

Sick, Parental and Family Care Absence Frequently Asked Questions

This document was created to answer questions that AFSCME and PSSU employees may have about the new Sick, Parental and Family Care (SPF) Absence provisions. Additional questions, not contained within this document, should be referred to your University Human Resource Office.

Frequently Asked Questions -- Topics Covered:

- General
- Eligibility to Use SPF Absence
- Requesting SPF Absence
- Use of SPF Absence Once Approved
- Multiple Reasons for SPF Absence
- Return to Work
- Transition to New SPF Absence

General

1. What is SPF Absence? Sick, Parental and Family Care (SPF) Absence is a paid or unpaid absence from work with benefits due to the serious health condition of an employee; the serious health condition of a family member when the employee is attending to the medical needs of the family member; or for the birth, adoption or foster care placement of a child. Up to six months of SPF Absence may be used within a rolling year for all SPF reasons.

2. Does the SPF Absence policy affect me, since I have a lot of sick leave accumulated? Yes, if the reason for absence is due to an employee's own or family member's serious health condition. All accrued paid sick leave (including sick family and additional sick family leave when appropriate) must be used before any other paid or unpaid leave. This paid leave is recorded as SPF Absence and is deducted from the six month entitlement.

3. What is a serious health condition? A serious health condition is defined by the Family and Medical Leave Act (FMLA) as an illness, injury, impairment, or physical or mental condition that involves any one of the following:

- An overnight stay in a hospital, hospice or residential medical care facility to receive inpatient care, including incapacity or treatment in connection with such a stay;
- A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the condition, that also involves one of the following: Treatment two or more times by a health care provider; or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Any period of incapacity due to pregnancy, or for prenatal care;
- A chronic condition that requires periodic visits for treatment by a health care provider; continues over an extended period of time (including recurring episodes of an underlying condition); and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
- Incapacity of permanent or long-term nature due to a condition for which treatment may not be effective. The patient must be under the continuing supervision of the health care provider even if not receiving active treatment (e.g., Alzheimer's, a severe stroke or the terminal stages of a disease); or
- Any period of absence to receive multiple treatments by the health care provider for at least one of the following: 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 absence of medical intervention (e.g., chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

4. Will absences for minor illnesses reduce the amount of time I can take for SPF? Common ailments, such as the common cold, flu, ear ache, upset stomach, minor ulcer, or minor headache, etc., which do not fit the

definition of a serious health condition or do not render the employee incapable of performing an essential function of the job, do not qualify as serious health conditions.

5. What is ESPF Absence? Extended Sick, Parental and Family Care (ESPF) Absence is an unpaid absence from work without benefits due to a serious health condition of an employee; a serious health condition of a family member when the employee is attending to the medical needs of the family member; or for the birth, adoption or foster care placement of a child. This includes all unpaid sick, parental and family care absence without benefits. Employees are entitled to up to six months of ESPF Absence without benefits under the following conditions:

- The request is made in writing, proof of the need for continuing absence is provided on the *Serious Health Condition Certification* form and the absence is contiguous to the expiration of SPF Absence; or
- The employee has not met the one year of service eligibility requirement and the ESPF Absence is for at least two consecutive weeks. Only one occasion within a rolling year may be approved.

6. Which of my family members are included under SPF Absence? For the purpose of SPF absence, a family member is defined as a spouse, parent, child, or other person qualifying as a dependent under IRS eligibility criteria. A parent can be a biological parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older must be incapable of self-care because of mental or physical disability. Note: The definition of family member for PSSU employees also includes the employee's domestic partner and the biological or adopted child of the domestic partner.

7. What is FMLA? The Family and Medical Leave Act of 1993 (FMLA) is the federal law that requires qualifying employers to provide at least 12 weeks of leave (with or without pay) with benefits within a 12 month period to employees who have serious health conditions; who become parents through childbirth, adoption or foster care placement; or who are attending to the medical needs of a family member with a serious health condition, as long as the employee has been employed at least one year total service and has at least 1,250 hours worked during the 12 month period preceding the date of the first absence for each qualifying event. The SPF Absence policies are consistent with the FMLA's requirements, except where more generous benefits are granted by union agreements.

8. Am I automatically eligible to use SPF Absence? No. Certain eligibility and entitlement restrictions apply. Refer to the *Eligibility to Use SPFAbsence* section of these Frequently Asked Questions for specific restrictions.

9. Who do I contact with questions that are not answered or for more information? The University SPF Coordinator, Linda S. Harrison – (814) 732-1348, should be contacted for questions or for more information.

Eligibility to Use SPF Absence

10. Am I automatically eligible to use SPF Absences? No. To be eligible, an employee must have one year of service (at least 26 pay periods of leave service credit) and must have worked 1,250 hours during the 12 month period preceding the date of the first absence for each event. (An event is a specific reason or medical condition for which an SPF Absence is approved). Regular hours and overtime hours worked and all military absence hours count toward the 1,250 hour requirement; holidays and other paid and unpaid absences do not count. Once eligibility is determined for a qualifying event, the employee remains eligible for that event for the next 12 months, at which time eligibility will be re-measured. Eligibility is re-measured for each new or different qualifying event.

11. How long can I be absent from work while using SPF Absence? An employee is entitled to up to six months of SPF Absence within a rolling year for any of the SPF reasons explained in the *General* section of these Frequently Asked Questions. An employee may be eligible for SPF Absence, but not entitled to the full six months if SPF Absence was used during the preceding rolling year. When an employee has more than six months of accumulated paid leave, the employee is entitled to use all paid leave.

12. What is a rolling year? A rolling year is the 12 month period measured backward from the date of the absence. Because the rolling year is measured backward from the date of each absence, an employee's entitlement can change by the day.

EXAMPLE: If April 1, 2008 is the absence date, the period of March 30, 2007 through March 30, 2008 will be reviewed to determine how much leave was used that reduced the entitlement.

13. What happens if I am not eligible or entitled to SPF or ESPF Absence? When not eligible or entitled to SPF or ESPF Absence, the employee will be involuntarily separated from employment unless the employee chooses to: use paid leave that was not used at the commencement of the absence subject to ordinary provisions for the use of those leave types, return to work, or resign the position. **IMPORTANT:** An employee who wishes to apply for regular or disability retirement must do so prior to resigning or being separated from employment.

14. What happens if I become pregnant or become ill with a serious health condition and I don't qualify for SPF or ESPF Absence? See answer #13.

Requesting SPF Absence

15. What should I do if I learn that I or a family member has a serious health condition? An employee should request SPF Absence as soon as the need to use SPF Absence is known, but at least two weeks in advance, if circumstances permit. When an absence is not foreseeable, the request must be made as soon as practicable to ensure protection under the FMLA. The request should be made in writing using the *Request for SPF Absence* form.

16. What is the approval process? Upon receiving a *Request for SPF Absence* form, the University SPF Coordinator will review the employee's eligibility and entitlement. If eligible and entitled, the employee will be provided with a *Serious Health Condition Certification* form for the health care provider to complete and return within 15 days of receiving the written request for medical documentation. Upon receipt of the completed *Serious Health Condition Certification* form, the information will be reviewed by the SPF Coordinator. If an employee qualifies for SPF Absence based on the medical information provided, SPF Absence will be approved in writing, generally by the next pay day. The timekeeper and supervisor will also receive a copy of the approval letter that includes the approved begin and end dates for using SPF Absence.

17. What steps can I take to ensure my request is processed and approved quickly? When requested, an employee should submit forms in a timely manner. The employee should also review the form completed by the health care provider to ensure the form is legible and complete.

18. Will leave be denied until I provide the medical documentation? No. The absence will be provisionally approved as SPF Absence contingent upon eligibility determination and receipt of acceptable medical documentation within 15 days.

19. What does "provisionally approved" mean? Provisional approval is a preliminary approval of an SPF Absence and designation of the absence as FMLA leave when completed medical certification has not yet been provided. The FMLA requires that all absences that are covered by the Family and Medical Leave Act be designated as FMLA leave. SPF Absence could ultimately be denied if complete information is not provided or the medical information provided does not certify a serious health condition.

20. Who should complete the medical documentation? The treating health care provider must complete the *Serious Health Condition Certification* form. It is inappropriate for the form to be completed by the employee or anyone else who is not representing the health care provider.

21. Can I be assured that the medical information provided remains confidential? Medical documentation is kept in a confidential file and is made available only to the SPF Coordinator. The Universities files are maintained consistent with the procedures outlined in the FMLA. If an employee provides medical information to a supervisor, the supervisor is instructed to forward the information in a “Personal and Confidential” envelope to the SPF Coordinator without keeping a copy. It is not necessary for an employee’s supervisor to know the details of any serious health condition, but the employee may voluntarily share the information.

22. Am I required to tell my supervisor that I have a Serious Health Condition? The employee must tell the supervisor or SPF Coordinator that he/she has a serious health condition. However, the employee does not need to divulge the diagnosis. Failure to provide notification of the serious health condition means that absences will not be protected by the Family and Medical Leave Act and could be denied. After approved to use SPF Absence, an employee must notify the supervisor at the time of each absence request if the absence is due to an approved serious health condition.

23. Why can’t my employer clarify information on the form with my doctor? Under the FMLA, only another health care provider is permitted to clarify information to substantiate a FMLA-qualifying absence. Even with the employee’s permission, the SPF Coordinator is not able to clarify information. Incomplete or illegible *Serious Health Condition Certification* forms will be **returned** to the employee to take back to the health care provider for completion or clarification. Therefore, it is a good idea, prior to leaving the health care provider’s office, to ensure that the form is complete and legible. Some agencies do have physicians on staff available to clarify the information with the employee’s health care provider. It is a good idea to provide your permission for this clarification where indicated on the *Serious Health Condition Certification* form to avoid the burden of obtaining the clarification with additional trips to your health care provider’s office.

24. Do I need to make two requests if both my child and I have serious health conditions? Yes. Each one requires its own request, and each is considered a separate event. Eligibility for SPF Absence will be determined separately, but the entitlement is combined.

25. When should I request parental leave without pay and when can I begin using it? Because pregnancy is a serious health condition, employees should request parental leave as soon as it is known that the leave will be used, especially since pre-natal appointments and absences for morning sickness are SPF Absences. Provided an employee is eligible and entitled to SPF Absence, parental leave without pay begins upon the employee’s request, however it may not be used prior to the date of birth, custody, or placement for foster care, except when required for adoption or foster care placement to proceed. Parental leave without pay shall expire one year from the date of birth, date of assuming custody for adoption, or date of placement for foster care regardless of whether or not the entire SPF Absence entitlement has been used. Paid or unpaid sick leave is available prior to birth, if necessary, or after the birth when a female employee is unable to work due to childbirth as certified by a physician.

26. What happens if my SPF Absence request is ultimately denied? If paid leave was used for the absence, the absence will be changed from a paid SPF Absence to a regular paid absence. If no paid leave is available, the absence may be changed to absent without leave (leave code AW), which may result in discipline.

Use of SPF Absence Once Approved

27. If I have no sick leave available, what type of leave will I use? After all applicable accrued sick leave is used, employees may choose to use accrued annual, personal, compensatory or holiday leave. Employees also may choose to use anticipated annual, personal, or sick leave in accordance with anticipation rules. All forms of

paid leave, if required or chosen to be used, must be used before beginning unpaid leave. In addition, employees may contact the Human Resource Office to discuss eligibility for the leave donation program for catastrophic conditions.

28. Do I have to use all of my paid leave before using unpaid SPF Absence? Employees must use all applicable accrued **sick leave** (including sick family and additional sick family leave when appropriate) prior to using unpaid SPF Absence. Employees may choose to use accrued annual, personal, compensatory or holiday leave. Employees also may choose to use anticipated annual, personal, or sick leave in accordance with anticipation rules. However, when paid leave is used, it must be used **before** beginning unpaid SPF Absence.

EXAMPLE:

- Employee has surgery on February 1, 2008 and expects to be absent for eight weeks.
- SPF Coordinator determines employee is eligible (one year of service and 1250 hours worked).
- Employee used no SPF absences within the last 12 months, so is entitled to 6 months.
- Employee has four weeks of sick leave and four weeks of annual leave.
- Employee is required to use all accrued sick leave (four weeks).
- Employee elects to use two of the four weeks of annual leave.
- Employee uses unpaid SPF Absence for the remaining two weeks.
- All eight weeks are designated as SPF Absence and FMLA leave.
- Employee's sick and annual leave balances are reduced by four and two weeks, respectively.
- Employee's SPF Absence entitlement is reduced by all eight weeks.

29. Will I receive six months of SPF Absence after I exhaust my accrued sick leave? No. All forms of paid leave, except compensatory leave, used run concurrently with the commencement of and are deducted from the period of SPF Absence. Thus, the six month entitlement remaining is the balance of six months minus the paid leave used.

30. If I have more than six months of paid leave available, am I limited to only six months? For employees with more than six months of paid leave available, the SPF Absence is not limited to six months, but employees will not be entitled to any unpaid SPF Absence if more than six months of paid leave is used; only ESPF Absence will be available.

31. If my SPF Absence is approved, do I need to re-certify? The approval period is based on the health care provider's responses on the *Serious Health Condition Certification* form. A *Serious Health Condition Certification* form is required for each new medical condition or reason. Medical recertification of the need for SPF Absence may also be requested as often as every 30 days in connection with intermittent absence, upon expiration of the initial certification and/or upon changed circumstances.

32. What leave is available to me for a chronic, intermittent condition? SPF Absences that are medically necessary may be taken on an intermittent or reduced-time basis during the initial 12 weeks of absence in a rolling year. The employee should attempt to develop a schedule, working cooperatively with the supervisor, which meets the employee's needs with consideration to the times that are least disruptive to normal operations, subject to the approval of the health care provider.

EXAMPLE 1:

- Employee has knee problems.
- First date of absence for knee problems is April 1, 2008.
- SPF Coordinator determines employee is eligible (one year of service and 1250 hours worked).
- Employee used no SPF Absence within the last 12 months, so is entitled to 6 months.
- Employee uses intermittent leave for doctor's appointments and when the knee pain is too great to work, but employee knows that ultimately a knee replacement surgery will be scheduled.
- Employee has 30 days of sick leave and 45 days of annual leave.
- Between April 1 and September 1, 2008, the hours equivalent of 6 weeks of SPF Absence was used.

- Employee was required to use all 30 days of sick leave.
- Employee chose to use unpaid leave rather than annual leave for the remaining days.
- Surgery occurs September 1, 2008. Because it's the same event, eligibility is not rechecked.
- Employee is absent full-time from September 1, 2008 to October 15, 2008 (6 weeks)
- Upon return, employee may not use intermittent absences because 12 weeks was used.

EXAMPLE 2:

- Same scenario as above, except in this case the employee doesn't have the surgery, and continues to use intermittent leave (but less than 12 weeks of it) for one year.
- Eligibility is for one year, and therefore, expires March 31, 2009.
- Employee requests to use more SPF Absence for absences after March 31, 2009.
- Eligibility is re-checked and, if 1250 hours is met, employee is eligible for one more year.
- Entitlement to use intermittent leave is available provided the employee hasn't used the full 12 weeks of entitlement during the 12 months preceding the date of each absence.
- NOTE: If, when the eligibility check is done on March 31, 2009, the 1250 hours are not met, the employee has no further rights to intermittent SPF Absence or ESPF Absence until the 1250 hour eligibility criteria is met. In the meantime, the employee could use paid leave subject to ordinary provisions for the use of those leave types.

33. Once approved for SPF Absence, how do I request an intermittent/episodic absence? When calling off from work, employees are expected to continue to follow applicable procedures for requesting absences, including the call-off notification process. While the employee does not need to divulge the symptoms or diagnosis of the serious health condition, the employee must inform the supervisor that the reason for the absence is due to an approved SPF Absence, as provided in the approval letter provided to the employee.

34. Will annual, personal, sick, or holiday leave accrue while I am on SPF Absence? Annual and sick leave will continue to accrue based on regular hours paid. If unpaid absence is used, paid leave will not accrue. Personal leave will be earned provided 20 days are paid within the earning period. Holidays will be earned provided the employee is in a paid status the half day before and half day after the holiday.

35. Will my health benefits continue while I'm using SPF Absence? Employee health benefits through the PEBTF will continue as long as the employee continues to pay the applicable employee contributions and buy-ups during the first six months of SPF Absence or longer if paid leave is used beyond six months. Employees enrolled in the PEBTF using SPF Absence will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits. Health benefits through the PEBTF will not continue for employees using ESPF Absence.

36. Will I accrue retirement credit while I am on SPF Absence? Retirement credit accrues based on regular hours paid.

37. What if I don't need six months of leave, but only need time for episodic absences? Provided an employee is eligible and entitled, SPF Absences that are medically necessary may be taken on an intermittent or reduced-time basis only during the initial 12 weeks (450 hours for a 37.5 hour workweek or 480 hours for a 40 hour workweek) of absence in a rolling year. Employees are required to use all applicable accrued paid sick leave (including sick family and additional sick family leave when appropriate) before using unpaid SPF Absence.

38. How do I determine my remaining SPF Absence entitlement, since it can change daily? Contact your SPF Coordinator, Linda S. Harrison – (814) 732-1348.

39. Does SPF affect my eligibility to participate in an alternate work schedule? The use of unpaid SPF could affect your eligibility to participate in alternate work schedules. Employees should discuss the work schedule options with the Human Resource Office.

Multiple Reasons for SPF Absence

40. What if I have a serious health condition and a family member becomes ill? Employees who meet SPF Absence eligibility are entitled to up to six months of SPF Absence within a rolling year for all events. Eligibility is re-measured for each new or different event/reason. If an employee is approved for SPF Absence due to a serious health condition and requests SPF Absence to care for a family member with a serious health condition, the employee's eligibility will be re-measured for this second event. To be approved for SPF Absence for the second event, the employee must meet eligibility requirements and have an SPF Absence entitlement balance remaining.

EXAMPLE:

- Employee has a serious health condition (pregnancy) beginning on March 1, 2008.
- SPF Coordinator determines employee is eligible (one year of service and 1250 hours worked).
- Employee used no SPF absences within the last 12 months, so is entitled to 6 months.
- Employee uses 4 months of SPF Absence and returns to work on July 1, 2008.
- Employee's mother contracts a serious health condition September 1, 2008.
- SPF Coordinator determines employee is not eligible because the employee used 4 month absence for parental reasons, holidays and other absences, the employee did not work 1250 hours.
- Employee may not use SPF absence to care for the mother.
- Employee's only option would be to use paid leave, if paid leave is available in accordance with ordinary rules for using paid leave.

41. What if I have more than one serious health condition? Employees who meet SPF Absence eligibility are entitled to up to six months of SPF Absence within a rolling year for all events. Employees must provide a separate *Serious Health Condition Certification* form for **each** event (different reason), at which time eligibility for SPF Absence will be measured. To be approved for an SPF Absence for additional conditions, the employee must meet eligibility requirements and have an SPF Absence entitlement balance remaining.

42. What if my doctor orders bed rest prior to the birth of my baby? Pregnancy is a serious health condition. If an employee qualifies for SPF Absence, applicable accrued sick leave must be used before any other paid or unpaid absence. If an employee does not qualify for SPF Absence because the employee has less than one year of service, the employee may be granted ESPF Absence for one occasion for an absence that is at least two weeks in duration. See also question #25.

Return to Work

43. Is my job protected? Upon return from an SPF Absence, employees have the right to return to the same or equivalent position held before commencing SPF Absence. After commencing ESPF Absence, employees have limited return rights. Generally, employees have the right to return, during the remainder of the six month period, to a vacant position in the same or equivalent classification to which there are no seniority claims and which the agency intends to fill. For specific return rights, refer to your collective bargaining agreement.

44. Do I need a release from the health care provider before returning to work? If the *Serious Health Condition Certification* form does not cover the period of absence, an updated *Serious Health Condition Certification* form or other type of release to return to work from the health care provider will be required.

45. Can I return to work if my health care provider authorizes me to return with limitations? If the employee is authorized to return to work with limitations, the health care provider must document those limitations or modifications. Employees must receive approval in writing from the SPF Coordinator before returning to work with limitations, since it may not be possible to modify some job duties.

Transition to New SPF Absence

46. How will this affect me since I'm approved to use intermittent sick leave without pay? Employees using intermittent or episodic absences that qualify as SPF Absence will be covered by the new provisions upon their first return to work on or after January 1, 2008. Employees who were approved for unpaid sick, parental, or family care leave intermittently prior to January 1, 2008, will remain eligible beginning January 1, 2008, and will be notified of their entitlement.

EXAMPLE:

- Employee has several serious health conditions.
- Employee is approved for intermittent use of SPF absence through February 1, 2008.
- Eligibility does not need to be checked because it was approved before January 1, 2008.
- Eligibility is set for one year beginning on January 1, 2008 for the pre-approved serious health conditions.
- Employee requests a 2 day absence from January 15, 2008 to January 16, 2008.
- Before approving each day of absence, entitlement is checked to be sure not more than 12 weeks of intermittent absence was used within the 12 months preceding the absence date.
- If SPF Absence entitlement for intermittent use remains, absence will be approved; if no entitlement remains, and no paid leave can be approved, the absence will be denied.

47. What if I'm on an approved full-time absence on January 1, 2008? Employees who are absent on a full-time basis for an SPF Absence reason will remain covered by the current provisions until the employee returns to work.

EXAMPLE 1:

- Employee is on parental leave without pay beginning November 1, 2007, and expects to be continually absent through January 15, 2008.
- Employee may use the leave in accordance with the provisions of the previous contract.
- Eligibility does not need to be checked.
- Employee returns to work on January 15, 2008.
- Employee is in a car accident on May 1, 2008, but fortunately only needs time for physical therapy and doctor appointments (no long-term absence is required).
- Employee is eligible (one year and 1250 hours) for the new event.
- Entitlement is checked for each absence. The balance of 12 weeks of intermittent leave is available for use. (Employee had used approximately 10 weeks within last year for parental purposes, so the hours equivalent of 2 weeks remain available on an intermittent basis.)

EXAMPLE 2:

- Same scenario as above, except employee uses parental leave through March 31, 2008.
- Employee is in a car accident on May 1 and only needs time for physical therapy and doctor appointments.
- Employee is eligible (one year and 1250 hours because of overtime worked in the last year).
- However, intermittent absences cannot be approved because 12 weeks of leave have been used within the last 12 month period.
- Employee could use paid leave for appointments that cannot be scheduled outside of working hours, subject to ordinary provisions for using paid leave.