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Contents: Family & Medical Leave Act (FMLA)

 Effective Date: **September 2004**

 Point of Contact: [Benefits Manager](#)

Section

Overview of Content (see section for full process)

[Introduction](#)

[1. Requesting, Approving, and Taking Leave Under the Family & Medical Leave Act](#)

- Give 30 days notice to Supervisor before FMLA leave begins, or as soon as practical.
- Provide medical certification to qualify for FMLA leave.
- Contact supervisor regularly during FMLA Leave.
- Report to the Occupational Medicine Clinic for fitness for duty review.
- Submit an updated medical certification.

[Definitions](#)

Exhibits

None

Forms

[Certification of Health Care Provider Form \(DOL WH380\)](#)

Training Requirements and Reporting Obligations

This subject area does not contain training requirements.

This subject area does not contain reporting obligations.

References

[BNL Employee Handbook](#)

[Supervisors' Personnel Manual: 6.0 Work Schedules and Records](#)

Standards of Performance

The Laboratory's policies, standards, and Laboratory-wide procedures and guidelines are based on an evaluation of external requirements, documents, and applicable non-government standards, e.g., orders, directives, and federal, state, and local laws.

Managers shall support our ability to deliver innovative scientific and technological research products and analysis by the following:

- Offering flexible and competitive compensation and benefits programs that encourage achieving organizational goals by hiring and maintaining qualified staff;
- Dealing with all staff fairly and consistently;
- Fostering diversity of staff to enhance our base of knowledge and experience; and
- Promoting open communication and dialogue among all staff.

Management System

This subject area belongs to the **Human Resources** management system.

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Introduction: Family & Medical Leave Act (FMLA)

Effective Date: **September 2004**

Point of Contact: [Benefits Manager](#)

Family & Medical Leave Act (FMLA)

The procedures in this subject area are intended to ensure compliance with the Family & Medical Leave Act (FMLA) of 1993. FMLA allows "eligible" employees to take job-protected, unpaid leave, or to substitute accrued paid leave for up to 12 work weeks in a 12-month period. At BNL, the 12-month period is the 12 months preceding the request for FMLA leave (i.e., upon an employee's request for FMLA leave, any FMLA-approved leave that the employee used within the previous 12 months is counted towards the 12 work week limit).

Eligible employees may request more than one FMLA leave within a 12-month period, but the total FMLA leave may not exceed 12 weeks. Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement. Should Brookhaven Science Associates (BSA) employ both FMLA-eligible spouses, they are jointly entitled to a combined total of 12 work weeks of FMLA leave in a 12-month period when the leave is taken for the birth a child, or placement for adoption or foster care.

Intermittent Leave

In certain cases, leave may be taken on an intermittent basis, or the employee may work a reduced schedule to provide care following the birth, or placement for adoption or foster care, of a child. With Laboratory concurrence, intermittent leave may be taken whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work. When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the work of the Laboratory unit.

Employment Status After FMLA Leave

It is generally expected that an employee will return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave, unless the position has been eliminated as a result of budgetary changes. Under specified and limited circumstances, where restoration to employment will cause substantial and grievous economic injury to operations, the Laboratory may refuse to reinstate certain "key" employees (see [Definitions](#)) to BNL's payroll after using FMLA leave.

Use of FMLA-protected leave will not result in disciplinary actions related to attendance, nor will it result in the loss of any benefit that the employee was entitled to, or had accrued, before the start of the leave.

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Subject Area: **Family & Medical Leave Act (FMLA)**

1. Requesting, Approving, and Taking Leave Under the Family & Medical Leave Act (FMLA)

Effective Date: **September 2004**

Point of Contact: [Benefits Manager](#)

Applicability

This information applies to BNL employees requesting FMLA leave, their supervisors, and staff of the Human Resources and Occupational Medicine Division who perform services related to FMLA leave.

Required Procedure

This procedure enables employees and supervisors to use and administer leave in compliance with the Family & Medical Leave Act (FMLA).

Step 1	<p>Eligible employees (see Definitions) must provide 30 days notice to their supervisors before the FMLA leave starts, when the need is foreseeable, or as soon as practical, depending on the circumstances.</p> <ul style="list-style-type: none"> • If the leave is foreseeable and the employee fails to give 30 days notice, the Laboratory may delay the start of the leave until 30 days have elapsed since notification by the employee. • In cases of unforeseeable leave requirements, employees should give notice to their supervisor within one or two working days after learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. <p>Note: Employees giving notice of the need for FMLA leave are not required to expressly assert rights under the Act, or even mention FMLA, to meet their obligation to provide notice. Employees are required to provide a reason for the leave and sufficient information regarding the nature of the leave to enable the Laboratory to determine the applicability of FMLA. Failure by the employee to request FMLA status for a leave will not preclude the employee from seeking covered status for that absence in the future.</p>
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Step 2	When an employee notifies their supervisor of an illness that may qualify as a serious health condition, the supervisor should inquire if the employee believes that the illness or condition would qualify as an FMLA-covered leave (see Definitions). Employees are required to provide medical certification for all health-related FMLA leaves at both their initiation and completion, if requested (see Step 5).
Step 3	If the employee claims that the illness or condition would qualify for FMLA-covered leave, the supervisor contacts the Benefits Office via e-mail at FMLA@bnl.gov or telephone at (631) 344-2881.
Step 4	The Benefits Office identifies key employees (see Definitions) and notifies them of their key employee status in response to their notice of intent to take FMLA leave. The Benefits Office notifies key employees when and if the Laboratory decides to deny job restoration, and provides the reason for that decision.
Step 5	<p>If the employee meets eligibility requirements for FMLA leave, the Benefits Office mails a Certification of Health Care Provider (DOL WH380) form and instructions to the employee's home.</p> <p>Note: An employee may be instructed, upon submitting a notice of the need for FMLA leave, or immediately after the unforeseeable leave has commenced, that, if and when they request a return to work, they must supply a medical certification of their fitness to work (see Step 12).</p>
Step 6	<p>Employees arrange for their treating physician to complete the Certification of Health Care Provider (DOL WH380), and return it to the Benefits Office in Human Resources, Building 185, within 15 calendar days of the request for FMLA-covered leave. Employees requesting leave for a reason other than their own medical condition follow the same procedure.</p> <p>Note: BNL may require a second opinion to confirm that the medical condition qualifies for FMLA leave. The doctor providing the second opinion will be selected and paid for by the Laboratory. If the opinion of the employee's doctor and the doctor selected by the Laboratory for the second opinion differ, the Laboratory may require the employee to obtain, also at the Laboratory's expense, a medical opinion from a third doctor who is agreeable to both the Laboratory and the employee. The opinion of the third doctor is binding upon both the Laboratory and the employee.</p>
Step 7	The Benefits Office sends written notification of acceptance or rejection of FMLA-covered leave to both the employee's home and supervisor within two working days of receiving the completed Certification of Health Care Provider Form.
Step 8	<ul style="list-style-type: none"> Employees approved for FMLA leave must use sick leave (if the leave is requested for the employee's own medical condition) until their sick leave balance is exhausted. At that time, the employee may continue their leave using accrued vacation time or unpaid leave (Leave Without Pay or Leave

	<p>of Absence) for the balance of the leave, up to a maximum of 12 weeks.</p> <ul style="list-style-type: none"> • If employees use Leave of Absence (see the BNL Employee Handbook) for their FMLA leave, benefits-eligible employees may maintain coverage as if they were actively employed. They must indicate on the Leave of Absence form whether they will maintain their health insurance coverage. If applicable, arrangements will be made for employees to pay their share of health insurance premiums while on leave. • Employees requiring leave to care for a seriously ill family member are eligible for five occasions of Sick Family Member (SFM) leave, of up to 8 hours per occurrence per payroll calendar year, before using accrued vacation or beginning unpaid leave.
Step 9	Supervisors ensure that employee time records are completed and submitted. Use FMLA pay codes for sick, vacation, and leave without pay even if the leave has not yet been approved as FMLA-covered. (See Supervisors' Personnel Manual: 6.0 Work Schedules and Records for pay codes.) Blue card corrections can be submitted later, if necessary.
Step 10	Employees contact their supervisor on a regular basis during FMLA leave to discuss their status and intent to return to work.
Step 11	The Benefits Office may require the employee to obtain re-certification of the condition that triggered the leave no more than every 30 days. (Shorter periods may apply under extenuating circumstances.)
Step 12	Employees returning from an FMLA leave for their own serious health condition must first report back to work through the Occupational Medicine Clinic (OMC) to undergo a fitness for duty review. Such employees must also provide an updated Certification (DOL WH380) to the Benefits Office upon their return to work. Employees who used Leave of Absence must also report to Human Resources to reactivate their employee status.

Guidelines

As with all absences from work, a key element for ensuring that employees are treated fairly and the Laboratory is able to perform its work is regular communication between employees and their supervisors. Regular communication is important both before and during the absence, and it is the responsibility of both employees and supervisors. Employees should notify supervisors of any changes in their condition that might impact their return to work, and supervisors should maintain periodic contact with employees to ensure that Laboratory policies are being followed.

References

[BNL Employee Handbook](#)

[Supervisors' Personnel Manual: 6.0 Work Schedules and Records](#)

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Subject Area: **Family & Medical Leave Act (FMLA)**

Certification of Health Care Provider Form (DOL WH380)

Effective Date: **September 2004**

Point of Contact: [Benefits Manager](#)

The Certification of Health Care Provider Form (DOL WH380) is provided as a [PDF](#).

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(When completed, this form goes to the employee, **not to the Department of Labor.**)

OMB No.: 1215-0181
Expires: 07/31/03

1. Employee's Name

2. Patient's Name (If different from employee)

3. Page 4 describes what is meant by a "**serious health condition**" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or None of the above _____

4. Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5. a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present **incapacity**² if different):

b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

¹ Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

c. **If a regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)?
If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?

8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable **duration** of this need:

Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date

A "**Serious Health Condition**" means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

- (1) **Treatment³ two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment⁴** under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity²** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a period of Incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification (29 CFR 825.306).

Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

Public Burden Statement

We estimate that it will take an average of 10 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE; IT GOES TO THE EMPLOYEE.


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Definitions: Family & Medical Leave Act (FMLA)

 Effective Date: **September 2004**

 Point of Contact: [Benefits Manager](#)

Term	Definition
eligible employee	An individual who has been employed by the Laboratory for at least 12 months, and has completed at least 1,250 hours of service during the 12-month period preceding commencement of the leave.
family member	Spouse, parent, or child. Parent may be the biological parent of an employee or an individual who stands or stood in loco parentis to the employee when the employee was a child. Child may be an adult (18 years or older) who is incapable of self-care because of mental or physical disability. The disability did not have to occur before the child reached age 18.
FMLA-covered leave	Leave granted for the following reasons: <ul style="list-style-type: none"> • The birth and care of a child of the employee; • The placement with the employee of a child for adoption or foster care; • The care of an employee's family member who has a serious health condition and is incapable of self-care because of a mental or physical disability; • The employee's own serious health condition, should it prevent the employee from performing job functions. (A serious health condition causing a period of incapacity of more than three consecutive calendar days may qualify as FMLA-covered leave.)
incapable of self-care	The individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living.
key employees	The highest paid 10% of employees. Under specified and limited circumstances, where restoration to employment will cause substantial and grievous economic injury to operations, the Laboratory may refuse to reinstate key employees after using FMLA leave.
	An illness, injury, impairment, or physical or mental condition that

serious health condition	<p>involves any of the following:</p> <ul style="list-style-type: none">• Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or• Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) due to:<ul style="list-style-type: none">○ A health condition (including treatment for, or recovery from) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:<ul style="list-style-type: none">■ treatment two or more times by or under the supervision of a health care provider or■ one treatment by a health care provider with a continuing regimen of treatment or○ Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or○ A chronic serious health condition, which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or○ A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or○ Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).
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Revision History: Family & Medical Leave Act (FMLA)

 Point of Contact: [Benefits Manager](#)

Revision History of this Subject Area

Date	Description	Management System
September 2004 -- Major Rev. 1.0	<p>This new subject area provides procedures, responsibilities, and guidance for employees and supervisors regarding leave taken under the Family and Medical Leave Act (FMLA).</p> <p>This subject area replaces the section on Family Leave in the Supervisors' Personnel Manual: 15.0 Leave of Absence.</p>	Human Resources

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