

# Cornell Cooperative Extension of Tompkins County Human Resource Policy Manual

**Section:** Absence Policies  
**Subject:** Family and Medical Leave Act (FMLA)  
**Policy:** Compliance  
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**Introduction** – Cornell Cooperative Extension provides Family and Medical Leave (FML) to assist staff members with balancing the demands of the workplace, their personal needs, and the needs of their families in a manner that accommodates the legitimate interests of the CCE system. This policy is intended to complement whatever leave rights employees may have under applicable federal and/or state law.

Cornell Cooperative Extension complies with the provisions of the Family and Medical Leave Act (FMLA). FMLA entitles an eligible employee to a maximum of 12 workweeks (defined by the employee's normal workweek) of job-protected, unpaid leave in any 12-month period for certain family and medical reasons.

**Eligibility** – To be eligible for an unpaid leave under the FMLA, an employee must meet the following requirements:

- The employee must have worked for the Association for at least 12 months before the leave request (these 12 months need not be worked consecutively);
- The employee must have worked for the Association for at least 1,250 hours during the previous 12 months prior to the date the leave begins;
- Spouses who both work for the Association are allowed a combined maximum of 12 workweeks of leave during any 12-month period for the birth or care of a newborn child, adoption or foster care of a child and to care for such newly placed child, or the serious health condition of a parent.

**Types of Unpaid Leave** – An eligible employee shall receive an unpaid leave under the following circumstances:

- Inability of the employee to perform one or more of the essential functions of the employee's job due to the employee's own serious health condition;
- The birth of the employee's child and to care for the newborn child;

- The placement of a child with the employee for adoption or foster care and to care for the newly placed child; and
- To care for the employee's spouse, child, or parent who has a serious health condition.

**Serious Health Condition** – The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves: 1) inpatient care in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care; or 2) continuing treatment by a health care provider. This includes, but is not limited to:

- A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity that also involves continuing treatment by a health care provider;
- A period of incapacity due to pregnancy or prenatal care;
- A period of incapacity or treatment for such incapacity due to a chronic serious health condition;
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- A period of absence to receive multiple treatments, including any period of recovery, for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

**Notification Requirements** – If the need for leave is foreseeable, an employee must give written notice to the employee's supervisor at least 30-calendar days prior to the requested start date of the leave. Failure to give 30-days' notice of a foreseeable leave with no reasonable excuse may result in the FMLA leave being delayed until 30 days from the date of notice. When the need for leave is not foreseeable, the employee must give notice as soon as the need for a leave is known.

**Military FMLA** – On January 28, 2008, President Bush signed the National Defense Authorization Act, which amends the FMLA to provide two new reasons when employees with covered family members in the Armed Forces, National Guard, and Reserves may be eligible for FMLA leave:

- Up to 26 weeks of unpaid leave in a 12-month period to care for an employee's child, spouse, parent, or next of kin (nearest blood relative) who is a member of the Armed Forces and who is undergoing medical treatment or is medically unfit to perform the military duties of his or her office, grade, rank, or rating because of an injury or illness suffered while on active duty.

And

- Up to 12 weeks of unpaid leave in a 12-month period for a qualifying exigency arising out of the employee's child, spouse, or parent's active or impending military duty in the Armed Forces in support of a contingency operation.

**Processing Requirements** – The employee and the employee's supervisor must complete an *FMLA Request Form* and forward it to the Association HR Lead or the Executive Director for approval or denial. Permission or denial of the FMLA leave will generally be communicated to the employee in writing within one week of receipt of the leave request.

**Medical Certification** – The employee must provide medical certification issued by a health care provider that supports the need for a leave under this policy. When required, the employee must provide the certification before the leave begins, or if the leave was unforeseeable, 15-calendar days from the date the Association requests the certification. Failure to submit medical certification may jeopardize the employee's eligibility for an unpaid FMLA leave of absence and/or the ability to return to work. The medical certification must include:

- The date the medical condition began;
- The probable duration of the medical condition;
- Pertinent medical facts; and
- An assertion that the employee is unable to perform the employee's essential job functions or that the employee is needed to care for a family member for a specified period.

*The Association reserves the right to request a second opinion by another health care provider at the employer's expense. In the event a conflict occurs between the first and second opinion, the Association may again, at its own expense, obtain a third opinion from a health care provider approved jointly by the Association and the employee. This third opinion shall be final and binding.*

**Certification for Adoption or Foster Care** – An employee must produce proper certification from the appropriate agency for an unpaid leave due to the adoption or foster care of a child.

**Employer Designation** – The Association may designate the leave as FMLA leave in the event an employee chooses not to designate it as such. The Association will notify the employee of the designation. Failure to notify the employee does not prevent the Association from designating the leave as FMLA after commencement or completion of the leave period.

**Twelve-Month Period** – The 12-month period is a rolling period measured backward from the date an employee uses any FMLA leave. Each time FMLA leave is utilized, the remaining FMLA leave is the balance of the 12 weeks that have not been used during the immediately preceding 12 months.

**Intermittent and Reduced Leave Schedules** – An employee may take all 12 weeks of leave consecutively. If the leave is related to the serious health condition of the employee or the employee's immediate family member, leave may be scheduled on an intermittent or reduced schedule basis when medically necessary.

**Status Reports** – If an employee’s request for leave does not indicate a specific return to work date, or if an employee requests a leave extension, the employee must update the Executive Director or designate as to the employee’s medical status and intent to return to work every two weeks.

**Benefits during an Unpaid Leave of Absence** – For the purpose of this policy, the following applies:

- **Use of Accumulated Paid Leave** – Accumulated vacation and personal leave must be used at the start of the leave. For leaves taken due to the birth of a child (female employees only), an employee’s own serious health condition, the employee must also use any accumulated sick leave if allowable per the sick leave policy. The use of paid leave benefits does not extend the 12-week period. The use of paid leave benefits does not apply to employees who are on FMLA leave and workers’ compensation/disability concurrently (see below).
- **Accrual of Paid Leave Benefits** – An employee shall accrue vacation, personal, and/or sick leave for up to the first 20 days of the leave of absence. Such time is credited only if the employee returns to work from the leave.
- **Insurance Benefits** – An employee’s eligibility for health, dental, and life insurance benefits and the employee’s contribution towards the premium payments does not change during a FMLA leave. All employee contributions, if any, must be paid on a timely basis in order to maintain the continuous coverage of benefits. Coverage shall cease for the duration of the leave if premium payments are not made within a 30-calendar day grace period of the due date. Premium payments and policy coverage are subject to change. If an employee does not return to work after an authorized FMLA leave has expired, the Association may recover the insurance premiums it paid during such leave under certain circumstances.
- **Flexible Spending Accounts** – Employee contributions towards a medical and/or dependent care flexible spending account shall continue to be deducted from an employee’s paycheck on a pre-tax basis during any portion of a leave that is paid. Employee contributions towards a medical and/or dependent care flexible spending account do not continue during any portion of a leave that is unpaid.

**Workers Compensation and Disability** – Leaves taken under workers’ compensation, extended medical leave, and leave of absence may invoke the FMLA if an employee meets the eligibility criteria outlined above, the Association designates the leave as FMLA, and the employee is notified that such leave is being counted as FMLA leave. Failure to notify the employee does not prevent the Association from designating the leave as FMLA after commencement or completion of the leave period.

**Employment Restrictions During Leave of Absence** – While on an approved FMLA leave, an employee may not be employed by another employer during the same work hours that the employee is normally scheduled to work for Cornell Cooperative Extension.

**Early Return or Extension of Leave** – An employee who intends to return to work earlier than anticipated must notify the supervisor at least two business days prior to the date the employee is able to return. If an employee needs to extend the FMLA leave beyond the time originally requested, the supervisor must be notified at least two business days from the date the change occurred which necessitates the extension.

**Return to Work** – At the conclusion of the leave, the following conditions apply:

- **Job Restoration** – At the conclusion of the leave, the employee shall be restored to the position the employee held when the leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, provided the employee returns to work within the time period allowed under the Act; and
- **Medical Statement** – Before resuming employment from a medical FMLA leave, an employee must submit documentation from a health care provider indicating that the employee is able to return to work with or without work restrictions. Failure to return to work when required may result in the employee being terminated due to misconduct.