Eligibility for FML

- An employee is eligible for FML if he
  - has at least 12 months cumulative University service and
  - has worked 1,250 hours during the 12 months immediately preceding the commencement of the leave.
FML-Qualifying Reasons for Leave

- FML may be taken:
  1. For the employee’s serious health condition (SHC).
  2. For the employee’s pregnancy-related disability (Pregnancy Disability Leave or “PDL”).
  3. As parental leave to bond with the employee’s newborn, adopted, or foster care child (within 12 months of the child’s birth or placement, as applicable).
  4. To care for employee’s family member (child, spouse, same- or opposite-sex domestic partner, or parent) who has a SHC.
FML-Reasons for Leave

- FML may also be taken:
  5. As Military Caregiver Leave to care for a covered service member with a serious injury or illness incurred in the line of duty (or a prior injury or illness aggravated by active duty service) if service member is employee’s parent, spouse, domestic partner, son, daughter, or next of kin.

- FML may also be taken:
  6. As Qualifying Exigency Leave because of a “qualifying exigency” arising out of the fact that employee’s spouse, domestic partner, 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).

Tip: For detailed information about Qualifying Exigency Leave or Military Caregiver Leave, see the Absence From Work Policy, section III.D.7. In connection with this type of FML leave.
How Can Leave Be Taken?

- FML may be taken
  - In blocks of time
  - Intermittently
  - By working a reduced schedule
Leave is generally unpaid but may be paid in certain circumstances.

- Policy covered employees have the option to use accrued sick leave for certain types of FML.

- For represented employees, consult the applicable collective bargaining agreement to determine whether the employee has the option to substitute paid leave or whether that is required.
UC’S
NOTICE OBLIGATIONS
Failing to provide any of the following 4 notices on a timely basis constitutes a violation of the FMLA:

(1) **General Notice** (This is already be posted at the campus.)

(2) **Eligibility Notice**
- Eligibility is determined (and this Notice must be provided) when the first instance of leave for each FML-qualifying condition begins.
(2) **Eligibility Notice** cont’d

- When an employee requests FML leave or UC acquires knowledge that the employee’s leave may be for an FML-qualifying reason, **UC must give this Notice to the employee within 5 business days**, absent extenuating circumstances.
Required Notices

(3) **Rights & Responsibilities Notice**
- The UC form combines the Eligibility Notice and the Rights & Responsibilities Notice in the same document.

(4) **Designation Notice**
- Advises employee whether the leave will be designated and counted as FML leave.
- Must be provided to employee **within 5 business days** of acquiring enough information to determine whether the leave qualifies as FML (e.g., after receiving certification from health care provider), absent extenuating circumstances.
(4) **Designation Notice** (cont’d)

- If UC will require substitution of paid leave for unpaid FML leave, or that paid leave taken under an existing leave plan will be counted as FML leave, this should be in the Designation Notice.

- If a Return to Work Certification will be required, that should be stated in the Designation Notice.

- Only one Designation Notice is required for each FML-qualifying reason per applicable 12-month period (calendar year except for Military Caregiver Leaves) even if leave is going to be taken intermittently or by reduced schedule.
Why is it in the employee’s interest to designate the leave as FML?

- FML is job-protected leave.
- Benefits continue during leave if it is FML.
- Employee cannot be terminated, disciplined, or penalized for the FML absences.
  - Important: FML absences cannot be considered when evaluating performance.
- Taking FML is protected conduct. Employee cannot be subjected to retaliation for taking FML.
What if the employee requests vacation but doesn’t mention FML or an FML-qualifying reason?

- UC should not ask whether the leave is for an FML-qualifying purpose under these circumstances.
  - But, if UC denies the request and employee then provides information to indicate the leave may qualify for FML, UC’s notice obligations are triggered and FML paperwork should be initiated.
  - Alternatively, if leave is granted and UC later learns it is being taken for a reason that may qualify for FML, UC’s notice obligations are triggered and the FML paperwork should be provided at that point.

Note: The above scenario presumes that the employee is not presently taking FML on an intermittent basis. If employee is taking FML on an intermittent basis, the supervisor needs to inquire whether the requested time off is for FML to be sure the absences are recorded properly.
How do you know if an injury or illness is a Serious Health Condition (SHC)?

- Generally speaking, a SHC is an illness, injury (including on-the-job injury), impairment, or physical or mental condition that involves either:
  - Inpatient care in a hospital, hospice, or residential health care facility or
  - Continuing treatment or continuing supervision by a health care provider.

- Chronic conditions (e.g., migraine headaches, depression, diabetes, arthritis, asthma) can be SHCs.
How do you know if an injury or illness is a Serious Health Condition (SHC)?

- Conditions that generally are not considered SHCs (unless complications arise): common cold, flu, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease.

- If you’re not sure, best practice is to provide the Notice of Eligibility and Rights & Responsibilities. Rely on the certification from the health care provider to determine whether a SHC exists.
When is a Certification (or doctor’s note) complete and sufficient?

- If FML is being taken for employee’s SHC, the certification (or doctor’s note) should be signed and dated by the health care provider and needs to indicate:
  - Approximate date when SHC began
  - Probable duration of the SHC
  - Statement that the employee is unable to perform one or more essential functions of the employee’s position due to the SHC
When is a Certification (or doctor’s note) complete and sufficient?

- If FML is being taken for family member’s SHC, the certification (or doctor’s note) should be signed and dated by the health care provider and needs to indicate:
  - Approximate date when SHC began
  - Probable duration of the SHC
  - Statement that SHC warrants the employee providing care during a period of the family member’s treatment, and
  - An estimate of the frequency and duration of the leave required to provide that care
When is a Certification (or doctor’s note) complete and sufficient?

- If FML is being taken intermittently or on a reduced schedule for employee’s SHC or family member’s SHC, the certification (or doctor’s note) also needs to indicate that the intermittent or reduced schedule leave is medically necessary.

- If FML is being taken intermittently on a reduced schedule for employee’s SHC that may result in periodic episodes of incapacity, it should also estimate the frequency and duration of those episodes of incapacity.
Key Resources

- For employees covered by policy, the system-wide **Absence from Work** policy governs FML leaves.
- For academic employees, the Academic Personnel Manual governs FML leaves.
- For represented employees, consult the applicable collective bargaining agreement.
- All the Notices, Certifications, and other forms can be downloaded from the UC website here:
  
  http://atyourservice.ucop.edu/administrators/loa/fml.html

- At the top of that website, there is a link to step-by-step guidelines for handling routine FML and pregnancy disability leaves, with links to sample cover letters.
QUESTIONS?