OLD DOMINION UNIVERSITY
University Policy

Policy #6050
FAMILY AND MEDICAL LEAVE ACT POLICY

Responsible Oversight Executive: Vice President for Human Resources
Date of Current Revision or Creation: December 16, 2016

A. PURPOSE

The purpose of this policy is to provide an effective means for administering the Family and Medical Leave Act of 1993 (FMLA) and to ensure compliance.

B. AUTHORITY

Virginia Code Section 23.1-1301, as amended, grants authority to the Board of Visitors to make rules and policies concerning institution. Section 6.01(a)(6) of the Board of Visitors Bylaws grants authority to the President to implement the policies and procedures of the Board relating to University operations.

Federal Family and Medical Leave Act of 1993 (FMLA)

Virginia Department of Human Resource Management Policy 4.20 - Family and Medical Leave

C. DEFINITIONS

Active Duty or Call to Active Duty Status – Active duty in the Regular Armed Forces or duty under a Federal call or order to active duty (not a State call to active duty unless by order of the President of the United States) in support of a contingency operation pursuant to specific enumerated provisions of Section 688 of Title 10 of the United States Code or deployment to a foreign country. A call or order to active duty is only made to members of the National Guard or Reserve components or a retired member of the Regular Armed Forces or Reserves.

Child – A biological, adopted or foster child, a step child, legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or a physical disability.

Covered Service Member – For purposes of military caregiver leave, a covered service member is a *current* member of the Regular Armed Forces, National Guard, or Reserves, including those on the temporary disability retired list, but not including former members or members on the permanent disability list. Also covered are veterans who have served on active duty and, within five years of serving, are undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred while on active duty or because active duty aggravated an existing or preexisting injury or illness. The covered service member must be receiving medical treatment or

oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider.

Eligible University Employees - Those employed for a total of at least 12 months by the University or the Commonwealth of Virginia in the past seven years and who have worked at least 1,250 hours during the 12-month period prior to the leave request. (NOTE: The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.) Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. Employees who do not meet the above criteria should contact the Department of Human Resources.

Employee Benefits – All benefits provided by the University to eligible employees including annual and sick leave, group life insurance, health insurance, retirement contributions and tuition assistance.

Family and Medical Leave –Leave without pay (or use of an employee's accrued leave) for up to 12 or 26 workweeks during a designated 12-month period for the reasons stated in this policy in conformance with the Federal FMLA.

Health Care Provider – Health Care Provider includes the following:

- Doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice;
- Any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and
- Others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, physician assistants, and nurse-midwives authorized to practice in the State and performing within the scope of their practice as defined under State law.

Immediate Family Member – An employee's child, spouse, parent or "next of kin."

Military Caregiver Leave – Up to 26 weeks of leave may be taken during a single 12-month period to care for a covered service member. The single 12-month period is measured forward from the date the leave begins.

Next of Kin – The closest blood relative of the injured or recovering military service member. The next of kin is only eligible for FMLA entitlement and benefits protection for military caregiver leave.

Parent – Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent. The term does not include a parent-in-law.

Qualifying Exigency – A non-medical activity that is directly related to the covered military member's active duty or call to active duty status. For an activity to qualify as an exigency, it must fall within one of seven categories of activities or be mutually agreed to by the supervisor and the employee.

The seven categories of qualifying exigencies are short-notice deployment, military events and related activities, certain temporary childcare arrangements and school activities, financial and

legal arrangements, counseling by a non-medical counselor, rest and recuperation, and post-deployment military activities.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that requires either inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in daily activities.

Whether such a condition causes an incapacity for FMLA leave is: (a) measured by the duration of the incapacity itself (more than three full consecutive calendar days); (b) requires in-person treatment by a health care provider at least once within seven days of the first day of incapacity; and (c) requires either a regimen of continuing treatment initiated by the health care provider during the first treatment or a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.

A chronic condition is one that: (a) requires visits for treatment by a health care provider at least twice a year; (b) continues over an extended period of time; and (c) may cause episodic incapacity rather than a continuing period of incapacity.

Spouse – The husband or wife of the employee as recognized under the laws of the Commonwealth of Virginia for the purpose of marriage.

Web Time Entry (WTE) - A web-based system designed to enable employees to submit hours worked and leave information electronically, eliminating the paper submission of time slips, time and attendance forms, leave activity forms, and leave reports.

D. SCOPE

This policy applies to all eligible employees of the University and employees of affiliated organizations who are paid through the University. Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. Affiliated organizations are separate entities that exist for the benefit of the University through an operating agreement and include the Foundations, the Community Development Corporation, and the Alumni Association.

E. POLICY STATEMENT

Old Dominion University complies with the Family and Medical Leave Act of 1993 and provides eligible employees with up to 12 weeks of unpaid, job-protected family or medical leave for the birth, adoption, or foster care of a child; because the employee is needed to care for a family member (child, spouse or parent) with a serious health condition; or because the employee's own serious health condition makes him or her unable to do his or her job. FMLA also provides for specific military family leave rights related to military service.

F. PROCEDURES

BASIC FAMILY AND MEDICAL LEAVE ENTITLEMENT

Eligible full-time faculty and staff may request up to 12 weeks (60 workdays or 480 work hours) of unpaid, job-protected leave during a designated 12-month FMLA leave year for the following circumstances:

1. birth of a child and to care for that child,
2. placement of a child for adoption or foster care and to care for the newly placed child,
3. to care for a spouse, child or parent with a serious health condition,
4. serious health condition of the employee that makes the employee unable to perform his/her job,
5. any qualifying exigency arising out of the fact the employee's spouse, son, daughter or parent is a covered military member on active duty or has been notified of an impending call or order to active duty in support of contingency operations.

Certain kinds of paid leave, according to applicable University leave policies, will be substituted for unpaid leave. (See the section of this policy on "Use of Paid Leave.")

FMLA for Eligible Part-time Employees – Eligible part-time employees may take up to 12 weeks of family and medical leave for the reasons listed above. Actual hours taken will be counted on a pro-rated basis corresponding to the percentage of hours they normally are scheduled to work during a year.

FMLA for Eligible Wage Employees – Eligible wage employees may take up to 12 weeks of family and medical leave for the reasons listed above. Actual hours taken will be counted on a pro-rated basis corresponding to the percentage of hours they are normally scheduled to work during the 365-day period prior to the date family and medical leave is scheduled to begin.

MILITARY FAMILY LEAVE ENTITLEMENT

Eligible employees with a spouse, son, daughter or parent on active duty or call to active duty status in the Regular Armed Forces, National Guard or Reserves in support of a contingency operation may use their 12-week (60 workdays or 480 work hours) leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special military caregiver leave entitlement that permits an eligible employee who is the spouse, son, daughter, or next of kin of a covered service member or veteran who is recovering from a serious illness or injury sustained or a preexisting condition aggravated in the line of duty while on active duty to use up to 26 weeks (130 workdays or 1040 work hours) of leave in a single, 12-month period to care for the service member. This leave is only available once and is combined with all other FMLA leaves that year limiting FMLA for all purposes to 26 weeks during a 12-month period.

Certain kinds of paid leave, according to applicable University leave policies, will be substituted for unpaid leave. (See the section of this policy on "Use of Paid Leave.")

Eligible employees taking leave under the FMLA have a guaranteed right to return to their same jobs or to a job with equivalent status and pay. Health benefits must continue during the leave at the same level and conditions as if the employee had continued to work.

ELIGIBLE UNIVERSITY EMPLOYEES

All full-time faculty, administrative and professional faculty, part-time faculty, wage and classified staff employed at the University or the Commonwealth of Virginia for at least 12 months in the past seven years and who have worked 1,250 hours during the 12 months before the start of the FMLA leave are eligible.

Wage employees and part-time faculty who have been employed by the University for at least 12 months and who have worked at least 1,250 hours during the 12 months before the start of the FMLA leave are eligible.

TWELVE-MONTH FMLA LEAVE YEAR

The FMLA Leave Year for classified and hourly employees is January 10-January 9. For faculty, administrative and professional faculty, adjunct faculty and those employees applying for military caregiver leave, the FMLA Leave Year is a rolling 12-month period measured backward from the date an employee begins an FMLA-approved leave.

USE OF PAID LEAVE

The University requires employees eligible for paid leave to use accrued paid leave in concurrence with usage of FMLA. The types of paid leave that may be used are based on the applicable State and University leave policies. Wage employees and part-time faculty are ineligible for paid leave.

SPOUSES EMPLOYED BY THE UNIVERSITY

If both spouses work for the University, they are eligible for an aggregate of 12 weeks of leave per 12-month period for birth, for placement for adoption or foster care, or to care for a sick parent. However, if leave is for a seriously ill spouse or child or for the employee's own serious illness, the husband and wife are each entitled to a 12-week period.

EMPLOYEE RESPONSIBILITIES

An employee must give 30 days' advance written notice to the supervisor of the need to take FMLA leave when it is foreseeable for the birth or placement of a child for adoption or foster care or for planned medical treatment. When it is not possible under the circumstances to provide advance notice, the employee must notify the supervisor according to the University's and/or department's usual and customary leave of absence notification requirements. The employee must provide sufficient information depending on the situation for the University to reasonably determine whether FMLA may apply; calling in sick is inadequate to obtain FMLA protection. The employee must also notify the Department of Human Resources. The employee's adult relative, spouse, attorney or health care provider may also notify the supervisor and/or the Department of Human Resources of the employee's need for FMLA leave.

If an employee takes leave based on planned medical treatment for the employee or the employee's child, spouse or parent, the employee must consult with the supervisor in advance and make reasonable efforts to schedule the treatment to minimize disruptions to the department's operations.
The employee must notify the supervisor as soon as practicable about any changes to the leave dates.

The employee is responsible for ensuring that the health care provider completes the required certification of the employee's or family member's serious health condition to be eligible for FMLA coverage. The employee is also responsible for reporting leave taken in WTE or the appropriate reporting method for his/her leave status as required by the Payroll Office.

SUPERVISOR'S RESPONSIBILITIES

Supervisors and managers are responsible for notifying the Department of Human Resources immediately upon request for or notification of an employee's FMLA leave. The Department of Human Resources will provide formal notification to the employee. Additionally, supervisors must approve intermittent leave work schedules. The Department of Human Resources must be notified of any change in the employee's status as soon as the supervisor is notified. The supervisor is responsible for timely submission of leave taken via WTE.

DEPARTMENT OF HUMAN RESOURCES RESPONSIBILITIES

The Department of Human Resources is responsible for administering the University's FMLA policy. Responsibilities include notifying all employees of the FMLA policy, designating FMLA coverage, and maintaining all related documents and forms. The Department of Human Resources, upon receiving notice of a request for FMLA leave, is responsible for issuing the notice of eligibility and rights and responsibilities under FMLA to the employee within five business days (absent extenuating circumstances). The Department of Human Resources will provide the employee with the health care provider or military family leave certification forms and issue the designation notice of FMLA leave to the employee within five business days after receiving sufficient information to determine if the absence qualifies for FMLA (absent extenuating circumstances).

SERIOUS HEALTH CONDITION CERTIFICATION

A request for leave due to a serious health condition must be supported by a certification from the employee's or family member's health care provider. The certification should include:

- the date on which the health condition began and the probable duration of the employee's present incapacity
- the medical facts regarding the "serious health condition" information as to whether it will be necessary for the employee to work intermittently or on a less than full schedule or if the employee is unable to perform work of any kind as a result of the condition (i.e., is the employee unable to perform any one or more of the essential functions of the employee's job?)
- if the condition is a chronic condition or pregnancy, a statement as to whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity
- a statement as to whether additional treatments will be required for the condition and an estimate of the probable number of such treatments

The certification for a family member should include a statement from the health care provider that the employee is needed to care for the family member with a serious health condition and should identify the serious health condition, the probable duration of care, and indicate which of the following the employee will be providing:

- assistance with basic medical or personal needs
- transportation
- psychological comfort

The medical certification should be provided within 15 calendar days of the request to use FMLA leave. The Department of Human Resources will provide the employee with the certification form for the health care provider to complete.

Re-certifications may be requested every six months in connection with an absence. A re-certification may also be requested at any time for the following reasons:

- if an extension to leave is requested
- if there is a significant change such as a pattern of absences before/after scheduled days off
- if the duration of absences is longer than specified on certification for the most recent two or more episodes of incapacity
- if the University receives information casting doubt on the stated reason for the absence.

The Department of Human Resources (but not the employee's immediate supervisor) may contact the employee's health care provider directly to authenticate and/or clarify the certification or re-certification.

If the employee's health care provider will not complete the certification or provide subsequent clarification of it without a HIPAA authorization from the employee, the University cannot require the employee to provide the HIPAA consent. However, the employee will lose FMLA protection if the certification is not submitted in a timely manner because of failure to provide the HIPAA consent. Upon notification by the Department of Human Resources that the certification is incomplete or missing, the employee shall have seven days in which to submit the required certification.

Time off may be designated retroactively as FMLA leave once the University has enough information to determine the qualifying reason for the leave.

Second and Third Opinions – The University may require, at its expense, a second opinion from its designated or approved health care providers. (This health care provider cannot be one who is employed by the University on a regular basis.) When the second opinion differs from the first, the University may, at its expense, require a third opinion from a health care provider designated or approved jointly by the employee and University. The opinion of the third health care provider shall be considered final and binding upon the University and the employee.

The University may require an employee to report periodically during the leave period on his or her leave status and intention to return to work and to provide subsequent re-certifications on a reasonable basis.

Employees who have been absent due to their own illness may be asked to provide a medical release statement confirming their fitness for duty or return to work and their ability to perform

the essential functions of their job from their health care provider. This requirement will be noted on the FMLA Designation Notice Form provided by the Department of Human Resources.

MILITARY FAMILY LEAVE CERTIFICATION

Military Exigency Leave – Two different types of certification for military exigency leave are required. One is a certification that the covered service member is a member of the Regular Armed Forces, National Guard or Reserves who is on active duty or called to active duty in support of a contingency operation or deployment to a foreign country. A copy of the Regular Armed Forces member's active duty military identification card or for National Guard or Reservists a copy of active duty orders will contain the necessary information. Once the employee furnishes the certification, the University may not require the same certification again for subsequent absences related to the same active duty of that particular service member. The other certification is a statement from the employee (including available written support documentation) about the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member. The University has developed a certification form for this purpose and the employee must provide the required certification within 15 calendar days, absent unusual circumstances.

Military Caregiver Leave – Information from the health care provider and from the employee and/or covered service member or veteran is required to support military caregiver leave. The certification will address the service member's military status (for veterans a copy of the DD-214) and care to be provided, along with a medical certification completed by the authorized health care provider. The University has developed a certification form for this purpose and the employee must provide the required certification within 15 calendar days, absent unusual circumstances.

Time off may be designated retroactively as FMLA leave once the University has enough information to determine the qualifying reason for the leave.

INTERMITTENT LEAVE

An employee may take leave intermittently (take a day or days periodically when needed) or use leave to reduce the work day or work week, resulting in a reduced work schedule. The supervisor must approve these variations. The supervisor and employee should agree on work schedules during intermittent leaves or reduced schedule time periods.

Medical certification for intermittent leave should include the following information:

1. a statement confirming the necessity for intermittent leave;
2. the planned duration of the medical treatment;
3. the expected dates for the medical treatment.

The supervisor may request medical certification to verify that the actual work hours or days missed were medically necessary.

The employee may be temporarily reassigned to an alternative position with equivalent pay and benefits that could better accommodate the use of an intermittent leave schedule when the use of leave is foreseeable based on the planned medical treatment. An employee on unforeseeable intermittent leave cannot be transferred to an alternative job.

BENEFITS AND JOB PROTECTION

The University will continue to provide health insurance coverage under its group health plan during the leave period at the same level and conditions as if the employee had continued to work. The University will continue to pay its portion of the health care premium.

The employee's portion of the health care premium will continue to be deducted from the paycheck while the employee is on a paid leave status. If the employee is on leave without pay, then he or she will need to submit a personal check to the Payroll Office for his/her health care premium portion. All applicable insurance premiums are due to the Payroll Office by the fifth of the month for the current month's coverage. Failure to make payment within 30 days will result in termination of coverage. Employees should consult with the Department of Human Resources' Benefits Staff regarding how to make any necessary payments.

The University will continue to pay life insurance premiums while employees are on FMLA. Leave is not accrued during any period of leave without pay. Retirement contributions will be made for any pay period in which qualifying compensation has been received by the employee.

RESTORATION TO POSITION

The University will place faculty or staff who return from leave under the FMLA in their same jobs unless extenuating circumstances occur. Should extenuating circumstances occur, faculty or staff returning from leave under the FMLA will be placed in an equivalent position. The standard of equivalence requires comparability and correspondence to duties, terms, conditions and privileges of the employee's previous position.

The University may deny restoration if it can be shown that the employee would not have been employed at the time reinstatement is requested (i.e. the employee would have been laid off).

MANAGEMENT OF FMLA RECORDS

The Department of Human Resources is responsible for the management of FMLA records, which includes the maintenance, retention and preservation of FMLA records. Records and documents relating to medical certifications or re-certifications of employees or employees' family members are to be maintained in separate files/records and treated as confidential medical records except:

- supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations;
- first aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

G. RETENTION

Records are retained for five years and then destroyed in compliance with the Commonwealth's Records Retention and Disposition Schedule (General Schedule 102, Series 200113).

H. RESPONSIBLE OFFICER

Human Resources Benefits Manager

I. RELATED INFORMATION

Federal Fair Labor Standards Act
Virginia Department of Human Resource Management Leave Policies
University Faculty Leave Policies and Procedures

- Board of Visitors Policy 1430 - Sick Leave Policy
- Board of Visitors Policy 1431 - Military Leave Policy
- Board of Visitors Policy 1432 - Leave of Absence Without Compensation
- Board of Visitors Policy 1433 - Civil and Administrative Leave Policy
- Board of Visitors Policy 1434 - Bone Marrow and Organ Donor Leave Policy
- Board of Visitors Policy 1435 - Emergency/Disaster Leave Policy
- Board of Visitors Policy 1436 - Recognition Leave Policy
- Board of Visitors Policy 1437 - School Assistance and Volunteer Service Leave Policy

Certification of Health Care Provider for Employee's Serious Health Condition
Certification of Health Care Provider for Family Member's Serious Health Condition
Certification of Qualifying Exigency for Military Family Leave
Certification for Serious Injury or Illness of a Current Service Member for Military Family Leave
Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

POLICY HISTORY

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Policy Formulation Committee (PFC) & Responsible Officer Approval to Proceed:

/s/ Brenda M. Johnson — December 14, 2016
Responsible Officer — Date

Policy Review Committee (PRC) Approval to Proceed:

/s/ Donna W. Meeks — October 25, 2016
Chair, Policy Review Committee (PRC) — Date

Executive Policy Review Committee (EPRC) Approval to Proceed:

/s/ September Sanderlin — December 14, 2016
Responsible Oversight Executive — Date

University Counsel Approval to Proceed:

/s/ R. Earl Nance — December 15, 2016
University Counsel — Date

Presidential Approval:

/s/ John R. Broderick — December 16, 2016
President — Date

Policy Revision Dates: August 5, 1993; August 24, 1995; October 2, 2009; June 24, 2010; December 16, 2016

Scheduled Review Date: December 16, 2021