

## FAMILY AND MEDICAL LEAVE ACT (“FMLA”) POLICY

### 1. Scope

- 1.1. This policy applies to all Albert Einstein College of Medicine employees. This policy does not apply to students who work under Federal Work Study programs or individuals on qualified scholarships.

### 2. Purpose

- 2.1. As per the Family and Medical Leave Act (FMLA), eligible employees are entitled to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. This policy provides information regarding the eligibility, use and return from FMLA leave.

### 3. Definitions

- 3.1. *12 Month Rolling Period* – the 12 month period measured backward from the date that an employee seeks to use FMLA leave.
- 3.2. *Consecutive FMLA Leave* – Leave taken as one continuous block of time, as based on certified medical necessity.
- 3.3. *Disability* – The FMLA regulations define a disability as a temporary or permanent physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- 3.4. *FMLA* – The Family and Medical Leave Act is a federal law which provides eligible employees with a leave of absence for up to 12 weeks within a 12 month period under certain circumstances.
- 3.5. *In Loco Parentis* – A relationship in which a person puts themselves in the situation of a parent by assuming and discharging the obligations of a parent to a child. Under the FMLA, persons who are *in loco parentis* include those with day-to-day responsibilities to care for or financially support a child.
- 3.6. *Intermittent FMLA Leave* – Leave taken in separate blocks of time for a single qualifying reason, as based on certified medical necessity.
- 3.7. *Parent* – A biological, adoptive, step or foster mother or father, or someone who stood *in loco parentis* to the employee when they were a minor.
- 3.8. *Serious Health Condition* – An illness, injury, impairment, or a physical or mental condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.
- 3.9. *Son or daughter* – 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 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.
- 3.10. *Spouse* – a husband or wife as recognized in the state where the employee was married,

including, those in same-sex marriages.

#### 4. Eligibility

4.1. Employees are eligible for FMLA leave if:

- *They have been employed by the Albert Einstein College of Medicine for at least 12 months; and,*
- *They have completed at least 1250 hours of service during the 12 month period prior to the commencement of leave.*

4.2. Employees are encouraged to contact the Benefits Office to determine their eligibility. The Benefits Office will assess an employee's eligibility based on length of service and hours worked.

4.3. An employee's request for FMLA leave will be determined by the Benefits Office once the applicable documents have been received and reviewed.

#### 5. FMLA Leave

5.1. For an employee to qualify for up to 12 weeks of FMLA leave, they must be eligible (refer to [section 4.1](#)) and their request for leave must be based on any of the following reasons:

- *for the birth of a son or daughter, and to care for the newborn child;*
- *for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;*
- *to care for an immediate family member (spouse, child, or parent — but not a parent "in-law") with a serious health condition; or*
- *due to an employee's inability to work because of their own serious health condition.*

5.2. Leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement of the child.

5.3. An eligible employee is entitled to take up to 12 weeks of unpaid FMLA leave during a 12 month rolling period (e.g., 12 months measured backward from the date the employee seeks to use the leave).

5.4. In the event both spouses are employed by Albert Einstein College of Medicine and they take FMLA for any of the following reasons, they are entitled to a combined total of 12 weeks of FMLA:

- *birth and care of a child;*
- *for the placement of a child for adoption or foster care, and to care for the newly placed child; and,*
- *to care for an employee's parent who has a serious health condition.*

5.5. Each spouse is entitled to take 12 weeks of leave to care for a seriously ill child.

#### 6. FMLA Military Exigency Leave

6.1. For an employee to qualify for up to 12 weeks of FMLA Military Exigency Leave, they must be eligible (refer to [section 4.1](#)) and they must request the leave for any of the following reasons, arising out of the fact that the employee's spouse, son, daughter or parent is a "covered military member" on "covered active duty" or has been notified of an impending call or order to covered active duty in the Armed Forces:

- *the short-notice deployment of a covered family member (e.g., within seven or less calendar days prior to the date of deployment);*

- *attendance at military events and related activities, such as pre-deployment briefings and family support sessions;*
- *time needed to provide or arrange for child care or participate in school-related activities with respect to a child or ward of the covered family member;*
- *time needed to make or update financial and legal arrangements relating to the covered family member or act as the covered family member's representative with respect to military service benefits;*
- *time needed to participate in counseling, where the need for counseling arises from the covered member's active duty or call to active duty;*
- *to spend up to five days with a covered family member on short-term rest and recuperation leave during the period of deployment;*
- *post-deployment activities, including any official ceremony sponsored by the military, as well as exigencies arising from the death of a covered family member while on active duty status;*
- *other activities provided that Albert Einstein College of Medicine and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave.*

6.2. An eligible employee is entitled to take up to 12 weeks of unpaid FMLA Military Exigency Leave during a 12 month rolling period (e.g., 12 months measured backward from the date the employee seeks to use the leave).

## 7. FMLA Military Caregiver Leave

7.1. An eligible employee is entitled to a combined total of 26 weeks of leave for any FMLA qualifying reason during the single 12 month period, provided that the employee is entitled to no more than 12 weeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency.

7.2. For an employee to qualify for up to 26 weeks of FMLA Military Caregiver Leave, they must be eligible (refer to [section 4.1](#)) and they must request the leave to care for their spouse, child, parent or next-of-kin, who is also a "covered service member" of the United States Armed Forces (including a member of the National Guard or Reserves) with a "serious injury or illness."

7.3. Military Caregiver Leave is to be applied on a per-covered service member, per-injury basis. Except for military caregiver leave, FMLA leave is still limited to 12 weeks within a 12 month period for all other qualifying reasons.

## 8. Intermittent FMLA Leave

8.1. The 12 weeks of FMLA leave can be taken in single continuous period of time or, in certain circumstances, intermittently (e.g., leave in separate blocks of time for a single qualifying reason as based on certified medical necessity).

8.2. Leave taken for the Employee's own or covered family member's (including covered service members) serious health condition or qualifying exigencies may be taken consecutively or intermittently, as based on certified medical necessity.

8.3. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt operations. In the event a medical appointment is scheduled during an employee's regular shift, the employee should provide

advance notice of the medical appointment to their supervisor to allow for the department to plan accordingly and ensure appropriate staff coverage.

- 8.4. The department's usual call-in procedures must be followed when reporting an absence due to intermittent FMLA. At the time the Employee calls in to report the absence due to FMLA, the employee must state whether the absence is related to themselves or for a covered family member's approved FMLA condition.
- 8.5. Maternity/Paternity leave, and leave taken for the birth, adoption, or foster care of a child must be taken in consecutive weeks, unless the child suffers from a qualifying serious health condition.

## 9. FMLA & Other Leaves of Absence

- 9.1. FMLA leave runs concurrently with other qualifying leaves of absences. Absences which qualify for workers' compensation; disability benefits under federal or state law, an Einstein benefit plan, or a union benefit plan; or are otherwise covered under a collective bargaining agreement (such as sick time for personal illness/injury, or maternity/paternity leave purposes) or an Einstein policy may also be counted as FMLA leave if (a) the underlying reason for the absence qualifies as FMLA leave, and (b) the Employee is eligible for FMLA leave.
- 9.2. Provided the Employee is FMLA eligible, Albert Einstein College of Medicine reserves the right to designate qualifying absences as FMLA leave, even if the Employee does not request or want the absences to be designated as such.
- 9.3. An employee's 12 or 26 week FMLA entitlement runs concurrently with all other applicable unpaid leaves including, but not limited to, short-term and long-term disability, and Workers' Compensation. Employees may substitute accrued paid leave for unpaid FMLA leave as discussed below.

## 10. Substitution of Paid Leave during FMLA

FMLA provides eligible employees with job-protected leave for specified family and medical reasons for up to 12 weeks within a 12 month period. FMLA leave **may be paid or unpaid** depending on the circumstances, as outlined below.

### **FMLA Leave - Employee's own serious health condition:**

- 10.1. If an employee is on approved FMLA leave due to their own serious health condition, their available accrued sick time will be utilized for pay purposes. For maternity FMLA, sick time will only be used for the period in which the employee's physician deems the employee disabled.
- 10.2. Upon the exhaustion of available sick time and if still deemed unable to work, the employee may be paid under Einstein's Supplemental Sick Pay Plan and/or New York State Disability Benefits, in accordance with the requirements and conditions set forth in such plans. Supplemental sick pay is paid at the rate of two-thirds of the employee's salary, up to a prescribed weekly limit.
- 10.3. An employee on approved FMLA leave for their own serious health condition may request to utilize **accrued available vacation time**, for pay purposes if:
  - *They are in receipt of supplemental sick pay, i.e. two-thirds of salary, and want to receive in total of 100% of their salary (i.e. use a portion of accrued vacation time to top up the pay); OR*

- *They have exhausted their accrued sick time and have exhausted (or are not eligible for), supplemental sick pay or New York State Disability Benefits;*

- 10.4. Employees requesting to utilize vacation time must do so in writing to the [Benefits Office](#).
- 10.5. Einstein will count applicable paid leave taken for a FMLA qualifying reason toward an employee's 12 or 26 week FMLA entitlement. This applicable leave will run concurrently with and count toward an employee's 12 or 26 week FMLA entitlement. Once such accrued benefits are exhausted, the balance of the FMLA leave will be without pay.

#### **FMLA Leave - Family Reasons:**

- 10.6. An employee's accrued sick time cannot be utilized for FMLA leave taken due to family reasons.
- 10.7. An employee may request to utilize available accrued vacation time during approved FMLA leave taken due to family reasons.
- 10.8. Employees requesting to utilize vacation time must do so in writing to the [Benefits Office](#).
- 10.9. Einstein will count applicable paid leave taken for a FMLA qualifying reason toward an employee's 12 or 26 week FMLA entitlement. This applicable leave will run concurrently with and count toward an employee's 12 or 26 week FMLA entitlement. Once such accrued benefits are exhausted, the balance of the FMLA leave will be without pay.

#### **11. Notice**

- 11.1. Where reasonable and practicable, the employee must give at least 30 days' advance notice prior to the commencement of a FMLA leave. If proper notice is not given, leave may be denied unless there is a reasonable excuse for the delay.
- 11.2. If the need for FMLA leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. Employees must advise their supervisor as soon as they know the need for and expected duration of the leave (except in cases of extreme medical emergencies), and generally within two business days of the time they know of the need for leave. Notice may be given by telephone, e-mail, or other similar methods. In all cases, whether leave is taken intermittently or continuously, the employee, where practicable, must make a reasonable effort to schedule their leave so as not to interrupt business operations unduly.
- 11.3. The Benefits Office will notify the employee requesting leave whether they are eligible for FMLA. If the employee is eligible, the notice will indicate any additional information required and describe the employee's rights and responsibilities. If the employee is not eligible, the reason for the ineligibility will be provided to the employee.
- 11.4. Upon the provision of sufficient information, the employee will be notified that the absence has been designated as FMLA leave and the amount of leave to be counted towards the employee's leave entitlement. The employee will also be notified if the leave is not designated as FMLA leave due to insufficient information or a non-qualifying reason. The absence may provisionally be designated, at the outset, as FMLA leave, subject to submission of sufficient information.

#### **12. Certification**

- 12.1. The employee must provide medical certification from a health care provider to confirm

that the employee or employee's child, spouse or parent has a serious health condition or that service member leave is required.

- 12.2. An employee requesting leave for a qualifying exigency should provide documentation pertaining to the exigency, including a copy of their family member's military orders, except where military necessity or other circumstances make it impossible or unreasonable to do so.
- 12.3. Medical certification by a health care provider or certification of a qualifying exigency must be provided within 15 days from the date the certification was sent to the employee, unless it is not possible to do so. Failure to provide the required certification on time may impact the employee's ability to take the leave as requested.
- 12.4. Albert Einstein College of Medicine may seek clarification or authentication of information provided on a medical certification form, and may require an opinion from a second health care provider at its expense to verify any information in the medical certification.
- 12.5. Albert Einstein College of Medicine requires that the serious medical condition be recertified every 30 days except for leave related to pregnancy or childbirth or where the minimum duration of the serious health condition at issue is more than 30 days. For employees requesting intermittent or reduced leave for periods in excess of 6 months, Albert Einstein College of Medicine requires recertification every 6 months. In addition, employees are required to report periodically on their status and intent to return to work. If the circumstances of an employee's leave change and the employee is able to return to work earlier than originally indicated, the employee should notify the Benefits Office at least two days prior to the date that they intend to return to work.

### 13. Accrued Benefits (e.g., vacation, personal days)

- 13.1. During FMLA leave that runs concurrently with paid leave, the employee's benefits that operate on an accrual basis, such as sick, personal and vacation days, will continue to accrue. During unpaid FMLA leave, these benefits will cease to accrue.

### 14. Health Benefits (e.g., medical, dental)

- 14.1. During FMLA leave (paid or unpaid) the employee's group health benefits, such as medical and dental, will continue during the leave provided that the employee continues all required regular employee contributions to these plans. Employees enrolled in Albert Einstein College of Medicine sponsored benefit plans should contact the Benefits Office to make arrangements for employee contributions. Union-represented employees should contact their Benefit Fund Office so that they can comply with the requirements of their Benefit Fund. All other benefits will be governed in accordance with the terms of each benefit plan.

### 15. Return to Work

- 15.1. Upon the timely return from FMLA, eligible Employees are entitled to be reinstated to their former position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Exceptions to this provision may apply if business circumstances have changed (e.g., if the Employee's position is no longer available due to a job elimination). Exceptions may also apply for certain highly compensated Employees.

- 15.2. Before an Employee is permitted to return from medical leave, they will be required to present to the Benefits Office a certification from their own physician indicating that they are capable of returning to work and performing the essential functions of their position, with or without a reasonable accommodation. The Benefits Office will assess the certification provided and may request additional information. Where required, reasonable accommodations will be considered for any disability the Employee may have in accordance with applicable laws.

16. Contact & Additional Information

- 16.1. To apply for an FMLA leave or to obtain further information concerning an FMLA leave, employees should contact the Albert Einstein College of Medicine, Benefits Office at **(718) 430-3276** or **(718) 430-2566**.
- 16.2. Flow charts demonstrating the **FMLA Procedures** and **Paid Leave Options** can be found on the Human Resources webpage under [Policies and Procedures](#).