



# UTHealth

The University of Texas  
Health Science Center at Tyler

Origination Date: 12/2005

Last Approved: 04/2018

Last Revised: 04/2018

Next Review: 04/2021

Owner: *Weston Griffin: Benefits  
Manager*

Policy Area: *Human Resources and  
Employment*

References:

## Family Medical Leave Act of 1993 and New Regulations of January 2009

### Scope

All University of Texas Health Science Center at Tyler (the "University") employees

### Purpose

To set forth guidelines and procedures to be followed in compliance with the Family and Medical Leave Act of 1993 and January 2009 ("FMLA").

### POLICY

All University employees are eligible for up to 12 weeks (480 hours) of Family Medical Leave per year for certain family reasons, provided they have been employed by the State for a total of 12 months (which need not be consecutive) and worked at least 1,250 hours in the most recent 12 months counting backward from the date of the leave request. The maximum of 12 weeks (480 hours) is not prorated based on full time status as long as the employee meets the 1250 hours qualifying factor.

#### Leave Requirements

- A. FMLA guidelines will grant up to 12 weeks leave (480 hours) inclusive of paid and unpaid hours, in a 12-month period for one or more of the following reasons:
1. Birth of son/daughter and care after such birth;
  2. Placement of son/daughter for adoption or foster care;
  3. Serious health condition of employee, spouse, child or parent of employee; or
  4. Serious health condition of employee (unable to perform job).
  5. Leave for birth or placement for adoption can be taken prior to the actual birth or adoption.
  6. For a qualifying event:
    - a. Related to a family member's call to active duty in the National Guard or reserves; or
    - b. To a serious injury or illness arising out of the military service of a spouse, son, daughter, parent, or next of kin.
- B. FMLA guidelines will grant up to 26 weeks of job-protected leave in a 12-month period to care for a

military service member who is:

1. Employee's spouse, son, daughter, or parent; or
  2. Next of kin and is recovering from an injury; or
  3. Illness suffered while on active duty in the armed forces.
- C. When an employee is taking leave due to his/her own serious health condition or to care for a family member, the employee will be required to provide and support the leave request with certification from the health care provider. If the University does not agree with the medical certification, a second opinion may be obtained at the University's expense. If the two opinions disagree, a third opinion will be the final determination.
- D. Documentation to support an adoption or foster care may be required. The medical certification must be furnished at least 15 days after the employee notifies the University of the requirement for Family Medical Leave.
- E. Employees are required to keep supervisors updated on expectation of return to work at least every 30 days.

### **Spouses Employed by the University**

When both spouses work for the University and each spouse is eligible to take FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all, FMLA-qualifying leave reasons.

- A. Eligible spouses who work for the University are limited to a combined total of 12 workweeks of leave in a 12-month period for the following FMLA-qualifying reasons:
1. The birth of a son or daughter and bonding with the newborn child,
  2. The placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child,
  3. The care of a parent with a serious health condition.
- B. Spouses are entitled to 12 workweeks each for their own serious health condition or to care for a spouse, son, or daughter with a serious health condition.
- C. Where a spouse uses a portion of his or her leave for a purpose that is subject to the combined 12-week limit, that employee has the remainder of his or her 12 workweeks for any leave that is not subject to the combined limit.
- D. Eligible spouses who work for the same employer are also limited to a combined total of 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness (commonly referred to as "military caregiver leave") if each spouse is a parent, spouse son or daughter, or next of kin of the service member. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

### **Disqualifying Events**

- When an employee fails or refuses to return a completed medical certification, the University can delay designation of the leave as Family Medical Leave until the certification is returned. If the certification is never returned, the leave is not considered Family Medical Leave.

# Definitions

- **Spouse**

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 Family Medical Leave.

- **Children**

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.

- **Parent**

The biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. (This does not include the parent of an employee's spouse.)

For purposes of confirmation of family relationship, the University may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The University is entitled to examine the documentation such as birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

- **Serious Health Condition**

A serious health condition is one that requires inpatient care or continuing treatment by a certified health care provider. The term "serious health condition" is intended to cover those conditions that affect one's health to the extent that inpatient 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. Family Medical Leave is not intended to cover short-term conditions for which treatment and recovery are brief. Examples of serious health conditions may include, but are not limited to, 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, ongoing 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 (3) days.

- **Substance Abuse**

Treatment of substance abuse may be included under FMLA where a "serious health condition" is met. Family Medical Leave may be taken only for treatment by a healthcare provider or on referral by a healthcare provider. However, an absence because of an employee's use of a substance without treatment does not qualify under FMLA provisions. The inclusion of substance abuse does not prevent the University from taking any employment action against an employee who is unable to perform the essential functions of the job. However, through the Americans with Disabilities Act ("ADA"), accommodations may be made when applicable and reasonable.

- **Parental Leave**

An employee's entitlement to leave for the birth or placement of a child expires 12 months after the birth or placement. If both parents work for the University, regardless of whether they work at different work sites or different component institutions, the total amount of leave cannot exceed 12 weeks (480 hours). This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness, this limitation does not apply.

- **Intermittent Leave**

Leave taken due to the serious health condition of the employee, a member of the employee's family, with a qualifying exigency or service member caregiver may be taken in intermittent times, provided proper notice is given to the immediate supervisor. To accommodate recurring periods of leave when an

employee requests intermittent leave, the University may transfer the employee to an alternative position with equivalent pay and benefits, as long as the employee is qualified for the position.

- **Undue Hardship**

There is a very limited "key employee" exception for salaried employees who are paid among the top 10% of employees in a organization (within a 75-mile radius). For those employees, the University may deny restoration to their prior position if restoration would cause the University to suffer substantial and grievous economic injury. If an individual is designated as a "key employee", he/she must be informed of this status at the commencement of leave or as soon as practical.

## Procedures

### A. How the 12-Month Period is Calculated

Eligible employees are entitled to take up to 12 work weeks (480 hours) of FMLA leave during any 12-month period measured forward from the date the employee's first FMLA leave begins.

### B. Requirement of Using Sick/Vacation Leave

Under the Appropriations Act, employees are required to utilize all paid leave entitlements, including accumulated sick, vacation, comp and holiday leave, if applicable, when taking leave under FMLA. Sick leave must be utilized first when applicable. However, the University is not permitted to count paid leave that was not for a Family Medical Leave purpose against an employee's Family Medical Leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, cold, flu, or something that is not an extended illness, those days may not be counted toward the 12-week (480 hour) 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 University will require the employee to use his/her paid leave entitlements, and limit the total amount of time away from the University to a total of 12 weeks (480 hours). The University must inform the employee that paid leave must be taken when an individual requests Family Medical Leave. It is the University's responsibility to designate whether or not the leave (paid or unpaid) will be considered leave taken pursuant to FMLA.

### C. Premium Payments for Medical Insurance

When an employee is on unpaid Family Medical Leave, the University may continue to pay the State's premium sharing for medical/dental/vision insurance as if the employee had continued in employment during the leave as long as the employee continues to pay his/her share of the premiums. For example, if the employee normally has family medical coverage, the University will continue paying the applicable amount of State premium sharing at the family rate. The employee is required to pay his/her share of the premiums as in the same manner required when working. An employee will be billed by the Cashier's Office for his/her share of premiums of the health plan in any manner customarily used by the University.

### D. Failure of Employee to Pay Share of Insurance

1. If the employee fails to make a timely health plan premium, a 30-day grace period will be provided after the 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 discontinuation of insurance coverage.
2. If the University discontinues health coverage as a result of non-payment of premiums, and the employee returns, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave commenced. The restored employee shall not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements.

3. If an employee fails to return to work after a period of unpaid Family Medical 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:
  - a. continuation of a serious health condition that would entitle the employee to Family Medical Leave, or
  - b. other circumstances beyond the control of the employee.
4. An employee is considered to have returned to work after he/she has worked for a period of 30 calendar days. An employee who returns to work for only one week and then departs is not considered to have returned to work for the purpose of the premium payments. The University may recover health insurance premium payments from any payment due to the employee such as travel pay checks, etc, provided that prior to the deduction of any amounts, the Office of General Counsel has approved such deduction is appropriate.

#### **E. Returning Employee**

When an employee returns to work under FMLA, he/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. Returning employees may be required to provide a fitness for duty certificate.

#### **F. Notice by Employer Requirement**

The University is required to post a notice in a prominent place to notify employees of their rights and responsibilities under FMLA. The University must also supply employees a written notice of FMLA requirements each time a leave is designated as eligible.

#### **G. Notice by Employee**

1. Employees must give at least 30 days advance notice to their immediate supervisor or Human Resources of the need to take Family Medical Leave when it is foreseeable for the birth or adoption of a child or for medical treatment. When it is not practicable under any circumstances, such as premature birth or medical illness, to give such notice, the notice should be given as soon as practical within one to two (2) business days of when the employee learns of the need for leave and/or in accordance with University's policy for such leave. In unforeseen situations, verbal notice is sufficient to inform the immediate supervisor that the employee will need the leave. However, the employee must provide the certification requirements within fifteen (15) days.
2. An employee who has given notice under FMLA and has provided the certification requirements, if applicable, may not be denied taking Family Medical Leave.

#### **H. Rights of Employees**

1. 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 University. It is unlawful for any person to discharge, or in any other manner discriminate, against an individual for having filed charges, instituted any proceeding under or related to FMLA, given any information in connection with the inquiry proceeding with the right under FMLA, or testified in any right or proceeding regarding FMLA.
2. If an employee's FMLA rights have been violated, FMLA provides that the employee may file a complaint with the Department of Labor or file a private law suit against the University to obtain damages and other relief. There is also an assessment of penalties for willfully failing to post the attached notice.

## **I. Record Keeping Requirements**

1. The following records must be kept by the University regarding FMLA:
  - a. Books or records of no less than three (3) years which contain 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 pay.
  - b. Dates Family Medical Leave is taken by employee. Leave must be designated in the records as Family Medical Leave.
  - c. Documentation of Family Medical Leave taken in increments of less than one (1) full day, as well as hours of the leave.
  - d. Copies of the employee's notice of leave furnished to the employer under FMLA, if in writing, copies of all general and specific notices given to employees under FMLA and the regulations issued on June 4, 1993.
  - e. Any documents describing employee benefits or University policies. This includes written and electronic records regarding the taking of paid and unpaid leave.
  - f. Premium payments of employee benefits.
  - g. Records of any dispute between the employee and the University regarding any designation of leave as Family Medical Leave, including any written statements from the University or employee and reasons for the designation and disagreement.
2. 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. 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, the first aid and safety personnel if the employee's physical and medical conditions require medical treatment and government officials investigating compliance with 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. 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 (480 hours) of Family Medical Leave. It should also be noted that FMLA does not restrict or modify any federal or state anti-discrimination rules or the University's obligation to comply with the ADA.

## **K. Leave of Absence ("LOA") in conjunction with FMLA**

Leave of Absence ("LOA") may be used in conjunction with FMLA. Employees should coordinate the leaves through the Benefits Department.

## **L. Exhaustion of FMLA Leave Entitlements**

Once an employee has exhausted the maximum number of hours (480) under FMLA regulations and has no paid leave remaining, and has not imminent date to return to work, the University may designate termination of employments. Employees may be sent a letter of acknowledgement.

## **M. Retaliation**

The University is prohibited from discriminating or retaliating against an employee who meets the 12month/1250-hour requirement, has requested leave, has opposed a practice forbidden by FMLA, has made a charge, testified or assisted in any manner, in any investigation, proceeding, or hearing under FMLA.

# References

[Texas Government Code, Section 661.912 \(b\);](#) and [Opinion, Texas Attorney General, No. JC-0040 \(1999\)](#)  
[Texas Government Code, Section 825.214](#)

# Forms

[Human Resources forms](#)

## Attachments:

No Attachments

## Approval Signatures

Step Description	Approver	Date
	Kirk Calhoun: President/Prof of Medicine	04/2018
Executive Cabinet	Carol Davis: Executive Assistant Senior	04/2018
Office of Legal Affairs	Terry Witter: VP Legal Affairs/ChiefLegalOf	03/2018
Faculty Senate	Vijaya Lella: Prof Of Biochemistry	03/2018
	Cynthia Scott-Lunau: VP Human Resources/CHRO	02/2018

## Applicability

UTHealth

COPY