



SECTION: Human Resources

Policy 2.02.01

SUBJECT: Family and Medical Leave

I. PURPOSE AND SCOPE

This policy has been established to comply with the Federal Family and Medical Leave Act of 1993 (FMLA) and related Department of Labor regulations, the General Provisions of the State General Appropriations Act, and UH System Administrative Memorandum No. 02.D.06. The policy prescribes the leave benefits available to eligible employees under these laws; it applies to all faculty and staff employees who meet the eligibility requirements defined in section III of this policy.

II. POLICY STATEMENT

Family and medical leave is provided to eligible employees for any of the events or conditions listed below. Leave taken for these events must be reported as family and medical leave.

- The birth of a child and the care of the newborn
- The placement of a child with an employee in connection with the adoption or state-approved foster care of the child
- The serious health condition of a child, parent, or spouse of the employee
- A serious health condition of the employee

An eligible employee is entitled to a maximum of 12 weeks of approved family and medical leave in a year, as defined in this policy. (The employee may request a shorter leave.)

An employee who does not meet the eligibility requirements for family and medical leave may be eligible for parental leave for the birth of a natural child or the adoption or foster care placement of a child under three years of age.

III. DEFINITIONS

- A. Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a person for whom the employee has (or had during the person's youth) daily responsibility to care and financially support and who is either under 18 years of age or is incapable of self-care because of a physical or mental disability
- B. Continuing treatment: Under "serious health condition"
- C. Chronic health condition: One that meets all the following requirements:
- Requires periodic visits for treatment by a health care provider
 - Continues over an extended period of time
 - May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy)
- D. Eligible employee: Any employee who:

- Has worked for the State of Texas a total of at least 12 months prior to the date of leave (the 12 months need not be consecutive); and
 - Has at least 1,250 hours actually worked for the University of Houston in the 12 months immediately preceding the leave. Full-time (100% FTE) exempt staff and faculty are presumed to have worked 1,250 hours.
- E. Health care provider: A person authorized to practice as a health care provider in Texas who is performing within the scope of that practice as one of the following:
- Doctor of medicine
 - Doctor of osteopathy
 - Podiatrist
 - Dentist
 - Clinical psychologist
 - Optometrist
 - Chiropractor (for manipulation of spine to correct subluxation)
 - Nurse practitioner
 - Nurse midwife
 - Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts
 - Clinical social worker
 - Any health care provider from whom the university's group plan will accept certification of a serious health condition
 - Any health care provider within the scope of practice listed above practicing in another country who is authorized to practice in that country
- F. Incapacity: For the purposes of FMLA, the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment therefor, or recovery therefrom
- G. Intermittent leave or reduced leave schedule: A leave schedule that reduces the usual number of hours per work week or hours per work day of an employee. Intermittent leave is calculated on an hourly or daily basis, as a proportion of the employee's normal work week.
- H. Parent: A biological, foster, or adoptive parent; a stepparent; a legal guardian; or a person who has (or had during the employee's childhood) daily responsibility to care for and financially support the employee. Parents-in-law are not included in this definition.
- I. Regimen of continuing treatment: Includes a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.
- J. Serious health condition: An illness, injury, impairment, or physical or mental condition that involves either or both of the following:
- In-patient care in a hospital, hospice, or residential care facility
 - Continuing treatment by a health care provider

For an employee to qualify for family and medical leave for a serious health condition, the employee or family member must be under continuing supervision of, but not necessarily receiving active treatment by, a health care provider, who must certify to one of the following:

- In the case of leave requested to care for a family member, the employee is needed to care for the family member.
- In the case of leave requested for the serious health condition of the employee, the employee is unable to perform the essential functions of the position.

A serious health condition involving continuing treatment by a health care provider includes any of the following conditions:

1. A period of incapacity of more than three consecutive calendar days, involving treatment by a health care provider
 - two or more times, or
 - at least one time that results in a regimen of continuing treatment
 2. Any period of incapacity due to pregnancy or prenatal care
 3. Any period of incapacity due to a chronic serious health condition
 4. A period of incapacity that is permanent or long-term for which treatment may not be effective (e.g. Alzheimer's, severe stroke, terminal stages of a disease)
 5. Any period of absence to receive multiple treatments 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)
 6. Allergies or mental illness resulting from stress, but only if they meet all of the other criteria of a serious health condition
 7. Substance abuse, but only if the employee is taking leave for treatment by a health care provider
- K. Spouse: A husband or wife, as recognized under the laws of the State of Texas, including a husband or wife in a common-law marriage
- L. Treatment: For the purposes of FMLA, includes, but is not limited to, examinations to determine if a serious health condition exists. Treatment does not include routine physical, eye, or dental exams.
- Specific conditions for which treatment does not qualify for FMLA leave include: cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental, or orthodontia problems and periodontal disease. Cosmetic treatments are not considered a serious health condition unless medically required or unless complications arise.
- M. Year: Twelve months measured forward from the first date family and medical leave begins

IV. PROVISIONS

- A. An eligible employee must use all applicable accrued paid leave balances (including sick leave and vacation) while taking family and medical leave. The use of accrued sick leave is, however, restricted

to those circumstances that would otherwise qualify the employee for sick leave usage under state law and university rules and regulations governing the use of sick leave (UH System Administrative Memorandum 02.D.01). The employee may choose to use accrued compensatory time instead of unpaid family and medical leave, but may not be required to do so. Any FLSA compensatory time (1.5) taken may not be counted against the employee's 12-week family and medical leave entitlement.

Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious or chronic health conditions must be counted as family and medical leave. When there is any question about whether a condition qualifies as family and medical leave, the employing department should contact the Human Resources Department. If it is determined that the leave qualifies as family and medical leave, the procedures for applying for and reporting family and medical leave must be initiated, including noting "Family and Medical Leave" on the employee's timesheet.

- B. An employee on Workers' Compensation who wishes to continue to receive state insurance premium sharing is required to apply for family and medical leave.
- C. If a holiday falls during a week when an employee is on family medical leave, the entire week is treated as a week on family medical leave, except when the university is closed for the entire week (five or more consecutive working days).
- D. If both spouses are employed by the University of Houston as eligible employees, they are entitled together to a total of 12 weeks of leave between them (rather than 12 weeks each) for the birth or placement of a child. A jointly-filed request form is required from spouses who are both requesting leave for the birth or placement of a child. Spouses who are eligible employees are entitled to 12 weeks each for other qualifying events or conditions.
- E. Leave for the birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption. Leave for birth or placement of a child is available equally to both sexes.
- F. An intermittent or reduced leave schedule is available under the Family and Medical Leave Act for the serious health condition of the employee, employee's spouse, child, or parent.
- G. For the period of the family and medical leave that is without pay, the employee may continue insurance benefits (excluding disability insurance plans) and will receive the premium sharing from the state or the university toward the cost of health insurance. The employee is responsible for self-paying by personal check or money order that part of his/her insurance cost that would otherwise be deducted from the employee's paycheck. (If an employee's premium payment is more than 30 days late, the university will reduce the employee's insurance coverage to self-coverage only, following prescribed notification of the employee.)
- H. For the period of the family and medical leave that is without pay, the employee on family and medical leave will accrue state service credit for any full calendar month of family and medical leave and will not accrue vacation or sick leave for such months.
- I. Family medical and leave is not considered a break in service. Benefit entitlements based upon length of service will be calculated including any period of family medical leave.
- J. Except under the conditions outlined in section K below, employees returning from approved family and medical leave must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

1. An employee offered an equivalent position who chooses to decline the position waives any rights to reinstatement.
 2. An employee who believes that a position offered is not an equivalent position is entitled to file a grievance under the University of Houston Grievance Policy and Procedure, MAPP 2.04.01.
- K. The university may decline to restore an employee on family and medical leave to his/her original or equivalent position under the conditions listed below.
1. If an employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan, the employee's family and medical leave rights (including rights to restoration of employment) end on the scheduled termination date.
 2. If misconduct by the employee which constitutes grounds for termination occurs or is discovered, the employee is subject to termination, even if the employee is on family and medical leave at the time of the misconduct or discovery of misconduct.
 3. If an employee is scheduled for termination for any other reason prior to notification of family and medical leave and has received written notice of the termination, the employee's family and medical leave rights end on the previously scheduled termination date.
 4. If the employee is among the highest paid ten percent employed by the University of Houston and a determination is made by the president that restoring employment to the employee would result in substantial economic injury to the university, the employee's right to restoration of employment may end at the close of the family and medical leave period. At the time an employee in this category applies for family and medical leave, the employee must be notified that he/she may be ineligible for reinstatement.

In such cases, the employee maintains only those rights provided by such regulations as COBRA and, in the case of a reduction in force, MAPP 2.04.06 on Reduction in Force.

- L. If an employee elects not to return to work upon completion of an approved unpaid family and medical leave, the employee is obligated to reimburse the university for the amount of the state's or university's contribution of insurance premium during any complete months of unpaid leave. The employee need not reimburse the university if the failure to return to work was for reasons beyond the employee's control, or if the employee retires directly from leave or within 30 days of returning from leave.
- V. REVIEW AND RESPONSIBILITIES:

Responsible Party: Assistant Vice President, Human Resources

Review: Every 3 years, on or before August 31

VI. APPROVAL

Vice President for Administration and Finance

President

Approval date: _____

VII. REFERENCES

Family and Medical Leave Act of 1993
Article V of the State of Texas Appropriations Act
UH System Administrative Memorandum 02.D.06
MAPP Procedure 2.02.01

Index terms: Adoption
 Family and medical leave
 Leave
 Medical leave
 Parental leave
 Sick leave
 Unpaid leave