

## **The New School -- FMLA Policy**

The New School will comply with the Family and Medical Leave Act (FMLA) implementing Regulations as revised effective October 28, 2009. The New School posts the mandatory FMLA Notice required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Act in The Office of Human Resources, 79 Fifth Avenue, 18<sup>th</sup> Floor and upon hire provides new employees with information.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact the University's benefits office at [benefitshelp@newschool.edu](mailto:benefitshelp@newschool.edu) or by calling 212-229-5671 x4942.

### **A. General Provisions**

Under this policy, The New School will grant up to 12 weeks of job protected leave (or up to 26 weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid, depending upon the circumstances of the leave and as specified in this policy.

### **B. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for The New School for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the University's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The university counts paid and unpaid leave hours as hours worked for determining whether 1,250 hours have been worked.
- 3) The employee must work in a worksite where 50 or more employees are employed by The New School within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### **C. Type of Leave Covered**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child within one year of birth.
- 2) The placement of a child with the employee for adoption or foster care and to care for the newly placed child within one year of placement.
- 3) To care for a spouse, child or parent with a serious health condition (described below).

4) The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the essential functions of the employee's position.

“**Serious health condition**” means an illness, injury, impairment, or physical or mental condition that involves either:

- (a) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- (b) Continuing treatment by a health care provider, which includes:
  - (i) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that **also** includes:
    - treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
    - one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); **or**
  - (ii) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
  - (iii) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**
  - (iv) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
  - (v) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Employees with questions about what illnesses are covered under this FMLA policy or under The New School's sick leave policy are encouraged to consult with the Benefits staff in the Human Resource Department.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, The New School may designate all or some portion of the earlier related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the University and employee agree, including agreement on timing and duration of the leave.

"Covered active duty" means:

- (a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- (b) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

6) Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.

An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

The term "covered servicemember" means:

- (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term "serious injury or illness":

- (a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- (b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a

covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

#### **D. Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) above under this policy during any 12-month period. The New School will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, The New School will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, The New School will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

#### **E. Employee Status and Benefits During Leave**

While an employee is on leave, The New School will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Under current policy, the employee pays whatever portion of the health care premium that the employee paid just prior to being on leave. However, if the premiums are raised or lowered the employee will be required to pay the new premium rates. While on paid leave, the University will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Human Resources Department by the date indicated on the notification. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The New School will provide 15 days notification prior to the employee's loss of coverage.

If the employee contributes to other benefit plans, such as life insurance or flexible spending accounts, The New School will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. If the employee does not continue these payments, the University may discontinue coverage during the leave.

#### **F. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a return to work/fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the University's response to the employee's FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The New School may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

## **G. Use of Paid and Unpaid Leave**

FMLA leave is unpaid. However, other types of leaves, such as disability (for an employee's own serious health condition or the birth of a child) and workers' compensation leave (to the extent that it qualifies) may provide income replacement and will run concurrently with FMLA and be designated as FMLA leave.

### Non-Union Faculty and Non-Union Administrative Staff:

The first 40 hours of unpaid FMLA will be paid as New York City Sick Leave per the Paid Sick Leave Act. Please refer to the Institutional Policies and Procedures Manual for more information pertaining to this law.

### Non-Union Administrative Staff:

An employee who is taking FMLA leave may use accrued vacation days, accrued floating holidays and/or days in their special leave bank\* during all or a portion of their unpaid leave. Otherwise, the employee may choose not to use accrued time, and the leave will be unpaid.

\*Vacation days above the allowable carryover maximum are placed in a special leave bank to be used by an employee during any unpaid portion of an approved FMLA. Please refer to the Institutional Policies and Procedures Manual for more information regarding the special leave bank for FMLA.

### Union Staff:

Union employees who are taking FMLA leave for their own personal illness may be required to use all or a portion of their accrued leave, may have the option to use their accrued leave, or may be able to take the FMLA leave as unpaid, depending on the collective bargaining agreement between the employee's respective union and the University and practices and procedures thereunder and the reason for the leave (i.e., a workers compensation injury or an injury covered by New York State Short Term Disability).

Union employees should see the leave of absence policy for an illness, injury or disability (for their union) for more details.

Union employees who are taking FMLA leave to care for a family member with a serious health condition or are using military FMLA leave for a qualifying exigency or FMLA military caregiver leave may use accrued leave other than sick leave, or the employee may choose to not use that accrued leave, and the leave will be unpaid. The employee may not use sick leave that is designated under the relevant collective bargaining agreement as leave to be used solely for the purpose of an employee's personal illness. Local 1205 union employees may receive regular pay for all or part of the leave under Article X, Section D (1) of their union contract, if it applies.

The employee's leave under the FMLA will run concurrently with leave provided for under the union contract.

## **H. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember) over a 12-month period.

The New School may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, The New School and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach an agreement with The New School before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the requested leave schedule qualifies under FMLA.

### **I. Certification for the Employee's Serious Health Condition**

The New School will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf> ).

The New School may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The New School will not use the employee's direct supervisor for this contact. Before The New School makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, The New School will obtain the employee's permission for clarification of individually identifiable health information.

The New School has the right to ask for a second opinion if it has reason to doubt the certification. The New School will pay for the employee to get a certification from a second doctor, which The New School will select. The New School may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, The New School will require the opinion of a third doctor. The New School and the employee will mutually select the third doctor, and The New School will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### **J. Certification for the Family Member's Serious Health Condition**

The New School will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf> ).

The New School may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave

administrator or management official. The New School will not use the employee's direct supervisor for this contact. Before The New School makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, The New School will obtain the employee's family member's permission for clarification of individually identifiable health information.

The New School has the right to ask for a second opinion if it has reason to doubt the certification. The New School will pay for the employee's family member to get a certification from a second doctor, which The New School will select. The New School may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, The New School will require the opinion of a third doctor. The New School and the employee will mutually select the third doctor, and The New School will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **K. Certification of Qualifying Exigency for Military Family Leave**

The New School will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (<http://www.dol.gov/esa/whd/forms/WH-384.pdf> ).

#### **L. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave**

The New School will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember (<http://www.dol.gov/esa/whd/forms/WH-385.pdf> ).

#### **M. Recertification**

The New School may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the University receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, The New School may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The New School may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

#### **N. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave by contacting the University's benefits office at [benefitshelp@newschool.edu](mailto:benefitshelp@newschool.edu) or by calling 212-229-5671 x4942.

When the need for the leave is foreseeable, the employee must provide the University with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with The New School's

usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**O. Intent to Return to Work From FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, The New School may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

All employees, except for Facilities Department employees who are covered by the 32BJ/RAB contract, must provide a fitness-for-duty certification from their doctor as least two weeks prior to the employees' scheduled date of return. Facilities Department employees who are covered by the 32BJ/RAB contract must provide a fitness-for-duty certification from their doctor at least one week prior to the employees' scheduled date of return. If such certification is not timely received, the employee's return to work may be delayed.