

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Human Resources

NUMBER: 02.D.06

AREA: Leave Entitlement

SUBJECT: Family and Medical Leave

1. PURPOSE

- 1.1. The University of Houston System provides leave benefits to eligible employees in accordance with the Family and Medical Leave of Act of 1993 (FMLA) and related Department of Labor regulations and the General Provisions of the State General Appropriations Act. This policy defines and describes leave benefits available to eligible employees under these laws.
- 1.2. Each component university shall incorporate FMLA policy and procedures into its faculty and staff handbooks, where such handbooks exist; and shall post a notice that complies with the requirements of FMLA.

2. DEFINITIONS

- 2.1. Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is:
 - a. Under 18 years of age; or
 - b. 18 years of age or older and incapable of self-care because of mental or physical disability.

Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child or in the case of an employee, who had such a responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

“Incapable of self-care” means the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or the instrumental activities of daily living. Activities of daily living include caring for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephone and directories, using a post office, etc.

- 2.2. Continuing treatment: See “Serious Health Condition.”
- 2.3. Chronic health condition: One that meets all the following requirements:
- a. Requires periodic visits for treatment by a health care provider;
 - b. Continues over an extended period of time;
 - c. May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy).
- 2.4. Eligible employee: Any employee who:
- a. Has at least 12 calendar months of service with the State prior to the date of leave but not necessarily 12 consecutive months; and
 - b. Has worked at least 1,250 hours (based on FLSA hours-worked principles) for the State in the 12 months immediately preceding commencement of the leave. Full-time (100 percent FTE) exempt staff and faculty are presumed to have worked 1,250 hours.
- 2.5. Health care provider: The term “health care provider” means:
- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
 - b. Any other person determined by the Secretary of Labor to be capable of providing health care services. Others capable of providing health care services include only:
 - Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined by State law;
 - Nurse practitioners, nurse-midwives, and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
 - Christian Scientist practitioners listed with the First Church of Christ Scientist, in Boston, Mass. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from

an employer that an employee or family member submit to an examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under State or local law;

- Any health care provider from whom the component university's group health plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
- A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

The phrase "authorized to practice in the State" means that the provider must be authorized to diagnose and treat physical or mental conditions without supervision by a doctor or other health care provider.

- 2.6. 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, or recovery therefrom.
- 2.7. Intermittent or reduced leave schedule: Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. Intermittent leave is calculated on an hourly or daily basis, as a proportion of the employee's normal work week. A reduced leave schedule is a change in the employee's schedule for a period of time normally from full-time to part-time.
- 2.8. Parent: A biological, foster, or adoptive parent; a stepparent; a legal guardian, or a person who has (or had during an employee's childhood) daily responsibility to care for and financially support a child. Parents-in-law are not included in this definition.
- 2.9. 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.

2.10. Serious Health Conditions:

- a. Serious health condition: An illness, injury, impairment, or physical or mental condition that involves one or both of the following:
 - In-patient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility; or
 - Continuing treatment by a health care provider
- b. 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; or
 - 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.
- c. A serious health condition involving continuing treatment by, or under the orders of, a health care provider includes any of the following conditions:
 - 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;
 - Any period of incapacity due to pregnancy or prenatal care;
 - Any period of incapacity due to a chronic serious health condition;
 - 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 disease);
 - 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);
 - Allergies or mental illness resulting from stress, but only if they meet all of the other criteria of a serious health condition; or

- Substance abuse, but only if the employee is taking leave for treatment by a health care provider.
- 2.11. Spouse: A husband or wife, as recognized under the laws of the State of Texas, including common-law marriages.
- 2.12. 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.

- 2.13. Year: Twelve months measured forward from the first date family and medical leave begins.

3. TERMS OF LEAVE

- 3.1. Family and medical leave is provided to eligible employees for any of the events or conditions listed below:
- a. The birth or care of a child;
 - b. The placement of a child for adoption or foster care, or to care for the child after placement; or
 - c. The care of the employee's, employee's spouse, child or parent with a serious health condition.

For other qualifying events or conditions, spouses who are eligible employees who use a portion of the total 12 weeks entitlement for one of the above-stated purposes are each entitled to the difference between the amount each has taken individually and 12 weeks.

- 3.2. An eligible employee is entitled to 12 weeks of approved FMLA leave in a year, as defined in this policy. The employee may request a shorter leave.
- 3.3. 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 (System Administrative Memorandum 02.D.08).

4. PROCEDURES

- 4.1. An eligible employee must use all applicable accrued paid leave balances (including sick leave and vacation) while taking family and medical leave, unless the employee is receiving temporary disability benefit payments or workers' compensation benefits. 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 (System Administrative Memorandum 02.D.01, Vacation and Sick Leave). The employee may choose to use accrued compensatory time, instead of unpaid family and medical leave, but may not be required to do so (System Administrative Memorandum 02.B.02, Overtime and Compensatory Time). Any compensatory time taken may not be counted against the employee's family and medical leave entitlement.

Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious 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 component university Human Resources Department. If it is determined that this leave qualifies as family and medical leave, the procedures for applying for and reporting family and medical leave must be followed.

- 4.2. An employee on Workers' Compensation who wishes to continue to receive state insurance premium sharing is required to apply for family and medical leave.
- 4.3. 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).
- 4.4. If both spouses are employed by the component university as eligible employees, they are entitled together to a total of 12 weeks of family and medical leave between them during the year (rather than 12 weeks each) for the birth or placement of a child. Spouses who are eligible employees are entitled to 12 weeks each total for other qualifying events or conditions.
- 4.5. 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.
- 4.6. An intermittent or reduced leave schedule is available under the FMLA for the serious health condition of the employee, employee's spouse, child, or parent.

- 4.7. 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 to the employee.)
- 4.8. Any full calendar month (i.e., from the first day of a month through the last day of a month, inclusive) in which an employee is on family medical leave without pay, shall not be counted in the calculation of total state service for the purposes of longevity pay or vacation leave entitlements. No employee shall accrue vacation or sick leave for such month. Any full calendar month or unpaid family and medical leave shall not constitute a break in continuity of employment but shall not be included in the calculation of the minimum number of continuous months of employment.
- 4.9. Except under the conditions outlined in Section 4.10. below, employees returning from approved family and medical leave within the provisions of this policy shall be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- a. An employee offered an equivalent position who chooses to decline the position waives any rights to reinstatement; or
 - b. An employee who believes that a position offered is not an equivalent position is entitled to file a grievance under the University of Houston System Administrative Memorandum 02.A.05, Employee Relations, Grievance, and Appeal, or the comparable component university policy and procedure.
- 4.10. The component university may decline to restore an employee on family and medical leave to his/her original equivalent position under the conditions listed below:
- a. If an employee's position is scheduled for elimination as a 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;
 - b. 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 the discovery of misconduct;

- c. 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; or
- d. If the employee is among the 10 percent highest paid employed by a component university within the System and a determination is made by the President that restoring employment to the employee would result in substantial economic injury to the component 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 RIF, System Administrative Memorandum 02.A.06, Reduction in Force of Regular Staff Employees, unless the employee is eligible for retirement benefits.

5. PROCEDURAL REQUIREMENTS

Each component university shall abide by the following provisions, as required by the terms of the Family and Medical Leave Act.

- 5.1. Communication of provisions of the Family and Medical Leave Act to employees:
 - a. The component university Human Resources Department must post a notice describing the provisions of the Family and Medical Leave Act in a location available to all eligible employees;
 - b. The component university policy and procedures on family and medical leave shall be published in their faculty and staff handbooks, where such handbooks exist; and
 - c. When an employee notifies the component university of the need for leave qualifying as family and medical leave, the employee will be provided with a summary of employees' rights and requirements under FMLA. This summary may be included as part of the family and medical leave application form.

5.2. Applying for Family and Medical Leave:

- a. Each component university shall develop an application form for family and medical leave that provides all required information to initiate, record, and track the employee's family and medical leave, including the following:
- The employee's name, social security number, home address and telephone number, name of employing department, and name of supervisor;
 - The qualifying condition;
 - The amount of family and medical leave requested;
 - The expected dates of leave and return to work;
 - Family and medical leave taken within the prior 12 months;
 - A statement from the employee that he/she understands and agrees to the terms and limitations of the family and medical leave, with line for signature of employee and date;
 - The employee's job title, FTE, hire date, pay type, and other relevant employment information;
 - Date of event or onset of condition and last day worked;
 - Vacation and sick leave balances at last day worked;
 - Dates for which family and medical leave is approved with pay and without pay;
 - Total family and medical leave approved;
 - Where applicable, schedule of intermittent or reduced leave schedule as approved;
 - A place to allow for disapproval of family and medical leave and the reason; and
 - Approval signatures for:
 - Employee - see 6 above
 - Supervisor
 - Human Resources Department.

- b. All requests for family and medical leave must be submitted on the application form and accompanied by the U.S. Department of Labor Certification of Health Care Provider form or alternate documentation providing the same information and certified by the health care provider.
- c. A jointly filed request form is required from eligible spouses who are both requesting leave for the same qualifying event or condition.
- d. For an intermittent or reduced leave schedule, the following provisions shall apply:
 - The health care provider's certification must state that medical need can best be accommodated through an intermittent or reduced leave schedule;
 - The employee must attempt to schedule the leave so as not to disrupt the university's operations; and
 - The component university may require the employee to transfer temporarily (not to exceed the 12-week family and medical leave period) to an alternative position that better accommodates recurring periods of absence or a part-time schedule, provided the position provides equivalent benefits and an equivalent pay rate for the hours worked. However, a reduction in hours may not result in a reduction in FTE.
- e. When the need for family and medical leave can be planned, such as for the birth or placement of a child or for scheduled medical treatment, the employee is responsible for submitting both required forms to the component university at least 30 calendar days in advance of the leave and for making efforts to schedule the leave to minimize disruption of the university's operations.
- f. In case of sudden illness or other unforeseeable need for leave, the employee is required to give notice to the component university within two days of learning of the need for leave, except under extraordinary circumstances. The notice may be oral.
- g. Within two business days after being informed that an employee is taking sick leave involving a condition that may qualify for family and medical leave, the component university must notify the employee in writing that the paid leave is also designated as family and medical leave and will be counted toward the 12-week entitlement. The component university must also provide the employee with a summary of employees' rights and requirements under FMLA. The notice must be provided in a language

that the employee understands and must explain the consequences of failure to pay for optional benefits and circumstances under which coverage may lapse.

- h. The two required forms must be submitted to the component university Human Resources Department within 15 calendar days from the date of the written notification unless not practicable under the circumstances.
- i. To request leave based on a serious health condition, the employee must provide the following information on the forms noted or, in the case of the health care provider's form, the same information may be provided in a letter:
 - The health care provider must certify that one of the following conditions exists:
 - if the leave is requested based on the serious health condition of the employee, that the employee is unable to perform the functions of his or her position;
 - if the request is based on the serious health condition of the child, parent, or spouse of the employee, that the employee is needed to provide care to the child, parent, or spouse; or
 - that the employee or the employee's spouse is expecting the birth of a child.
 - The medical certification must also include the following information:
 - the date on which the serious health condition commenced;
 - the probable duration of the condition;
 - the appropriate medical facts regarding the condition for which the current need for leave exists; and
 - an estimate of the time needed to care for the individual involved, if the request is based on the serious health condition of the child, parent, or spouse of the employee.
- j. To request leave based on the adoption or placement of a child, a copy of the legal orders of adoption or placement is required.

- k. To request intermittent leave or leave on a reduced leave schedule, the employee must provide the following information from the health care provider:
- For a request based on the serious health condition of the employee:
 - a statement of medical necessity for his or her intermittent leave or reduced leave schedule;
 - the expected duration of the reduced leave schedule; and
 - a listing of the dates of his or her planned medical treatment and the duration of the treatment.
 - For a request based on the serious health condition of the child, parent, or spouse of the employee:
 - a statement from the employee certifying the relationship of the child, parent, or spouse to the employee;
 - a statement attesting to the necessity of intermittent leave or reduced leave schedule for the employee to provide care or to assist in the person's recovery; and
 - an estimate of the expected duration and schedule of his or her intermittent or reduced leave schedule.
- l. At its discretion, the component university may require a second medical opinion at the component university's expense. The second health care provider shall not be employed on a regular basis by the university. If the second medical opinion differs from the employee's medical certification provided in accordance with the policy, the component university may require the opinion of a third health care provider, approved by both the university and the employee, at the component university's expense. This third opinion is binding on both the component university and the employee. An employee who refuses to cooperate with the third health care provider is bound by the opinion of the second health care provider. Pending receipt of the second or third medical opinion(s), the employee is provisionally entitled to family and medical leave benefits. If the certifications do ultimately establish the employee's family and medical leave entitlement, the leave shall be designated as paid or unpaid leave depending upon the employee's other available leave (such as sick time, vacation time, etc).

- m. The component university may request recertification from the employee's health care provider under certain conditions, such as when any extension of leave is requested, when circumstances described by the original certification have changed significantly, or when the component university receives additional information that makes recertification necessary. Prior to requesting recertification for any reason, the appropriateness of such a request under the law should be verified by the Human Resources Department.
- n. The component university does not have the option of approving less than the requested leave as long as the employee has that amount of family and medical leave available and the physician certification indicates that the employee has an eligible condition and at least that length of time is needed.
- o. The component university shall provide the employee with a copy of the application for the employee's records.
- p. If the employee is eligible for benefits under the University of Houston System disability plans, the component university Human Resources Department shall provide the employee with the appropriate information and applications.

5.3. Insurance coverage:

- a. As long as paid leave is available under family and medical leave, insurance coverage will continue as usual.
- b. When/if paid leave is exhausted, the component university must submit a personnel action request (PAR) placing the employee on leave without pay, indicating "Family and Medical Leave" in the "Remarks" section.
- c. The component university will bill the employee for any premium due after application of the state premium sharing toward the cost of health insurance.
- d. The state or component university will continue to contribute its monthly portion of insurance premiums to the Employee Retirement System of Texas (ERS) during the period of family and medical leave. However, if an employee's premium payment is more than 30 days late, insurance coverage will be reduced to employee-only coverage. Prior to making the reduction in coverage, the component university must provide written notice that the payment has not been received and coverage will be dropped, providing at least 15 days' notice to allow for the employee to provide payment.

- e. If family and medical leave is unpaid, the Human Resources Department must notify the ERS of a change in employment status in accordance with ERS's procedures.
- f. In the event of an on-the-job injury or illness, the Human Resources Department and the Office of Risk Management shall communicate with each other, providing pertinent family and medical leave data, such as start and end dates.

5.4. Employee reporting requirements:

- a. The employee is required to report to their supervisor or designee periodically (at least once per week) during the leave on the status of his/her leave. If medically necessary, a representative may report for the employee. Failure to report periodically during the leave may result in the suspension of the family and medical leave.
- b. The employee must report to their supervisor or designee if he/she will be unable to return to work at the end of the leave period. Failure to report by the date intended to return to work will be considered abandonment by the employee of his/her job. Job abandonment (voluntary resignation) may not be appealed (System Administrative Memorandum 02.A.04, Discipline and Dismissal of Regular Staff Employees).
- c. The employee must be notified in writing prior to suspension of family and medical leave or termination of employment that his/her status with the university is in jeopardy.
 - The employee must be given a sufficient amount of time to contact the component university and comply with policy requirements;
 - If the decision is made to suspend the family and medical leave or to terminate the employment, the employee must be notified in writing by the component university; and
 - The employee has a right to appeal any such action (involuntary resignation) under the component university's grievance policy and procedure.
- d. Since only 12 weeks of job protection are provided under the terms of family and medical leave, additional unpaid leave beyond 12 weeks is subject to the approval of the component university in accordance with regulations governing leave of absence without pay.

- e. If an employee plans to return to work earlier than expected by the component university, the employee shall provide the university with two business days' notice where feasible.

5.5. Employee requirement for return to work:

- a. Upon return to work, an employee who has been on approved leave for more than three days based on the employee's serious health condition will be required to present to the component university a health care provider's release certifying fitness to return to work.
- b. A request to return to duty with restrictions will be considered on a case-by-case basis, based on the needs of the department and the essential functions of the job.

5.6. Recordkeeping:

- a. It is the responsibility of the component university to designate all leave that constitutes family and medical leave on the appropriate payroll documents (time sheet and, in the case of leave without pay, PAR). All family and medical leave shall be reported on the time sheet by indicating "Family and Medical Leave" in the Remarks section.
- b. The component university must maintain records of all family and medical leave taken by the employee for as long as the employee is employed by the component university and for at least three years from the end of the fiscal year past the employee's termination. The component university may be required to submit records to the U.S. Department of Labor, but no more than once during a 12-month period, unless the Secretary of Labor has adequate cause for requesting records more frequently. Additionally, medical records are to be maintained in separate confidential files; and these records are not to be integrated into personnel files because of the need for medical confidentiality.

6. REVIEW AND RESPONSIBILITY

Responsible Party: Assistant Vice Chancellor for Human Resources

Review: Odd numbered years before August 31

7. APPROVAL

Approved: John Rudley
Vice Chancellor for Administration and Finance

Jay Gogue
Chancellor

Effective Date: November 30, 2006

8. INDEXING TERMS

Adoption
Benefits
Family leave
Family and Medical Leaves Act
Illness
Leave
Medical leave
Parental leave
Sick leave
Unpaid leave