

Policies of the University of North Texas System Administration	Chapter 03
03.621 Family and Medical Leave	Human Resources

Policy Statement. The University of North Texas System Administration (System Administration) provides unpaid job-protected leave to eligible employees for family and medical reasons as required by the federal Family and Medical Leave Act.

Application of Policy. All employees.

Definitions.

1. **Child.** "Child" means a biological, adopted, 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.
2. **Health Care Provider.** "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.
3. **Immediate Family Member:** "Immediate family member" means the employee's spouse, parent or child. See definitions for "Spouse", "Parent", and "Child".
4. **Intermittent leave.** "Intermittent leave" means leave taken in separate and variable blocks of time due to a single illness or injury. Intermittent leave can include a reduced leave schedule.
5. **Need for care.** "Need for care" means when an employee has a family member with physical or psychological medical needs, and includes 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, as well as situations where the employee is only needed intermittently.

6. Parent. "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."
7. Reduced Leave Schedule. "Reduced leave schedule" means a leave schedule that reduces an employee's usual number of working hours per work week, or hours per workday.
8. Rolling year. "Rolling year" means the twelve (12) month period measured backward from the date an employee uses any FMLA leave. Under the "rolling" twelve (12) month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the twelve (12) weeks which has not been used during the immediately preceding twelve (12) months.
9. Serious Health Condition. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - a. 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; or
 - b. Continuing treatment by a health care provider including any one or more of the following:
 - i. 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.
 - ii. Any period of incapacity due to pregnancy, or for prenatal care.
 - iii. 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.)
 - iv. 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.

- v. 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).
- vi. 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 conditions for inpatient care or continuing treatment are met.

10. Spouse. "Spouse" means a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriages.

11. Treatment. "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. Additionally, a regimen of continuing treatment that includes the taking of over-the-counter medications, 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.

Procedures and Responsibilities.

1. General Provisions.

- a. Human Resources must give notice of FMLA designation to the employee within five (5) days of receipt of required and completed documentation, except in the case of extenuating circumstances. If advance notice is impracticable, a period of leave which is still in progress may be retroactively designated by the System Administration 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 (2) 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 Administration'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).
 - c. 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. Where appropriate, the employee may be asked to provide a treatment schedule to the employer.
 - d. 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.
 - e. 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.
 - f. An employee on leave should report in periodically to the supervisor of the employee's status and intention to return to work.
 - g. 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.
2. Eligibility. Staff who have been employed for a total of at least twelve (12) months of state service and have worked at least 1,250 hours during the twelve (12) month period immediately preceding the beginning of FMLA leave are eligible to be considered for leave. The twelve months of state service do not need to be consecutive. If an eligible employee is approved, the employee will be entitled to unpaid, job-protected leave of up to twelve (12) weeks within any twelve (12) month period beginning on the initial date of leave. Leave may be taken intermittently or on a reduced leave schedule under certain circumstances.

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered veteran with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a single 12-month period to provide care for the veteran.

3. Eligible Reasons for Taking Leave.

- a. To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;

- b. For a serious health condition that results in the employee being unable to perform their job; or
- c. For the birth of the employee's child, including incapacity due to pregnancy and for prenatal medical care, or placement of a child with the employee for adoption or foster care and to bond with the newborn or newly-placed child.

Parental Leave is available for eligible staff who have worked less than twelve (12) months and have worked less than 1,250 hours during the twelve (12) month period immediately preceding the beginning of leave (see System Administration Policy 03.619, Parental Leave).

- d. Qualifying exigency when the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending order to active duty in support of a contingency operation. These include short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and certain additional activities arising out of the covered military member's active duty or call to active duty status provided that the member and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

4. Requirements.

- a. A staff member is required to provide his or her supervisor thirty (30) days' notice of intent to take FMLA leave for foreseeable events such as childbirth, adoption, or necessary medical treatment. If thirty (30) days' notice is not possible, notice must be given as soon as practicable. 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 thirty (30) days' notice of foreseeable leave without a reasonable excuse, leave may be delayed until at least thirty (30) days after the employee provides notice of the need for leave. Initial notice may be verbal or written.
- b. 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 (see procedures for FMLA application process) The System Administration may require second and third medical opinions, at System Administration expense. Subsequent recertification may be required at reasonable intervals, and for cause. Failure to submit required re-certifications may result in the revocation of FMLA leave. The System Administration is responsible for designating whether the leave is qualified as FMLA leave even if the employee does not specify FMLA in his/her leave request.

- c. 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. The release must be provided to Human Resources prior to the employee's return date. Employees on leave are required to report periodically on their status and their intention to return to work.
5. Record keeping. 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. Human Resources will maintain stated documents.
6. Utilization of Paid Leave. While on FMLA leave, a staff member must use all applicable paid leave, including sick leave, sick leave pool, sick leave donation, compensatory time, and vacation, 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 Group Benefit Plan (GBP). The period of time covered by paid leave runs concurrent with the approved FMLA period. 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. If a leave of absence due to worker's compensation injury or illness is designated as FMLA leave, such leave runs concurrent with FMLA leave. Employees receiving workers' compensation benefits are not required to use accrued vacation leave, floating holiday, and sick leave concurrent with their FMLA leave.
7. Benefits Administration During Leave.
 - a. During FMLA leave, the employee's optional insurance coverage will continue under the same conditions as long as premiums are paid. Employee-only health coverage will continue to be provided by the employer during the covered leave period.
 - b. The employee must continue to make contributions to a medical expense flexible benefits spending account during unpaid leave to continue participation.
 - c. Employees do not accrue state service or leave accruals during unpaid full calendar months of leave.
 - d. If the employee fails to return to work at the end of the leave, he/she may 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.

8. 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 twelve (12) month period beginning on the date of birth or placement.
- b. The amount of FMLA leave that may be taken by spouses who both work for the State of Texas is limited to a combined total of twelve (12) weeks during any twelve (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 by the employee's supervisor in advance.

9. 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. 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.

10. 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 Administration may temporarily transfer the staff member who is on intermittent leave if the leave is for appointments only, and the employee has a treatment schedule 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 Administration Policy 03.119, Return to Work.

References and Cross-references.

Texas Government Code, Section 661.912
The Family and Medical Leave Act of 1993
System Administration Policy 03.119, Return to Work
System Administration Policy 03.619, Parental Leave

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