



# Family & Medical Leave Policy, including Active Duty Family Military Leave & Military Caregiver Leave, for Employees Subject to Collective Bargaining Agreements

(Revised Feb. 13, 2014)

## Purpose

This policy outlines conditions and procedures under which eligible employees may take limited periods of time off without pay for certain qualifying medical, family-related, and family-military related reasons. This policy is intended to cover eligibility for unpaid leave, including unpaid leave authorized in the Family and Medical Leave Act and the Family Military Leave Act, including Military Caregiver Leave.

This policy is separate and apart from the Military Leave Policy, which applies to an employee's own active or reserve military service leave.

## I. Scope & Eligibility

The provisions of this policy apply to all eligible Union Pacific Railroad employees subject to collective bargaining agreements and to all absences designated as FMLA-related.

1.1. An employee is eligible for FMLA leave if he or she:

- (a) Has been employed for at least 12 months; and
- (b) Has at least 1,250 hours of service during the 12-month period immediately preceding the start of leave.

The 12 months of employment do not need to be consecutive. If an employee is maintained on the payroll for any part of a week, the week will count as a week of employment. For purposes of determining whether intermittent employment qualifies for meeting the 12-month period, 52 weeks is deemed equal to 12 months.

1.2. If an employee has accrued vacation or personal leave, he or she may elect, but will not be required, to substitute such paid time for all or any part of unpaid FMLA leave subject to terms of any applicable collective bargaining agreement. Accordingly, the employee will receive pay pursuant to Union Pacific's applicable paid leave policies and any governing collective bargaining agreement provisions during the period of otherwise unpaid FMLA leave. Therefore, any conditions or procedural requirements governing use of that accrued paid leave must be met in order for an employee to receive pay for FMLA leave.

1.3. The employee must substitute accrued sick leave, if available, for his or her own serious health condition.

## II. Types of FMLA Leave & Duration

Various forms of FMLA leave are identified as follows:

### 2.1. Basic and Active Duty Family Military Leave.

FMLA leave of absence taken for family and/or medical reasons, including a qualifying family military event, is defined as an approved, unpaid absence available to eligible employees not to exceed 12 work weeks in one calendar year. Leave may be taken for the following reasons:

- Upon the birth of the employee's child;
- Upon the placement of a child with the employee for adoption or foster care;
- When the employee is needed to care for his or her child, spouse, or parent who has a serious health condition;



- When the employee is unable to perform the essential functions of his or her position because of a serious health condition; or
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is either (1) a member of the National Guard and/or Reserves and is on active duty (or has been notified of an impending call or order to active duty) in support of a national emergency, or a military action or operation outside the U.S. or (2) is a member of the regular Armed Forces who is or has been deployed to an assignment outside the U.S.

## 2.2. Military Caregiver Leave.

An FMLA leave of absence taken as Military Caregiver Leave is defined as an approved, unpaid absence that may be taken to care for a spouse, son, daughter, parent, or next of kin who is either (1) a current member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty while on active duty or (2) a veteran who has left military service sometime within the previous five years, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that the veteran incurred in the line of duty while on active duty, and that manifested itself before or after the service member became a veteran. Serious injury or illness is one that was incurred in the line of duty on active duty that may render him or her medically unfit to perform the duties of his or her office, grade, rank or rating.

Employees who are eligible for Military Caregiver Leave are entitled to a total of 26 work weeks of unpaid Military Caregiver Leave during a single 12-month period. This single 12-month period begins on the first day an eligible employee takes Military Caregiver Leave and ends 12 months after that date.

The leave described in Section 2.2 applies on a per-covered service member, per-injury basis. However, no more than 26 work weeks of leave may be taken within a single 12-month period by any employee. Even in circumstances where an employee takes other leave covered by the federal FMLA, including Active Duty Leave described in Section 2.1, the aggregate leave under this policy shall not exceed 26 work weeks during that 12-month period.

## III. Definitions of "Serious Health Condition" & "Qualifying Exigency"

As used above in Section II, "serious health condition," which relates to basic FMLA leave, and "qualifying exigency," which relates to Active Duty Family Military Leave, are defined as:

### 3.1. Serious Health Condition.

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- (a) Inpatient care in a hospital, hospice, or residential care facility; or
- (b) Continuing treatment by a healthcare provider involving:
  - i) A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity, relating to the same condition that also involves:
    - Treatment two or more times by a healthcare provider within 30 days of the start of the incapacity; or
    - Treatment by a healthcare provider on at least one occasion within 7 days of the start of the incapacity that results in a regimen of continuing treatment under the supervision of a health care provider.
  - ii) Any period of incapacity due to pregnancy or for prenatal care;
  - iii) Any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits of at least twice per year for treatment by a healthcare provider (this includes conditions that may cause episodic rather than a continuing period of incapacity);
  - iv) A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective during which time the employee must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider; and
  - v) Any period of absence to receive multiple treatments by a healthcare provider.



### 3.2. Qualifying Exigency.

A "qualifying exigency" as used in connection with Active Duty Family Military Leave only refers to the following circumstances:

- (a) **Short-notice deployment:** To address issues arising when the notification of a call or order to active duty is seven (7) days or less;
- (b) **Military events and related activities:** To attend official military events or family assistance programs or briefings;
- (c) **Childcare and school activities:** For qualifying childcare and school-related reasons for a child, legal ward, or stepchild of a covered military member;
- (d) **Financial and legal arrangements:** To make or update financial or legal affairs to address the absence of a covered military member;
- (e) **Counseling:** To attend counseling provided by someone other than a healthcare provider for oneself, for the covered military member, or child, legal ward, or stepchild of the covered military member;
- (f) **Rest and recuperation:** To spend up to five (5) days for each period in which a covered military member is on a short-term rest leave during a period of deployment; and
- (g) **Post-deployment activities:** To attend official ceremonies or programs sponsored by the military for up to 90 days after a covered military member's active duty terminates or to address issues arising from the death of a covered military member while on active duty.

## IV. Other Considerations

4.1. Leave may be taken intermittently or on a reduced leave schedule when it is medically necessary and the employee is required to care for a family member with a serious health condition or the employee is taking FMLA leave for his or her own serious health condition. When it is physically impossible for an employee to return to work during a work assignment after the taking of intermittent FMLA leave, the entire amount of work missed will be counted against the employee's FMLA leave entitlement.


4.2. Leave may be taken for the birth or placement of a child; leave cannot be taken on a reduced leave schedule or intermittent basis. Under such circumstances, leave must be taken in a single block of time and within one year of the qualifying event.

4.3. A husband and wife who are both employed by the Company are each entitled to 12 work weeks of FMLA leave for basic and family military leave.

4.4. A husband and wife who are both employed by the Company are entitled to a combined 26 work weeks of Military Caregiver Leave.

## V. FMLA Notice Requirements

Employees should provide maximum advance notice of their intentions to take FMLA leave to allow for the time necessary to reassign duties or otherwise fill the assignment.

As of Jan. 1, 2014 all requests for FMLA should be made through the eHealthSafe system. Applicable forms are made available through eHealthSafe during the request process. Review this [FMLA Quick Reference Guide \(QRG\)](#)  for step-by-step instructions on how to formally request FMLA.

5.1. Employees must give 30-days advance notice of the need for FMLA leave when it is foreseeable for the birth or placement of a child, for planned medical treatment, or when leave is due to active duty of an immediate family member. All employees are required to comply with their department's or work group's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

5.2. When 30-days advance notice is not possible, notice is required as soon as practicable.



5.3. When planning or scheduling medical treatment, an employee should consult with his or her supervisor and make reasonable efforts to schedule the leave so as not to unduly disrupt operations.

5.4. In the case of an intermittent or reduced leave schedule, the employee must provide the reasons why the taking of intermittent or reduced schedule leave is necessary and provide the schedule for treatment to allow an opportunity to reassign duties or otherwise fill the assignment.

5.5. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to Union Pacific as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employee's department's or work group's usual and customary notice requirements applicable to such leave. Notice should be given either in person or by telephone when medical emergencies are involved and may be given by the employee's spouse or other family member if the employee is medically unable to provide notice.

5.6. If an employee fails to give 30-days notice for foreseeable leave and has no reasonable excuse for the delay, FMLA may be denied until adequate notice of the need is provided, and the leave may be delayed as a result of the inadequate or delayed notice.

5.7. Nothing herein changes the normal call-in procedures or requirements for requesting leave that have been established by the employee's department or workgroup absent unusual circumstances. Where an employee does not comply with the usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

## **VI. Conditions of Leave & Certification of Medical Need**


6.1. The reason for the leave must be covered under FMLA and the employee must provide the appropriate, completed FMLA Certification of Health Care Provider Form, which is made available during the eHealthSafe FMLA request process, supporting the need for the leave. A request for reasonable documentation of family relationship verifying the legitimacy of a FMLA Leave may also be required.

6.2. An employee will have fifteen (15) days in which to return a completed Certification Form. If the employee fails to provide timely certification after being required to do so, the employee may be denied the taking of the leave under FMLA. If the Certification Form is incomplete or insufficient, an employee will be given written notification of the information needed and will have seven (7) days after receiving such written notice to provide the necessary information.

6.3. If there is reason to doubt the validity of the medical certification, a second opinion, at the expense of the Company, related to the health condition may be required. If the original certification and the second opinion differ, a third opinion, at the expense of the Company, may be required. The opinion of the third healthcare provider, which the Company and the employee jointly select, will be the final and binding decision.

6.4. A request for Active Duty Leave must be supported by the Certification of Qualifying Exigency for Military Family Leave Form, as well as appropriate documentation, including the covered military member's active duty orders.

6.5. A request for Military Caregiver Leave must be supported by the Certification for Serious Injury or Illness of Covered Service Member Form, as well as any necessary supporting documentation.

6.6 As of Jan. 1, 2014 all requests for FMLA should be made through the eHealthSafe system. Applicable forms are made available through eHealthSafe during the request process. Review this [FMLA Quick Reference Guide \(QRG\)](#)  for step-by-step instructions on how to formally request FMLA.

## **VII. Maintenance of Benefits**

An employee's healthcare coverage will be maintained by the Company during FMLA absences to the same extent that coverage was provided prior to the leave.

7.1. Any portion of the health plan premiums that had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period and handled in the same manner as for other periods of unpaid leave.

7.2. When, at an employee's request, accrued vacation, personal days, or sick leave is taken concurrently with FMLA leave, the employee's share of healthcare premiums will be paid in the normal manner through payroll deductions.



7.3. Medical and dental benefits may be continued during an FMLA leave of absence by the employee making his/her applicable monthly contributions to UPRR to cover the cost of participation in the plan. If an employee's health insurance premium is more than 30 days late, UPRR will mail a written notice advising such employee that the payment has not been received. Fifteen days after the notice has been mailed, UPRR will discontinue the employee's health insurance benefits while on FMLA leave. Upon returning from leave, the employee will be reinstated on the same terms and conditions as prior to taking leave without having to fulfill any qualifying period or physical examination.

7.4. Except as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, the Company's obligation to maintain health benefits under FMLA ceases if and when the employee (1) informs the Company of his or her intent not to return from leave; (2) fails to return from leave and thereby terminates employment; or (3) the employee exhausts his or her FMLA leave entitlement.

7.5. The Company may recover healthcare premiums from an employee who does not return to work after FMLA leave, unless the employee can show that the failure to return is due to the continuation, recurrence, or onset of an FMLA qualifying serious health condition or due to circumstances beyond the employee's control.

## **VIII. Reinstatement Rights**

8.1. Employees will return to service as provided for under applicable collective bargaining agreements.

8.2. An employee returning to service after FMLA leave has no greater right to reinstatement or to other benefits and conditions of employment than if he or she had been continuously employed during the FMLA leave.

8.3. Upon return from FMLA leave, an employee's benefits will be at the same level as before the leave began subject to any changes in benefit levels that may have taken place during the period of leave.

## **IX. Fraudulent FMLA Leave**

An employee who fraudulently obtains FMLA leave is not protected by the FMLA's job restoration or maintenance of healthcare benefits provisions.

## **X. Failure to Return from Leave**

The failure of an employee to return to work upon expiration of FMLA leave will subject the employee to termination in accordance with the applicable collective bargaining agreement.

## **XI. State & Local Laws**

FMLA provisions do not supersede provisions of state or local law that provide greater family or medical leave rights.

## **XII.Changes in Policy**

The Company reserves the right to modify the terms of this policy where benefits extended exceed FMLA requirements.

## **XIII. Miscellaneous**

Nothing in this policy insulates an employee from the application of any applicable collective bargaining agreement and any other Company policies.

## **Need Help?**

Employees requiring FMLA-related absences should contact their supervisor. The Company has the authority and responsibility to administer this leave policy, including deciding which absences from work will be charged as FMLA leave time. Questions concerning the FMLA or Union Pacific Railroad's policy and procedures for implementing the Act should be referred to Labor Relations at 402-544-4179.