The University of Colorado at Boulder (UCB) recognizes the need for eligible employees to use leave for the birth or adoption of a child, an employee’s own serious health condition or for an employee to care for a parent, child, spouse, civil union partner or domestic partner who has a serious health condition, for an employee to care for a parent, spouse, civil union partner, domestic partner, child or next of kin who is an injured servicemember, or due to a qualifying exigency when a parent, child, spouse, civil union partner or domestic partner is called up for active military duty. These Guidelines are designed to provide guidance to officers, professional exempt employees, 9 and 12 month faculty and research faculty, and are designed to comply with the provisions of the Family Medical Leave Act (FMLA) and the State of Colorado Family Care Act (FCA). Generally, the FMLA and the FCA require employers to provide up to 12 weeks of family medical leave (FML) during a 12 month period for the reasons stated in the provisions below.

Officers, professional exempt employees and 9 and 12 month faculty should consult with Employee Relations for guidance regarding the administration of FML. Research faculty should consult with the Office of the Vice Chancellor for Research and Dean of the Graduate School for guidance regarding the administration of FML.

I. Definitions

A. **Spouse**: A husband or wife is recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Colorado law recognizes common law marriages.

B. **Civil Union Partner**: The employee’s partner in a civil union, as defined in section 14-15-103(5) C.R.S.

C. **Domestic Partner**: The employee’s domestic partner and: (1) has registered the domestic partnership with the municipality in which the person resides or with the state, if applicable; or is recognized by the employer as the employee’s domestic partner.

D. **Parent**: A biological parent or an individual who stands or stood *in loco parentis* to an employee when s/he was a child. Parent does not include parent-in-law.

E. **Child**: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act (ADA).

F. **Next of kin of a covered servicemember**: The servicemember’s nearest blood relative other than the covered service member’s spouse, civil union partner, domestic partner, parent, son or daughter, as defined by the Federal Regulations.

G. **Covered Servicemember**: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

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1 These Guidelines were updated to be consistent with the March 2013 FMLA updates regarding military leave and to comply with the State of Colorado Family Care Act.

2 Any leave taken under the FMLA runs concurrently with any leave taken under the Family Care Act.
H. **Military member:** An employee’s spouse, civil union partner, domestic partner, son, daughter or parent on covered active duty or called to covered active duty who is enlisted in the Regular Armed Forces including the National Guard or Reserves.

I. **Covered Active Duty:** Duty during deployment of the military member to a foreign country.

J. **Qualifying Exigency:** Short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post deployment activities and additional activities not encompassed in other categories, but agreed to by the employer and employee.

K. **Supervisor:** A supervisor is anyone who has the authority to hire, promote, discipline, evaluate or direct faculty and/or staff.

L. **Research faculty:** Faculty members whose primary duties are to conduct research and who hold the title of Professional Research Assistant (PRA), Sr. Professional Research Assistant, Research Associate, Sr. Research Associate, Assistant Research Professor, Associate Research Professor and Research Professor.

M. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Inpatient Care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment and recovery in connection with or consequent to such inpatient care.

2. **Continuing Treatment by a Health Care Provider:** A period of incapacity of more than three consecutive full calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
   a. Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse 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
   b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
   c. Treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment must take place within seven days of the first day of incapacity.

3. **Pregnancy:** Any period of incapacity due to pregnancy, including prenatal care.

4. **Chronic Conditions Requiring Treatment:** Any condition requiring periodic visits at least twice a year to a health care provider, or a nurse or physician's assistant under the direct supervision of a health care provider; AND continues over an extended period of time (including recurring episodes of a single underlying condition); AND may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. **Permanent/Long-Term Conditions Requiring Supervision:** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The patient must be under continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, terminal stages of a disease).

6. **Multiple Treatments (Non-Chronic Condition):** Any period of absence to receive multiple treatments (including any period of recovery there from) 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 incapacity 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), kidney disease (dialysis).

Note: Cosmetic treatments (e.g., most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, 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.

N. **Health Care Provider:** Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, physician’s assistant, nurse midwife and clinical social worker performing within the scope of his/her practice as defined under State law. Chiropractors and Christian Science practitioners are health care providers to the extent defined under FMLA regulations. Also included is any health care provider recognized by the University of Colorado group health plan for reimbursement of services.

O. **Equivalent Position:** A position that is virtually identical to the employee’s former position in terms of pay, benefits, and working conditions, including privileges, prerequisites and status.

II. **Provisions**

A. **Basic FML Leave Entitlement**

Eligible employees are entitled to up to a total of 12 work weeks of FML during a rolling 12 month period, measured backward from the date an employee uses any FML if leave is requested for any one or more of the following reasons:

1. the birth of the employee’s child and to care for the newborn child. (Leave must be used within 12 months of the date of birth);
2. the placement with the employee of a child for adoption or foster care and to care for the newly placed child. (Leave must be used within 12 months of the date of placement);
3. to care for the employee’s spouse, civil union partner, domestic partner, child, or parent with a serious health condition (see definition on pp. 1-2); and
4. because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position;

B. **Military Family Leave Entitlement**

1. **Injured Service member Leave:** Eligible employees are entitled to up to a total of 26 work weeks of leave during a 12-month period to care for an injured covered servicemember who is the employee’s spouse, civil union partner, domestic partner, parent, child or relative for whom the employee is the “next of kin.” This leave is based on a single 12 month period and begins with the first day the employee takes leave. This leave is applied on a per-covered-servicemember, per-injury basis. Regardless of the type of FML leave, employees are entitled to no more than 26 weeks in a single 12 month period.

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3 University employees injured while on active duty are covered under the Administrative Policy Statement (APS) on Military Leave Policy for all Exempt Employees including Faculty. Pursuant to section III.4 of the APS, Employees who are hospitalized or convalescing from an illness or injury incurred in, or aggravated during, the performance of military service must report to the University at the end of the period necessary to recover from such illness or injury. Such recovery period may not exceed two years. However, the two-year period shall be extended by the minimum time required to accommodate circumstances beyond the employee's control which make reporting to the University impossible or unreasonable.
2. **Qualifying Exigency Leave:** Eligible employees may take up to a total of 12 weeks of leave while the employee’s spouse, son, daughter, or parent (covered military member) is on active duty or called to active duty status due to a qualifying exigency.

C. **Determination of Eligibility**

1. A request for leave is contingent upon a determination that the individual is eligible for FML. To be eligible for FML, an employee must have been employed by the University for at least 12 months and have worked at least 1,250 hours during the most recent 12 month period. Eligibility also includes compliance with the requirements of these Guidelines. The 12 work weeks are prorated for eligible part-time staff.

2. For purposes of confirmation of family relationship, the University may require the individual to provide reasonable documentation or statement of family relationship.

D. **Family Medical Leave and Paid Leave**

FML is federally mandated job protection and unpaid leave and it runs concurrently with all types of paid leave and compensatory time (if applicable). Therefore, for an employee to receive compensation while on FML, s/he must use some form of paid leave (sick, vacation, injury leave, etc.) or be receiving Short Term Disability (STD), or use compensatory time. Employees receiving paid leave while on FML will continue to accrue sick and vacation leave. When an employee is on leave without pay, the employee does not accrue sick or vacation leave.

1. **Sick Leave.** If the purpose of the leave is the serious health condition of the employee, s/he will be required to use accrued sick leave while on FML. The employee may elect to use sick leave while on FML to care for his/her spouse, child, or parent with a serious health condition.

2. **Vacation Leave.** If the purpose of the leave is the serious health condition of the employee, s/he will be required to use accrued vacation leave once sick leave is exhausted unless the employee is on leave without pay while receiving STD. The employee may elect to use vacation leave to care for her/his spouse, child, or parent with a serious health condition.

3. **Short Term Disability** (if applicable). FML runs concurrently with any leave without pay taken while an employee is receiving STD benefits, including any waiting period before STD begins.

4. **Job related Injury or Illness.** A serious health condition may result from a job-related injury or illness. Paid injury leave runs concurrently with FML.

E. **No Spousal Limitation**

Eligible spouses working for the same department or administrative unit are both entitled to receive up to 12 weeks of FML, which they can take concurrently or consecutively.

F. **Intermittent or Reduced Leave Schedule**

An employee taking leave for his/her own serious health condition, to care for a spouse, civil union partner, domestic partner, parent or child with a serious health condition, to care for an injured service member or due to a qualifying exigency, need not take FML continuously. FML may be taken intermittently or on a reduced leave schedule if the employee provides certification of medical necessity. Employees needing intermittent leave or leave on a reduced leave schedule must make a reasonable effort to schedule his/her leave so as not to disrupt the operations of his/her department. If the leave is for planned medical treatment or for intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider. A supervisor may temporarily assign the employee to an alternative position with equivalent pay and benefits during the period of the intermittent or reduced leave schedule for which the individual is qualified and which better accommodates
recurring periods of leave. An employee taking leave for birth or placement of a child may take leave intermittently or on a reduced leave schedule only with the approval of a supervisor.

III. Process

A. Need for FML

An employee must comply with the department’s usual and customary procedure for requesting leave, absent unusual circumstances. An employee may request FML pursuant to the “FML Entitlement” sections or an employee’s compliance with the department’s leave procedures may trigger FML. Failure to comply with the department’s leave procedures can be grounds for delaying or denying an employee’s FML.

B. Notice to Supervisor

If the need for FML is foreseeable, the employee must provide notice to the supervisor at least 30 days before leave is to begin. If the need for FML is of an urgent nature, the request must be submitted as soon as practicable and generally must comply with the department’s normal call-in procedures. Employees must provide sufficient information for the employer to determine if the leave may qualify for FML protection and the anticipated timing and duration of the leave.

C. Notice of Eligibility and Rights and Responsibilities

Upon receiving notice from the employee of the possible need for FML, the supervisor will provide the employee with a Notice of Eligibility and Rights and Responsibilities and medical certification within 5 business days (absent extenuating circumstances) detailing the employee’s eligibility for FML and the specific expectations and obligations of the employee and the department explaining any consequences of a failure to meet these obligations. If the employee is not eligible for FML, the supervisor must provide a reason for the ineligibility.

D. Designation Notice

Once the supervisor has sufficient documentation to determine whether an employee’s leave is FML qualifying, the supervisor has 5 business days (absent extenuating circumstances) to provide the employee with a notice designating the employee for FML. The designation decision will be based only on information received from the employee (or designee). If there is a question regarding designation of FML, it should be resolved through discussions between the supervisor and the employee and in consultation with Employee Relations (for professional exempt employees, officers and 9 and 12 month faculty) or the Office of the Vice Chancellor for Research and Dean of the Graduate School (for research faculty). Such discussions and resolution shall be documented. If the supervisor determines that the leave is not FML protected, the supervisor must notify the employee.

E. Certifications

1. Certification of Health Care Provider for Employee’s Serious Health Condition/Certification of Health Care Provider for Family Member’s Serious Health Condition

For leave to care for a parent, child, spouse, civil union partner, or domestic partner with a serious health condition or for leave due to the employee’s own serious health condition, the employee should submit the medical certification form to his/her supervisor before leave begins if leave is foreseeable. If the leave is unforeseeable, the medical certification form must be submitted no later than 15 calendar days from the date the leave request is made, unless it is not practicable under the particular circumstances. If a medical certification form is incomplete or insufficient, the supervisor should contact Employee Relations. A certification is considered insufficient if it contains information that is vague, ambiguous or non-responsive.

If the supervisor has reason to doubt the validity of the initial medical certification, a second opinion, at UCB’s expense, from an independent medical provider selected by UCB, may be required. If the two opinions conflict, the conflict may be resolved by a third opinion, at UCB’s expense, by an agreed upon provider which shall be considered final. The employee must authorize the release of relevant medical
information pertaining to the condition for which leave is being sought to the second/third opinion health care provider, if so requested by that health care provider. Failure to authorize the release of this information is grounds for denying FML.

2. Certification of Qualifying Exigency for Military Family Leave
   For Qualifying Exigency leave, the employee should submit the Certification of Qualifying Exigency for Military Family Leave form to his/her supervisor before leave begins. The supervisor may ask for copies of the military member’s duty orders or other military documentation, facts regarding the exigency, dates of the military member’s active duty service, and date of commencement of exigency. If the employee’s request for exigency leave is for an intermittent/reduced leave schedule, he/she may be asked to give beginning and ending dates, as well as an estimate of the frequency or duration of the qualifying exigency. If the employee is meeting with a third party (i.e. to arrange for childcare or make financial arrangements), the employee must supply detailed information about the third party and nature of meeting so the supervisor can verify need for leave.

3. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
   For leave to care for an injured servicemember, the employee should submit a Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave completed by the servicemember’s healthcare provider to his/her supervisor before leave begins. The supervisor may obtain details about the servicemember’s medical condition, such as whether the injury occurred in the line of duty, when it occurred, its probable duration, and the amount of the time the servicemember will require care. The employee may be required to provide confirmation of his/her relationship to the injured or ill service member. Neither the provisions relating to obtaining second/third opinions or recertification apply with respect to leave to care for an injured servicemember.

F. Periodic Reporting and Recertification

Employees on FML are required to report on their status and intent to return. During FML, the supervisor may also require a new medical certification no more often than every 30 days and only in connection with an absence, unless the minimum duration of the condition is more than 30 days. Recertification may be requested in less than 30 days if the following circumstances exist:

1. when the supervisor obtains information that casts doubt on the continuing validity of the original certification;
2. when the individual requests an extension of leave; or
3. when the employee’s circumstances have changed.

IV. Continuation of Health Plan Benefits during Unpaid FML

A. Health Benefits and Timely Payment of Premiums

When an employee has exhausted all paid leave and is on leave without pay, s/he may elect to continue health plan benefits by contacting Payroll and Benefit Services. If the employee elects to continue health plan benefits while on leave without pay, the University will maintain health plan coverage and the University will continue to pay its share of the premiums as long as the employee maintains his/her share. If Payroll and Benefit Services does not receive payment from the employee to pay his/her share of the premiums, Payroll and Benefit Services may discontinue coverage without notice. An employee may choose not to retain the University's health insurance program during leave without pay.
V. Return from FML

A. Job Restoration

Upon return from FML, the employee will be returned to the same position s/he held when the leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, except that an individual has no greater right to reinstatement or to other benefits and conditions of employment than if s/he had been continuously employed during the period.

B. Benefits

At the end of FML, other benefits, including group life insurance, health insurance, disability insurance, and retirement benefits must be resumed in the same manner and at same levels as provided when the leave began, subject to any changes in benefit levels that may have taken place during the period of FML affecting the workforce, unless otherwise elected by the employee. Upon return from FML, an individual cannot be required to re-qualify for any benefit enjoyed before FML began. With respect to University retirement benefits plans, any period of unpaid FML will not be treated as, or counted toward, a break in service for purposes of vesting and eligibility to participate. However, unpaid FML will not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

C. Fitness-to-Return Form (FTR) (Attachment C)

An employee returning to work because of his/her own serious health condition may be required to present written documentation from his/her health care provider that s/he is able to return to work. An FTR shall be required of any individual who is on FML for more than 30 days due to his/her own serious health condition. An FTR may be required for leaves of less than 30 days when it is a business necessity given the nature of the condition in relation to the assignment. The FTR shall only address the particular health condition that caused the individual's need for FML. This FTR may be required of employees taking intermittent FML up to once every 30 days if reasonable safety concerns exist regarding the employee’s ability to perform his/her duties. Return to work may be delayed until the required FTR is provided. Any additional medical inquiry will be governed in accordance with the ADA.

VI. Coordination with University Parental Leave Policy

The provisions of these Guidelines are interpreted and implemented in a manner consistent with the requirements of the Administrative Policy Statement on Parental Leave for Faculty, Officers, and Exempt Professionals. Any FML taken to care for the birth or adoption of a child runs concurrently with any leave taken under the Parental Leave Policy.