
UNC Hospitals Graduate Medical Education
Resident and Subspecialty Resident
Family Medical Leave Act Policy

All duly appointed residents and subspecialty residents within a UNC Hospitals' graduate medical education program who have worked for UNC Hospitals for at least 12 months and have worked at least 1,250 hours during the previous 12 month period are eligible for leave under the Family and Medical Leave Act (FMLA) for one or more of the qualifying reasons listed below.¹

If Family Medical Leave (FML) is taken, depending on the length of time a resident is on leave, **residency training may need to be extended, contingent upon specialty or subspecialty board requirements and RRC requirements. See also Leave of Absence Policy.**

Except in case of emergency, prior to beginning FMLA leave, all required documentation must be submitted in accordance with the procedure outlined below, reviewed by the Program Director and delivered to the Office of Graduate Medical Education.

A resident is prohibited from moonlighting while on Family Medical Leave.

Qualifying Reasons for Leave and Length of Leave

Eligible residents may take up to **12 weeks** of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter and to care for the newborn child (must be taken within 12 months of the birth of the child and must be continuous);
- The placement of a son or daughter with the resident for adoption or foster care (must be taken within 12 months of the placement of the child and must be continuous);
- To care for a spouse, son, daughter, or parent who has a serious health condition;²

¹ NOTE: If a resident is not eligible for FMLA, the resident may be eligible for leave under the GME Serious Medical Illness and Parental Leave Policy.

² "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care (an overnight stay in a medical care facility) or continuing treatment by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

- For a serious health condition that makes the resident unable to perform the essential functions of his or her job; or
- For a qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. A qualifying exigency includes leave to address issues that arise from a short-notice deployment; attend an official ceremony related to the covered active duty; to arrange for alternative childcare or enroll a child in a new school; to make or update financial or legal arrangements to address the military member's absence; to attend counseling; to spend time with the military member who is on short-term, temporary, rest and recuperation leave during the period of deployment (leave taken for this purpose can be used for a period of 15 calendar days); for post-deployment activities; or to provide care or arrange for care for a parent of the military member.

An eligible resident may take up to **26 weeks** of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness, when the resident is the spouse, son, daughter, parent, or next of kin of the servicemember.

- A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
- A serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.
- The "next of kin" of a current servicemember is the nearest blood relative, other than the current servicemember's spouse, parent, son, or daughter, in the following order of priority: (1) a blood relative who has been designated in writing by the servicemember as the next of kin for FMLA purposes; (2) a blood relative who has been granted legal custody of the servicemember; (3) brothers and sisters; (4) grandparents; (5) aunts and uncles; (6) first cousins.

An eligible resident is limited to a combined total of 26 weeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. Military caregiver leave is available to an eligible resident once per servicemember, per serious injury or illness. However, an eligible resident may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember if he or she has another serious injury or illness.

Payment During FMLA

Residents must use their paid time off (“PTO”) concurrently with FMLA leave. After a resident has exhausted his or her PTO, he or she will receive an additional amount of paid leave to run concurrently with the resident’s FMLA leave, in the following amount:

- If the resident’s program provides 3 weeks of PTO, the resident will receive an additional 3 weeks of paid leave to use during FMLA leave, for up to a total of 6 weeks of paid leave;
- If the resident’s program provides 4 weeks of PTO, the resident will receive an additional 2 weeks of paid leave to use during FMLA leave, for up to a total of 6 weeks of paid leave;

Any FMLA leave taken after the resident’s available paid time off is exhausted will be unpaid.

Measurement Period

The 12-month period for purposes of measuring FMLA leave is a “rolling” 12-month period measured backward from the date an employee uses any FMLA; except that, for purposes of leave to care for a covered servicemember, the single 12-month period begins on the first day the eligible resident takes FML to care for a covered servicemember and ends 12 months after that date.

Holidays: For purposes of determining the amount of leave used by a resident, the fact that a holiday may occur within a week taken as FML has no effect; the week is counted as a week of FML. However, if a resident is using FML in increments of less than one week, the holiday will not count against the resident’s FML entitlement unless the resident was otherwise scheduled and expected to work during the holiday.

Spouses: When two spouses work for the same employer, they are only entitled to a combined total of 12 weeks of leave (or up to 26 weeks of leave to care for a covered servicemember) during any 12-month period if the leave is taken to care for the resident’s parent with a serious health condition, for the birth of the resident’s son or daughter, or for placement of a son or daughter for adoption or foster care.

Intermittent Leave or Reduced Schedule Leave

If there is a medical need for leave that can be best accommodated through an intermittent or reduced schedule, FMLA leave may be taken intermittently (separate blocks of time) or on a reduced schedule (fewer hours than the resident’s usual schedule) if the leave is for one of the following reasons: a resident’s own serious health condition; to care for a spouse, parent, son or daughter with a serious health condition; or to care for a covered servicemember with a serious injury or illness. **Intermittent leave is not permitted for the birth of a child, to care for a newborn child (except if the child has a serious medical illness), or the placement of a son or daughter with the resident for**

adoption or foster care. Leave due to a qualifying exigency may be taken on an intermittent or reduced schedule basis. Examples of intermittent leave would include leave taken for medical appointments related to a serious health condition, such as chemotherapy.

If a resident needs leave intermittently or on a reduced schedule basis for planned medical treatment, then the resident must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations. The resident may be reassigned to an alternative position with equivalent pay and benefits for the duration of the intermittent leave.

Residents who return to work on a reduced or intermittent schedule are required to use time off benefits in order to be paid for a full day. This does not jeopardize the classification of residents as exempt.

Requirements of intermittent leave:

- a) All residents are required to contact the GME office within 24 hours of an absence due to intermittent FML.
- b) All residents must follow their department/hospital attendance or "call in" policy when on intermittent leave.
- c) When calling in, residents must state that they are taking leave under the FMLA on an intermittent basis so it will be designated properly in the Graduate Medical Education Residency Management System (E*Value).

If a resident works a reduced or intermittent work schedule, the resident may be required to extend his or her residency in order to meet requirements for residency certification.

PROCEDURE

Before taking leave for an FMLA qualifying reason, a resident or subspecialty resident must give written notice to the Office of Graduate Medical Education that FMLA leave is being requested. The resident's written notice must explain the reason for the requested leave so that the GME Office can determine whether the leave qualifies as FMLA leave. An FMLA leave request letter is available in the residents' library on Sharepoint that residents should use when requesting FMLA leave. If a resident or subspecialty resident takes leave for an FMLA-qualifying reason, the leave will be designated as FMLA leave.

Birth or Adoption: The resident must give the Office of Graduate Medical Education 30 days notice in writing using the GME Request for Family Medical Leave Form of the intent to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the resident shall provide as much notice as is feasible.

Planned Medical Treatment: When leave is necessary in order for the resident to care for a spouse, son, daughter, or parent who has a serious health condition, or because the resident has a serious health condition, the resident

must give written notice to the Office of Graduate Medical Education of the intention to take leave 30 days in advance (or as many days as is feasible) using the GME Request for Family Medical Leave Form.

Medical Emergency: In the case of a medical emergency requiring leave because of a resident's own serious health condition, or the unexpected need to care for a spouse, son, daughter, or parent who has a serious health condition, advance notice is not required. The resident (or if incapacitated, his/her representative) should communicate with the Office of Graduate Medical Education as soon as is feasible. It generally should be practicable for the resident to provide notice of unforeseen leave within the time prescribed by the residency program's usual and customary notice requirements using the GME Request for Family Medical Leave Form.

Certification

When a resident requests FMLA leave for one of the following reasons, the resident is required to provide certification from a health care provider in support of the leave request:

- Leave due to the resident's own serious health condition;
- Leave to care for a covered family member's serious health condition; or
- Leave to care for a covered servicemember with a serious injury or illness.

Leave because of adoption or foster care must also be supported by reasonable proof of adoption or foster care. The GME office will provide the appropriate certification forms for the resident to complete and return. Residents are responsible for providing a complete and sufficient certification at the time the resident gives notice of the need for leave or within five business days. It is the responsibility of the resident to make sure the physician portion of the paperwork is completed and returned to the GME office within these time limits.

In some instances, a resident may be required to recertify the need for leave, at the resident's own expense. In the event that the GME office requests an employee to recertify, the resident must provide the requested certification to the GME office within 15 calendar days. Where the GME Office has a reason to doubt the validity of a certification, it may require the resident to get the opinion of a second doctor designated or approved by the GME Office, at the GME Office's expense. Where the second opinion differs from the opinion in the original certification, the GME Office may require the resident to get the opinion of a third doctor chosen by the GME Office and the resident.

FML will not be approved until all paperwork is received. Failure to submit FML paperwork by the above described timeframe may result in the delay or denial of FML.

The employer may retroactively designate continuous leave as FML, provided that doing so will not cause harm or injury to the resident.

Reinstatement

The resident shall be reinstated to the same position held when the leave began or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

The GME Office may require that the resident report periodically on the employee's status and intent to return to work.

If the resident's leave was for the resident's own serious health condition, then the resident must provide a fitness-for-duty certification before returning to work that addresses the resident's ability to perform the essential functions of his or her job.

Failure to Return to Work

If the resident does not intend to return to work after the period of FMLA leave, the resident must notify the Program Director and GME office in writing immediately. Failure to report to work at the expiration of the leave, unless an extension has been requested, may be considered a resignation.

Health Benefits

During FMLA leave, the GME Office or Department (depending on salary funding source) will maintain the resident's coverage under any group health plan on the same conditions as coverage would have been provided if the resident had been continuously employed during the entire leave period.

Any share of group health plan premiums which were paid by the resident prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. During any period of FMLA that is unpaid, the resident must make arrangements with the GME office to continue to pay the resident's portion of health plan premiums. The obligation to maintain health insurance coverage stops if the resident's premium payment is more than 30 days late.

If the resident's failure to make the premium payments leads to a lapse in coverage, the department must restore the resident, upon return to work, to the health coverage equivalent to that he or she would have had if leave had not been taken and premium payments not missed, without any waiting period.

Recovery of Premiums

The GME Office or Department may recover the premiums if the resident fails to return to work after the period of leave for which the resident is eligible has expired, for a reason other than the continuation, recurrence or onset of a serious health condition, or other circumstances beyond the resident's control.

Non-Discrimination

The GME Office will not interfere, restrain, deny any right, discharge or in any other way discriminate against any resident because he or she exercises any rights under the FMLA.

Interaction With Other Policies

Residents should consult the GME short term disability policy to ascertain whether they may qualify for short term disability benefits while on FMLA leave.

If a resident is on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA, then the workers' compensation absence and FMLA leave will run concurrently.

FMLA leave shall not accumulate nor be carried forward from year to year, shall not be allowable as terminal leave when the resident leaves the GME program, and shall not be used to extend years of creditable state service for retirement benefit purposes.

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