

Extended Medical Leave of Absence Management

Sam Sears, Associate Vice Chancellor & Deputy General Counsel

Jeff Jensen, Senior Associate General Counsel

February 26, 2020

Overview

- ▶ Introduction to Applicable Laws, including:
 - Family and Medical Leave Act
 - Americans with Disabilities Act
- ▶ Case Studies highlighting when Employees may require Extended Leave
- ▶ University Resources to Assist Employees and Supervisors navigating Extended Leaves

Family and Medical Leave Act (FMLA)

Medical Leave Benefit

- ▶ Provides an employee with up to 12 weeks of job-protected medical leave of absence in any year (a rolling 12-month period) due to the employee's own serious health condition.

Family and Medical Leave Act (FMLA)

Serious Health Condition

- ▶ An illness, injury, impairment, or physical or mental condition that involves inpatient care, continuing treatment by a healthcare provider, and/or long-term incapacity, and that prevent the employee from performing one or more essential functions of their job.

Family and Medical Leave Act (FMLA)

Employee Eligibility for FMLA Leave Protections

- ▶ At least 12 months of cumulative employment with the University (or NC State government) and has been in pay status at least 1040 hours during the previous 12-months.

Americans with Disabilities Act (ADA)

Disability

- ▶ A physical or mental impairment that substantially limits one or more major life activities.

Qualified Individual with a Disability

- ▶ An employee with a disability who, with or without reasonable accommodation, can perform the essential functions of a job.

Americans with Disabilities Act (ADA)

Major Life Activities include, *but are not limited to*:

- ▶ caring for oneself,
- ▶ performing manual tasks,
- ▶ seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working

Americans with Disabilities Act (ADA)

Essential Functions of a Job

- ▶ The fundamental duties of a position or the primary reasons the position exists, as opposed to the marginal functions.
- ▶ Whether a particular function is essential is a factual determination that must be made on a case-by-case basis.

Scenario 1

- ▶ A University manager receives a call from the spouse of a long-term University employee who fell ill over the weekend and was hospitalized. The following week the employee, diagnosed with a rare blood disorder, remained hospitalized for observation and evaluation by a team of medical specialists.
- ▶ After a week, the employee's primary care doctor provided the University Benefits Office with information indicating that, due to his serious medical condition, the employee would likely be out of work for a period of six to ten weeks.

Q. How should University officials respond in this situation?

Scenario 1, Part 2

An Intermittent Leave Request

- ▶ In advance of his scheduled return to work, the employee's doctor provided the Benefits Office with a medical update indicating that the employee would be fit and able to return to work at the end of his 10-week leave of absence, but that he would require on-going dialysis treatments that would require him to miss one day of work every two weeks for the foreseeable future.

Q. How should University officials respond to this employee's new information?

Intermittent Leave

- ▶ Leave taken in separate blocks of time due to an illness or injury that requires episodic rest or treatment.
- ▶ Employees may be obligated to confer with supervisors to schedule treatments at a time that will not unduly disrupt operations, though the demands of the treatment program will inform the extent to which supervisors can require flexibility.
- ▶ An “open-ended” work schedule—with irregular, excessive, unplanned absences—would prevent most employees from performing the essential functions of their job.
- ▶ In very limited circumstances, employees may be temporarily reassigned to another position, if the demands of their current position cannot be met during periods of intermittent leave.

Scenario 2 – Interim Measures

You are out on approved leave for 12 weeks, following the birth of a child. During this leave period, your supervisor appoints another employee, who comes highly recommended, to oversee your responsibilities during your leave. The interim appointee receives high praise from direct reports and your supervisor regarding her efficiency and responsiveness. She appears to have a real talent for the position and thrives during the interim appointment.

The week prior to your scheduled return from leave, you learn that complications experienced during childbirth will extend your return to work longer than originally anticipated, but likely no more than a couple of weeks. Given the critical nature of your position, your supervisor is concerned about the uncertainty posed by your continued absence. The interim appointee has also threatened to leave if the appointment is not made permanent. Your supervisor permanently appoints the interim employee to your former position and offers to make you a priority candidate if any similar positions open up after you have fully recovered.

Employee Rights Following Leave

- ▶ Employees are entitled to return to “the same or equivalent” position, following their protected leave.
- ▶ Employers must ensure that the employee receives the same pay and benefits as the employee would have received if the employee had not gone on leave. The employee should be extended pay raises administered during the leave, unless there is a valid, non-retaliatory reason not to extend the raise.
- ▶ Likewise, Employers should ensure that working conditions are restored-such that the employee is returning to the same or similar schedule and work station. Changes to working conditions are only appropriate if the employer can demonstrate that they are not connected to the protected leave.

Scenario 3 – How much is too much?

- ▶ A University employee requested and was approved for a medical leave of absence for the period January 1, 2019 through March 31, 2019.
- ▶ On March 15, 2019 the employee provided the Benefits Office with a letter from her physician stating that, due to her serious health condition, she would “not be able to return to work at the University until June 2, 2019.”
- ▶ On June 3, 2019 the employee called the Benefits Office and stated that her physician had not released her as fit to return to work. Moreover, she reported that she was awaiting a future surgical procedure and that she did not have an anticipated date for that procedure, nor could she currently predict when she would be fit and able to return to work at the University.

Q. How should University officials respond in this situation?

Short Term Disability (STD) Benefits

Eligibility Criteria for STD Benefits –

- (1) If the employee has at least one year of contributing membership in the Retirement System within 36 months preceding the disability;
- (2) if the employee is disabled and unable to performance his/her usual occupation;
- (3) if the disability was incurred during the time when the employee was actively employed; and,
- (4) if the disability has been continuous.

Short Term Disability (STD) Benefits

STD Waiting Period

- ▶ Sixty (60) continuous days from the onset of a disability, medical condition or illness.

Salary Continuation Benefit

- ▶ The Disability Income Plan of North Carolina provides eligible employees with 365 days of salary continuation benefits after the waiting period.

Benefit Payments

- ▶ Monthly STD benefit payments will equal 50% of the employee's last paid base compensation, up to a maximum of \$3,000 per month and \$36,000 per year.

Scenario 4 – Professor Smith

- ▶ During the Thanksgiving holiday, Professor Smith begins feeling short of breath, ill and very weak. The tenured faculty member sent his department chair an email message explaining that he is not feeling well, and suggests that he may have to stay home a few days to recuperate. The department chair wishes his colleague “a fast recovery” and promises to cover Professor Smith’s final week of classes during his absence.
- ▶ Professor Smith feels well enough to prepare for and oversee all his fall course final exams. The next week, however, Professor Smith begins feeling worse. He visits his doctor and is diagnosed with lung cancer. After consulting with an oncologist, it is recommended that Professor Smith begin receiving a combination of chemotherapy and immunotherapy treatments, a four-month treatment regime, beginning immediately after the Christmas holiday.
- ▶ Q. How should University officials respond in this situation?

Medical Leave for Nine-Month Faculty

See University Policy 102.6

- ▶ Because full-time 9-month faculty members’ fringe benefits do not include sick leave or vacation leave, the University provides Continuation Pay for a period of up to one semester for eligible faculty.
- ▶ This medical leave benefit is provided for up to a semester so that there is less disruption in the classroom.

Whom should I contact with questions about extended leave?

Leave of Absence, FMLA and Short Term Disability Questions:

- ▶ Marina LeLeux, Benefits Counselor
mleleux@uncc.edu
- ▶ Stephanie Lazzaro, Benefits Consultant
sllazzar@uncc.edu
- ▶ Krissy Kaylor, Benefits Director
krissy.kaylor@uncc.edu

ADA Workplace Accommodation Questions:

- ▶ Cindy Edwards, Employee Relations Manager
ckedward@uncc.edu
- ▶ Wanda Barr, Assistant Employee Relations Manager
tbarr10@uncc.edu
- ▶ Gary Stinnett, AVC and Director of Human Resources
gwstinne@uncc.edu

Resources

- ▶ FMLA Policy
<https://hr.uncc.edu/pims/family-and-medical-leave>
- ▶ Extended Leave of Absence Resource Guide for all 12-Month Employees
https://hr.uncc.edu/sites/hr.uncc.edu/files/media/ExtendedLeave12mos_ResourceGuide%205-9-2018.pdf
- ▶ University Policy 102.6, Medical Leave for Nine-Month Faculty
<https://legal.uncc.edu/policies/up-102.6>
- ▶ Extended Leave of Absence Resource Guide for Nine-Month Faculty
https://hr.uncc.edu/sites/hr.uncc.edu/files/media/ExtendedLeave9mos_ResourceGuide%205-9-2018.pdf
- ▶ Short Term Disability (STD) Benefit Information
<https://hr.uncc.edu/pims/short-term-disability>
- ▶ Reasonable Accommodation Policy and Request Form
<https://hr.uncc.edu/pims/reasonable-accommodation>