Background -The Family and Medical Leave Act (FMLA) was enacted on February 5, 1993 as a means of balancing the demands of the workplace with the needs of families, and promoting the stability, integrity, and economic security of families in a manner that accommodates the legitimate interests of employers.

The Family and Medical Leave Act entitles an "eligible" employee to take up to 12 work weeks of leave during any 12-month period for certain family and medical reasons. FMLA maintains eligible employees' pre-existing group health insurance coverage during periods of FMLA leave and restores most eligible employees to their same or an equivalent position at the conclusion of their FMLA leave. The following is a brief summary of the major provisions of the federal law and its State application, University Collective Agreements and Professional Employee Handbook.

1. Eligibility

To be eligible for FMLA leave, employees must have one year of aggregate Delaware State University service and have been paid for at least 1,250 hours during the prior 12 months.


Eligible employees may take up to 12 work weeks of paid or unpaid FMLA leave (continuous or intermittently) during an FMLA 12-month period. The eligibility period begins on the first day of FMLA leave and runs for 365 days.

3. Reasons for Using FMLA

Leave shall be granted for any of the following reasons: to care for an employee's child after birth, or placement for adoption or foster care; to care for an employee's spouse, son, daughter, or parent who has a serious health condition living at home; or for a serious health condition that renders an employee unable to perform his/her job. Under certain circumstances, FMLA leave may be taken on an intermittent basis, or employees

1 Employee FMLA leave entitlement for birth, adoption or placement for foster care expires one year following the date of birth, adoption or placement.
may work a part-time schedule. Such accommodations shall be made only when medically necessary or when agencies agree to a reduced leave schedule.

4. Qualifying Conditions

Specific conditions will determine what qualifies as a serious health condition. At least one of the following shall be satisfied: inpatient hospital care; absence from work or school for more than three consecutive calendar days that involves continuing care by a health care provider; continuing treatment for a chronic serious health condition; continuing treatment for a serious health condition that if not treated would result in incapacitation for more than three days; and any period of incapacitated prenatal care.

The three-day waiting period does not apply for pregnancy, chronic serious health conditions, or for multiple treatments.

Common maladies like colds, flu, earaches, headaches other than migraine, etc., are not considered to be serious health conditions. Plastic surgery after injury or removal of a cancerous growth would be considered a serious health condition. Mental illness may be a serious health condition. Cosmetic surgery is not considered a serious health condition unless in-patient hospital care is required.

Continuing treatment means treatment two or more times, or one treatment resulting in a regimen of continuing treatment under the supervision of a health care provider, or continuing supervision but not necessarily being actively treated for a severe long-term or chronic condition.

5. Definitions

To determine who is covered under FMLA, the following definitions shall apply: "spouse" means a current husband or wife as defined or recognized under Delaware law for the purposes of marriage. (Delaware does not recognize common-law marriages.) "Parent" means a biological parent or an individual who stands or stood "in loco parentis," meaning, "in place of parent," to the employee when the employee was a child. (This does not extend to a parent "in-law.") "Son" or "daughter" means a biological, adoptive, step, or foster child, a legal ward, or a child of a person standing "in loco parentis" under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.

6. Application

Employees on FMLA shall use available accrued annual and/or accrued sick leave in accordance with the leave policy.

An employee may be on a workers' compensation absence due to an on-the-job injury or illness, which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave run concurrently. If employees are offered a
"light duty" assignment, they are permitted but not required to accept the position. Consequently, they may no longer qualify for payments from the workers' compensation benefit plan, but are still entitled to continue on FMLA either until the employee is able to return to the same job or until the 12-week FMLA leave entitlement is exhausted. FMLA leave taken on a part-time or intermittent basis is charged on a pro-rated basis.

7. Notice and Medical Certification

Employees are required to provide advanced leave notice and medical certification whenever practical. Ordinarily, 30 days advance notice shall be given when leave is "foreseeable." Medical certification to support a request for FMLA leave is required and the University may also require second or third opinions (at the University’s expense) and a "fitness-for-duty" report to return to work.

Employees are responsible for providing the University with the qualifying medical reason. The University will make the FMLA designation within two business days. This designation may be verbal, but shall be followed up in writing. Medical re-certification may be required every 30 days.

The Certification of Health Care Provider can be found at the University’s web site at: http://www.desu.edu Human Resources Forms & Templates.

8. Job Benefits and Protection

The FMLA provides maintained employee health care coverage for the duration of the leave period. Employees who fail to return to work after their FMLA leave entitlement has been exhausted shall be responsible for their State share under their existing "group health plan" unless they fail to return to work due to their own or eligible family member's serious health condition, or for some other reason beyond their control. Employees are responsible for re-payment of State contributions toward coverage for any unpaid leave if they fail to return to work. Coverage will be reinstated upon an employee's return without waiting until the next open enrollment period. We will not interfere with, restrain, or deny the exercise of any right provided under FMLA. Additionally, we will not discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for their involvement in any proceeding under or relating to FMLA.

2 If an employee on FMLA leave is more than 30 days late in paying the employees contribution for health insurance, the University is no longer obligated to maintain that insurance. However, before dropping coverage, we will provide the employee written notice at least 15 days before coverage is to cease. The notice will advise the employee that coverage will be dropped on a specified date at least 15 days after the date of notice unless payment is made.