

Family and Medical Leave Act

Responsible Officer: Vice President for Human Resources

Sponsoring Department: Human Resources

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Errors or changes to: aim@uta.edu

Procedures

I. **Purpose**

The purpose of this policy is to set forth guidelines and procedures to be followed in complying with the Family and Medical Leave Act of 1993 (to be referred to in this policy as FMLA).

II. **Policy**

All University employees are eligible for up to 12 weeks of FMLA or up to 26 weeks for Military Caregiver Leave per year for certain family reasons provided they have been employed by the State of Texas for at least 12 months and have worked at least 1,250 hours during the year before the beginning of the leave. During FMLA, the University will maintain the employee's current health coverage on the same terms as if the employee had continued to work. Upon return from FLMA, the employee will be returned to their original or equivalent position with equivalent pay and benefits.

A. **Leave Requirements**

1. Qualified purposes for FMLA are:
 - a. Birth and care of a newborn child;
 - b. Placement of a son/daughter for adoption or foster care with an employee during the first year following placement;
 - c. Serious health condition of spouse, child or parent of an employee, or
 - d. Serious health condition of an employee (unable to perform essential job functions).
 - e. Qualifying Exigency allowing families of National Guard and Reserve personnel on active duty to take FMLA to manage their affairs arising from the fact that a spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty. It does not extend to family members of military members in the Regular Armed Forces.

- f. Military Caregiver Leave to care for spouse, son, daughter, parent or next of kin who is a covered military service member who is recovering from serious illness or injury sustained during active duty.
2. When an employee is taking leave to care for an eligible family member, or due to his/her own serious health condition, the employee will be required to support the leave request with certification from a health care provider. *Request for Family and Medical Leave (Form 3-23)* and the attached Certification of Health Care Provider must be completed by the employee. If the University does not agree with the medical certification, a second opinion at the University's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at the University's expense, and will be the final determination.

B. Medical Certifications

1. Medical certifications will be required for any request for FMLA. It must be received within 15 calendar days of the original request. Failure to provide the medical certification may result in the denial of continuation of leave.
 - a. [Certification of Health Care Provider for Employee's Serious Health Condition](#)
 - b. [Certification of Health Care Provider for Family Member's Serious Health Condition](#)
 - c. [Certification for Qualifying Exigency](#)
 - d. [Certification of Serious Injury or Illness of Covered Service Member for Military Family Leave](#)
2. In addition, the University will require:
 - a. Re-certification for FMLA requests for an extension of leave, if the circumstances described in the previous certification have changed significantly;
 - b. Periodic reports during FMLA leave on the employee's status and intent to return to work;
 - c. Medical certification to show that intermittent leave is medically necessary;
 - d. Medical certification if an employee claims inability to return to work after the expiration of leave because of the continuation of a serious medical condition.

C. Expiration of Leave Entitlement

1. The entitlement to leave for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of birth or placement.
2. An eligible employee who is the spouse, son/daughter, parent or next of kin of a covered service member shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for the service member. Military Caregiver Leave shall only be available during a single 12-month period.
3. An eligible employee shall be entitled to a combined total of 26 work weeks of all FMLA leave requests during a single 12-month period.

D. Return to Work Certification

To be completed by the healthcare provider and is required prior to returning to work.

E. Definitions

1. Eligible Family Member: Spouse/Dependent

For purposes of FMLA, spouse is defined in accordance with the applicable state law including common law marriages when recognized by the state. Unmarried domestic partners do not qualify for spouse status. Son or daughter is defined under FMLA to include a child under 18 years or one who is 18 years or older who is incapable of self care because of a mental or physical disability.

2. Next of Kin

The term "next of kin", used with respect to an individual, means the nearest blood relative of that individual.

3. Serious Health Condition

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves either 1) in-patient care in a hospital, hospice or residential care facility, or 2) continuing treatment by a health care provider. The term "serious health condition" is intended to cover those conditions which affect one's health to the extent that in-patient care is required or continuing treatment by a provider of health care is necessary on a recurring basis for more than a few days for treatment or recovery. FMLA is not intended to cover short-term conditions for which treatment and recovery are brief.

Examples of serious health conditions include heart attacks, heart conditions, most cancers and back conditions requiring extensive therapy or surgical procedures, strokes, respiratory conditions, appendicitis, pneumonia, emphysema, severe nervous disorders, injuries caused by serious accidents on or off the job, pregnancy, severe morning sickness, need for prenatal care, childbirth, and recovery from childbirth. A serious health condition includes treatment

for a serious chronic condition which, if left untreated, would likely result in an absence of work for more than three days.

4. **Continuing Treatment by a Health Care Provider**

Continuing treatment by a health care provider is defined as:

- a. To meet the definition of "continuing treatment" under federal law, an employee must, in connection with a period of incapacity of more than three consecutive full calendar days, have (1) one in-person treatment visit to a health care provider within seven days of the first day of incapacity, plus a regimen of continuing treatment, or (2) two in-person treatment visits to a health care provider within 30 days of the first day of incapacity, unless extenuating circumstances exist.
- b. pregnancy or prenatal care even if an employee does not receive treatment and even if the care does not last three days;
- c. a chronic serious health condition, defined as one that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than continuing incapacity (e.g., asthma, severe morning sickness);
- d. a permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease); and
- e. an absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three or more days in the absence of medical treatment (e.g., cancer, severe arthritis).
- f. In addition to these five broad categories, also included are allergies or mental illness resulting from stress, but only when all of the other criteria of a serious health condition are met.

5. **Treatment**

Treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine physical exams, routine eye exams, or routine dental exams. A course prescription medicine or therapy would qualify as a "regimen of continued treatment," but over-the-counter medicines would not.

6. **Substance Abuse**

Treatment of substance abuse may be included under FMLA in order to undergo treatment by a health care provider; however, absences because of an employee's use of a substance without treatment do not

qualify for family leave. The inclusion of substance abuse does not prevent the employer from taking any employment action against an employee who is unable to perform the essential functions of the job provided the employer complies with the Americans with Disabilities Act (ADA) and does not take action against the employee because such employee exercises rights under FMLA.

7. **Workers' Compensation Leave**

FMLA 12-week leave entitlement will run concurrently with workers' compensation leave when the injury is one that meets the criteria for a serious health condition. An employee receiving workers' compensation benefits will not be required to utilize accrued leave while taking Family Medical Leave.

8. **Injury Leave for Police Officers FMLA 12-week leave entitlement will run concurrently with Injury Leave when the injury is one that meets the criteria for a serious health condition. An employee receiving Injury Leave benefits will not be required to utilize accrued leave while taking Family Medical Leave.**

9. **Parental Leave**

Employees with less than 12 months of service or who have worked less than 1,250 hours are eligible to take a parental leave of absence for the birth or placement of a child. The leave may not exceed 12 weeks and the leave period begins with the date of birth or the adoption or foster care placement. This provision is limited to the birth of a natural child or the adoption or foster placement of a child less than three years of age.

10. **Intermittent and Reduced Schedule Leave**

- a. Employees with a serious health condition or with a spouse, parent or child with a serious health condition are also entitled to take "intermittent" or reduced schedule leave if the leave is medically necessary. Examples include leave periods from one hour to several weeks.
 - i. Intermittent leave is defined as leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.
 - ii. "Reduced schedule leave" is defined as a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. This type of leave might be used, for example, when an employee is recovering from a serious health condition, but is not strong enough to work a full time schedule. Where an

employee normally works a part time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

- iii. If an employee takes an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled.
- b. When an employee has requested intermittent or reduced schedule leave, the University may transfer the employee to an alternate position with equivalent pay and benefits, if the employee is qualified for the position and if it better accommodates the recurring periods of leave more than the employee's current job.
- c. Requests for intermittent leave due to the birth or placement of a child must be approved by the department.
- d. When intermittent leave is taken for planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt the operations of the department.
- e. When the employee has requested a reduced schedule, the employee shall make the reasonable effort to work a schedule so as not to disrupt the operations of the department.

III. Procedures

A. How the 12-Month Period is Calculated

Eligible employees are entitled to take up to 12 work weeks of family leave or 26 weeks for military caregiver leave during any 12-month period measured forward from the date the employee first uses FMLA.

B. Notice by Employee to the University

1. Employees must give at least 30 days advance notice to the University of the need to take unpaid family leave, when it is foreseeable, for the birth or adoption of a child or for medical treatment. When it is not practicable to give such notice under any circumstances, such as premature birth or medical illness, the notice should be given as soon as practical within one or two business days of when the employee learns of the need for leave. Employees are required to complete a Request For Family and Medical Leave form as provided by the Office of Human Resources and provide the appropriate medical certification as indicated on the form.

2. An employee shall provide sufficient notice to make the University aware that the employee needs FMLA leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under FMLA or even mention FMLA, but may only state that leave is needed for an expected birth or adoption, for example.
3. The University should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details for the leave to be taken.
4. An employee who has given notice under FMLA and has provided the certification requirements, if needed, may not be denied family leave.

C. Notice by the University to the Employee

It is the University's responsibility to designate leave, paid or unpaid, as FMLA-qualifying and to give notice of the designation to the employee. Once the University has acquired knowledge that paid leave is being taken for an FMLA required reason, the University must notify the employee within five business days (absent extenuating circumstances) that the leave is designated and will be counted as FMLA leave.

D. Requirement of Using Sick, Vacation, and Compensatory Leave

1. The University is not permitted to count paid leave that was not for an FMLA leave purpose against an employee's family leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, cold, flu, or condition that is not an extended illness, those days may not be counted toward the 12-week entitlement under FMLA. If, however, the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, the employer may require the employee to use his or her sick and vacation leave, and limit the total amount of time away from the University to a total of 12 weeks. If applicable, the University must inform the employee that paid leave must be taken when an individual requests family leave.
2. With the exception of employees receiving workers' compensation income benefits, employees are required to utilize all accumulated sick, vacation, and State compensatory leave, if applicable, when taking leave under FMLA. The 12-week entitlement may run concurrently with workers' compensation leave, provided the employee is eligible for FMLA leave.
3. An employee may use sick leave in conjunction with FMLA for adoption of a child under three years of age, regardless of whether or not the child is actually ill at the time of adoption.

E. Premium Payment for Medical Insurance

When an employee is on unpaid family and medical leave, the University will continue to contribute its share of premium sharing for medical/dental insurance as if the employee had continued in employment during the leave.

For example, if the employee normally has family medical coverage, the University will continue sharing the cost of the premiums with the employee at the family rate. The employee is required to pay his or her share of the premiums in the same manner required when working. An employee may pay his or her share of premiums of the health plan in any manner customarily used by the University.

1. Failure of Employee to Pay Share of Insurance

- a. If the employee fails to pay a timely health plan premium a 30-day grace period will be provided after the agreed upon date for which payment is due. If the employee does not make payment within 30 days, the University will cease to maintain the health coverage on the date the grace period ends. Prior to expiration of the grace period, the University will notify the employee of the discontinuance of insurance coverage.
- b. If the institution discontinues health coverage as a result of non-payment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave commenced. Therefore, the returning employee shall not be required to meet any qualification requirements, such as the waiting period or pre-existing condition requirements, when the employee has failed to continue his/her health coverage for non-payment of premiums.
- c. If the employee fails to return to work after a period of unpaid family leave, and the employer has paid for maintaining health coverage, the employer is entitled to recover the premiums paid unless the reason the employee does not return to work is due to:
 - continuation of a serious health condition that would entitle the employee to family leave, or
 - other circumstances beyond the control of the employee.
- d. An employee is considered to have returned to work after he or she has worked for a period of 30 calendar days. Therefore, an employee who returns to work for only one week and then departs is not considered to have returned to work for purposes of premium payments. The University may recover health insurance premium payments from any sum due to the non-returning employee such as travel reimbursement checks, etc., provided that prior to the deduction of any amounts the Office of General Counsel is consulted to ensure that such deduction is appropriate.

F. Returning Employee

When an employee returns to work under FMLA, he or she is entitled to be restored to the same position held when the leave started, or to an equivalent position with equivalent pay. An equivalent position is one that has the same

pay, benefits, and working conditions, and involves the same or substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility and authority.

G. Notice by Employer Requirement

A notice must be posted in common business areas to notify employees of their rights and responsibilities under FMLA. The University must also supply to employees a notice describing FMLA issued by the Department of Labor.

H. Rights of Employees

Employees who exercise their rights under FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by the employer solely on the basis of exercising his or her rights under FMLA. The employer may not discriminate against an individual for having filed charges, instituted any proceeding under or related to FMLA, or given any information in connection with an inquiry or proceeding regarding FMLA. Refer to the Request for Family and Medical Leave form for further information.

I. Record Keeping Requirements

1. The following records must be kept by the employer regarding family leave:
 - Books or records for no less than three years, which contain the basic payroll and identifying employee data, including name, address, occupation, rate of pay, terms of compensation, hours worked, additions and deductions to the wages, and total compensation.
 - Dates family leave is taken by an employee. The leave must be designated in the records as family leave.
 - Documentation of family leave taken in increments of less than one full day, as well as hours of the leave.
 - Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific notices given to employees under FMLA and copies of the regulations that were issued on June 4, 1993.
 - Any documents describing employee benefits or University policies. This includes written and electronic records regarding the taking of paid and unpaid leave.
 - Premium payments of employee benefits.
 - Records of any dispute between the employee and the University regarding any designation of leave as family leave, including any written statements from the University or employee and the reasons for the designation and disagreement.

2. It should be noted that records and documents relating to medical certifications, recertification, and medical histories of the employee or employee's family members are maintained in separate files and treated as confidential medical records. Therefore, these records do not go into the employee's personnel file. The medical information may be disclosed to supervisors and managers, if needed, regarding work restrictions; to the first aid and safety personnel if the employee's physical conditions require medical treatment; and governmental officials investigating compliance with the FMLA.

J. Coordination with Other Leave Entitlement

FMLA regulations state that if an employer provides more benefits than required by FMLA, FMLA will not restrict those benefits. Therefore, benefits such as the sick leave pool and extended disability leave, when available, may be used in conjunction with and count towards the 12 weeks of family leave. It should also be noted that FMLA does not restrict or modify any federal or state anti-discrimination rules or the employer's obligation to comply with ADA.

Related Resources