

What are your web sites?

<https://www.colorado.edu/hr/managers-and-supervisors/leave/family-medical-leave-information-managers-supervisors>

<https://www.colorado.edu/hr/employees/leave/family-medical-leave-act-fmla-employees>

<https://www.colorado.edu/institutionalequity/ada>

What benefits continue under unpaid FMLA?

An employee remains eligible for all benefits while on unpaid FMLA. When an employee has exhausted all paid leave and is on leave without pay, the employee will continue health plan benefits by contacting Employee Services at 303-860-4200. If the employee elects to continue health plan benefits while on leave without pay, the University will maintain health plan coverage and the University will continue to pay its share of the premiums as long as the employee maintains his/her share. If Employee Services does not receive payment from the employee to pay his/her share of the premiums, Employee Services may discontinue coverage without notice. An employee may choose not to retain the University's health insurance program during leave without pay.

Do employees continue to accrue sick and vacation time off while on unpaid FMLA?

FML is federally mandated job protected and unpaid leave and it runs concurrently with all types of paid leave and compensatory time (if applicable). Therefore, for an employee to receive compensation while on FML, s/he must use some form of paid leave (sick, vacation, injury leave, etc.) or be receiving Short Term Disability (STD), or use compensatory time. Employees receiving paid leave while on FML will continue to accrue sick and vacation leave. *When an employee is on leave without pay, the employee does not accrue sick or vacation leave.*

Can you tell the team that someone is out on FMLA, or has an FMLA/ADA accommodation?

It's appropriate to inform the team that an employee has been approved for leave and has engaged with appropriate resources in order to do so. It would not be appropriate to discuss specifics about the reason for the employee's leave. ADA Accommodation information should only be shared with those who have a legitimate business need to know that there is an accommodation so it can be implemented properly. If the accommodation would be immediately obvious to others (e.g. modified work schedule, change in workstation location, etc.), then you can encourage the employee to share this with others. If you as the supervisor are approached and asked about the employee, you can inform them that their colleague has gone through a process to receive accommodations. The specific accommodation and the reason for the accommodation should not be shared, unless done so by the employee themselves.

What constitutes a “qualified healthcare provider”?

Healthcare Provider Under FMLA: Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, physician’s assistant, nurse midwife and clinical social worker performing within the scope of his/her practice as defined under State law. Chiropractors and Christian Science practitioners are health care providers to the extent defined under FMLA regulations. Also included is any health care provider recognized by the University of Colorado group health plan for reimbursement of services.

Healthcare Provider Under ADA: An individual who is qualified by education, training, licensure/regulation who performs a professional service within his/her scope of practice. For example, if the disability is a mental health impairment, the documentation should be provided by a mental health practitioner (psychologist, counselor, social worker, etc.) unless the practitioner can otherwise identify that they have an established, therapeutic relationship with the employee. Under Colorado law, naturopathic practitioners are considered qualified healthcare providers.

How do FMLA and ADA integrate with ongoing on-the-job injuries (OJI) that don’t require ADA accommodation or leave beyond lost work?

FMLA runs concurrently with leave associated with a workplace injury. ADA may or may not be a factor that must be considered depending on the nature of the injury and the essential functions of the employee’s position. If an employee is still off of work due to a workplace injury after exhausting all protected leave, the ADA office may do an analysis to determine if additional leave as an accommodation, or another accommodation, is appropriate.

Should you stop an employee that wants to discuss the medical conditions of a spouse, child, union or domestic partner that has qualifying conditions and meets the FMLA requirements?

A lot of the interaction likely depends on the type of personal relationship between the employee and supervisor, but the most important piece is that the employee is referred to the correct person to get the information needed regarding FMLA. It is important your employee doesn’t feel like they have to disclose medical information to you. Best practice is to refer the employee to the FMLA Administrator.

Is there a form letter to email employee and cc employee services for initiating the FMLA process?

Not currently – but we suggest some form of the following communication after the initial conversation with the employee:

Dear (Name of FMLA Administrator),

I want to connect you with (name of employee), who may be in need of information regarding FMLA. Can you please assist?

What are our office's options for securing funding for temporary work while an employee is out?

Funding a temporary position is the financial responsibility of the department. Financial options would need to be worked out and discussed at the unit/department/college level.

If you have an employee who has been out on FMLA is it appropriate to tell staff to not ask the employee questions about why s/he was out when s/he returns?

It's appropriate to ask the employee how he/she would like the return to be handled, and if they would like other employees to be instructed to not ask any questions, or if they are ok fielding questions. Go with what the employee is comfortable with.

When taking FMLA, if employee has both sick and vacation time, should this employee have to use the vacation time first and when it's exhausted then use sick time?

An employee is required to use sick time first, then vacation time, and then will go into unpaid status after all paid leave is exhausted. An exception to this would be if the employee has elected Short Term Disability (STD). If applicable, the employee would receive STD pay after sick time and the waiting period have exhausted.

How often can an employee take FMLA?

How many times in a year can an employee use FMLA after they have used up their 12/13 weeks?

Once an employee has utilized their 12/13 weeks of FMLA leave time in a rolling 12-month period they are no longer eligible to receive FMLA leave. Depending on the issue the ADA may allow for leave as an accommodation if appropriate, but it's a separate analysis and is not considered FMLA.

FMLA for Classified Employees

A classified employee may qualify for up to 13 weeks (520 hours) of FMLA leave per a rolling 12-month period, so long as that employee has one year of total state service as of the date leave will begin. This amount is prorated for part-time employees. Specific forms must be completed by both the employee and the department for FMLA leave to be granted.

FMLA for University Staff, 12-month Faculty, and Research Faculty

University staff, 9 and 12 month faculty, and research faculty may qualify for up to 12 weeks (generally 480 hours) of FML per a rolling 12 month period, so long as they have been employed by the University for at least 12 months and have worked at least 1,250 hours during the most recent 12 month period. Part-time FLSA-exempt employees with an FTE of 50% or greater are presumed to have met the 1250 hours requirement, provided they have at least one year of university service. This presumption will be lost if the employee has taken FML and or any extended period of leave in the 12 months prior to requesting FML. The 12 work weeks are prorated for eligible part-time staff.

What is intermittent FMLA?

An employee taking leave for his/her own serious health condition, to care for a spouse, civil union partner, domestic partner, parent or child with a serious health condition, to care for an injured service member or due to a qualifying exigency, need not take FML continuously. FML may be taken intermittently or on a reduced leave schedule if the employee provides certification of medical necessity. Employees needing intermittent leave or leave on a reduced leave schedule must make a reasonable effort to schedule his/her leave so as not to disrupt the operations of his/her department. If the leave is for planned medical treatment or for intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider. A supervisor may temporarily assign the employee to an alternative position with equivalent pay and benefits during the period of the intermittent or reduced leave schedule for which the individual is qualified and which better accommodates recurring periods of leave. If not medically necessary, an employee taking leave for birth or placement of a child may take leave intermittently or on a reduced leave schedule only with the approval of a supervisor.

If an employee is out for a full week (5 days) due to the flu and the employee has medical documentation to substantiate the illness, is it required that FMLA paperwork be filled out?

If an employee calls in unexpected and says it's due to the flu and is out for a few days FMLA may not be necessary. If an employee just submits a request for 3+ days of sick time with no explanation, it's best practice to send FMLA paperwork.

If an accommodation is made due to a documented disability and nothing has changed to improve that disability, is my employer allowed to ask for an updated medical documentation?

Accommodations are provided to enable an employee with a disability the ability to perform the essential functions of their position. Their purpose is not to improve a person's disability, but rather to facilitate the ability to perform one's job. For example, an employee with a visual impairment may require screen reader software to perform computer-based tasks. While their impairment will never change, using screen reader software will allow them to perform in their position, despite their impairment. In the event that the accommodation appears to be ineffective (e.g., the employee is unable to perform the essential functions of their position), ADA Compliance should be contacted to reassess the efficacy of the accommodation and whether or not it remains reasonable. Documentation should not be requested by the supervisors or other department representatives, and will be facilitated by ADA Compliance.

What if you see any of the changes noted in the slide about supervisor role in your supervisor?

If you are concerned about your supervisor's behavior or that they have a potential need for leave, it is always appropriate to go to their up line (your supervisor's, supervisor). You can also report this to your department HR or central Human Resources.

When can medical documentation be requested under ADA?

The following are reasons the ADA allows for an employer to request updated medical documentation. In the event of one of the following scenarios, contact ADA Compliance or Employee Relations to facilitate gathering medical information:

A disability-related inquiry or medical examination of an employee may be job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that:

- An employee's ability to perform essential job functions will be impaired by a medical condition
- An employee will pose a direct threat due to a medical condition
- An employer is given reliable information by a credible third party that an employee has a medical condition
- An employer has observed symptoms indicating that an employee may have a medical condition that will impair his/her ability to perform essential job functions or will pose a direct threat. In these situations, it may be job-related and consistent with business necessity for an employer to make disability-related inquiries or require a medical examination

What if an employee doesn't want FMLA, or they don't fill out the appropriate documents?

As an employer we can't force an employee to complete FMLA paperwork. We can do our best to get them the information they need and educate employees on the benefits of FMLA job protection. If an employee chooses to not be covered under FMLA he/she is subject to discipline for attendance and other issues that FMLA may have provided protection for.

What if an employee breaks a leg before a business trip and wants accommodations for their trip, what is the process?

In most cases, a broken leg, or similar condition, will not qualify as a disability unless the physical impairment is expected to last a minimum of three to six months and will substantially limit a major life activity during that duration. As such, ADA Compliance would not provide accommodations. If this occurs and the employee needs accommodations during their trip, they should work with the department, or the host of the trip (e.g. conference, hotel, etc.) to arrange for accommodations.

If an employee self-reports a limitation to your office, does the supervisor always get notified? Does this happen as part of the process of determination or only after determination?

Some employees may choose to meet with ADA Compliance to disclose a limitation/impairment/disability, but may decide they do not currently need an accommodation. In the event the employee determines they do not currently need an accommodation, then the supervisor will not be notified of the self-report. If the employee discloses their limitation/impairment/disability and is requesting accommodations, then the supervisor will be contacted during the interactive process before

a final determination is made. We will share with the supervisor the limitations and requested accommodation, but will not disclose the disability or impairment.

How should we process FMLA paperwork when employee is out sick for more than 3 days (unplanned)? The paperwork may take longer than for the employee to actually return.

It depends. Did the employee say why he/she is out (potentially indicating that it may be a serious health condition, or caring for a qualified family member with a serious health condition) or is it because of something benign like the flu or a cold? Depending on the context of the situation it may or may not be necessary to complete FMLA paperwork. Call the ER office if you have questions.