

FMLA and ADA Decoded: What Managers and Staff Need to Know Before, During & After Medically Related Leave

Presented by:

Tara Minion, Benefits Manager

André Lindsay, Senior Associate General Counsel



Focus for today

FMLA Policies

Employee Responsibilities Under the FMLA

Supervisor Responsibilities Under the FMLA

Reasonable Accommodation Policy

Employee Responsibilities Under the ADA & PWFA

Supervisor Responsibilities Under the ADA & PWFA

Scenarios

Myth Busters

Need Time Off?



Does the Family & Medical Leave Act apply to UNC Charlotte?

- Yes – Government agencies (including local, state, and federal employers) and elementary and secondary schools are covered by the FMLA, regardless of the number of employees. UNC Charlotte is a state university.
- UNC Charlotte complies with the FMLA through policies:
 - [PIM 09: Family and Medical Leave](#) for staff and 12-month faculty
 - [University Policy 102.6](#) for 9-month faculty

FMLA Policies

- **PIM No. 9 – Family and Medical Leave**
 - The policy (PIM No. 09) provides eligible employees with up to 12 workweeks of job-protected, unpaid leave for qualified medical and family reasons and up to 26 workweeks for military caregiver leave.
- **University Policy 102.6 - Family and Medical Leave for Nine-Month Faculty**
 - This Policy provides eligible 9-month faculty with Continuation Pay for a period of up to one semester.
 - Short-term leave of less than six weeks and intermittent leave during a semester should be handled at the department and/or college levels.



Who is Eligible for FMLA Leave?

Staff and 11 or 12-Month Faculty (PIM No. 09)	9-Month Faculty (Univ. Policy 102.6)
<ul style="list-style-type: none">• Have worked for UNC Charlotte for at least 12 months• Have been in paid status for at least 1040 hours in the last 12 months• Have a qualifying family or medical reason	<ul style="list-style-type: none">• Must work for the University for one full academic year• Have a qualifying family or medical reason

What is a qualifying family or medical reason?

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| <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) |
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What is a “Serious Health Condition”

Serious health conditions that qualify for FMLA leave under the law are:

- conditions requiring an overnight stay in a hospital or other medical care facility and subsequent treatment;
- 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 are incapacitated and require continuing 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).

Employee Responsibilities

Timely Notice Requirement

- To take FMLA leave, the employee must provide HR with appropriate notice
- Complete FMLA paperwork at least 30 days in advance for known or planned events, or as soon as possible in an emergency
- A known or planned medical event includes
 - Surgery or other scheduled medical procedures
 - Childbirth
 - Recurring medical appointments
- Failure to do so may result in the delay or denial of FMLA

Understanding Timeline for Leave Case

Action	Timeline	Employee	Benefits Office
Apply for FMLA	30-days in advance for known/ planned, or as soon as possible	☒	
Send Notice of Eligibility - Rights & Responsibilities, and applicable documents, medical certification, and position description	Within 5 business days of application		☒
Provides medical certification to Benefits Office	Within 15 calendar days of date Notice of Eligibility sent	☒ (Employee/ Provider)	
Send Designation Notice of approval/denial	Within 5 business days of receipt of medical certification		☒
Send Fitness for Duty form (for employee's own serious health condition)	One week prior to anticipated return date, or as soon as possible	☒ (Employee/ Provider)	
Return employee back to work	Depends on situation (with/without restrictions)		☒

Kronos Leave Entry While on FMLA

Intermittent Leave

- Employee enters leave in Kronos and specifies if leave is FMLA or other (i.e., sick leave for dental appointment)
- If LWOP, employee enters hours in Kronos real-time (daily), or in advance to help prevent or minimize overpayments. If overpaid, the manager needs to complete an overpayment form, and Payroll will collect from the following pay period

Full-time FMLA

- During an approved full-time FMLA, employees should not complete any work or make timekeeping, leave, or leave without pay entries in Kronos. The supervisor is responsible for the leave entries
- Employees should consult with their supervisor on eligible options to use their accruals and indicate any preferences
- If on a Full-Time LWOP for more than 10 days, the employee also needs to contact the Benefits Office for guidance regarding benefit impact (i.e., health insurance premium payments)

Full-time v. Intermittent FMLA

- Leave-earning eligible employees start with 480 hours of FMLA (pro-rated for part-time and temporary employees)
- Leave may be taken all at once or intermittently over an extended period based on the medical condition or qualifying event
- Leave may also be taken as a combination of full-time and intermittent leave

Example of combination FMLA leave

Employee A needs 4 weeks of full-time FMLA leave due to knee surgery and the recovery time following the procedure. Employee A will also need 6 months of intermittent FMLA when they return to work for follow-up appointments and physical therapy.

Retuning to Work After FMLA

- Employees returning from a continuous FMLA leave for their own serious health condition
 1. Requires a Fitness For Duty (FFD) form a week before returning
 2. If restrictions are received, employees will be referred to the ADA Consultant to review for potential accommodations and interim arrangements
- Employees returning from a continuous leave caring for a family member
 1. Not required to provide a Fitness For Duty Form (FFD)
 2. Employee would only need to let us know when they have returned from leave
- Employees whose intermittent leave is ending:
 1. Not required to provide a Fitness For Duty Form (FFD).
 2. Employees will need to let us know if they need to renew FMLA
- See [PIM 09: Family and Medical Leave](#) for more details

Supervisor Responsibilities

How to Respond When an Employee Needs FMLA

- If an eligible employee has advised their manager of a need for FMLA or is absent from work for more than five (5) working days *and* is taking sick leave, the supervisor must:
 - Promptly notify the Benefits Office of the employee's absence.
 - Do not request or collect medical information from the employee.
 - Request that the employee contact the Benefits Office to discuss whether the leave is FMLA-qualifying.
 - Track and timely approve leave and timesheets through KRONOS.
 - If an employee is unable to enter their time, submit leave usage and time worked in the university leave and timekeeping system (KRONOS).

Properly Inquiring About An Employee's Leave

- If an employee is absent and using sick leave for more than 5 workdays, the supervisor may ask the employee:
 - Do you need additional time off from work?
 - Do you need FMLA?
 - Have you contacted the Benefits Office regarding your leave options?
 - If not, provide instructions to submit a case through HR Connect
- Supervisors should not do the following:
 - Ask any questions about the nature of the employee's illness
 - Request the employee provide medical documentation to support future absences

Working While on Full-Time FMLA

- FMLA is an unpaid, job-protected leave of absence
- Employees cannot be required to work during their FMLA leave period
- Employees on intermittent FMLA leave are not expected to work during the period of intermittent leave, but may be required to work before or after the intermittent leave period
 - Example: Employee takes three hours, one day per week for 5 weeks for follow up appointments.
- Managers should consult with Benefits before approving voluntary work

Communication with Employees on FMLA

- Supervisor may engage in limited communications with employees who are on continuous FMLA leave.
- Supervisor may contact the employee to request information about a pending project, the location of a file, etc.
- Such communications should be the exception, not the rule.
- Depending on the circumstances, the employee on continuous FMLA may not be able to respond to communications.
- Employees on intermittent FMLA are expected to be responsive to communications while working.

FMLA & Holidays

- If a University holiday occurs during a period of a full week of FMLA leave, then those hours count toward FMLA leave entitlement
- If a University holiday occurs during a partial week of FMLA leave, then those hours do not count against the FMLA leave entitlement, unless the employee was otherwise scheduled and expected to work during the holiday

My Employee's FMLA Was Not Approved

Reasons:

- Not eligible (employee did not meet the year/service requirements)
- Non-qualifying FMLA reason
- Medical certification was not provided, incomplete or insufficient
- Employee exhausted their FMLA hours

What happens next:

- The Benefits Office reviews leave case, coordinates with Employee Relations, if applicable, and provides employee and department with further guidance.

Reasonable Accommodation Under The ADA & PWFA

PIM Number 50 - Reasonable Accommodation Policy

- The purpose of the policy is to “assist qualified UNC Charlotte employees and/or applicants with disabilities in requesting reasonable accommodations related to position responsibilities. This procedure 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.
- Policy available at: <https://hr.charlotte.edu/about-hr/personnel-information-memorandums-pims/pim-50-reasonable-accommodation>

Reasonable Accommodations under the ADA and PWFA

- **Examples of Accommodations:**

- Time off (does not require indefinite leave)
- Schedule changes
- Special equipment
- Flexible work arrangement
- Temporary remote work for certain positions
- Adjustment of workplace policy (allow food or water at workstation, allow service animal)
- Adjusting methods of supervision
- Leave of absence

An Overview of the Interactive Process

- The interactive process is at the heart of the reasonable accommodation process and is critical to enabling individuals with disabilities and known limitations to stay employed and fully integrate into the workplace.
- Involves collaborative communication between the ADA Consultant, department leadership, and the employee or applicant to identify and implement reasonable accommodations.
- The ADA Consultant will meet with the employee or applicant to discuss possible and effective reasonable accommodations.
- The ADA Consultant will then work closely with supervisors to determine if the requested accommodation is acceptable or if a different but effective accommodation should be offered.
- Where more than one effective accommodation is available, the final decision as to which accommodation will be provided will be made by the University



Implementing the Reasonable Accommodation

- The ADA Coordinator will work with the employee's supervisor to implement the accommodation
- If effective reasonable accommodations are offered but rejected by the employee, the following will occur:
 - The employee will not be considered a “qualified individual” with a disability under the ADA
 - They will lose their ADA protection
 - May be subject to disciplinary policies if not meeting job expectations

Employee Responsibilities

Requesting Accommodation

Current Employee or Applicant Offered a Job

- Employees should inform their supervisor and HR of the need for an accommodation due to a disability or medical condition
- Obtain and submit an Accommodation Request Form to Employee Relations via HR Connect or email (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

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
- Stay in communication with your supervisor while you are on a medical leave of absence

Employee Responsibilities

- Do not give FMLA forms or medical documentation to your supervisor; provide only to the Employee Relations Office
- Reach out to the ADA Consultant if you need to adjust your approved accommodation
- Before returning to work, you may need to provide a fitness for duty at least a week or two in advance

FMLA and Teleworking

- Employees should not telework or adjust their work schedule in lieu of taking FMLA
- If an employee is requesting to telework during a pending or approved FMLA leave for more than five consecutive workdays, the employee should request and submit a Temporary Telework Request form via HR Connect and obtain approval before teleworking
- A fitness for duty return to work form is still required
- Resource: [Flexible Work and Telework Arrangements for SHRA and EHRA Non-Faculty Employees -University Policy 101.22](#)

Supervisor Responsibilities

Supervisor Responsibilities

- Be aware of and supportive of employees who may need a reasonable accommodation due to disability, pregnancy, or a related condition
- Engage in the interactive process
- Obvious accommodation needs do not require an interactive process, but must still go through the ADA Consultant
- 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 to avoid overpayment

Supervisor Responsibilities

- Confirm with the Benefits Office that the employee has been cleared to return to work if they were out for a serious medical condition – employees should not return before being cleared to do so by Benefits
- Manage but do not interfere with an employee's right to their approved accommodation
- It is a violation of university policy to refuse to implement or interfere with an approved accommodation
- It is a violation of university policy to retaliate against an employee for requesting an accommodation
- Maintain confidentiality – information about an employee's medical leave should only be shared on a need-to-know basis

What happens when an employee has exhausted their leave options?

- If an employee has exhausted their FMLA hours and need to continue to be out:
 - If for their own serious health condition, their leave case is referred to the ADA Consultant for review of a possible ADA accommodation. Reference [PIM 50 Reasonable Accommodations](#) for more details
 - If out to care for their immediate family member, they may qualify for the Family Illness Leave benefit (up to 52 weeks of leave without pay during a 5-year period). Reference [Family Illness Leave, OSHR Policy Manual, Section 5](#) for more details

The End!