

Leave It to Us: Navigating Employee Leave, FMLA & ADA with Confidence

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Agenda

- ❖ Review Family and Medical Leave Act (FMLA)
- ❖ Review FMLA Policies, Procedures, and Resources
- ❖ Review Americans with Disabilities Act (ADA) and Pregnant Workers Fairness Act (PWFA)
- ❖ Review Accommodation Policies, Procedures, and Resources
- ❖ Intersection with Other Leave Benefits
- ❖ Questions



UNIVERSITY OF NORTH CAROLINA
CHARLOTTE



The Family and Medical Leave Act

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Let's Talk About FMLA

- What is the FMLA?
 - The Family and Medical Leave Act of 1993 (FMLA) is a federal labor law requiring covered employers to provide employees with up to 12 workweeks of job-protected, unpaid leave for qualified medical and family reasons
 - Leave may be taken on a continuous or intermittent (as needed) basis
 - Leave is calculated using a rolling 12-month period measured backward

Applicable University Policies

- UNC Charlotte has two separate FMLA policies.
 - [PIM No. 09](#) - Family and Medical Leave
 - This Policy authorizes unpaid leave of absence for leave-earning employees, including full-time and eligible part-time staff employees, and faculty with eleven- and twelve-month appointments, with qualifying conditions covered under the FMLA.
 - [University Policy 102.6](#) - Family and Medical Leave for Nine-Month Faculty
 - This Policy authorizes paid leave of absence (“Continuation Pay”) for faculty with academic year (9-month) appointments with qualifying conditions covered under the FMLA.



FMLA Eligibility Requirements – 9-Month Faculty

9-Month Faculty

- Have worked for the university for one full academic year
- Have a qualifying family or medical reason
- For leave greater than six weeks, entitled to one semester of leave with continuation pay, if approved by Academic Affairs

FMLA Eligibility – SHRA, EHRA Non-Faculty & 12-Month Faculty

Employment

- FT (Permanent, probationary, trainee, or time-limited),
- PT (half-time or more permanent, probationary, trainee, or time-limited)
- Temporary, intermittent, or part-time (less than half-time)

Service/Hours

- 12+ months total service with the State, and in a pay status at least 1,040 hours in the previous 12 months
- Pay status 1,040+ hours during the previous 12 months
- Pay status 1,250+ hours during the previous 12 months

What is a qualifying family or medical reason?

- | | |
|---|---|
| <ul style="list-style-type: none">• employee's own <u>serious health condition</u> (including pregnancy)• caring for an immediate family member (spouse, parent, child) with a serious health condition• caring for or bonding with a new child (birth, adoption, foster placement) in the first year | <ul style="list-style-type: none">• any qualifying exigency arising from the active military duty of the employee's immediate family member• care for a family member who is a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty (up to 26 work weeks of leave allowed in a 12-month period) |
|---|---|

What is a “Serious Health Condition”

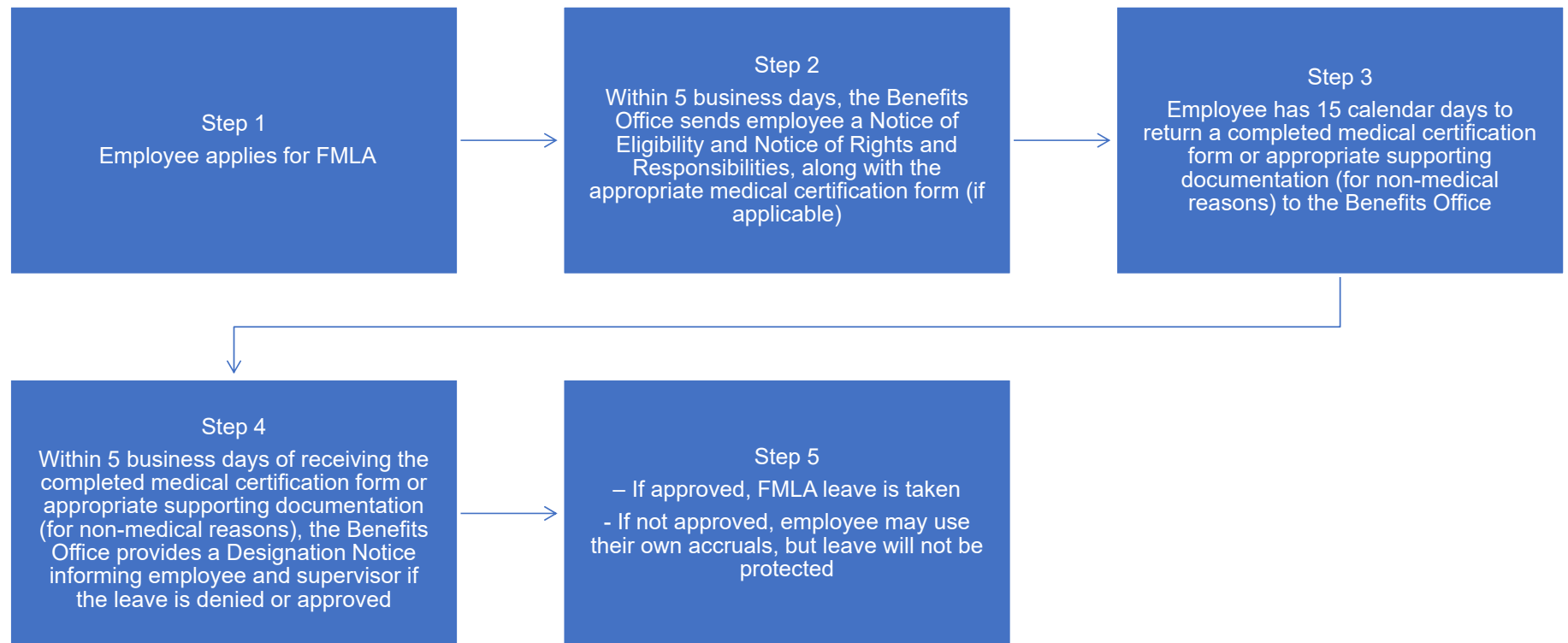
The most common serious health conditions that qualify for FMLA leave are:

- conditions requiring an overnight stay in a hospital or other medical care facility;
- conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- chronic conditions that cause occasional periods when you or your family member is incapacitated and requires treatment by a health care provider at least twice a year; and
- pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

**The FMLA
Clock Is
Ticking!**



FMLA Process Flow & Timeline



What are my responsibilities as an employee?

Apply for FMLA if absent or plan to be absent for more than 3 workdays due to a serious health condition for yourself or an immediate family member

For planned absences, complete the FMLA application at least 30 days in advance (e.g., planned surgery or other medical procedure, or birth/adoption)

For unplanned absence (typically a medical emergency for you or an immediate family member), complete the FMLA application as soon as you become aware that you may need FMLA leave

Work with your medical provider to return the medical certification form provide by the Benefits Consultant in a timely manner to avoid delay – DO NOT DOWNLOAD FORMS FROM THE INTERNET

For continuous FMLA leave, provide periodic updates to the Benefits Office and your supervisor regarding your return-to-work status

For intermittent FMLA leave, work with your manager to schedule your leave

Submit a completed fitness for duty form to the Benefits Office at least 1-2 weeks before your release date

What are my responsibilities as a manager?

- ❖ Promptly notify the Benefits Office when your employee is absent for more than 5 workdays due to a personal or family medical reason
- ❖ Advise your employee to contact the Benefits Office to commence the FMLA process
- ❖ Do not request or accept medical documentation from the employee
- ❖ Review PIM 09: Family and Medical Leave
- ❖ Confirm that FMLA leave is being accurately entered into KRONOS each week
- ❖ Submit leave usage in KRONOS if the employee is on a continuous FMLA or is unable to make the entries
- ❖ Ensure leave without pay (LWOP) is entered as it occurs on the employee's timesheet
- ❖ Be flexible so that employees can take intermittent FMLA leave based on the intermittent leave schedule approved by the Benefits Office
- ❖ Do not assign work to employees on continuous FMLA leave
- ❖ Avoid overpayment issues by promptly advising the Benefits Office when the employee has exhausted leave accruals and needs to move to leave without pay status

What are my responsibilities as a manager?

- ❖ Promptly notify the Benefits Office of any of the following circumstances:
 - The employee has indicated that he/she is or was hospitalized related to an injury or illness;
 - The employee has provided information that he/she is or will be absent from work due to his/her own serious health condition or that of a family member; or
 - The supervisor has information that the employee suffers from a chronic condition and has been or will be absent from work due to that condition.

FMLA Application Resources

- ❖ The FMLA application links are available on the HR FMLA webpage:
 - <https://hr.charlotte.edu/benefits/holidays-and-leave/leave/fmla/>
- ❖ FMLA for 12-Month Employees (SHRA, EHRA Non-Faculty, 12-Month Faculty)
 - [Online FMLA Application \(Part\) A](#)
 - [12 Month FMLA Extended Leave of Absence Resource Guide](#)
 - [Family Illness Leave \(Used after FMLA is exhausted\) \(for care of a spouse, child or parent\)](#)
- ❖ FMLA for 9-Month Faculty (must complete both forms below):
 - [9 Month Faculty FMLA Extended Leave of Absence Resource Guide](#) (*Send to Benefits Office via secure method*)
 - [Request for Leave of Absence 9-month Faculty AA-32](#) (*Complete form and send to Academic Affairs*)



Let's Talk About Workplace Accommodations



Let's Talk About the ADA

- The Americans with Disabilities Act of 1990 (as amended in 2008 (ADAAA)) prohibits discrimination based on disability
- Requires employers to provide reasonable accommodations to applicants and employees so that qualified individuals can perform the essential functions of the job
- State and local government employers are covered by the ADA, regardless of size



Who Has Rights Under the ADA?

- Applies to all applicants or employees who:
 - Have a disability
 - Have a record of having a disability (even if they do not currently have a disability)
 - Are regarded as having a disability
- If any of the three prongs are satisfied, the individual counts as disabled under the law.
- “Disabled” means a physical or mental impairment that substantially limits one or more **major life activities or major bodily functions**. The impairment needs to be a physiological or mental disorder.



Major life activities

- Caring for oneself
- Performing manual tasks
- Seeing // hearing
- Eating // Sleeping
- Walking // Standing
- Lifting // Bending
- Speaking // Breathing
- Learning // Reading
- Concentrating // Thinking
- Communicating // Working

Major bodily functions

- functions of the immune system
- normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological // brain
- Respiratory // circulatory
- Endocrine // reproductive functions



Reasonable Accommodation

- Alteration to University policies or the work environment that would allow a disabled employee or applicant for employment to perform the essential functions of the job unless the accommodation is an undue hardship or creates a direct threat.
- There are three categories of reasonable accommodations:
 - (i) modifications or adjustments to a job application process
 - (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the job is customarily performed
 - (iii) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities



Let's Talk About the Pregnant Workers Fairness Act

- Federal law that took effect in June 2023
- Requires employers to provide reasonable accommodations to employees for known conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a known limitation) unless doing so will cause an undue hardship
- Requires employers to engage in an interactive process
- Prohibits retaliation, coercion, threats, or interference for requesting or using accommodation
- Does not replace federal, state, or local laws that are more protective of applicants and employees



Scope of the PWFA

- Qualified Employee
 - An employee or job applicant who can perform the essential functions of the position, except that an employee or applicant shall be considered qualified when:
 1. Their inability to perform an essential function is for a temporary period;
 2. the essential function could be performed in the near future; and
 3. the inability to perform the essential function can be reasonably accommodated.
- “Known Limitation” definition
 - Applies to physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or their representative has communicated to the employer, whether or not the condition meets the definition of “disability” under the ADA.



Undue Hardship Factors (ADA & PWFA)

- A determination of undue hardship should be based on several factors, including:
 - the nature and cost of the accommodation needed;
 - the overall financial resources of the facility making the reasonable accommodation;
 - the number of persons employed at this facility;
 - the type of operation of the employer, including the structure and functions of the workforce; and
 - the impact of the accommodation on the operation of the facility.
- Accommodations that cause undue hardship are ones that are too extensive or disruptive, or ones that fundamentally change the nature or operation of the business.

Applicable University Policy

- **PIM 50: Reasonable Accommodation**
 - <https://hr.charlotte.edu/about-hr/personnel-information-memorandums-pims/pim-50-reasonable-accommodation/>
- This policy applies to all qualified applicants and university employees with disabilities and who have a known limitation related to pregnancy, childbirth, or related medical condition.
- This includes SHRA and EHRA employees who are in assignments considered part-time, full-time, probationary, career status, adjunct, or temporary (which includes student employees)."
- Employees and/or applicants are protected from retaliation for requesting an accommodation or disclosing a disability.



Requesting a Reasonable Accommodation

- **Notice:** Regardless of the method of notification, the process of assisting an employee in applying for an ADA accommodation should begin immediately upon learning of their disability.
- **Step 1 - Consultation:** Notifying the ADA Consultant is the first step in initiating the accommodation process. Individuals should communicate their needs to the ADA Consultant through a phone call, email, or pre-scheduled in-person meeting.
- **Step 2 - Documentation:** To request a reasonable accommodation, an employee or applicant should complete and submit the **Initial Accommodation Packet** to the ADA Consultant in the Human Resources Department.
- **Step 3 - Medical Information:** Depending on the nature of the disability or limitation, the ADA Consultant will provide a Job Accommodation Medical Certification Form (JAMCF) to be completed by the medical provider.

Requesting Accommodation

Current Employee or Applicants Offered Job

- Submit an Accommodation Request Form to Employee Relations at ada-hr@charlotte.edu
- The form must identify the functional limitations with respect to your disability or known limitation and specify the requested accommodation(s)
- The existing form may be used for both disability and pregnancy-related reasonable accommodation requests

Supervisor Responsibilities

- Be aware and supportive of employees who may need a reasonable accommodation due to disability, pregnancy, or related condition
- Engage in the interactive process
- Abide by the approved reasonable accommodation
- If the employee is on full-time leave, ensure the employee's time is entered in Kronos using the correct code
- If the employee runs out of their own accruals, complete a LWOP form
- It is important that the time in Kronos is updated daily or in advance if an employee is on LWOP to avoid overpayment
- Confirm with the Benefits Office that the employee has been cleared to return to work if they were out for a serious medical condition

Employee Responsibilities

- Submit accommodation request to your supervisor and the ADA Consultant verbally or in writing
- Work with your medical provider to return forms and medical documentation as promptly as possible to avoid delay
- Engage in the interactive process – failure to do so may result in a denial
- Do not give FMLA forms or medical documentation to your supervisor; provide only to Employee Relations staff
- Reach out to the ADA Consultant if you need to adjust your reasonable accommodation
- Before returning to work, you may need to provide a fitness for duty at least a week in advance

Important Reminders

- The University provides Continuation Pay for a period of up to one semester for eligible faculty
- When a non-tenured, tenure-track faculty member is granted Continuation Pay, an automatic one-year extension of the tenure clock will be given, up to a maximum of two years.
- Retaliation is strictly prohibited by the Act and under University policy
- Upon return from FMLA leave, all employees are entitled to reinstatement to the same or equivalent position with equal pay, benefits, and other terms and conditions
- Abusing FMLA or ADA leave will result in disciplinary action

Implementing the Reasonable Accommodation

- ADA Coordinator will work with the employee's supervisor to implement the accommodation
- The employee is not required to accept an accommodation being offered
- If reasonable accommodations are rejected by the employee the following will occur:
 - Employee will not be considered a qualified individual with a disability
 - May be subject to disciplinary policies if not meeting job expectations

The background of the slide is a photograph of a university campus, featuring brick buildings and greenery, overlaid with a dark teal color filter. A large blue rounded rectangle is centered on the slide, containing the title text in white.

Related Leaves of Absence (LOA)

Family Illness Leave (FIL)

Up to 52 weeks of unpaid job protection, may begin after FMLA:

- Used to care for employee's child, parent or spouse with serious health condition
- Limited extension of unpaid job protected leave (beyond FMLA)
- Increments of 1+ hour = 1 week
- Does not run concurrently with FMLA
- May continue coverage for State Health (if LWOP must pay full premium)

Eligibility: Same eligibility as FMLA, except temp employees and PT employees less than half-time are not eligible for Family Illness Leave

Application: [Family Illness Leave \(Used after FMLA is exhausted\)](#)

Paid Parental Leave (PPL)

Up to 8 weeks of paid leave:

- 4 weeks birthing parent (recuperation during the disability period associated with the birth)
- 4 weeks bonding (used within the first twelve months of the birth and must be used as a continuous four-week period of leave)

Eligibility: FT or PT (half-time or more) employees in permanent, probationary or time-limited (benefits-eligible) position,
Temp and PT (less than half-time) not eligible to participate in this program

Application: [Paid Parental Leave Request Form](#)

Disability: Short and Long Term

	Short-Term Disability	Long-Term Disability
Requirement:	One year retirement plan contributions	Five years retirement plan contributions, and not eligible for unreduced retirement
Benefit:	50% eligible compensation \$3,000/month cap	65% eligible compensation \$3,900/month cap
Payable:	Up to 365 days after 60-day waiting period (Extended Short Term, potential of additional 365 days)	Based on eligibility

Note: Less than 5 years employment, employee pays both employee & employer premiums for health coverage



Important Takeaways!

- Applying for FMLA is not optional
- Employees may be disciplined for abusing FMLA leave and not following departmental call-out procedures
- When taking intermittent FMLA leave, work with your supervisor to establish a schedule
- You are responsible for returning completed medical certification (FMLA and ADA) in a timely manner to HR
- Working remotely is not a substitute for taking FMLA leave
- Failing to engage in the interactive process may result in a denial of accommodation



Contact Information

Employee Benefits Office

Email: loa-hr@charlotte.edu

Phone: (704) 687-8134

Employee Relations Office – ADA

Email: ada-hr@charlotte.edu

Phone: (704) 687-0658

THANK YOU!



Questions

