

**THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN
OFFICE OF HUMAN RESOURCES
POLICY AND PROCEDURES MEMORANEUM**

FAMILY & MEDICAL LEAVE

DATE: February 1, 2006

1. PURPOSE

The purpose of this policy is to provide for the administration of and compliance with the Family and Medical Leave Act (FMLA) of 1993.

2. POLICY

An employee of The University of Texas of the Permian Basin who has been employed for at least twelve months by the State of Texas, and has worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of leave is eligible for up to twelve weeks of leave per year for certain family and medical reasons.

2.1 Reasons for Leave

The FMLA provides that eligible employees are entitled to leave for one or more of the following reasons:

- For the birth of a child and care after birth during the child's first year of life.
- For the placement of a child for adoption or foster care, with an employee, during the first year following placement.
- To provide care for the employee's spouse, child or parent with a serious health condition; or,
- Due to the employee's serious health condition that prevents him or her from performing the functions of the job.

2.2 Medical Information and Examinations

An application for Family and Medical Leave (FML) leave must be completed and submitted with a certification from the health care provider to support the leave request when an employee is taking leave to care for a family member or due to his or her own serious health condition. The certification form that the health care provider must complete ("Certification of Health Care Provider") is available from the Office of Human Resources. If the Office of Human Resources does not agree with the medical certification, a second opinion may be obtained at the expense of The University of Texas of the Permian Basin. If the two opinions disagree, a third opinion may be obtained at the expense of The University of Texas of the Permian Basin and will be the final determination. The Office of Human Resources may request periodic recertification. Although there is no medical certification requirement when an employee is taking leave for the birth or placement of a child, the employee must complete the prescribed application form.

The Office of Human Resources may request that the employee provide periodic reports during FML on the employee's status and intent to return to work.

If the employee's leave is intermittent (see Definitions), the employee must provide medical certification to show that intermittent leave is medically necessary.

An employee whose FML was occasioned by his or her serious health condition must submit a medical certification that he or she is able to return to work as a condition of reinstatement.

Medical certification is required if an employee claims inability to return to work after the expiration of leave because of the continuation of a serious medical condition.

3. PROCEDURES

3.1 How to Calculate the 12-Month Period

An eligible employee is entitled to take up to twelve weeks or 480 hours of leave during any twelve-month period measured forward from the date the employee's first FML leave begins.

3.2 Notice by Employee

The employee should give at least thirty days of advance notice to the supervisor and to the Office of Human Resources of the need to take paid or unpaid FML, 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, such as with premature birth or acute medical illness, the notice should be given as soon as possible after the employee learns of the need for leave.

An employee must provide at least verbal notice sufficient to make the supervisor and the Office of Human Resources aware that the employee needs FML, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under, or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The Office of Human Resources may require more information about whether FML is being sought by the employee, and obtain the necessary details for the leave to be taken.

An eligible employee who has given notice and has provided the certification requirements may not be denied FML.

3.3 Notice to the Employee

It is the responsibility of The University of Texas of the Permian Basin to designate leave, paid or unpaid, as FML and to give notice of the designation to the employee. Once the determination has been made that an employee's leave is FML, the Office of Human Resources will, absent extenuating circumstances, notify the employee within two business days that the leave is designated and will be counted as FML.

3.4 Use of Accrued Leave While on FML

Except when an employee is receiving workers' compensation income benefits or temporary disability benefits, the employee is required to utilize all accumulated vacation and applicable sick leave when taking FML.

A holiday that occurs during a week of FML is counted as part of FML. However, if The University of Texas of the Permian Basin closes for a week, for example during the Christmas holidays, then that week would not count toward an employee's FML.

The twelve-week entitlement may run concurrently with workers' compensation leave or leave while receiving temporary disability benefit payments, provided the employee is otherwise eligible for FML. An employee who is on FML and are receiving workers' compensation benefits or temporary disability benefit payments may use paid vacation or sick leave while on FML.

Compensatory time and FLSA overtime may be used by an employee during absence for an FML-covered reason, but it will not count toward the employee's FML entitlement.

Leave taken by an employee that was not for FML covered purpose may not be counted against an employee's FMLA 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 towards the employee's twelve-week entitlement.

Any leave taken by either parent due to pregnancy and childbirth, from nine months before the birth through twelve months following the birth, is considered FML leave and will count against the employee's twelve-week entitlement.

3.5 Premium Payments for Medical Insurance

When an employee is on unpaid FML, The University of Texas of the Permian Basin will continue to contribute premium sharing for medical insurance as if the employee were at work or on paid leave. For example, if the employee normally has family medical coverage, The University of Texas of the Permian Basin 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 or on paid leave. An employee may pay his or her share of premiums of the health plan in any manner customarily used by The University of Texas of the Permian Basin.

3.6 Failure of Employee to Pay Share of Insurance

Payment for the premium must be made during the month in which it is due. If the employee does not make a timely payment, The University of Texas of the Permian Basin will cease to maintain the health coverage effective on the last day of the month in which premiums should have been paid, and will notify the employee of the discontinuation of insurance coverage.

When an employee returns to work after the discontinuation of 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 in place when leave commenced. The returning employee will not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements.

If an employee fails to return to work after a period of unpaid FML, The University of Texas of the Permian Basin is entitled to recover the premiums paid unless the reason the employee does not return to work is due to the continuation of a serious health condition that would entitle the employee to FML, or other circumstances beyond the control of the employee.

An employee is considered to have returned to work after he or she has worked for a period of thirty 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 of Texas of the Permian Basin may recover health insurance premium payments due to not returning from certain sums such as travel reimbursement checks, provided that prior to the deduction of any amounts The University of Texas System Office of General Counsel is consulted to ensure that such deduction is appropriate.

3.7 Returning Employee

The employee will 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 requiring the equivalent skill, effort, responsibility, and authority. A determination of whether a job is equivalent to the one held prior to FML will be made by the Office of Human Resources. The University of Texas of the Permian Basin cannot guarantee that the employee will be returned to the position held at the commencement of leave.

3.8 Notice by Employer Requirement

The University of Texas of the Permian Basin has posted the required notice advising employees of their rights and responsibilities under the FMLA. The University of Texas of the Permian Basin will also supply affected employees a notice issued by the Department of Labor (Fact Sheet No. ESA 93-24), available from the Office of Human Resources.

3.9 Rights of Employees

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

3.10 Record-Keeping Requirements

The following records must be kept by the Office of Human Resources regarding family and medical leave:

- 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.
- Dates FML is taken by an employee. The leave must be designated in the records as FML.
- Documentation of FML taken in increments of less than one full day, as well as hours of the leave.
- Copies of the employee notices of leave furnished to the Office of Employee Services under the FMLA, if in writing, and copies of all general and specific FMLA-related notices given to employees.
- Any documents describing employee benefits or policies of The University of Texas of the Permian Basin, including 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 of Texas of the Permian Basin regarding any designation of leave as FML, including any written statements from The University of Texas of the Permian Basin, or from the employee, and the reasons for the designation and disagreement.
- Records and documents relating to medical certifications, recertification, and medical histories of the employee or employee's family members must be maintained in files separate and apart from the employee's personnel file and treated as confidential medical records.
- If necessary, medical information may be disclosed to supervisors and managers regarding work restrictions; to first aid and safety personnel if the employee's physical and medical conditions require medical treatment; and, to government officials investigating compliance with FMLA.

3.11 Coordination with Other Leave Entitlement

FMLA regulations state that if The University of Texas of the Permian Basin normally provides more benefits than required, the FMLA does not restrict those benefits. Therefore, benefits such as the sick leave pool, when available, may be used in conjunction with and count toward the twelve weeks of FML. It should also be noted that the FMLA does not restrict or modify any federal or state anti-discrimination law or the employer's obligation to comply with the Americans with Disabilities Act (ADA).

DEFINITIONS

Spouse/Child/Parent:

- **Spouse:** a husband or wife as defined in accordance with Texas statute, including common law marriages. Unmarried domestic partners do not qualify for spousal status under FMLA.
- **Daughter or Son:** a biological, adopted, foster or stepchild, a legal ward, or a child of a person in standing *in loco parentis*, who is under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- **Parent:** the biological, adoptive or step-parent of an employee, or an individual who stood *in loco parentis* to an employee.

In loco parentis: Latin for "in the place of a parent", occurs when an individual intentionally assumes the duties and responsibilities of a parent during a child's childhood years, for example, physical, financial, and educational support of a child, that is not dependant on any legal or biological relationship.

Serious Health Condition: a serious health condition is defined as an injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential care facility, or 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. The FMLA does not cover short-term conditions for which treatment and recovery are brief.

Examples of serious health conditions include but are not limited to heart attacks, heart conditions, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, respiratory conditions, appendicitis, pneumonia, emphysema, severe nervous disorders, or injuries caused by serious accidents on or off the job. 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.

Continuing Treatment by a Health Care Provider:

- A period of incapacity (inability to work, attend school, or perform other regular daily activities due to a serious health condition) for more than three consecutive calendar days, involving treatment two or more times by a health care provider, or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the health care provider's supervision;
- 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);
- A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease); or,
- The need for 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).

In addition to these broad categories, also included are allergies and mental illness resulting from stress, but only when all of the other criteria of a serious health condition are met.

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 of prescription medicine or therapy would qualify as a "regimen of continued treatment," but use of over-the-counter medicines would not.

Substance Abuse: treatment of substance abuse by a health care provider is covered under the FMLA; however, absences due to an employee's substance abuse without treatment do not qualify for FML. The inclusion of substance abuse does not prevent The University of Texas of the Permian Basin from taking any employment action against an employee who is unable to perform the essential functions of the job, provided The University of Texas of the Permian Basin complies with the Americans with Disabilities Act (ADA) and does not take action against the employee because the employee has exercised rights under the FMLA.

Leave for the Birth or Placement of a Child: FML-covered leave due to the birth of a child may be taken from nine months before the birth until one year after the birth.

All policy and procedures relating to FML-covered leave due to the birth of a child apply to either parent.

An employee may use sick leave in conjunction with FML when a child under the age of three is adopted if the child is actually sick. If both parents work for The University of Texas of the Permian Basin, even if they work at different work sites or different institutions, the total amount of FML-covered leave cannot exceed twelve weeks. This limitation applies only for those cases involving the birth or placement of a child, and does not apply in cases of a serious health condition.

When 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 proportional basis.

Intermittent and Reduced Schedule Leave: an employee with a serious health condition or having 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 entitled to take "intermittent" or "reduced schedule" leave, if the leave is medically necessary.

Intermittent leave: leave taken at different times due to a single illness or injury, rather than for one continuous period of time, and may include leave for periods of 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: 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 and returns to work on a light-duty basis.

If an employee takes an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the twelve weeks of leave to which an employee is entitled.

When an employee has requested intermittent or reduced schedule leave, the employee may be transferred to an alternative position with equivalent pay and benefits for which the employee is qualified, if it better accommodates the recurring periods of leave than the employee's current job.

4. AUTHORITY

Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq. 29 C.F.R. § 825 et seq.
Texas Government Code, § 661.912

5. APPLICATION

This policy applies to The University of Texas of the Permian Basin.