## Guidance for Completing: FMLA Eligibility Notice

### Notice of Eligibility and Rights & Responsibilities

**Family and Medical Leave Act**

**Notice of Eligibility and Rights & Responsibilities**

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

### Part A: Notice of Eligibility

**To:**

**From:**

**Date:**

On [Date], you informed us that you needed leave beginning on [Date] for:

- The birth of a child, or placement of a child with you for adoption or foster care;
- Your own serious health condition;
- Because you are needed to care for your [spouse; child; parent] due to [his/her health condition];
- Because of a qualifying exigency arising out of the fact that your [spouse; son or daughter; parent] is on covered active duty or call to covered active duty status with the Armed Forces;
- Because you are the [spouse; son or daughter; parent] of a covered service member with a serious injury or illness.

This Notice is to inform you that:

- Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- Are not eligible for FMLA leave, because only one reason need be checked, although you may not be eligible for other reasons:
  - You have not met the FMLA’s 12-month length of service requirement. As of the first date of requested leave, you have worked approximately [months] towards this requirement.
  - You have not met the FMLA’s hours of service requirement.
  - You do not work and/or report to a site with 50 or more employees within 75 miles.

If you have any questions, contact [HR Representative Name] or view the FMLA poster located in [Location].

### Part B: Rights and Responsibilities for Taking FMLA Leave

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by [Due Date]. If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances. If sufficient information is not provided in a timely manner, your leave may be denied.

- Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request is enclosed.
- Sufficient documentation to establish the required relationship between you and your family member.
- Other information needed (such as documentation for military family leave):

No additional information requested

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If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

16. Contact __________ at __________ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse; or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

17. You will be required to use your available paid sick, vacation, and/or other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

18. Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," notification to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We ______ have/________ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

19. While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every __________. (Indicate interval of periodic reports, as appropriate for the particular leave situation)

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to return for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

20. You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

- a fixed leave year based on __________
- the 12-month period measured forward from the date of your first FMLA leave usage.
- a "rolling" 12-month period measured backward from the date of any FMLA leave usage.

21. You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on __________.

22. Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

23. You must be reutilated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)

24. If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

25. If you have not informed us above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have __________ sick, __________ vacation, and/or __________ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

For a copy of conditions applicable to sick/vacation/other leave usage please refer to ________ available at __________.

26. Applicable conditions for use of paid leave:

________________________________________________________________________

________________________________________________________________________

27. Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave, and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact: __________

________________________
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This form originated with the U.S. Department of Labor.
Applicable Conditions for Use of Leave

(Copy and paste applicable language in the “Notice of Eligibility and Rights & Responsibilities Form)

FOR BIRTH (Mother)

- **AFSCME Covered:** Enter – For the first six weeks use FMLA Sick leave (code 52) or to available sick hours balance. Use FMLA Vacation (Code 51) for the approved leave balance. All vacation will be used unless you inform me of your interest to reserve two weeks. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
- **MERIT EXEMPT, MERIT CONFIDENTIAL, P&S, SEIU, and FACULTY earning Vacation:** Enter – For the first six weeks use FMLA Sick leave (code 52) or to available sick hours balance. Use FMLA Vacation (Code 51) for the approved leave balance unless other arrangements are made with me for full day FMLA unpaid leave. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
- **FACULTY who do not earn Vacation:** Enter - Use FMLA Sick leave (Code 52) for the first six weeks up to available sick hours balance. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

FOR BIRTH (Father/Partner)

- **AFSCME Covered:** Enter - Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available followed by FMLA Vacation (Code 51). All vacation will be used unless you inform me of your interest to reserve two weeks. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
- **MERIT EXEMPT, MERIT CONFIDENTIAL, P&S, SEIU, and FACULTY earning Vacation:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available. Use FMLA Vacation (Code 51) for the approved leave balance unless other arrangements are made with me for full day FMLA unpaid leave. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
- **FACULTY who do not earn Vacation:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available followed by approved full day FMLA Unpaid leave which will be charged by the department as a leave transaction.

FOR ADOPTION

- **Employees Who Earn Sick Leave and Vacation**
  - **AFSCME Covered:** Enter – Use FMLA Sick (Code 57) for the maximum five full day adoption leave. Use FMLA Vacation (Code 51) for additional authorized absence. All vacation will be used unless you inform me of your interest to reserve two weeks. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
  - **MERIT EXEMPT and MERIT CONFIDENTIAL, P&S, SEIU, and Faculty who earn Vacation:** Enter - Use FMLA Sick (Code 57) for the maximum five full day adoption leave. Use FMLA Vacation (Code 51) for additional authorized absence unless other arrangements are made with me for full day FMLA Unpaid leave. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.
  - **FACULTY who do not earn Vacation:** Enter - Use FMLA Sick (Code 57) for the maximum five full day adoption leave followed by approved full day FMLA Unpaid leave which will be charged by the department as a leave transaction.
Applicable Conditions for Use of Leave
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FOR EMPLOYEE’s OWN CONDITION

- **AFSCME Covered:** Enter - Use FMLA Sick (Code 52) leave to exhaustion followed by FMLA Vacation (Code 51). All vacation will be used unless you inform me of your interest to reserve two weeks. For additional approved leave use FMLA Unpaid (Code 29) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **MERIT EXEMPT, MERIT CONFIDENTIAL:** Enter - Use FMLA Sick (Code 52) leave followed by FMLA Vacation (Code 51). For additional approved leave use FMLA Unpaid (Code 29) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **SEIU:** Enter - Use FMLA Sick leave (Code 52) to exhaustion. Use FMLA Vacation (Code 51) on exhaustion of sick leave prior to partial day FMLA Unpaid leave (Code 59) unless you notify me otherwise. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **P&S and FACULTY earning Vacation:** Enter - Use FMLA Sick leave (Code 52) leave followed by FMLA Vacation (Code 51) prior to using approved FMLA Unpaid leave (partial days Code 59) unless you notify me otherwise. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **FACULTY who do not earn Vacation:** Enter - Use FMLA Sick leave (Code 52). For additional approved leave use FMLA Unpaid (Code 59) for partial days unless you notify me otherwise. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

FOR FAMILY

- **AFSCME Covered:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available followed by FMLA Vacation (Code 51). All vacation will be used unless you inform me of your interest to reserve two weeks. For additional approved leave use FMLA Unpaid (Code 29) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **MERIT EXEMPT, MERIT CONFIDENTIAL:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available followed by FMLA Vacation (Code 51). For additional approved leave use FMLA Unpaid (Code 29) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **P&S, SEIU and FACULTY earning Vacation:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available followed by FMLA Vacation (Code 51). For additional approved leave use FMLA Unpaid (Code 59) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.

- **FACULTY who do not earn Vacation:** Enter – Use FMLA Sick leave as Family Caregiving Leave (Code 53) to the maximum available. For additional approved leave use FMLA Unpaid (Code 59) for partial days. Approved full day FMLA Unpaid leave will be charged by the department as a leave transaction.