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 may also be taken:
- Military Caregiver Leave and/or Qualifying Exigency Leave
  - 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.
  - Qualifying Exigency Leave or Military Caregiver leave can be up to 26 weeks.
How Can Leave Be Taken?

- FML may be taken
  - In blocks of time
  - Intermittently
  - By working a reduced schedule

Using Paid Leave During FML

- 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 FML NOTICE OBLIGATIONS

Required Notices

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.
Required Notices

(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.
Required Notices

(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.
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

- 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.

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.
Non-FML Leaves at the UC

What if the employee is not eligible for FML?

a) The employee is out of luck and must either work or quit or get terminated?
b) The employee may use vacation if they have any accrued.
c) The employee may apply for unlimited catastrophic leave.
d) The employee may take unpaid leave of absence.
e) It depends.
And the Answer is?

It depends!

- However the answer is NEVER “the employee is out of luck”
- There are always options!

Pregnancy Disability Leave

- Pregnancy Disability leave
  - Maximum of 4 months
  - To be eligible must be pregnant.
  - Protects employee during period of disability
    - No terminations
    - No layoffs
    - No reduction in salary.
    - No change in working conditions.
FML & Pregnancy Disability Leave

- Pregnancy specifically excluded from California Family Rights Act
- Pregnancy Disability runs concurrently with Family Medical Leave Act (federal law)
- Once Pregnancy Disability Leave (PDL) is exhausted or employee released, employee is entitled to 12 weeks of California Family Rights Act (aka “baby bonding leave”)
  - Baby bonding runs consecutively with PDL

Other Options

- Sick Leave
- Vacation
- Leave without pay
  - May be eligible for catastrophic leave
  - Disability leave
Sick Leave

- Always check whether the employee is covered by a collective bargaining agreement
- Is the leave for the employee’s own illness or to care for a family member?
- Remember even if the family member isn’t one under FML the person may be under sick leave---so always check.
- Is there a limit on the use of sick leave?
  - Self vs Family member?
  - Baby bonding?

Vacation

- Can be used with the permission of the supervisor
- Can only use vacation that has been accrued
- In some cases, must be used before employee can go on no pay
Catastrophic Leave

- Catastrophic leave permits an eligible employee to apply for temporary salary and benefit continuation after having exhausted all paid leave credits as a result of:
  - Catastrophic injury or illness (self or family member);
  - To deal with the death of a family or household member; or
  - To address catastrophic casualty loss due to a terrorist attack, fire or natural disaster.

Eligible Employee: a non-probationary career staff employee or eligible academic appointee eligible to accrue and use vacation who has exhausted all paid leave credits, is on an approved leave without pay or no pay status and who has not received any formal disciplinary action for excessive absenteeism during the 12 month period immediately preceding the request for catastrophic leave donations.
Catastrophic Leave Cont’d

- SOME CONSIDERATIONS?
  - Is the employee covered by a collective bargaining agreement?
    - Does the agreement permit participation?
  - Has the employee exhausted all available paid leaves?
  - Is the employee eligible for disability benefits?
  - Are they seeking it for periodic or intermittent leave of less than full day increments?

Maximum of 184 hours.
- Eligible employee must apply by the end of the month following month in which paid leave credits are exhausted.
- 80 hour limit for bereavement.

http://blink.ucsd.edu/go/catastrophicleave
Key Resources

- For employees covered by policy, the system-wide Absence from Work policy governs all leaves.
- For academic employees, the Academic Personnel Manual governs FML leaves.
- For represented employees, consult the applicable collective bargaining agreement (check under: Sick Leave, Vacation, Leaves of Absences)

Key Resources cont’d

- All the Notices, Certifications, and other forms can be downloaded from the UC website.
- Step-by-step guidelines for handing routine FML and pregnancy disability leaves.

Available at:
http://atyourservice.ucop.edu/administrators/loa/fml.html
QUESTIONS?