

### 03.606 Leave of Absence without Pay

1. Leave of Absence without Pay. A leave of absence without pay is an authorized, temporary release of a faculty or staff member from the payroll. Leaves of absence are granted either under the provisions of applicable federal or state laws or by the System at the discretion of the employing department to protect employment and certain benefit rights for a specific period of time.
2. Types of Leave of Absence without Pay.
  - a. Family and Medical Leave. Under the provisions of the Family and Medical Leave Act of 1993 (effective August 5, 1993) and the Texas Government Code (Chapter 661.912), employees 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 entitled to a total of 12 weeks of leave during a 12 month period for one or more of the following reasons: birth of a child, placement of a child for adoption or foster care, care of a family member with a serious health condition, or a serious health condition which prevents the employee from performance of their work. An employee must exhaust all paid leave entitlement prior to taking leave without pay, unless the leave is due to a worker's compensation injury or illness or the employee is receiving a temporary disability payment under the Uniform Group Insurance Plan.
  - b. Parental Leave. Under the provisions of the Texas Government Code (Chapter 661.913), regular System staff with less than 12 months of state service or who have not worked at least 1,250 hours during the 12 month period immediately preceding the beginning of leave are entitled to a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption or foster care placement of a child under three years of age, beginning with the date of birth or the first day the adoptive or foster child is formally placed in the home. An employee must exhaust all paid leave entitlement prior to taking leave without pay, unless the leave is due to a worker's compensation injury or illness or the employee is receiving a temporary disability payment under the Uniform Group Insurance Plan. Refer to System Policy Number 1.4.19, Parental Leave, for a more detailed explanation of the provisions and requirements of Parental Leave.

- c. Illness, Injury, or Pregnancy. Employees who do not meet the criteria for either Family and Medical Leave or Parental leave, or who have expended their allowable leave under either of those policies, may apply for a leave without pay under general System policy for their own illness, injury or pregnancy. The employee must have exhausted all paid leave entitlement prior to the leave without pay, unless the leave is due to a worker's compensation injury or illness or the employee is receiving a temporary disability payment under the Uniform Group Insurance Plan. The employee must provide a health care provider's statement, which advises on his/her physical inability to perform the job. The approval and duration of the leave is at the discretion of the department official who has the authority to approve leave and will be based on a health care provider's statement, the individual's ability to perform the duties, and the needs of the employing department. Leave granted under this provision will normally not exceed 26 weeks duration, (less may be granted if the employee's continuing absence would substantially conflict with the needs of the department), but in no instance will exceed a duration of 12 months.
- d. On-the Job Injury or Illness. On-the job injury or illness leaves of absence without pay are subject to the same provisions as c. Leave under this provision will in no instance exceed a duration of 12 months. A leave under Worker's Compensation insurance provisions is concurrent with applicable Family & Medical Leave Act leave.
- e. Personal. A leave of absence without pay may be granted to regular staff for personal reasons only after eligible leave with pay entitlement (vacation, compensatory leave) has been exhausted. Consideration of a request for personal leave should be based upon the effect of such leave on the department's workload and the reason for the leave. Leave granted under this provision will normally not exceed 26 weeks duration, but in no instance will exceed a duration of 12 months.
- f. Military Leave (Extended). A member of the staff who is inducted or enlists in the armed services or is called to active duty as a member of the Texas National Guard, State Guard, or any of the reserve components of the armed services is considered to be on extended military leave without pay, and is eligible for reinstatement to their former employment with the

System within five years from the date of their enlistment or call to active service, if honorably discharged.

- g. Disciplinary Suspensions. A supervisor with authority to discharge has authority to suspend without pay, either as a disciplinary measure or to permit an investigation of alleged charges. Refer to Human Resources Policy, Performance Counseling and Discipline, for a more detailed explanation of the provisions and requirements for Disciplinary Suspensions.
3. Requests and Approvals for Leaves of Absence without Pay.
- a. All requests for leave of absence without pay must be submitted in writing via the Application for Approval of Leave/Overtime Form UPO-15. Such requests should be made in advance if possible and as soon as the staff member determines leave is necessary. Notification for Family and Medical Leave must be made in accordance with the provision of the System's policy on Family and Medical Leave. The employee should fully outline the purpose for the request, and attach any pertinent documentation such as a statement from the health care provider, military orders, etc. The leave of absence must be approved by the department official who has the authority to approve leave (this is the head of the department, unless otherwise directed by the Vice Chancellor or the Chancellor.) Department officials are urged to consult with the UNT Human Resources Department if unsure whether a particular request qualifies for the type of leave requested.
  - b. Leaves of absence of more than 10 working days require the submission of a Position Authorization Form HRM-6, temporarily removing the employee from the payroll and stating the applicable provisions under which the leave is authorized. A copy of the UPO-15 should be attached to the HRM-6. Leaves of absence without pay for 10 working days or less require that a Reduction of Pay Notice be sent directly to the UNT Payroll Office.
  - c. Requests for extension of medical or personal leave beyond 26 weeks must be approved by the department official with the authority to approve leave, and by the Vice Chancellor and Chancellor. An employee should forward a written request for extension to the department official no later than 2 weeks prior to the original scheduled expiration date. Total leave may not exceed 12 months.

- d. Before an employing department may fill the position of an employee who is on leave without pay and not covered by FMLA with a permanent replacement, written permission must be obtained from the Vice Chancellor and filed with the UNT Human Resources Department.
  - e. Leaves of absence, along with any paid leave utilized prior to the leave without pay, should be recorded on the individual's departmental time and attendance records. Leaves of absence under Family Medical Leave Act provisions must be reported to the UNT Human Resources Department.
4. Benefits Administration. The administration of an employee's benefits during a leave of absence without pay shall be as follows:
- a. An employee due to go on a leave without pay for any reason should contact the UNT Human Resources Department immediately to discuss benefits during leave. If possible, this should be done in advance of the leave without pay.
  - b. Accrued leave benefits are to be handled as follows:
    - 1. Accrued vacation leave, sick leave, and compensatory time must be expended prior to taking leave without pay under the provisions of the Family and Medical Leave Act [unless the leave is due to a worker's compensation injury or illness or the employee is receiving temporary disability benefits under the Uniform Group Insurance Program (UGIP)], under the State Parental Leave Statute, or under the general System provisions relating to illness, injury or pregnancy. The employee may request not to use his/her balance of accrued Fair Labor Standards Act (FLSA) compensatory time (1.5). 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 entitlement. 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.
    - 2. Accrued vacation leave, sick leave and compensatory time must be expended prior to taking leave.

3. An employee who takes leave without pay as a result of a Worker's Compensation case, or an employee who is receiving temporary disability benefits under UGIP, may elect not to expend any paid leave balances before taking leave without pay.
  4. An employee taking Military Leave (Extended) may elect not to expend accrued vacation leave. In such instances the vacation leave will be frozen. Accrued sick leave shall be frozen until the employee returns to work.
  5. Vacation leave and compensatory leave will be expended before an employee is granted a personal leave of absence without pay.
- c. Group health, life, dental, and disability insurance coverage may be continued during the leave without pay:
1. If leave is taken under the provisions of the Family and Medical Leave Act, an employee is entitled to receive the State contribution toward the total monthly insurance premium even if no salary is paid for that month.
  2. Leave taken under any of the other provisions stated in this policy does not entitle the employee to receive the State contribution in any month in which no salary is paid.
  3. In all instances, the employee must pay the monthly employee's contribution, and, if applicable, the State's contribution, by a specified deadline each month to retain coverage. Coverage discontinued while on leave of absence without pay will not be automatically reinstated upon return to employment. Some coverages may be reinstated only with evidence of insurability.
- d. Credit for vacation or sick leave entitlement is not accumulated during a leave or absence without pay. However, if the employee has any fraction of paid employment in a month (but is not physically on the job during that month) they will be credited with sick leave and vacation entitlement for that month upon their return to active employment.

- e. Except in the case of Military Leave (Extended), time in a leave of absence without pay status is not creditable toward total State employment for vacation leave earning purposes. Also, credit for seniority and longevity pay is not earned during a leave of absence without pay. However, if the employee has any fraction of paid employment in a month, he will be credited 1 full month toward total State employment.
- f. No pay is given for holidays, which occur during the period of leave of absence without pay.
- g. The employee's retirement program will remain intact with benefits suspended until the individual returns to work. Tax deferred annuities are suspended, along with contributions to the Teacher Retirement System or to the Optional Retirement Program. Funds in a retirement program may not be withdrawn without the action being considered a termination.

5. General Provisions.

- a. Failure to return to work upon expiration of approved leave will be considered a voluntary termination of employment. In such cases, an individual desiring to return to work will be treated as a new applicant.
- b. An unauthorized absence for over 3 consecutive working days may be considered job abandonment and may result in separation for cause.
- c. An individual on leave may be replaced with a temporary employee during the absence.
- d. An employee who returns to employment at the termination of a leave of absence without pay will normally be reinstated in the same position he/she formerly held, or in a position of similar status or pay. If circumstances make it impossible or unreasonable to restore the employee to the same or equivalent position, the employee will be given the opportunity to apply for the next similar position that is available. The employee will be entitled to any across-the-board mandatory raises that were granted to all employees in similar positions during the absence.
- e. Subject to fiscal constraints, approval of such leaves constitutes a guarantee of employment for a specified period of time.

- f. An employee who desires to return to active employment temporarily with valid medical (physical) limitations certified by their physician, may be reinstated subject to the provisions of the policy on Return to Work.
- g. The Chancellor of the System may grant exceptions to this policy for such reasons as interagency agreements or educational purposes.

REFERENCES:

Texas Government Code, Chapter 661.909

Rules and Regulations of the Administrative Council for Texas State College and University Employees Uniform Insurance Benefits Act, Senate Bill No. 95, 65th Legislature, Chapter 25, Section 25.34(g), Basic Procedural Administrative Practices.

Article 6252-4a, V.A.C.S., Military Leave.

State Auditor's Office Memorandum to File -- Personnel Laws and Policies Affecting Classified Employees, October 21, 1985.

Attorney General Opinion No. H-251, March 4, 1974, RE: Questions relating to the rights of pregnant women employed by the State.

Attorney General Opinion No. M-1222, September 2, 1972, RE: Determination of eligibility of maternity leave.

Code of Federal Regulations, Title 41, Chapter 60, Part 60-70, Section 3Q.

Pregnancy Discrimination Act, October 21, 1978, as Amendment to Title VII of the Civil Rights Act of 1964.

Family and Medical Leave Act of 1993.