of Legal Affairs/
Interim Vice President of Human Resources

APPROVAL:

Joel S. Bloom 7.18.19
Date
Joel S. Bloom
President

Fadi P. Deek 7/11/19
Date
Fadi P. Deek
Provost & Sr. Executive Vice President

Edward J. Bishof, Sr. 7/10/19
Date
Edward J. Bishof, Sr.
Senior Vice President for Finance &
Chief Financial Officer

Andrew P. Christ 7-11-19
Date
Andrew P. Christ
Vice President for Real Estate
Development & Capital Operations

Donald H. Sebastian 7/12/19
Date
Donald H. Sebastian
Senior Vice President for Technology &
Business Development

Simon Nynens
Date
Simon Nynens
Vice President of Business Incubation &
Executive Director of Commercialization

Kenneth Alexo, Jr. 7/18/19
Date
Kenneth Alexo, Jr.
Vice President for Development & Alumni Relations
President, Foundation at NJIT