

FMLA UPDATES & PROCESS IMPROVEMENTS

GUIDING MANAGERS WITH INTERMITTENT LEAVES



*Provided by OED & TCW
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Icon Guide



This icon indicates a Handout(s) that is separate from this guide. Handouts could consist of Job Aids, reference, resources, policy, etc.



This icon indicates something new and could consist of a new topic, feature or policy.



This icon indicates Question(s) for Thought and could serve as a discussion point for sharing thoughts and experiences.



This icon represents a simulation or demonstration of a specific task.



This icon indicates a skills activity where participants will review items (case studies, reports, etc.) and apply learned skills.



Contact icon will follow with a list of contact information (phone number, email, etc.)



This icon represents Links of Interest and are accessible in electronic form.

Course Overview

This leader-led session is the first phase of training that is intended for Human Resource Consultants (HRCs) who help administer the FMLA process at Wayne State University. This session is tailored specifically to HRCs in preparation of guiding Managers/Supervisors after they have attended training. This session offers a brief refresher of FMLA with updates and changes on federal and state regulations. Techniques on how to utilize reports to effectively track leave time and identify next steps in an effort to maintain compliance will be presented. Coaching strategies for guiding Managers/Supervisors through the FMLA process and addressing problematic trends will be presented. Case studies and specific scenarios on how to effectively manage FMLA leaves will be examined. The second phase of training will be offered to Managers/Supervisors in September 2015 and will follow a similar format with HRCs input.

Learning Objectives

By the end of this session you will have the knowledge and skills to perform the following tasks:

- Identify what's new with FMLA
- Follow WSU's clarified FMLA Leave Process more accurately
- Distinguish your roles and responsibilities
- Manage Leave time through:
 - Using the Intermittent Trend Dashboard Report and other available reports
 - Identifying when recertification is warranted
- Outlining Return to Work requirements and business processes
- Coach Managers/Supervisors with an understanding of best practices, new tools and resources including:
 - Do's and Don'ts when consulting with Employees
 - Coding Time Accurately (FMLA, Illness, STD, etc.)
 - Implementing Intermittent Leave Tracking Sheet (Excel Spreadsheet)
 - Implementing a call-in procedure and other standard Unit policies
 - Independent Medical Exam (IME) is warranted
 - Using appropriate (legal) catch phrases when consulting with Employees

Family Medical Leave Act (FMLA) – A Review



As you know, the Family and Medical Leave Act (FMLA) is designed to help eligible WSU Employees, our customers, balance their work and family responsibilities by providing unpaid job-protected leave for certain family and medical reasons. Let's take a moment to review the ***Your Rights & Responsibilities Under the Family & Medical Leave Act*** as provided by FMLASource.

News & Updates

Your role in the FMLA administration process is understanding, communicating and complying with state and federal FMLA leave regulations to help reduce confusion and abuse of FMLA leave. The following topics offer the latest FMLA updates and key news to help you stay abreast of the latest FMLA and FMLASource changes.

The Definition of Spouse – Revised

Effective March 27, 2015 the US Department of Labor has moved from a “state of residence” rule to a “place of celebration” rule for the definition of spouse under the FMLA regulations. The ruling basically affects FMLA cases in that same-sex spouses who are legally married can take leave (related to a Spouse) regardless of which state they live or were married in.

The proposed change also entitles eligible Employees to take FMLA leave to care for their stepchild (child of Employee's same-sex spouse) even if the *in loco parentis* requirement of the providing day-to-day care or financial support for the child is not met.

This change means that eligible Employees, regardless of where they live, will be able to:

- take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition,
- take qualifying exigency leave due to their lawfully married same-sex spouse's covered military service, or
- take military caregiver leave for their lawfully married same-sex spouse.

The image on the next page illustrates qualifying family relationships for military caregivers.

*** Designated for purposes of military caregiver leave under the FMLA.*

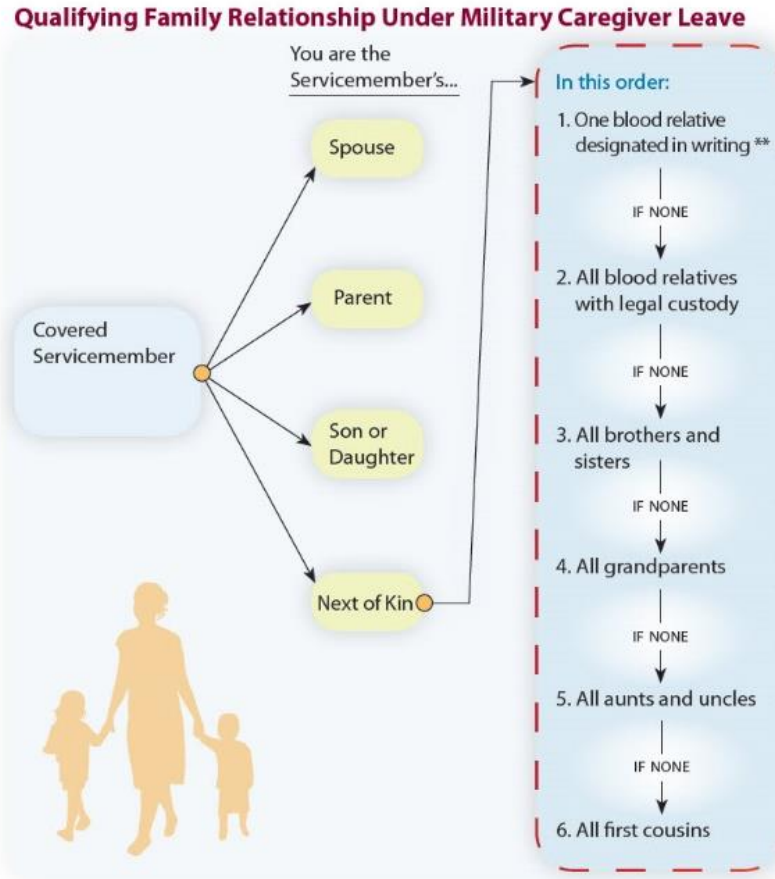


Image courtesy of DOL

Maternity/Parental Leave – Revised

Effective March 25, 2015 WSU has revised the rules of Maternity Leaves as follows:

- Illness Leave an eligible female Employee may take after the date of delivery. For Wayne State University Employees this leave is typically **8 weeks** for both Natural and Caesarean Delivery.
- For mothers of a newborn child, bonding leave is typically **4 weeks**, depending on how long the Employee is eligible for, and opts to take, of their entire 12-weeks of FMLA entitlement.

FMLASource Mobile App



A new mobile app, *FMLASource NOW*, is available for on-the-go access to FMLASource. Employees can track time, view leave status, update leave dates, check Q&A and view contacts. Employers can track time, view leave status, update leave dates, check Q&A and request an emailed report. The APP cannot be used to initiate a claim or view past letters due to their complexity. The mobile app is free as a GooglePlay and Apple iOS application (search for FMLASource Now). For more information visit the website at <https://play.google.com/store/apps/details?id=com.fmla.mobile.launcher>

Roles & Responsibilities – A Review

This session will examine each step of the FMLA process as outlined by WSU and provide details on which tasks each party is responsible for. As an HRC, you can appreciate that there are many tasks and support teams involved in the FMLA process. Understanding how the FMLA process works at WSU will ensure clear communication, avoid delays and reduce leave abuse.



For a detailed list of roles and responsibilities of each party, please refer to the **FMLA Roles & Responsibilities** hand out. The various roles and responsibilities for each party are also noted in the documents below. Your explicit HRC roles and responsibilities are outlined in the next section and throughout this guide.

- [APPM 3.4.5 Family and Medical Leave Act - WSU Policy & Procedure](#) (WSU's online policy)
- FMLA Roles and Responsibilities (provided by Total Compensation & Wellness (TCW))
- Your FMLA Rights & Responsibilities (provided by FMLASource)



When, if ever, do you feel uncertain about “who does what?” or about “connection points” among partners?

HRC Roles & Responsibilities

The HRC will be responsible for the following general tasks:

- Partner with University S/C/D to ensure compliance with University policies, procedures, practices and contractual agreements (in conjunction with Labor Relations for represented, non-academic employees and Academic Personnel for represented, academic employees) in addition to state and federal employment laws.
- Supports clients with FMLA leave administration (in partnership with FMLASource) by:
 - Providing employees with information regarding FMLASource, brochures, direct employees to HR website, and/or FMLASource website
 - Advising employee to file for FMLA when receiving notice sufficient to indicate employee need for FMLA-qualifying leave (3 day unscheduled absence or communication indicating potentially qualifying reason). Required certification should be sent to FMLASource (FMLASource maintains all Employee FMLA medical files.)
 - Assisting clients with intermittent and reduced schedule type leaves. Note: Employer cannot request exam and must work with FMLASource to resolve issues and/or request recertification.
 - Consulting with Managers who identify abuse of leave.
- Assist units with tracking process for intermittent leave usage (appointments/treatments and episodes) by:
 - Confirming whether leave is for appointment/treatment or episodic
 - Notifying FMLASource of additional call-ins (taking paid time off before/after leave, manager authorizations)
- Work with Managers in identifying when recertification is needed such as when:
 - Changing intermittent leave to continuous
 - Absence is inconsistent with Decision Letter/beyond scope of leave
 - Extension of FMLA is requested (i.e. when a change in health occurs)

- Manage absences through an intermittent trends analysis by reviewing FMLASource reports to identify employees with patterns, change in frequency or duration; compare to medical certification and to determine if a re-certification is warranted.
- Review FMLA appeals and retroactive FMLA claims responding to appeals as they arise (FMLASource will email and coordinate with HRC and employee returning to work with restrictions. This info is provided to employee when leave is approved.)
- Schedule second medical opinion when medical certificate is doubtful and before the initial decision on a claim is made.
 - Review FMLA claims filed for Employee on same dates as suspension start as a possible attempt to avoid discipline. Discuss with FMLASource.
 - Discipline concerns are separate from approved leave and handled upon the Employee's return.
- Third medical opinions are also scheduled by HRCs when the Employee and designated health care provider have a difference of opinion.
 - Contact the appropriate third party (such as MedSource) to schedule an appointment with an examining specialist (a notification is sent to the Employee by the third party). The third opinion must be approved jointly by WSU and the Employee.
 - Send a letter to the Employee and provide the examining specialist with Employee medical information and specific questions that need an answer.
- Notify BAO with requests for Employee to return to work with restrictions and contact the Office of Equal Opportunity, as needed to confirm accommodations.
- Notify BAO with Employee eligibility for leave of absence.
 - Refer to Request for Leave and FMLASource Weekly Status Reports (New requests, New Decision and Open Leaves) and contact FMLASource with questions.
- Review Employee information regarding leave of absence, short term disability, continuation of benefits (in partnership with Total Compensation & Wellness, TCW). To verify continuous leave hours, contact TCW (to do bank run-out for consecutive leaves) and leave / benefit questions.
- Initiate Peer-to-Peer Review to formulate questions for Peer Review for FMLASource to address concerns about validity of certifications.
- Verify Return to Work (RTW) documentation working with Unit and Labor Relations as needed for restrictions (Employee is required to provide a return to work note)

The HRC will notify the FMLASource team when:

- Employee absence is inconsistent with the information provided in "Designation Notice"

WSU's FMLA Leave Process (2015)



While there are a broad range of sensitive and inopportune leaves of absences, it's important to adhere to WSU's policy possible to ensure University compliance. Please refer to **WSU's FMLA Leave Process (2015)** document for a 1-page take-away. A more detailed description of each step in this process follows.

1) The Employee will contact FMLASource to submit a leave request

The first step is initiated by the Employee who requests FMLA leave through FMLASource. Employees can access FMLASource support in a variety of ways including the FMLASource website, email, phone, fax or mail. The contact information is as follows:



Online: www.fmlasource.com
 Email: fmlacenter@fmlasource.com
 Phone: 1-877-GO2-FMLA (1-877-462-3652)
 24 hours a day, 7 days a week
 Live FMLA representatives are available
 Monday-Friday 8:30 a.m. to 8:00 p.m. (EST)
 Fax: 1-877-309-0218
 Mail: ComPsych Corporation
 NBC Tower 12th Floor
 455 N. Cityfront Plaza Drive
 Chicago, IL 60611

The Employee will speak with an experienced FMLA Source Human Resource Specialist who will explain the following:

- Correspondence that they will receive in the mail regarding their FMLA claim
- Medical documentation that is needed from the Employee's health care provider
- The Employee's FMLA responsibilities

Employees may sometimes resort to contacting their Manager/Supervisor to inform them when they will be absent for FMLA. If the Employee's absence exceeds 3 consecutive days or an inpatient hospital stay, the Manager/Supervisor should redirect Employees to FMLASource as appropriate.



An Employee has a serious medical condition. He was offered leave, but refused to take it. What do we do now?

2) FMLASource will provide the Employee with Notification of Eligibility and Rights & Responsibilities.

Along with the **Your Rights & Responsibilities Under the Family & Medical Leave Act** document, FMLASource will send the initial request letter to the Employee and their Manager/Supervisor. FMLASource will provide written notification to an Employee within 5 business days and request that the Employee provide medical certification to support FMLA leave within 15 calendar days after their request.



A manager received notification that an employee has submitted a leave request but is suspicious. What options if any, does s/he have before FMLASource makes the leave decision?

3) HRC schedules 2nd and 3rd opinion Independent Medical Exam (IME) by request.

HRCs will collaborate with FMLASource and contact MedSource to schedule exams. Contact information for MedSource is provided below:



MedSource Services Inc.
Phone: 1-800-231- 5200
Online: www.medsourceservices.com

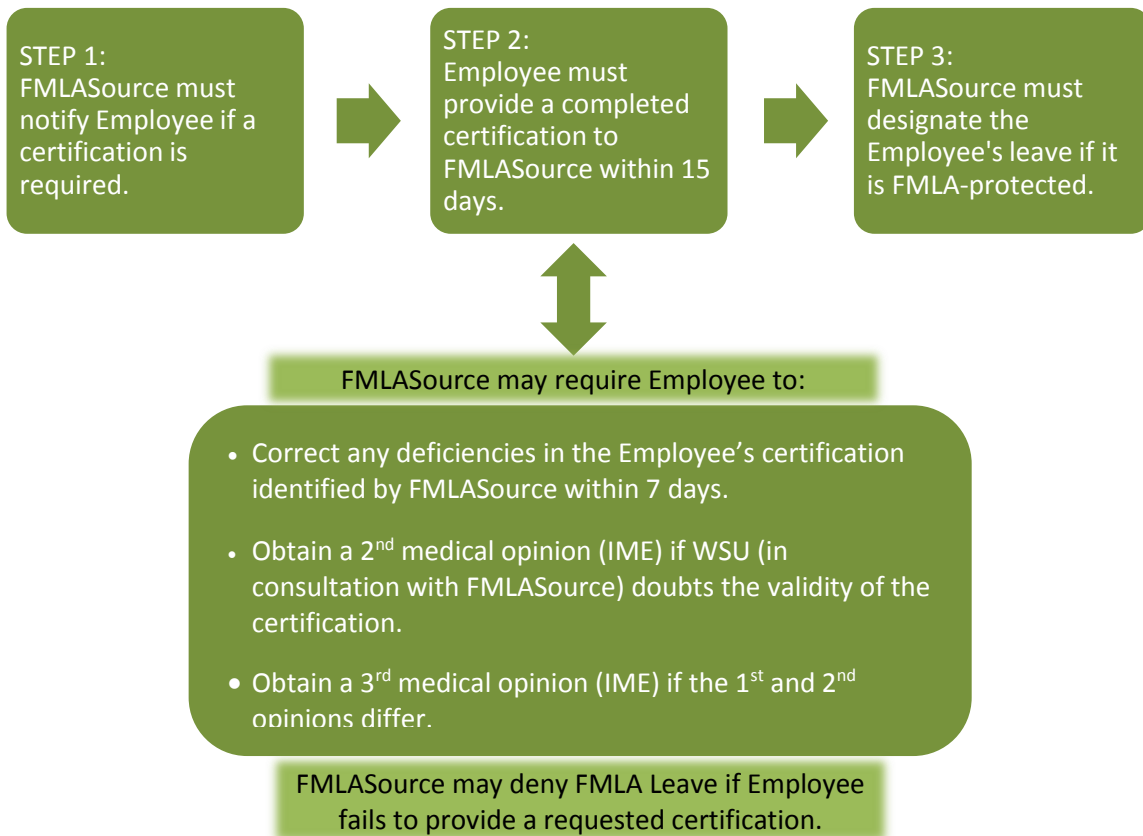
When an IME is scheduled, the Employee will receive a notification from MedSource. The HRC will also send a letter to the Employee and the Manager/Supervisors.

Wayne State University may choose the health care provider for the second opinion, except that in most cases it may not regularly contract with or otherwise regularly use the services of the health care provider. The third opinion shall be final and binding. The third health care provider must be approved jointly by WSU and the Employee.

4) Employee submits Medical Certification form to FMLASource

A Medical Certification form from the Employee’s health care provider must be submitted to FMLASource within 15 calendar days. The diagram below illustrates the FMLA Certification Process and is discussed in more detail throughout this session.

FMLA Certification Process





Previously, if medical certification was not provided, the claim remained in pending status. Effective April 15, 2015, all eligible Employees requesting a leave of absence related to FMLA, will be required to submit appropriate paperwork within 15 calendar days of their request. **Failure to do so will result in an automatic denial of the leave with the appropriate denial letter being issued.** FMLASource will send a decision/denial letter to the Employee and an email copy of the letter is sent to their Manager/Supervisor (as listed in Banner) and HRC. The Employee is given 7 additional days to correct any deficiencies in their medical certification. **Failure to do so will result in an automatic denial of the leave with the appropriate denial letter being issued.**



How long would an employee have to correct deficiencies in their initial medical certification submission?

5) FMLASource reviews Employee's Medical Certification form and sends Decision Letter

FMLASource will send approval and denial letters to the Employee usually within 5 calendar days. The Employee's Manager/Supervisor (as listed in Banner) and HRC will receive an e-mail copy of the letters. The Employee is given 7 additional days to correct any deficiencies in their medical certification.



Intermittent Decision Letter – Revised

The Decision Letter (sent to the Employee after medical certification has been submitted to FMLASource) has been revised to provide more accurate verbiage and information regarding treatments/appointments. It also includes specific entitlement availability and start date. This document is used in conjunction with FMLASource reports to track Employee patterns and frequency of absences to determine possible inconsistencies. Please take a moment to review the highlighted changes in this document.



Important Information about Managing Your Leave Time – Revised

The Important Information About Managing Your Leave Time (Designation Notice) is sent to Employees within 5 business days of receiving complete and sufficient certification and has also been revised and includes information on notification requirements, new TCW phone number and more. Please take a moment to review the highlighted changes in this document.

FMLASource administers WSU's FMLA policy in accordance with the applicable provisions of any Collective Bargaining Agreement (CBA) in effect with WSU. WSU's FMLA policy does not modify, affect or diminish any rights provided to Employees under an existing CBA. WSU will provide leave under and according to whichever statutory provision or CBA that provides the greater rights to its Employees.

6) Manage Leave based on Decision Letter

The leave type, frequency and duration is determined by the health care provider. As you are aware, there are a few options for how Employees take their leave of absence when medically necessary:

1. Continuous or Consecutive – Employees miss every day of work in one block of time
2. Intermittent – Employees absences are sporadic or episodic
3. Reduced Schedule – for specific days/hours to be missed

The HRC will assist Managers/Supervisors and collaborate with the Employee to schedule planned intermittent or reduced schedule. As noted in the FMLA Rights & Responsibilities documentation, FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period; however, leaves of absences can be supplemented by paid time off (illness and vacation banks) or short term disability (up to 26 weeks for covered service member or military caregiver).

Paid and Unpaid FMLA Leaves

FMLA leave may be paid, unpaid, or a combination of paid and unpaid. FMLA leave is concurrent with existing maternity leave, worker's compensation absence due to an on-the-job injury or illness (provided it also qualifies as a serious health condition), and other paid/unpaid leaves of absence taken for FMLA reasons. Unless a CBA provides otherwise, the following rules apply.

- Employees taking FMLA leave because of their own serious health condition or to give birth to a child, must use paid leave before going into an unpaid leave in the following order:
 - Illness banks
 - Vacation banks
 - Personal business time (where applicable)
- Employees who take a service member family leave, a leave for the birth, adoption or foster care of a child, or a seriously ill spouse, child or parent must use all accrued vacation and personal business time respectively before going into an unpaid leave.
- Sick leave used for short-term illnesses or absences (i.e. less than 3 days that are not qualifying FMLA events will not be counted as FMLA leave).



It just came to your attention that this employee has exhausted his leave balance for illness.

What coaching should be provided now for the manager?

For the employee? Who do you partner with and how?

Bank Run Outs

The TCW office is responsible for calculating bank run outs for consecutive leaves where the employee is projected to exhaust their FMLA hours or leave banks and determine if the Employee is eligible for other leave options (STD, LTD, etc.). TCW will partner with Labor Relations or Academic Personnel if the Employee is represented. The TCW office will prepare the Leave Letter and copy the Employee's Manager/Supervisor and HRC.



FMLASource notifies WSU through the Daily Report when an Employee's approved continuous leave goes into an unpaid status and/or FMLA hours will exhaust. Please refer to the sample **Bank Run-Out Worksheet** for a demonstration of this task.

Assisting Managers/Supervisors with accurate leave coding and tracking Intermittent leave time is discussed later in this session.

HRCs and Managers/Supervisors should remind Employees that they must contact TCW to continue paying any Employee-paid medical insurance premiums during unpaid medical leave or their medical insurance coverage may be canceled.



What options do I have if my Employee(s) have appointments that conflict with business operations?

7) Track Employee Leave Time

HRCs will provide guidance to Manager/Supervisor with tracking leave usage and compare to Decision Letter to identify Employees with patterns, change in frequency or duration and determine if recertification is warranted.

Only the amount of leave actually taken while on reduced schedule or intermittent leave may be counted as FMLA leave. Therefore, if an Employee needs to take off for two hours for a prenatal appointment, those two hours, and only those two hours can be counted against their 12-week entitlement. This time may include the appointment and reasonable travel time. Tips on how you can help Managers/Supervisors in tracking intermittent leave time is discussed later in this session.

How to Charge FMLA Time

Please refer to the following table on how to charge FMLA time.

	AAUP	All Other Employees
Holidays <ul style="list-style-type: none"> • New Year’s Day • Martin Luther King Day • Memorial Day • Independence Day • Labor Day • Thanksgiving • Day after Thanksgiving • Christmas Day 	No Charge for FMLA time	If work any part of holiday week – no charge for FMLA time. If not working entire holiday week – charge FMLA time.
Christmas Closure	No Charge for FMLA time	No Charge for FMLA time
Spring Break	Academic Staff – charge FMLA time Faculty – (e-classes A2, A9, and DA) No charge for FMLA time	Charge FMLA time
Snow Days	Charge FMLA time	Charge FMLA time

Using Web Time Entry (WTE)



There are six WTE codes that can be used for FMLA purposes. For a complete list of WTE codes please refer to the **Web Time Entry Codes** document. Remember to check with the Collective Bargaining Agreement (CBA) to determine time increments that can be taken.



Can I count holidays and closure towards an Employee’s FMLA entitlement?

8) Verify Return to Work Certification

The office of TCW will schedule Return to Work (RTW) exams as needed when Employee returns from a Continuous leave. Release to work medical documentation must be verified and any work restrictions/accommodations must be channeled through HRCs and Office of Equal Opportunity (OEO) in conjunction with the Unit and Labor Relations.

FMLASource will provide the return date in the Employee’s Decision is based on the release by the physician. The office of TCW will send notification and request a release from health care provider along with an IME as applicable. FMLASource will send 3 reminder letters prior to the return to work.

Return to Work Notes

Return to work notes should be submitted in advance of an Employee reporting to work based on their e-class (refer to the Employee’s contract). The table below illustrates the notice requirements for each e-class.

Time Requirement	E-Class
1 week prior to returning to work	24, HX, PE, PN, SA and SK
2 weeks prior to returning to work	AS, NC, NN, NE, NA, EX, D2, D9, C2, C9, R2, R9 and F1
On or before returning to work	7M, A2, A9, S2, S9, U2, U9, OE, and PS

Generally speaking, all Employees are required to submit a return to work notification one (1) week prior to their scheduled return date unless otherwise noted in their contract or unit policy. Managers/Supervisors are responsible for communicating this request in advanced as part of their unit policy. The RTW note must be forwarded to FMLASource.

If the Employee required work restriction (as noted by the health care provider), HRCs must collaborate with the Manager/Supervisor in conjunction with Office of Equal Opportunity (OEO) to make appropriate accommodations.

Return to Work Exams – Consecutive Leaves

All represented Employees from FP&M, AFSCME and Skilled Trades are required to undergo an Independent Medical Exam (IME) prior to returning to work. Depending on e-class, the Employee may be asked to contact TCW within a certain timeframe (1-2 weeks prior to their return) to set up the medical exam.

When Employee’s return to work note is submitted, HRCs must contact TCW to schedule Employee for a RTW exam. MedSource will need the medical condition in order to schedule exam with appropriate Doctor. The TCW office is responsible for contacting the Employee with date and time of appointment and follow up with notification letter. When completed exam is received, TCW will inform HRCs and Manager/Supervisor. If the Employee is not cleared to return to work, or if there are any restrictions for returning to work HRCs must contact Labor Relations/OEO for next steps.



Can I post the position while the Employee is out on leave if I suspect they will not return to work?

9) The Employee is reinstated at the same/equivalent position.

Upon return from FMLA leave, an Employee must be restored to his or her original job, or to an "equivalent" job, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions. In addition, an Employee's use of FMLA leave cannot result in the loss of any employment benefit that the Employee earned or was entitled to before using (but not necessarily during) FMLA leave.

If an Employee chooses not to return to work for reasons other than a continued serious health condition, WSU will require the Employee to reimburse the university the amount the university paid for the Employee's health insurance during the leave.



I'd like to request the Employee return to work before her FMLA leave time is exhausted. Can I offer a light-duty assignment for an early return or have her work from home?



*- Session Break -
Please return to the
classroom in 15 minutes.*

Intermittent Leave Tracking Tools

The purpose of Tracking Intermittent Leave is to identify leave patterns that could identify potential abuse or misuse of FMLA intermittent leave. Tracking Intermittent Leave helps to reduce the amount of time that Employees are away from work by parsing out the usage and identifying what is truly necessary.

Intermittent Leave Tracking Sheet



The department of TCW offers a new **Intermittent Leave Tracking Sheet** (Excel document) that Managers/Supervisors can use in conjunction with HRCs to manage intermittent leaves. This tool records the time an Employee has taken by week, month and calendar year.



Please refer to the **Intermittent Leave FMLA Tracking Sheet** (Excel document) as you review the following instructions.

Step 1) HRC sends Intermittent Leave FMLA Tracking Sheet to the Manager/Supervisor upon notification of an approved leave and offers support with its usage.

Step 2) Using the Employee's Decision letter and with HRC guidance, Manager/Supervisor will complete the Employee Information (upper left) and Approved Time-off box (upper right).

Step 3) The Manager/Supervisor will complete the blue highlighted cells recording the Employee's (in hours) as episodes or treatments at the end of each week and/or month (blue cells).

Step 4) The tracking sheet automatically provides a summary total by month/year and will also indicate whether or not the Employee is within compliance with their leave (Yes or No) in the compliant columns. A compliant column that returns a "No" value indicates additional investigation and discussion needs to occur with the Employee regarding their leave frequency. Manager/Supervisors should consult with HRC as needed.

Using the Intermittent Trend Dashboard Report

HRCs will assist in absence management through an Intermittent Trend Dashboard Report to identify leave patterns that could indicate potential abuse or misuse of FMLA intermittent leave. This report is generated from FMLASource and forwarded to TCW and then forwarded to HRC. The report will include all intermittent leaves (for their respective areas) for which recertification is suggested. The HRC will compare this report to the Intermittent Leave FMLA Tracking Sheet (Excel Spreadsheet) or other tracking tool(s) provided by Managers/Supervisors. FMLASource will take specific action based on WSU's feedback. Possible actions may include flagging the Employee for future scrutiny or requesting recertification with questions specifically related to the nature of the request. This level of analysis and pro-active leave management typically results in significant reduction in unplanned or inappropriate use and shorter leave durations overall.

The Intermittent Trend Dashboard Report proactively provides Employees with trends or leaves that are exceeding certification parameters or are showing patterns of usage. These trends may support recertification under the regulations. The report uses a three-month look back period to capture data and is set up into two separate spreadsheets: 1) Exceeding Frequency and Durations and 2) Pattern of Usage.



Please refer to sample of WSU's ***Intermittent Trend Dashboard Exceeding Frequency Duration*** report for this section.

Exceeding Frequency and/or Duration

Employees are sorted into three different categories based on intermittent leave time reporting:

1. ***Activity to Watch (Blue)*** Watch: These Employees have exceeded their leave frequency or duration estimate by 1 time. This is the strictest standard and we do not recommend recertification based solely on this standard.
2. ***Moderately Exceeding Estimate (Orange)*** Warning: These Employee have exceeded their leave frequency or duration estimate by 2 times. This level of activity "may" warrant recertification.
3. ***Significantly Exceeding Estimate (Red)*** Suggested Recertification: These Employees have exceeded their leave frequency or duration estimate by 3 or more times. This standard is based on case law, where the courts have supported recertification.



Please refer to sample of WSU's ***Intermittent Trend Dashboard Patterning*** report for this section.

Pattern of Usage

Leaves that exhibit the following patterns will be displayed on this report.

- 1) Employee has tracked 4 or more absence on the same weekday within the past 3 months,
- OR-
- 2) Employee has tracked 6 or more total absences within the past 3 months, AND same weekday usage comprises AT LEAST 50% of total tracked days within the time period.

Occasionally a category is not displayed on the report which may indicate that there were no Employee's that fell into that specific criteria.



Take a moment to review the report samples provided.

- 1) *Circle those individuals that you'd recommend a Manager/Supervisor watch.*
- 2) *Underline the names of individuals you'd recommend a Manager/Supervisor have a discussion with the Employee for clarification.*

Recertification

When to consider recertification

- Absence exceeds the approved duration
- Absence exceeds the approved frequency
- Absence occurs on the same day of the week 2 or more times
- Employee is exhibiting unexplained pattern of absences
- When an Employee requests an extension to an existing FMLA leave
- For long-term conditions or conditions that may require sporadic absences, a Manager/Supervisor may request recertification every 30 days in connection with an absence
- At the beginning of each leave year
- Every six months if the Employee is out on a leave that has been certified to extend for more than six months

When recertification is not recommended:

- The leave has ended or is ending within 30 days
- The leave began within the last 30 days
- The Employee has exhausted their entitlement

Note: No 2nd or 3rd opinion of recertification is required.



How many times can I ask for medical recertification for an Employee with an ongoing serious health condition?

Other Reports of Interests



There are several other reports available to help HRCs when counseling Employees and Managers/Supervisors. While you may not use all of them all of the time, it's good to be aware of them should you need them to resolve issues. Please refer to the **Reports used for FMLA Purposes** document for a detailed matrix of these reports. The matrix includes when and how to use reports and where to find them.

Manager's Tips & Tools for Tracking Intermittent Leaves

While there is not a one size fits all situation, there are some guidelines Managers/Supervisors can take to set clear expectations and reduce FMLA leave abuse. An Employee's ability to take small increments of FMLA leave sporadically generates administrative headaches and raises concerns about Employee abuse of intermittent leave.

Do's and Don'ts

A Manager/Supervisor cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. The FMLA offers a number of tools that you can use to discourage abuse of intermittent leave. Here are some strategies for handling this matter.



A manager has just called you to say his Employee has indicated that he is going through rough time with his own health and now that of his child.

The manager is not sure what he can and can't say and does not want to pry. What coaching could you give the manager as they speak with the Employee?



Manager/Supervisors are often reluctant to discuss intermittent leave concerns with their Employee in fear of retaliation, privacy concerns or otherwise violating the FMLA and Employee's rights. The **Discussion Do's and Don'ts Guide** offers some 'safe phrases' that could be used in some of the more common scenarios seen throughout an intermittent leave. Take a moment to review this valuable tool that you share with Managers/Supervisors.



A manager has just called you to say his employee has an approved FMLA for 2 episodic incapacitations/month lasting up to 8 hours/episode for epilepsy (he verbally shared this with you) and for 4 treatments/month lasting up to 8 hours/appointments for his child's chemotherapy treatments.

The manager's worried about the business impact of this leave. What coaching could you give the manager to ensure the foreseen time off is minimized?

Set clear call-in rules

Managers and Supervisors are advised to set clear call-in rules (in writing) for all Employees (not just those taking leave) and specify by when an Employee must call in, to whom and what information should be shared/left when calling in.



Please refer to the **Call-In Log Template** for an example of what this could look like. Also include specifics such as whether or not email or text is acceptable or if the Employee must talk to a live person and/or voice mail. If an Employee repeatedly fails to abide by the unit call-in rules, he or she may be disciplined for not following University policy and procedures (not for taking FMLA leave).

A Manager/Supervisor may find it difficult to keep an individuals' performance separate from that person's use of FMLA leave. HRCs can coach Managers by offering to keep performance issues at one level and FMLA issues at another level.



The manager has just called you to say his employee has called in sick again and he's not sure how the time should be coded. Is it related to one of the approved FMLA leaves or something else? He doesn't want to violate HIPAA by asking questions.

What coaching could you give the manager? How could any manager be sure that time is accurately coded?

Track all absences related to the qualifying FMLA condition

Managers/Supervisors must effectively track all absences related to the condition and count against the Employee's FMLA entitlement, while at the same time ensuring that they are not counted against the Employee under a no-fault attendance policy. Since the U.S. Labor Department have held that the Employee does not have to cite to the FMLA in a request, identifying FMLA absences is not simple.

Follow up on doubts and significant changes in leaves

Managers/Supervisors can seek recertification more frequently than thirty days if the circumstances described by the existing certification have significantly changed or the Manager/Supervisor receives information that casts doubt on the Employees stated reason for the absence.

A HRC can provide Managers/Supervisors with examples of when to question reason for absence (refer to **Discussion Do's and Don'ts Guide**). Such information that casts doubt may be information you receive from other Employees about activities that Employee is engaging in while on FMLA leave that are inconsistent with the Employee's health condition (i.e. an Employee playing softball while on leave for knee surgery).

Additional clarification of "casts doubt" and "changed significantly" can be found at the bottom of the Intermittent Trend Dashboard reports (provided by the Department of Labor Regulations).

When possible, create an agreed upon schedule planned appointment/treatment

The FMLA regulations require that Employees schedule absences for planned medical treatment in a way that least disrupts your operations subject to the approval of the health care provider. When intermittent requests are made, Managers/Supervisors should communicate with Employees about the frequency of the treatment, the office hours of the health care provider in order to work out a treatment schedule which best suits the needs of the Employee and employer.

An Employee must provide notice to WSU with at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable. If unable, give notice as soon as practical. For planned medical appointment/treatment the Employee must consult with the employer and try to schedule at a time that minimizes the disruption to the employer.

Contact the Employee while on Leave (only in extenuating circumstances)

Courts have found that reasonable requests for assistance by the employer are not prohibited while the Employee is on FMLA. For instance, if the Employee has vital knowledge, such as where a document is located or the password for a file, the employer is within its rights to contact the Employee to ask straightforward questions that focus on conducting business.

Employees are allowed to volunteer to help out by checking their email or taking some calls while on FMLA. Many Employees find this speeds their eventual return to work because they don't have to come back to a clogged inbox. However, while an employer can request your help in this way, they cannot require you to comply. Some employers actually go so far as to prohibit Employees from keeping up with emails, fearing it might put them in violation of the Act and potentially lead to legal problems or pay requests from the Employee.

Consider temporary transfers

To accommodate Employees on planned intermittent leaves, Managers/Supervisors can transfer the Employee during the period of intermittent leave to an available alternative position for which the Employee is qualified and which better accommodates the needs of the Employee. While the duties do not need to be equivalent, the

pay and benefits of the alternate position must be equivalent. Another option is to allow the Employee to work in the current position but on a part time basis with the same hourly pay rate and benefits still intact as long as the hours do not exceed FMLA time.

Ensuring University Compliance

The University may be held liable if it fails to maintain compliance. The points that follow are some common reasons why institutions fall out of compliance.

Failure to notify an Employee of FMLA rights

An Employee does not need to specifically assert rights under FMLA or even verbalize the act to invoke its protection. The following is a list of examples of notices provided by Employees that the courts deemed sufficient.

“I need time off to have nasal surgery”
“I need to work part time to care for my sick spouse”
“I need time off to get my life back together” (victim of domestic violence)
“I need to leave early. My migraine is killing me”
“I need every Friday off for chemotherapy treatments”

The following are examples of notices provided by Employees that the courts held were insufficient.

“I am sick”
“I am having personal/family problems”
“I want to stay home with my wife until she has the baby”
“My father is sick”
“I need to take care of my daughters kids because she just had a baby”
“I have a bad cold and won’t be in today”

Discrimination and Retaliation Claims

Employers who express unsupportive attitudes when an Employee seeks to exercise his or her rights under FMLA often open themselves up to liability based on a theory of discrimination or retaliation claims. To avoid such claims Managers/Supervisors should avoid the following:

- Making negative comments about the Employee’s use of FMLA in person or in performance evaluations or other documentation that will be placed in the Employee’s personnel file (eligibility for rehire, etc.)
- Documenting sudden negative changes in job performance immediately following an Employee’s request for FMLA.
- Making stray or negative comments about the Employees request for FMLA leave or making light of the Employees medical reason for requesting leave.

Failure to Code Time Appropriately

Remember to utilize the **Web Time Entry Codes for FMLA** and the **How to Charge FMLA Time** documents as needed to code time correctly.

Check Your Knowledge



There were many points of interest in today's session. It's time to check your knowledge!

Session Summary & Evaluation

What questions do you have? What else would you like to include in the Manager/Supervisor training scheduled for September?



Resources & Links of Interest

- [FMLA Fact Sheet #28](#)
- [In loco parentis](#)
- [FMLA Final Rule Website](#)
- [FAQ: FMLA Final Rule](#)
- [US Department of Labor](#)
- [FMLA Employee Guide](#)
- [FMLA Military Leave Employee Guide](#)
- http://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_ENGLISH.pdf
- [FMLA Compliance Guide](#)
- [Increments of FMLA leave for intermittent or reduced schedule leave 825.205](#)
- <http://work.chron.com/rules-employer-contact-fmla-18173.html>

WSU Resources

- [APPM 3.4.5 Family and Medical Leave Act - WSU Policy & Procedure](#)
- [Collective Bargaining Agreements](#) (Office of Provost)
 - [AAUP](#) Article XIII: Leaves of Absences
 - [GEOC](#) Article XI: Benefits
 - [UPTF](#) Article XXVI: Leave of Absence

Thinking Scenarios

Call-in Policy <http://www.hrmorning.com/fmla-lawsuit-employers-can-still-enforce-call-in-policies/>

Call-in Policy <http://www.hrmorning.com/did-Employee-on-fmla-have-to-follow-call-in-policy/>

Moonlighting <http://employerlinc.com/2013/03/family-and-medical-leave-act-Employee-on-fmla-leave-fired-for-moonlighting/>