

## **Family Medical Leave Policy**

Bentley University will comply with the Family and Medical Leave Act implementing Regulations as revised effective January 16, 2009. Bentley posts both the mandatory FMLA Notice required by the U.S. Department of Labor (DOL) on [Employee Rights and Responsibilities under the Family and Medical Act](#) and the [DOL supplementary information concerning Military Family Leave](#) on the Human Resources website. The notices are also posted in the bulletin board beside the Human Resources department entrance, on the 2<sup>nd</sup> floor of the LaCava building, and are given to all new employees upon hire.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact Michael Corthell, Director of Employee and Labor Relations, ext 3409 in writing.

### **A. General Provisions**

Under this policy, Bentley will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

### **B. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for Bentley for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of eligible service will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed in an eligible status for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- 3) The employee must work in a worksite where 50 or more employees are employed by Bentley within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### **C. Type of Leave Covered**

1. To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:
  - 1) *The birth of a child and in order to care for that child*
  - 2) *The placement of a child for adoption or foster care and to care for the newly placed child*
  - 3) *To care for a spouse/domestic partner, child, parent, parent-in-law, brother or sister with a serious health condition (described below)*
  - 4) *The serious health condition (described below) of the employee*
2. An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
3. A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent

treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

4. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.
5. If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, Bentley may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

**D. Qualifying exigency leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation**

- 1) An employee whose spouse/domestic partner, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.
- 2) The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

**E. Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member**

This leave may extend to up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty on active duty. Next of kin is defined as the closest blood relative of the injured or recovering service member.

**F. Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances described in C under this policy during any 12-month period. Bentley will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, Bentley will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (E) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, Bentley will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for Bentley and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave.

If a husband and wife both work for Bentley and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

### **G. Employee Status and Benefits During Leave**

While an employee is on leave, Bentley will continue the employee's health benefits and other benefits during the leave period at the same level and under the same conditions, as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, Bentley will require the employee to reimburse Bentley the amount it paid for the employee's health insurance premium during the leave period.

Under current Bentley policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on an unpaid leave, the employee must continue to make this payment and will be billed through Crosby Benefits. The packet from Crosby Benefits will include payment deadlines and details about actions to be taken in the event of non-payment.

If the employee contributes to a life insurance or disability plan, Bentley will continue making payroll deductions, while the employee is on paid leave. While the employee is on unpaid leave, Bentley will continue such benefits under the same terms as above.

### **H. Employee Status After Leave**

An employee who takes leave under this policy will be asked to provide a fitness for duty (FFD) clearance from the health care provider. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. Bentley may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

### **I. Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation (with the exception of one week), personal, sick leave, and in some cases Short Term Disability, prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave, if the reason for the FMLA leave is covered by the established sick leave policy.

Maternity leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement.

An employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave.

An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or four days sick leave prior to being eligible for unpaid leave.

### **J. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

Bentley may temporarily transfer an employee to an available alternative position with equivalent pay and benefits, if the alternative position would better accommodate the intermittent or reduced schedule, in

instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, Bentley and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with Bentley before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

#### **K. Certification for the Employee's Serious Health Condition**

Bentley will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf> ).

Bentley may directly contact the employee's health care provider for verification or clarification purposes using an HR professional. Bentley will not use the employee's direct supervisor for this contact. Before Bentley makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, Bentley will obtain the employee's permission for clarification of individually identifiable health information.

Bentley has the right to ask for a second opinion, if it has reason to doubt the certification. Bentley will pay for the employee to get a certification from a second doctor, which Bentley will select. Bentley may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, Bentley will require the opinion of a third doctor. Bentley and the employee will mutually select the third doctor, and Bentley will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **L. Certification for the Family Member's Serious Health Condition**

Bentley will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf> ).

Bentley may directly contact the employee's family member's health care provider for verification or clarification purposes using, an HR professional. Bentley will not use the employee's direct supervisor for this contact. Before Bentley makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, Bentley will obtain the employee's family member's permission for clarification of individually identifiable health information.

Bentley has the right to ask for a second opinion, if it has reason to doubt the certification. Bentley will pay for the employee's family member to get a certification from a second doctor, which Bentley will select. Bentley may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, Bentley will require the opinion of a third doctor. Bentley and the employee will mutually select the third doctor, and Bentley will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**M. Certification of Qualifying Exigency for Military Family Leave**

Bentley will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (<http://www.dol.gov/esa/whd/forms/WH-384.pdf> ).

**N. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave**

Bentley will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member (<http://www.dol.gov/esa/whd/forms/WH-385.pdf> ).

**O. Recertification**

Bentley may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days, and only when circumstances have changed significantly, or if the employee receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, Bentley may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. Bentley may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

**P. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to their manager and the Human Resources Department. Within five business days after the employee has provided this notice, the Human Resources Department will complete and provide the employee with the DOL Notice of Eligibility and Rights (<http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf> ).

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with Bentley's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**Q. Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the Human Resources Department will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice (<http://www.dol.gov/esa/whd/forms/WH-382.pdf> ).

**R. Intent to Return to Work From FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, Bentley may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

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