

# New York University

## UNIVERSITY POLICIES

**Title:** D.C. FMLA Policy and Procedure  
**Effective Date:** June 26, 2020  
**Supersedes:** April 30, 2018  
**Issuing Authority:** Executive Vice President  
**Responsible Officer:** Human Resources

### **Statement of Policy**

In accordance with the terms and conditions of this Policy, New York University (“University”) will provide unpaid, job-protected leave under the District of Columbia Family and Medical Leave Act (“D.C. FMLA”) and applicable regulations to eligible employees working in the District of Columbia. As detailed below, this Policy sets forth the eligibility requirements for D.C. FMLA leave, the conditions for using leave, the process for requesting leave, and other related provisions.

### **To Whom the Policy Applies**

Subject to the conditions listed in items (a)-(c) below, employees are eligible for D.C. FMLA leave if (1) they work within D.C., (2) they have been employed by the University for 1 year without a break in service (except for regular holiday, sick, or personal leave granted by the University), and (3) have worked at least 1,000 hours during the 12 month period immediately preceding the request for leave (hereinafter, “eligible employee”).

- a. The 1 year of employment without a break in service need not immediately precede the D.C. FMLA request, but if the break in service between the request for leave and the last date of service is greater than 7 years, the time need not be included in determining eligibility.
- b. Whether an employee has worked the minimum 1,000 hours of service shall be determined according to the principles set forth under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. Hours paid for holiday, sick, and vacation time will count toward the 1,000 hour threshold. An employee returning from his or her USERRA-covered service obligation also shall be credited with the hours of service that would have been performed but for the period of his or her USERRA-covered service.
- c. An employee shall be deemed to work within D.C. if he or she spends more than 50% of his or her work-time working for the University in D.C., if he or she is employed by the University in more than one location, or he or she is based in D.C. and regularly spends a substantial part of his or her time working for the University in D.C. and does not spend more than 50% of his or her work-time working for the University in any particular state.

## **Policy and Procedures**

### ***D.C. FMLA Leave Entitlement***

In a 24-month employment period, an eligible employee may take up to 16 workweeks of D.C. FMLA leave for medical leave purposes and may take up to 16 workweeks of D.C. FMLA leave for family leave purposes, in accordance with the terms of this Policy.

- An eligible employee may take medical leave where he or she becomes unable to perform the functions of his or her position because of a serious health condition.
  
- An eligible employee may take family leave for the:
  - birth of a child of the employee;
  - placement of a child with the employee for adoption or foster care;
  - placement of a child with the employee, if the employee permanently assumes and discharges parental responsibility for the child; or
  - care of an employee's family member with a serious health condition.

The 24 month period in which an eligible employee may take D.C. FMLA leave is calculated on a "rolling" basis measured backward from the date the employee first uses such leave. That is, each time an employee takes D.C. FMLA leave the remaining leave entitlement would be any balance of the 16 workweeks of family leave and the 16 workweeks of medical leave that had not been used during the immediately preceding 24 months.

Family leave for the birth of a child or placement of a child with the employee must conclude within 12 months of the birth or placement.

If two family members are employees of the University and both employees have the same or interrelated duties and the absence of both employees would unduly disrupt the conduct of the University's business, the University may: (a) limit to 16 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled; and (b) limit to 4 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled to take simultaneously. \*This limitation shall apply only if the family members seek to take leave for the same underlying reason (*e.g.*, to care for the same family member or due to the birth of the same child).

### ***Intermittent or Reduced Schedule D.C. FMLA Leave***

An eligible employee may take intermittent (in blocks of time) or reduced schedule D.C. FMLA leave under the following circumstances:

- for an employee's planned and/or unanticipated medical treatment or recovery when medically necessary; or
- caring for a family member with a serious health condition when medically necessary.

For intermittent or reduced schedule leave, leave shall be counted based on the proportion of a normal workweek that the employee misses for D.C. FMLA leave purposes.

The University may designate leave on an hourly basis.

Employees who require intermittent or reduced schedule leave for a planned medical treatment should make a reasonable effort to schedule their leave to minimize disruption of their department's operations.

### ***The Process for Requesting D.C. FMLA Leave***

1. Where the need for D.C. FMLA leave is foreseeable, the employee shall inform Lincoln Financial (the University's FMLA administrator) and his or her supervisor of the need for leave at least 30 days before the leave is scheduled to begin, where practicable. Where the need for leave is unforeseeable, the employee shall inform Lincoln Financial and his or her supervisor as soon as practicable. The employee may report a claim through one of the following means: online (using MyLincolnPortal® at <https://www.mylincolnportal.com>) or telephonically (at 888-339-6830). First time users of the MyLincolnPortal must register using Company Code NEWYORKUNIV.
2. When an employee requests D.C. FMLA leave, or when the University acquires knowledge that an employee's leave may be for a D.C. FMLA-qualifying reason, the employee shall be notified whether he or she is eligible for D.C. FMLA leave within 5 days of the request in the form of an eligibility letter.
3. The employee may be required to submit a medical certification within 30 days of the issuance of the eligibility letter, where practicable, if the employee seeks to take medical leave or leave related to a family member's serious health condition. The employee also may be required to support a claim for family leave by submitting a signed affidavit stating that the employee is, in fact, the person who will be taking care of the specific family member with the serious health condition.
4. If the University believes that the employee's medical certification does not provide the information required under the D.C. FMLA, the employee may be notified, in writing, of the missing or deficient information within 5 days of the University's receipt of the medical certification. The employee shall then have 10 days to correct the certification, where practicable. The University may require that the employee obtain a second medical opinion if the University doubts the validity of the certification, or obtain a third medical opinion if the first and second opinions differ.
5. Once the University receives a medical certification in accordance with applicable law from an employee, it will be responsible for designating leave as D.C. FMLA-qualifying, and for providing notice of the designation to the employee, in writing, within 5 business days of receiving the medical certification, unless there are extenuating circumstances. If family or medical leave taken by an

employee qualifies as D.C. FMLA leave, the University may designate the leave as D.C. FMLA leave, regardless of whether the employee requested to have the leave designated.

6. The employee may be required to obtain subsequent re-certifications if: (a) the employee requests an extension of leave or a different type or frequency of leave, beyond what the employee requested in his or her initial certification or request for D.C. FMLA leave; (b) the University obtains new information which causes it to doubt the validity of the employee's stated reason for the leave or the continuing validity of the certification; or (c) more than six months has passed since the employee previously submitted a certification for the leave.

### ***Benefits***

An employee who takes family or medical leave under this Policy shall not lose any employment benefit or seniority accrued before the date on which the family or medical leave commenced.

Group health benefit coverage will be maintained on the same basis as coverage would have been provided had the employee been continuously employed during the D.C. FMLA leave period.

Any share of group health plan premiums which had been paid by the employee prior to D.C. FMLA leave must continue to be paid by the employee during the leave period.

If the employee's premium payment obligations under the applicable plan are not covered by the employee's paycheck, the employee must provide the University with a check or money order in the appropriate amount.

### ***Alternative Employment***

Upon the mutual agreement of the University and the employee, an employee with a serious health condition may undertake alternative employment with the University throughout the duration of his or her serious health condition. A period of alternative employment shall not be considered use of medical leave under the D.C. FMLA and shall not cause a reduction in the amount of leave to which the employee is entitled under this Policy. When the employee who agreed to alternative employment is able to perform the functions of the employee's original position, the employee shall be restored to the original position in accordance with the terms of this Policy.

### ***Job Restoration***

1. Upon return from D.C. FMLA leave:

(a) the employee shall be restored to the position of employment held by the employee when the leave commenced; or

(b) if the position held by the employee when the leave commenced is no longer available, the employee shall be restored to a position of employment equivalent to the position held by the employee when the leave commenced. The position shall include equivalent employment benefits, pay, seniority, and other terms and conditions of employment.

2. The University may deny restoration of employment to a salaried employee if the employee is among the highest paid 10% of employees and if the University:

(a) demonstrates that denial of restoration of employment is necessary to prevent substantial and grievous economic injury to the University's operations and the injury is not directly related to the leave that the employee took pursuant to this Policy;

-and-

(b) notifies the employee of the intent to deny restoration of employment and the basis for the decision at the time it provides the eligibility letter to the employee following the employee's request for leave.

Section (2)(a) shall not apply if: (a) the University is under a contract to provide work or services and the absence of the employee prohibits it from completing the contract in accordance with the terms of the contract; (b) failure to complete the contract will cause substantial and grievous economic injury to the University; and (c) after the University made reasonable attempts, the University failed to find a temporary replacement for the employee.

### ***Other University Leaves***

***FMLA.*** D.C. FMLA leave runs concurrently with leave taken under the federal Family and Medical Leave Act ("FMLA"), in accordance with the University's FMLA Policy and Procedure.

***Paid Leave.*** Where D.C. FMLA leave runs concurrently with FMLA leave, the University also will require that accrued but unused paid leave run concurrently, in accordance with the University's Federal FMLA Policy and Procedure.

D.C. FMLA also shall run concurrently with D.C. Paid Family Leave (DCPFL). Employees must timely apply to the D.C. Department of Employment Services (DOES) for DCPFL benefits if eligible. If DOES approves the employee's application for DCPFL benefits, the employee must promptly provide the University with a copy of the benefit amount notification provided to the employee by DOES. *Note:* Where paid leave is running concurrently with D.C. FMLA, such paid leave will be offset by any DCPFL benefits the employee receives.

In all other instances, should an employee wish to use paid medical, sick, family, vacation, personal, or other compensatory leave for which the employee is eligible, the employee may use such paid leave in accordance with the applicable policy. Any such paid leave that the employee elects to use shall count against the workweeks of allowable medical and family leave provided by the D.C. FMLA.

***Additional Options.*** If the employee is unable to return to work upon the exhaustion of his or her D.C. FMLA leave, the employee may take or continue to take any other leave for which the employee is eligible under any other applicable laws or University policies; pursue disability options; or seek an accommodation, as appropriate. At no point shall any continued leave be counted as D.C. FMLA leave unless and until the employee again satisfies the respective eligibility requirements.

Nothing in this Policy shall supersede any provision of law or employment benefit program that provides greater employee family or medical leave rights than the family or medical rights established under this Policy.

## Definitions

\*All definitions set forth in this section are to be read in accordance with the D.C. FMLA and applicable regulations.

**Child** -- (a) a person under 21 years of age; (b) a person, regardless of age, who is substantially dependent upon the employee by reason of physical or mental disability; and (c) a person who is under 23 years of age who is a full-time student at an accredited college or university.

**Committed relationship** -- a domestic partnership, as defined under applicable law, or a familial relationship between two individuals demonstrated by such factors as, but not limited to, mutual economic interdependence, including joint bank accounts, joint tenancy, shared lease, and joint and mutual financial obligations such as loans; domestic interdependence, including close association, public presentment of the relationship, and exclusiveness of the relationship; length of the relationship; and the intent of the relationship, as evidenced by a will or life insurance.

**Family member** -- (a) a person related by blood, legal custody, or marriage; (b) a foster child; (c) a child who lives with an eligible employee and for whom the eligible employee permanently assumes and discharges parental responsibility; or (d) a person with whom the eligible employee shares or has shared, within the last year, a mutual residence and with whom the eligible employee maintains a committed relationship.

**Health care provider** -- a person licensed under federal, state, or D.C. law to provide healthcare services.

**Serious Health Condition** -- means a physical or mental illness, injury, or impairment that involves:

(I) inpatient care in a hospital, hospice, or residential health care facility for the duration of one overnight or longer, or any subsequent treatment in connection with such inpatient care, or

(II) continuing treatment or supervision at home by a health care provider or other competent individual. Continuing treatment by a health care provider includes any one or more of the following:

(a) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(1) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider (or agent thereof as defined by the D.C. FMLA);

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(b) Any period of incapacity due to pregnancy, or for prenatal care;

(c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or (or agent thereof as defined by the D.C. FMLA);

(2) Continues over an extended period of time; and

(3) May cause episodic rather than a continuing period of incapacity;

(d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(e) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (such as chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

\*Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment such as the taking of over-the-counter medications, bed rest, or similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute continuing treatment for purposes of D.C. FMLA leave.

\*\* Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" within this definition unless they render the recipient of such treatment incapacitated or unless complications develop.