

# University of Houston Clear Lake

## MEMORANDUM OF ADMINISTRATIVE POLICY

**SECTION:** Human Resources

**NUMBER:** 02.D.06

**AREA:** Leave Entitlements

**SUBJECT:** Family and Medical Leave

**MAP 02.D.06**

### 1. PURPOSE

The University of Houston -Clear Lake provides leave benefits to eligible employees in accordance with the [Family and Medical Leave Act of 1993](#), as amended, and related U.S. Department of Labor regulations and the General Provisions of the state [General Appropriations Act](#). University human resources departments are responsible for implementing and administering procedures in accordance with these laws.

### 2. POLICY

2.1. The [Family and Medical Leave Act of 1993](#), as amended (FMLA) allows “eligible employees” to take job-protected leave for up to a total of 12 workweeks in a “year” because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a “serious health condition,” because the employee’s own “serious health condition” makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is a member of the National Guard or Reserves on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. “Eligible employees” may take job-protected leave for up to a total of 26 workweeks in a single “year” to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, or next of kin of the servicemember. An “eligible employee” is entitled to a combined total of 26 workweeks of leave for any qualifying reason during a “year” provided that the employee is entitled to no more than 12 workweeks of leave that is taken for one or more of the reasons in the first sentence of Section 2.1. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

2.2. 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 child or placement of a child under three years of age with the employee for adoption or foster care ([System Administrative Memorandum 02.D.08](#)).

- 2.3. Additional unpaid leave beyond FMLA leave is subject to the approval of the university in accordance with regulations governing leave of absence without pay ([System Administrative Memoranda 02.D.04](#)).
- 2.4. The policy of the University of Houston-Clear Lake will ensure equal opportunity in all its educational programs and activities, and all terms and conditions of employment without regard to age, race, color, disability, religion, national origin, veteran's status, genetic information, or sex (including pregnancy), except where such a distinction is required by law. Additionally, UH-Clear Lake prohibits discrimination in all aspects of employment and educational programs on the basis of sexual orientation, gender identity, or gender expression. For the UH System's Official Non-Discrimination Statement, see [SAM.01.D.05 – Equal Opportunity and Non-Discrimination Statement](#).

### 3. DEFINITIONS

- 3.1. Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a child of an employee standing in loco parentis (e.g., who had or has daily responsibility to care for and financially support the child - a biological or legal relationship is not necessary) and who is under 18 years of age or 18 years of age or older and incapable of self-care because of mental or physical disability at the time the FMLA leave is to commence.
- 3.2. Chronic Serious Health Condition: A chronic serious health condition is one which:
  - 3.2.1 Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
  - 3.2.2 Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - 3.2.3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).
- 3.3. Covered military member: The employee's spouse, child, or parent who is on active duty or call to active duty status.
- 3.4. Covered service member: The employee's spouse, child, parent or next of kin who is (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred (or aggravated by service) in the line of duty on active duty in the Armed Forces; or (2) a covered veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred (or aggravated by service) in the line of duty on active duty in the Armed Forces.

- 3.5. Covered veteran: An individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
- 3.6. Eligible employee: Any employee who:
- 3.5.1 Has at least 12 calendar months of service with the state prior to the date of leave but not necessarily 12 consecutive months; and
- 3.5.2 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.
- 3.7. Health care provider: 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 any other person determined by 29 C.F.R. 825.125(b) of the FMLA to be capable of providing health care services.
- 3.8. 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.
- 3.9. Next of kin of a covered servicemember: The nearest blood relative other than the covered servicemember's spouse, parent, or child, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative under the FMLA. When such a designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.
- 3.10. 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 the employee. Parents-in-law are not included in this definition.
- 3.11. Qualifying Exigencies: Arise out of the fact that the employee's spouse, child, or parent is a military member who is on active duty or call to active duty status for any of the qualifying exigencies listed in [29 C.F.R. § 825.126](#) of the FMLA.
- 3.12. Serious Health Conditions: An illness, injury, impairment, or physical or mental condition that involves:

- 3.11.1. In-patient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- 3.11.2. Continuing treatment by a health care provider is defined by one of the following:
- A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - Treatment two or more times, within 30 days of the first day of such period of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under the direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under the orders of, or on referral by, a health care provider; or
    - Treatment by a health care provider on at least one occasion, which results in a continuing regimen of treatment under the supervision of the health care provider.

The treatment by a health care provider in the two paragraphs above means an in-person visit to a health care provider. Additionally, the first (or only) in-person treatment visit must take place within seven days of the first day of the period of incapacity.

- Any period of incapacity due to pregnancy or prenatal care;
  - Any period of incapacity or treatment due to a chronic serious health condition;
  - A period of incapacity that is permanent or long-term for which treatment may not be effective;
  - 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.
- 3.13. Spouse: A husband or wife, as recognized under the laws of the state of Texas.
- 3.14. Year: Twelve months measured forward from the first date family and medical leave begins.

## 4. TERMS OF LEAVE

- 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.
- 4.2. Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious health conditions must be counted as family and medical leave and the procedures for applying for and reporting family and medical leave must be followed.
- 4.3. An employee on Workers' Compensation who wishes to continue to receive state insurance premium sharing is required to apply for family and medical leave.
- 4.4. Leave taken for the birth or placement of a child for adoption or foster care must take place within 12 months after the event (i.e., the birth or placement of the child). Leave may begin prior to the birth or placement of the child for adoption. If both spouses are employed by the 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 the child.
- 4.5. 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 of 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 required by the FMLA.

5. PROCEDURAL REQUIREMENTS

5.1. Notification:

5.1.1. Employees are responsible for providing the following notice appropriate to their circumstance to the university's human resources department:

5.1.1.1. 30 days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable;

5.1.1.2. notice as soon as practicable, if the leave is unforeseeable and less than 30 days in advance of the need to take FMLA leave; or

5.1.1.3. notice to the university as soon as practicable in accordance with [SAM 02.D.01 – Vacation and Sick Leave](#), when the need for leave is not foreseeable.

5.1.2. The university will provide employees with the following:

5.1.2.1. General notice: A notice explaining FMLA provisions and procedures for filing complaints of violations of the FMLA must be prominently posted. This general notice will also be distributed to each employee either via employee handbooks or other written guidance, or upon hire.

5.1.2.2. Eligibility notice: When an employee requests FMLA leave, or when the university acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the university will notify the employee of the employee's eligibility to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days, absent extenuating circumstances.

5.1.2.3. Rights and responsibilities notice: The university will provide written notice to an employee who requests FMLA leave detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these expectations and obligations.

5.1.2.4. Designation notice: When the university has enough information (including all required forms and certifications) to determine that leave is being taken for a FMLA-qualifying reason, the university will, absent extenuating circumstances, notify the employee that the leave is designated and counted as

FMLA leave within five business days. The university must also provide notice if the leave does not qualify form FMLA.

5.2. Application and Certification:

- 5.2.1. The university has developed 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 in accordance with [29 C.F.R. § 825.306](#) of the Family and Medical Leave Act. Employees can apply for FMLA for the [Placement of a Child for Adoption or Foster Care](#), [Employee Serious Health Condition or Birth](#), or a [Family Member's Serious Health Condition](#).
- 5.2.2. All requests for family and medical leave must be submitted on the university application form and accompanied by the U.S. Department of Labor Certification of Health Care Provider form or acceptable alternate documentation providing the same required information certified by the health care provider.
- 5.2.3. When FMLA leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, the employee must obtain a medical certification from a health care provider. The employee must provide the medical certification to the human resources department of the university within 15 calendar days after the university requests the certification, unless it is not practicable under the particular circumstances to do so despite the employee's diligent good faith efforts. The medical certification must state the approximate date on which the serious condition commenced, its probable duration, and appropriate medical facts sufficient to support the need for leave (e.g., symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, referrals for evaluation or treatment, any other regiment of continuing treatment). If the leave is because of the employee's own serious health condition, the medical certification must also state that the employee is unable to perform the essential functions of his or her position as well as the nature of any other work restrictions, and the likely duration of such inability. When leave is taken to care for a family member, the certification must provide information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member. For intermittent leave, an estimate of the dates and duration of treatment and any periods of recovery must be specified.
- 5.2.4. A jointly filed request form is required from eligible spouses who are both requesting leave for the same qualifying event or condition.
- 5.2.5. All FMLA applicants must identify on the FMLA Leave Application whether they have dual employment with another state agency and must name the state agency to ensure compliance with FMLA management

and reporting of state employees.

- 5.2.6. If an employee submits a medical certification that the university determines is incomplete, the university must state in writing what additional information is necessary to make the certification complete and sufficient. The employee has seven calendar days to submit the additional information to the human resources department, unless seven calendar days is not practicable under the particular circumstances despite the employee's diligent good faith efforts.
  - 5.2.7. At its discretion, the university may require a second medical opinion from a health care provider designated or approved by the university who is not a regular employee of the university. If the opinions of the employee's and the university's designated health care providers differ, the opinion of a third health care provider, jointly approved by the university and the employee, may be required. This third opinion is binding on both the university and the employee. Second and third opinions shall be obtained at the university's expense. Pending receipt of the second or third medical opinion(s), the employee is provisionally entitled to family and medical leave benefits.
  - 5.2.8. The university may request new certifications or recertification from the employee's health care provider under certain conditions in accordance with the FMLA.
  - 5.2.9. Second and third opinions and recertifications are not permitted for certification of a covered service member's serious injury or illness or of a qualifying exigency. The university may use a health care provider, a human resource professional, a leave administrator, or a management official, but not the employee's direct supervisor, to authenticate or clarify a medical certification of a serious injury or illness, or an Invitational Travel Orders (ITO) or Invitational Travel Authorizations (ITA).
  - 5.2.10. The 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 satisfies FMLA requirements and indicates that the employee has an eligible condition and at least that length of time is needed.
- 5.3. Insurance coverage:
- 5.3.1. As long as paid leave is available under family and medical leave, insurance coverage will continue as usual.
  - 5.3.2. For the period of the family and medical leave that is without pay, the employee may continue insurance benefits and will receive the premium sharing from the state or the university toward the cost of health insurance. The university will bill the employee for the 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, insurance coverage will be reduced to employee-only coverage. If the university discontinues health coverage as a result of the employee's nonpayment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave commenced if the employee returns to work. The returning employee shall not be required to meet any qualification requirements, such as a waiting period or preexisting condition requirements, when the employee has failed to continue his or her health coverage for nonpayment of premiums.

- 5.3.3. If the employee is eligible for benefits under the state disability plans, the human resources department shall provide the employee with the appropriate information and applications.
- 5.3.4. If family and medical leave is unpaid, the university's human resources department will notify the [Employee Retirement System of Texas \(ERS\)](#) of a change in employment status in accordance with ERS's procedures.
- 5.3.5. In the event of an on-the-job injury or illness, the human resources department and the UHCL Office of Risk Management shall communicate with each other, providing pertinent family and medical leave data, such as start and end dates.

5.4. Return to work:

- 5.4.1. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. In general, employees returning from approved family and medical leave within the provisions of this policy shall be restored to their original or an equivalent position with equivalent pay, benefits, and other employment terms. The university must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.
  - An employee who is offered an equivalent position and chooses to decline the position waives any rights to reinstatement.
  - If an employee believes that a position offered is not an equivalent position, he/she is entitled to file a grievance in accordance with [Memorandum of Administrative Policy \(MAP\) 02.A.05 Employee Relations, Grievance, and Appeal](#).

- 5.4.2. Employees who have been on approved leave based on the employee's serious health condition for more than three days will be required to submit a medical release certifying fitness for duty to the Office of Human Resources before reporting to work. A request to return to duty with restrictions will be considered on a case-by-case basis, considering the needs of the department and the essential functions of the job.
- 5.4.3. The employee must notify the Office of Human Resources if 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. Additional leave beyond the maximum time provided under FMLA is subject to approval as in certain cases, employees may be eligible for additional leave without pay beyond FMLA in accordance with SAM 02.D.04 Types of Employee Leave.
- 5.4.4. If an employee plans to return to work earlier than expected, the employee shall provide advance notice to the Office of Human Resources.
- 5.4.5. 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.
- 5.5. Recordkeeping:
  - 5.5.1. It is the responsibility of the university to designate all leave that constitutes family and medical leave on the appropriate payroll and human resource documents.
  - 5.5.2. The university must maintain records of all family and medical leave taken by the employee for as long as the employee is employed by the university and for at least three years from the end of the fiscal year past the employee's termination. The university may be required to submit records to the U.S. Department of Labor. Additionally, medical records will be maintained in separate confidential files; and these records will not be integrated into personnel files because of the need for medical confidentiality.

6. REVIEW AND RESPONSIBILITIES

Responsible Party: Executive Director for Human Resources

Review: Every five years, on or before August 31<sup>st</sup>

