

Designating Absences as FMLA Leave.

Under the Family and Medical Leave Act (FMLA), faculty and staff members who have worked for the University for at least a total of 12 months and have worked a minimum of 1,250 hours over the prior 12 months are entitled to 12 weeks of unpaid leave for certain events. These events are the birth or adoption of a child or the development of a serious health condition of the employee or the employee's child, spouse or parent. In addition, the FMLA generally requires the University to restore the individual to the same job (or an equivalent job) that he or she held before the FMLA leave began.

Under certain circumstances, the FMLA permits an eligible employee to choose to substitute paid leave for unpaid FMLA leave. In addition, the FMLA permits the employer to require the employee to substitute accrued paid leave (including both sick leave and vacation leave) for FMLA leave. Also, the employee's FMLA 12-week leave entitlement may be designated to run concurrently with a workers' compensation (on-the-job injury) absence or disability absence when the injury or condition that is the basis for such an absence is one that meets the criteria for a serious health condition.

Absences that qualify for both FMLA leave and for leave under some other policy (*i.e.* sick leave, workers' compensation leave, or disability leave) will not count against an employee's entitlement to 12 weeks of FMLA leave unless the absence is specifically designated in writing as FMLA leave. The U.S. Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002) struck down the Department of Labor regulation that precluded the employer's retroactively designating leave as FMLA leave. The Court did not, however, invalidate the requirement that employers notify employees that a particular period of leave will be deducted from their annual FMLA entitlement. In addition, the Court did not rule out claims under the FMLA by employees who can demonstrate that they suffered actual harm as the result of an employer's failure to provide the required notice. Thus, despite the decision in *Ragsdale*, timely written notice of designation of FMLA leave remains an important part of the leave approval process.

The FMLA does not require that the employee specifically request FMLA leave. Instead, it places the responsibility on the employer to inquire, to the extent necessary, to determine if the FMLA is applicable to a request for leave. As a result, a supervisor who receives a leave request should always consider whether the basis for the request qualifies for FMLA leave. When additional information in that regard is needed, the supervisor should ask for it. If the leave request does so qualify, the leave should be approved in writing, specifically designating it as FMLA leave. Likewise, the supervisor should promptly dispatch a letter designating an absence based on an on-the-job injury or a disability status as FMLA leave.

Supervisors with questions regarding whether a situation qualifies as FMLA leave should call the Office of Benefits and Employee Services for assistance.