



Handbook of Operating Procedures

Section: 7.6.8
Originally Approved: 12/05/90
Last Amended: 05/17/99

FAMILY AND MEDICAL LEAVE ACT

A. 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 (to be referred to in this policy as FMLA).

B. Policy

All University employees are eligible for up to 12 weeks of unpaid family leave per year for certain family and medical reasons provided they have been employed by the university for at least 12 months and worked at least 1,250 hours within the 12 months immediately preceding the commencement of leave.

1. The University will grant up to 12 weeks of leave in a 12 month period for one or more of the following reasons:
 - a. Childbirth, or Placement for Adoption or Foster Care
 - 1) Birth of son or daughter and care after such birth;
 - 2) Placement with the employee of a child for adoption or foster care;
 - b. Serious Health Condition
 - 1) Serious health condition of spouse, child or parent of employee, or
 - 2) Serious health condition of employee (unable to perform job).

The prescribed leave may be taken intermittently when medically necessary if the intermittent leave is foreseeable based on planned medical treatment. Leave for birth or placement for adoption can be taken prior to the actual birth or adoption.

2. When an employee is taking leave to care for a family member, or due to his/her own serious health condition, the employee is required to support the leave request with certification from a health care provider within 15 calendar days following the initial request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. This certification may be provided by completing the Attending Physician's and Medical Certification Statement, a sample of



Handbook of Operating Procedures

Section: 7.6.8
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Last Amended: 05/17/99

FAMILY AND MEDICAL LEAVE ACT

which is included with this policy. There is no certification requirement if an employee is taking leave for the birth of a child, or placement of a child.

C. Definitions/Explanations

1. Spouse or Dependent

For purposes of the 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 leave. Son or daughter is defined under the 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. Serious Health Condition

- a. A serious health condition is one that requires in-patient care 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 is not intended to cover short term conditions for which treatment and recovery are brief.
- b. 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.

3. Substance Abuse

Treatment of substance abuse may be included under the 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 employment action against the 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



Handbook of Operating Procedures

Section: 7.6.8
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FAMILY AND MEDICAL LEAVE ACT

because such employee exercises rights under the FMLA.

4. 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.

5. Intermittent Leave

- a. Family leave due to the serious health condition of the employee or a member of the employee's family may be taken at the time it is needed. There is no minimum number of hours of intermittent leave that may be taken, i.e., the leave may be taken in increments of 2 hours, 4 hours, etc., provided proper notice is given when the need for the leave is foreseeable.
- b. When an employee has requested intermittent 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 so than the employee's current job.

6. Workers' Compensation Insurance (WCI) Leave

An eligible employee may elect to use FMLA leave in conjunction with WCI Leave resulting from a work-related injury or disease.

D. Procedures

1. Notice by Employee

- a. Employees must give at least 30 days advance notice to their Dean or Director of the need to take unpaid family leave when it is foreseeable for the birth or adoption of a child or for medical treatment by completing the Request for Family or Medical Leave form. When it is not practicable under any circumstances, such as premature birth or medical illness, to give written notice, verbal notice is sufficient to inform the Dean or Director. Such verbal notice should be given as soon as practical after the employee learns of the need for



Handbook of Operating Procedures

Section: 7.6.8
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Last Amended: 05/17/99

FAMILY AND MEDICAL LEAVE ACT

leave.

- b. An employee who has given notice under the FMLA and has provided the certification requirements by completing the Attending Physician's and Medical Certification Statement form, if needed, may not be denied family leave.

2. Notice by 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 the leave is being taken for an FMLA required reason, the University must notify the employee within two business days (absent extenuating circumstances) that the leave is designated and will be counted as FMLA leave.

3. 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.

4. Requirements of Using Vacation or Sick Leave and Compensatory Time

With the exception of employees receiving workers' compensation income benefits, the University requires employees to utilize accumulated vacation and compensatory time, and sick leave, if applicable, when taking leave under the FMLA. However, the University will not 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 condition that is not an extended illness (cough, cold, flu, etc.), those days may not be counted towards the 12 week entitlement under the FMLA.

5. Premium Payments for Medical Insurance

When an employee is on FMLA leave, paid or unpaid, the University will continue to contribute its share of premium sharing for medical or dental insurance as if the employee had continued in employment during the leave. The employee is required to pay his or her share of the premiums by payroll deduction or by submitting payment to Payments and Collections, SS115, using any acceptable means of payment.

6. Failure of Employee to Pay Share of Insurance



Handbook of Operating Procedures

Section: 7.6.8
Originally Approved: 12/05/90
Last Amended: 05/17/99

FAMILY AND MEDICAL LEAVE ACT

- a. If the employee fails to pay a health plan premium on a timely basis, a 30 day grace period will be provided after the agreed upon date for which payment is due. UTPA will send the employee a Notice of Insurance Continuance, Change or Cancellation to be completed and returned within 30 days of receipt. 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.
- b. If the University 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 upon the employee's return 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 exclusion requirements, when the employee has failed to continue his or her health coverage for non-payment of premiums.
- c. If an employee fails to return to work after a period of unpaid family leave, and the University has paid for maintaining health coverage, the University 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.
- 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 certain sums due to the non-returning employee such as travel reimbursement checks, etc.

7. Restoration to Same or Equivalent Position

When an employee returns to work subsequent to FMLA leave, 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.



Handbook of Operating Procedures

Section: 7.6.8
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FAMILY AND MEDICAL LEAVE ACT

8. Rights of Employees

- a. Employees who exercise their rights under the FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by the employer on the basis of exercising their rights under the FMLA. The employer may not discriminate against an individual for having filed charges, instituted and proceeding under or related to the FMLA, or given any information in connection with an inquiry or proceeding regarding the FMLA.
- b. If an employee believes his or her FMLA rights have been violated, he or she should first consult the University personnel office.
- c. The FMLA also provides that the employee may file a complaint with the Department of Labor or file a private law suit against the employer for alleged violations of the FMLA. There is also an assessment of penalties for willfully failing to post a notice describing the act.

9. Coordination with Other Leave Entitlement

- a. The FMLA regulations state that if an employer provides more benefits than required by the FMLA, the FMLA will not restrict those benefits.

Therefore, when more than 12 weeks of benefits such as sick leave (including sick leave from the sick leave pool), vacation, and/or extended disability leave, are available to the employee, he or she shall be entitled to the greater benefit and will not be limited to the 12 weeks available under FMLA.

- b. On the other hand, the University may require that paid or unpaid leave taken in conjunction with a foreseeable event or condition that would have entitled an employee to FMLA leave be counted toward the 12 week entitlement under FMLA, provided however, that the employee is so informed at the time FMLA leave is requested.

10. Certification from Health Care Provider

If the supervisor 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.



Handbook of Operating Procedures

Section: 7.6.8
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FAMILY AND MEDICAL LEAVE ACT

11. Record Keeping Requirements

a. The following records must be kept by the University regarding family leave:

1. 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 paid.
2. Dates FMLA leave is taken by an employee. The leave must be designated in the records as FMLA leave.
3. Documentation of family leave taken in increments of less than one full day, as well as hours of the leave.
4. Copies of the employee notices of leave furnished to the employer under the FMLA, if in writing, and copies of all general and specific notices given to employees under the FMLA.
5. Any documents describing employee benefits or University policies. This includes written and electronic records regarding the taking of paid and unpaid leave.
6. Premium payments of employee benefits.
7. Records of any dispute between the employee and the University regarding any designation of leave as FMLA leave, including any written statements from the University or employee and the reasons for the designation and disagreement.

b. It should be noted that records and documents relating the medical certification, recertification 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; to the first aid and safety personnel if the employees physical and medical conditions require medical treatment; and to government officials investigating compliance with the FMLA.

E. Review



***Handbook of
Operating Procedures***

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FAMILY AND MEDICAL LEAVE ACT

This document shall be reviewed annually by the Director of Personnel.