

03.621 Family and Medical Leave.

1. General Policy. The Family and Medical Leave Act (FMLA) became effective August 5, 1993. Under FMLA, staff who have been employed for a total of at least 12 months of state service and have worked at least 1,250 hours during the 12 month period immediately preceding the beginning of FMLA leave are eligible to be considered for leave. An eligible employee shall be entitled to unpaid, job-protected leave of up to 12 weeks within any 12 month period beginning on the initial date of leave for certain family and medical reasons as outlined below. Leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Parental Leave is available for eligible staff who have worked less than 12 months and have worked less than 1,250 hours during the 12 month period immediately preceding the beginning of leave - see Parental Leave Policy, No. 1.4.19.
2. Reasons for Taking Leave. Leave must be granted for any of the following reasons:
 - a. to care for the employee's child after birth, or placement for adoption or foster care;
 - b. to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
 - c. for a serious health condition that results in the employee being unable to perform their job.
3. Definition of Terms.
 - a. A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 1. Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (inability to work, attend school, or perform other regular daily activities due to the condition,

treatment, or recovery) or any subsequent treatment in connection with such inpatient care.

2. Continuing treatment by a health care provider including any one or more of the following:
 - A. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either (A) treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or (B) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 - B. Any period of incapacity due to pregnancy, or for prenatal care.
 - C. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition, which (A) requires periodic visits for treatment, (B) continues over an extended period of time (including recurring episodes of a single underlying condition); and (C) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
 - D. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include

Alzheimer's, a severe stroke, or the terminal stages of a disease.

- E. Any period of absence to receive multiple treatments (including any period of recovery) either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

- b. "Treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for FMLA leave. NOTE: Conditions for which cosmetic treatments are administered are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition. Restorative dental or plastic surgery, mental illness resulting from stress or allergies, and treatment for substance abuse may qualify as serious health conditions if all conditions above are met.

- c. An "intermittent leave" is leave taken in separate blocks of time due to a single illness or injury. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. For intermittent leave or leave on a reduced leave schedule, there must be a

medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Employees needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt departmental operations.

- d. Instances in which an employee is "needed to care for" a family member encompass both physical and psychological care, and include situations where the employee may be needed to fill in for others who are caring for the family member or to make arrangements for changes in care, and situations where the employee is only needed intermittently.
- e. A "health care provider" means individuals licensed or authorized to practice under State law and performing within the scope of their practice as defined under State law such as (1) a doctor of medicine or osteopathy; or (2) any other person determined by the Secretary of Labor to be capable of providing health care services, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, or Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or (3) any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or (4) 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 is performing within the scope of his or her practice.
- f. A "child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person 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.
- g. A "parent" means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

- h. A "spouse" means a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriages.
4. Procedures for Certification of Leave. A staff member is required to give 30 days notice of his/her intent to take FMLA leave for foreseeable events such as childbirth, adoption, or necessary medical treatment. If 30 days notice is not possible, notice must be given as soon as practicable. Notice shall be submitted to the departmental official who has the authority to approve leave using the System form UPO-15. If leave is foreseeable, the staff member is required to try to schedule the leave so that it is not unduly disruptive to the operations of the department. If the employee fails to give 30 days notice of foreseeable leave without a reasonable excuse, leave may be delayed until at least 30 days after the employee provides notice of the need for leave.

In situations involving leave to care for a family member or for the employee's own serious health condition, medical certification from the health practitioner is also required and must be submitted using the System's Practitioner Certification Form. (The System may require second and third medical opinions, at System expense.) Subsequent recertification may be required at reasonable intervals, and for cause. Failure to submit required re-certifications may result in the loss of FMLA benefits and disciplinary action up to and including termination. The System is responsible to designate whether the leave is qualified as FMLA leave even if the employee does not specify FMLA in his/her leave request. In order for the System to determine whether the leave requested is certifiable as FMLA leave, and to maintain the employee's benefit rights, the department must forward a copy of the medical certification or other documentation and the appropriate payroll form to the UNT Human Resources Department for review. For leaves involving the illness or injury of the employee, a statement releasing the employee to return to work must be provided by the health care practitioner.

Employees on leave are required to report periodically on their status and their intention to return to work.

NOTE: Under federal law, records and documents relating to medical certifications, recertifications or medical histories of an employee or an employee's family members shall be maintained

in separate files and shall be treated as confidential medical records, with access limited to supervisors/managers who need to be informed regarding necessary work restrictions and accommodations, first aid personnel (when appropriate), and review by government officials investigating compliance with FMLA or other pertinent law.

5. Utilization of Paid Leave. While on FMLA leave, a staff member must use all applicable paid leave, and if applied for and applicable, sick pool leave, before utilizing leave without pay, unless the leave is due to a worker's compensation injury or illness or the employee is receiving a temporary disability benefit payment under the Uniform Group Insurance Plan (UGIP). The period of time covered by paid leave is included in calculation of the maximum 12-week period required under the law. If a staff member wishes to extend a paid leave period with unpaid FMLA leave, the FMLA notice and certification requirements will apply as of the first day of the paid leave period, if the leave was for an FMLA purpose. The use of sick leave is strictly limited to those situations clearly falling within the definition of sick leave contained in the Sick Leave policy.

The employee may request not to use his/her balance of Fair Labor Standards Act (FLSA) compensatory time (1.5) for a FMLA Leave. While on FMLA leave, the absence which is paid from the employee's accrued (FLSA) compensatory time (1.5) "account" may not be counted against the employee's FMLA leave entitlement. However, absences paid from state compensatory time (1.0) "account" will be used and will count against an employee's FMLA leave entitlement.

6. Benefits Administration. During FMLA leave the employee's coverages under the Uniform Group Insurance Plan (UGIP) will continue under the same conditions as coverages would have been provided if the employee was continuously at work during the leave period. The State contribution for health coverage will continue to be paid for the employee during the FMLA leave. The portion of UGIP premiums normally paid by the employee will be the responsibility of the employee. If the employee fails to return to work at the end of the leave, he/she will be required to pay back the State contribution for health coverage, unless the employee does not return to work due to the continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave, or if the employee does not return to work due to other circumstances beyond his/her control.

The employee must continue to make contributions to a medical expense flexible benefits spending account during unpaid leave to continue participation.

Employees do not accrue state service or leave accruals during unpaid months of leave.

A leave of absence due to worker's compensation injury or illness is concurrent with applicable FMLA leave.

7. Limitations on Leave Eligibility.

a. Eligibility for FMLA leave for the birth of a child or the placement of a child for adoption or foster care shall expire at the end of the 12 month period beginning on the date of birth or placement.

b. The amount FMLA leave that may be taken by spouses who both work for the State is limited to a combined total of 12 weeks during any 12-month period if leave is taken for birth or placement of a child for adoption or foster care or if leave is taken to care for a parent with a serious health condition.

c. Leave for the birth of a child or placement of a child for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless agreed to in advance.

8. Reinstatement. Upon returning from FMLA leave an employee will be restored to the position held when the leave commenced or to an equivalent position with equivalent benefits, salary, and working conditions; however, an employee has no greater right to reinstatement than if the employee had been continuously employed during the FMLA leave period. As stated above in Item 4, a statement from the health care practitioner releasing the employee to work is required if the leave was for the employee's own serious health condition.

9. Temporary Transfer to an Alternative Position. If a staff member requests intermittent leave or a reduced work schedule to care for a seriously-ill child, parent, or spouse or for their own serious health condition, and the need for leave is foreseeable based on planned medical treatment, the System may temporarily transfer the staff member to an available alternative position with equivalent pay and benefits, if the staff member is

qualified for the position and it better accommodates recurring periods of leave. Such transfers will be made in accordance with the provisions of System Policy No. 1.3.21. "Return to Work."

10. General Provisions.

- a. The System must give notice of FMLA designation within a reasonable time after the employee gives notice of the need for leave. If advance notice is impracticable, a period of leave which is still in progress may be retroactively designated by the System as FMLA leave. However, a period of leave may not be retroactively designated as FMLA leave after the conclusion of the leave unless the reason for the absence was unknown, in which case the leave must be designated as FMLA leave within two business days of the employee's return to work; or if the reason for the absence is known but not confirmed, a preliminary designation of FMLA leave may be made but must be finalized or withdrawn upon a confirmation of the reason for the absence.
- b. In all cases, it is the System's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, based on information provided by the employee or an employee spokesperson (e.g., spouse, parent, physician, etc. if the employee is incapacitated.) In no event may the designation be based on information other than that provided by the employee or their spokesperson.
- c. An employee may not be disqualified from awards for perfect attendance, safety, or other reasons not linked to performance or production criteria because he or she took FMLA leave.
- d. An employee may not be penalized or disciplined for qualified absences under FMLA, nor may poor attendance resulting from FMLA qualified absences be used against an employee when considering eligibility for any term or privilege of employment including promotion or reduction in force.
- e. FMLA qualified leave which is unpaid may not be included in the calculation of the allowable period of leave without pay that may be granted prior to

termination of employment for inability to return to work.

FOR EXAMPLE: A period of leave without pay of up to 26 weeks may be granted by the department head (less may be granted if the employee's continuing absence would substantially conflict with the needs of the department). FMLA qualified leave which was unpaid may not be included in the determination of the maximum period of leave to be granted to the employee.

- f. An employee may not be required to return to work on modified (alternative) duty or with accommodation if the individual's FMLA entitlement is not exhausted.

REFERENCE:

Texas Government Code, Section 661.912
The Family and Medical Leave Act of 1993.

Approved:
Effective:
Revised: