



## Family and Medical Leave Act (FMLA)

### General Information

The Family and Medical Leave Act (FMLA) is a federal law passed in 1993 that provides eligible employees up to 12 weeks of unpaid job protected leave in a 12 month period with continuation of group health insurance for a specified family event or qualifying exigency. FMLA provides up to 26 weeks of job protected leave to a family member or “next of kin” to care of an injured service member. The following is an explanation of Michigan Technological University’s policy and its employee’s rights and duties under the FMLA. If you have any questions about this policy or your rights and responsibilities under the FMLA, please contact the Benefits office.

### Eligibility

Employees are eligible for FMLA leave if the employee has:

- worked for Michigan Tech at least 12 months; or
- has at least 1250 hours during the 12 month period immediately preceding the start of the leave; and
- has not already used the entire 12 week FMLA leave entitlement as outlined below.

For purposes of FMLA, the 12 week period is calculated in a rolling 12 month period looking back from the first day of the new leave period being requested.

Eligible spouses both employed by Michigan Tech are entitled to a combined total of 12 weeks of FMLA leave for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent with a serious health condition. If either spouse, partner or their child suffers from a serious health condition, both spouses are entitled to 12 weeks of FMLA leave. Additionally unmarried partners and families who have no biological or legal relationship with a child may stand *in loco parentis* to the child and be entitled to FMLA leave. A simple statement asserting that the relationship exists may be required in these situations.

An eligible employee may take an intermittent leave.

- Eligible employees seeking intermittent leave must give Michigan Tech as much advance notice as practicable.
- When an eligible employee is taking intermittent leave to undergo treatment or to care for an immediate family member undergoing treatment, the employee must make reasonable effort to schedule the treatment so as not to unduly disrupt Michigan Tech’s operations.
- Michigan Tech may require an eligible employee taking intermittent leave transfer temporarily to an alternate position or a part-time schedule with the same pay rate and benefits, which better accommodates the employee’s recurring periods of absence.

### Exigency

Leave for family members of military personnel (allowed up to 26 weeks),

- Active duty family leave allows family members to assist those who are on active duty.
- Injured service member leave allows family members to care for their injured military service member.

### Protections

During FMLA leave the employee’s health insurance benefits are maintained and the University maintains its regular contribution to health insurance coverage when the employee is in either paid or unpaid status. On return from an FMLA

leave, the employee will return to the same or an equivalent position and the same benefits for which he or she was eligible prior to the leave. Employees will not be reinstated if the term of the previously held position expired or if there has been a lay off due to a reduction in force or reorganization during the period of absence. However, employees maintain the same rights with respect to such actions, absent the leave, such as access to COBRA and unemployment benefits.

### Specified Family Event

A specified family event is:

- the employee's own serious health condition;
- the birth and of the employee's child (must conclude within 12 months of the birth);
- the adoption or foster placement of a child in the employee's home (must conclude within 12 months of placement);
- the care of a spouse, child, parent, or person in loco parentis with a serious health condition;
- a qualifying exigency for family members who are service members of the Armed Forces who have orders of deployment or are deployed; and
- leave for family members to care for service members of the Armed Forces who have been injured during active duty.

### Procedures for Requesting FMLA Leave

#### **Employee Responsibilities**

An eligible employee must notify their supervisor, and the Benefits office in writing of the need for FMLA leave including the anticipated timing and duration of the leave.

- If the leave is anticipated, an eligible employee must provide a 30 day notice, where practicable.
- If the need for FMLA is not anticipated, an employee must notify Michigan Tech as soon as practicable.
- An employee planning medical treatment should consult with his or her supervisor and make every reasonable effort to schedule such treatment as to not unduly interrupt Michigan Tech's schedule.

#### **Supervisor Responsibilities**

The supervisor is responsible for providing a completed status change form along with the written notice from the employee to the Benefits office within 5 days of the receipt of request.

#### **Employer Responsibilities**

The Michigan Tech Benefits office will provide written notification to those employees requesting an FMLA leave.

- A letter will be mailed to the employee, copied to the supervisor approving or denying the request.
- Michigan Tech may require an eligible employee's request for FMLA be supported by a certification issued by the health care provider of the employee or the employee's family member.
- Michigan Tech may supply a form to use to obtain medical certification. Michigan Tech has the option of retaining a second and third opinion from a health care provider at Michigan Tech's expense if there is reason to doubt the validity of the medical condition.
- Michigan Tech may also request re-certification throughout the FMLA leave to be responded to within 30 days. Such re-certification is at the employee's expense.
- Michigan Tech will monitor any time that results in an absence of 3 or more days (utilizing sick time or time off without pay). Michigan Tech will first notify employee of their FMLA rights when the absence is first noted. If the employee continues to be off into the next pay period, Michigan Tech will automatically count the days absent towards the 12 week FMLA period. Employees will receive a second follow up letter.

## Paid vs. Unpaid Leave and Benefit Continuation

Employee wages during FMLA covered absences are provided according to University policy and collective bargaining agreement requirements. Employees eligible for FMLA will use applicable University leave benefits concurrently with FMLA.

- An eligible employee is required to use accrued sick time during leave under FMLA.
- An eligible employee may use accrued vacation time for any part of FMLA leave.
- If the purpose of FMLA leave is for prenatal care, childbirth, newborn care or adoption or foster care placement, an employee does not have to use accrued sick or vacation time for any part of their leave entitlement under FMLA. An employee may, at their option use any accrued sick days, personal or vacation time for FMLA leave.
- Any period of paid time used under the Voluntary Sick Leave Pool or worker's compensation taken by an employee will be applied toward an employee's 12 week leave entitlement under FMLA.

During an employee's FMLA leave, the employee will continue to be covered by Michigan Tech's health care benefits, subject to the same terms and conditions as other employees of Michigan Tech. During FMLA leave, an employee remains responsible for the employee share premium. Premiums will go into arrears if the FMLA leave is unpaid.

Michigan Tech will seek to recover the cost it paid for employee health care benefits during an FMLA leave if the employee does not return to work following the leave, except in the case where an employee is prevented from returning to work due to the serious health condition or other circumstances beyond the employee's control.

Michigan Tech will permit an employee on FMLA leave to, at his or her cost, continue his or her LTD benefits, life insurance and Rider policies. Any arrearage will be collected from the first paycheck the employee earns after returning from an FMLA leave.

## Return to Work

- An employee seeking to return to work from an FMLA leave prompted by his or her own serious health condition will be required to provide Michigan Tech with a medical certification that he or she is able to return to work.
- An employee returning to work from an FMLA leave shall be placed in his or her former job or an equivalent position, with equivalent pay, benefits and duties, unless the position has been eliminated due to a reorganization or layoff due to a reduction in force during the period of absence.
- Michigan Tech, at its option and expense, may require a physician or physicians of its choosing examine an employee seeking to return from an FMLA leave to determine that employee's fitness to return to work.
- When a Key Employee requests FMLA leave, Michigan Tech will notify that employee of the possibility that he or she may, under certain circumstances, be denied restoration to his or her original position at the end of the leave.

## Definitions

### **Serious Health Condition**

A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care, more than three consecutive calendar days absence or any period of absence due to pregnancy or prenatal care, treated chronic condition, and supervised long term conditions or any period of absence to receive multiple treatments.

### **Immediate Family Member**

- Son or daughter: a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is under the age of 18, or 18 and older that is incapable of self-care due to physical or mental disability.
- Spouse: a husband or wife or as recognized by Michigan Technological University.
- Parent: a biological parent. The definition does not include a parent-in-law.

**Loco Parentis**

Persons who are *in loco parentis* include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

**Next of Kin (to care for an injured service member)**

The nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

**Health Care Provider**

Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker and Christian Science practitioner authorized to practice in the State.

**Key Employee**

A Key Employee is among the highest paid ten percent of Michigan Tech employees.

**Intermittent Leave**

Leave can be taken on a part-time basis when medically necessary. This leave reduces an eligible employee's usual number of working hours per workweek or hour per workday. The total amount covered under an intermittent FMLA may not exceed 12 weeks total.