



ADMINISTRATIVE
POLICIES AND PROCEDURES MANUAL

SUBJECT

LEAVES OF ABSENCE

SUB-TOPIC

FAMILY AND MEDICAL LEAVE ACT

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 "Act").

II. POLICY

All University employees are eligible for up to 12 weeks of family leave per year for certain family reasons provided they have been employed by the State of Texas for at least 12 months prior to the commencement of the leave, and worked at least 1,250 hours.*

A. LEAVE REQUIREMENTS

1. The University will grant up to 12 weeks of unpaid leave in a 12-month period for one or more of the following reasons:

- a. Birth of son/daughter and care after such birth;
- b. Placement of son/daughter for adoption or foster care;
- c. Serious health condition of spouse, child or parent of employee;
or
- d. Serious health condition of employee (unable to perform job).

Leave for birth or placement for adoption can be taken prior to the actual birth or adoption.

*If the employee requesting leave has not been employed by the State of Texas for 12 months and worked at least 1,250 hours, he/she may be eligible for other leave of absence options described in Section D6.



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A. LEAVE REQUIREMENTS, Continued

2. When an employee is taking leave to care for a family member, or due to his/her own serious health condition, the employee may be required to support the leave request with certification from the health care provider. A sample certificate is attached to this policy. If the institution 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. There is no certificate requirement if an employee is taking leave for the birth of a child, or placement of a child.

III. DEFINITIONS

A. SPOUSE/DEPENDENT

For purposes of the Act, 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 leave. Son or daughter is defined under the Act to include a child under 18 years or older who is incapable of self care because of a mental or physical disability.

B. SERIOUS HEALTH CONDITION

A serious health condition is defined as an injury, impairment, or physical or mental condition that involves either: 1) inpatient 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 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. The Act is not intended to cover short term conditions for which treatment and recovery are brief.



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B. SERIOUS HEALTH CONDITION, Continued

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 disorder, 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.

C. SUBSTANCE ABUSE

Treatment of substance abuse may be included under the Act where a stay at an in-patient treatment facility is required. However, absences because of an employee's use of a substance without treatment does 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 solely because such employee exercises his rights under the Act.

D. 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. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness, this limitation does not apply.



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E. INTERMITTENT LEAVE AND REDUCED SCHEDULE LEAVE

Employees with a serious health condition or with a spouse, parent or child with a serious health condition (but not those taking leave due to the birth or placement of a child) are also entitled to take "intermittent" or "reduced schedule" leave, if the leave is medically necessary.

"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 for periods from one hour to several weeks. Examples 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.

"Reduced schedule leave" is defined as a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. 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.

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. 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.

When an employee has requested intermittent or reduced schedule leave, the University may transfer the employee to an alternative 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.



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IV. PROCEDURES

A. HOW THE 12-MONTH PERIOD IS CALCULATED

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

B. REQUIREMENT OF USING SICK/VACATION LEAVE

With the exception of employees receiving workers' compensation, employees are required to utilize all accumulated vacation and sick leave, if applicable, when taking leave under the Act. However, the University is not permitted to count paid leave that was not for an Act 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 may **not** be counted towards the 12 week entitlement under the Act. 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 employment to a total of 12 weeks. The University must inform the employee that paid leave must be taken when an individual requests family leave. It is the employer's responsibility to designate whether or not the leave (paid or unpaid) will be considered leave taken pursuant to the Act. The twelve (12) week entitlement may run concurrently with workers' compensation leave, provided the employee is otherwise eligible for FMLA Leave.

C. PREMIUM PAYMENTS FOR MEDICAL INSURANCE

When an employee is on unpaid family 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.



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D. FAILURE OF EMPLOYEE TO PAY SHARE OF INSURANCE

1. 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 may 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 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 a waiting period or pre-existing condition requirements, when the employee has failed to continue his/her health coverage for non-payment of premiums.
3. If an 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 1) continuation of a serious health condition that would entitle the employee to family leave, or 2) other circumstances beyond the control of the employee.



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D. FAILURE OF EMPLOYEE TO PAY SHARE OF INSURANCE (Continued)

4. 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 certain sums due to the non-returning employee such as travel reimbursement, pay 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.

E. RETURNING EMPLOYEE

When an employee returns to work under the Act, 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.

F. NOTICE BY EMPLOYER REQUIREMENT

A notice will be posted, a copy of which is attached, to notify employees of their rights and responsibilities under the Act. The employer must also supply to employees a notice describing the Act which will be issued by the Department of Labor.



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G. NOTICE BY EMPLOYEE

1. Employees must give at least 30 days advance notice to the employer 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 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 business days of when the employee learns of the need for leave. Verbal notice is sufficient to inform the employer that the employee will be needing family leave.
2. An employee who has given notice under the Act and has provided the certification requirements, if needed, may not be denied family leave.

H. RIGHTS OF EMPLOYEES

1. Employees who exercise their rights under the Act 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 the Act. The employer may not discriminate against an individual for having filed charges, instituted any proceeding under or related to the Act, or given any information in connection with any inquiry or proceeding regarding the Act.
2. If an employee's Act rights have been violated, the Act provides that the employee may file a complaint with the Department of Labor or file a private law suit against the employer to obtain damages and other relief. There is also an assessment of penalties for willfully failing to post the attached notice.



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I. RECORD KEEPING REQUIREMENTS

1. The following records must be kept by the employer regarding family leave:
 - a. Books or records of 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.
 - b. Dates family leave is taken by an employee. The leave must be designated in the records as family leave.
 - c. Documentation of family leave taken in increments of less than one full day, as well as hours of the leave.
 - d. Copies of the employee notices of leave furnished to the employer under the Act, if in writing, and copies of all general and specific notices given to employees under the Act and copies of the regulations that were 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 leave, including any written statements from the University or employee and the reasons for the designation and disagreement.



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I. RECORD KEEPING REQUIREMENTS, Continued

2. It should be noted that records and documents relating to medical certifications, recertifications, and medical histories of the employee or employee's family members should be 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; the first aid and safety personnel if the employee's physical and medical conditions require medical treatment; and government officials investigating compliance with the Act.

J. COORDINATION WITH OTHER LEAVE ENTITLEMENT

The Act regulations state that if an employer provides more benefits than required by the Act, the Act 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 the Act does not restrict or modify any federal or state anti-discrimination rules or the employer's obligation to comply with the ADA.

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Federal Register/Vol. 58, No. 106/Friday, June 4, 1993/ Rules and Regulations
Appendix B to Part 825--Certification of Physician or Practitioner

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

CERTIFICATION OF PHYSICIAN OR PRACTITIONER (Family and Medical Leave Act of 1993)

1. Employee's Name:
2. Patient's Name (if other than employee):
3. Diagnosis:
4. Date condition commenced:
5. Probable duration of condition:
6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week):
 - a. By physician or practitioner:
 - b. By another provider of health services, if referred by physician or practitioner:

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THROUGH 14 ON REVERSE SIDE. OTHERWISE, CONTINUE BELOW.

Check Yes or No in the boxes below, as appropriate.

- | | Yes | No | |
|-----|---|--------------------------|---|
| 7. | <input type="checkbox"/> | <input type="checkbox"/> | Is inpatient hospitalization of the employee required? |
| 8. | <input type="checkbox"/> | <input type="checkbox"/> | Is employee able to perform work of any kind? (If "No", skip Item 9.) |
| 9. | <input type="checkbox"/> | <input type="checkbox"/> | Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.) |
| 15. | Signature of physician or practitioner: | | |
| 16. | Date: | | |
| 17. | Type of practice (field of specialization, if any): | | |

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Federal Register/Vol. 58, No. 106/Friday, June 4, 1993/Rules and Regulations
Appendix B to Part 825--Certification of Physician or Practitioner

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY ILL FAMILY MEMBER, COMPLETE ITEMS 10 THROUGH 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15 ON REVERSE SIDE.

- | | Yes | No | |
|-----|--------------------------|--------------------------|--|
| 10. | <input type="checkbox"/> | <input type="checkbox"/> | Is inpatient hospitalization of the family member (patient) required? |
| 11. | <input type="checkbox"/> | <input type="checkbox"/> | Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? |
| 12. | <input type="checkbox"/> | <input type="checkbox"/> | After review of the employee's signed statement (see Item 14 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.) |
| 13. | | | Estimate the period of time care is needed or the employee's presence would be beneficial: |

ITEM 14 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

14. When Family Leave is needed to care for a seriously ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Employee signature:

Date:

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FAMILY AND MEDICAL LEAVE ACT, Continued

Federal Register/Vol. 58, No. 106/Friday, June 4, 1993/Rules and Regulations
Appendix C to Part 825--Notice to Employees of Rights Under FMLA

YOUR RIGHTS under the FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Reasons for Taking Leave: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.)

Advance Notice and Medical Certification: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.