

1. Title

Family and Medical Leave

2. Policy

Sec. 1 Purpose. The purpose of this policy is to administer and comply with the Family and Medical Leave Act (FMLA) of 1993, as amended.

Sec. 2 Eligibility. Generally, an employee of The University of Texas System Administration is eligible to take a combined total of up to 12 workweeks of family and medical leave (FML) per 12-month period for qualifying reasons if

2.1 the employee has been employed by the State of Texas for at least 12 months. The 12 months do not need to have been consecutive. However, periods of employment that precede a break in State service of seven years or more do not count toward the 12-month requirement unless (a) the break is due to the fulfillment of the employee's National Guard or Reserve military service obligations, or (b) there is a written agreement stating the State of Texas' intent to rehire the employee after the break; and

2.2 the employee has been employed by the State of Texas for at least 1,250 hours during the 12-month period immediately preceding the first day of the employee's FML.

Sec. 3 Parental Leave. An employee who is not eligible for FML may be eligible to use parental leave for the birth or adoption of a child (see INT130, *Parental Leave*).

Sec. 4 Leave Entitlement.

4.1 Reasons for Leave. The FMLA entitles eligible employees to take leave for the following reasons:

(a) for the birth of a child and to care for a newborn child after birth;

(b) for the legal placement of a child for adoption or foster care with the employee;

(c) for the employee's serious health condition that makes him/her unable to perform the functions of the employee's job;

- (d) to provide care for the employee's spouse, son, daughter, or parent with a serious health condition;
- (e) to provide care for a covered servicemember with a serious illness or injury if the servicemember is the employee's spouse, son, daughter, parent, or next of kin ("military caregiver leave"); and/or
- (f) for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or has been notified of an impending call or order to covered active duty ("exigency leave").

4.2 Leave Limits.

- (a) Unless they are taking military caregiver leave, employees are entitled to take up to 12 workweeks of leave during a 12-month period for an approved FML-qualifying reason.
- (b) Employees taking military caregiver leave to care for a covered servicemember are entitled to take up to 26 workweeks of leave per covered servicemember, per injury in a single 12-month period. Employees taking this category of leave are entitled to a combined total of up to 26 workweeks of all types of FMLA leave during the single 12-month period.
- (c) A husband and wife who are eligible for FML and who are both employed by U. T. System Administration are limited to a combined total of 12 workweeks of FML if not taking military caregiver leave or 26 workweeks of FML if taking military caregiver leave. This limitation on FML applies even if the spouses work at different work sites. Moreover, even if one spouse is ineligible for FML, the other spouse may be entitled to FML.
- (d) For exigency leave due to short-notice deployment, eligible employees may take up to seven calendar days of leave beginning on the date the covered military member receives the call or order to covered active duty, even if the seven-day period occurs after the covered military member has been deployed. For exigency leave due to rest and recuperation, eligible employees may take up to five days of leave for each instance of rest and recuperation.

- (e) When an employee normally works a part-time schedule, the amount of FML to which he/she is entitled is determined on a proportional basis.

4.3 How the 12-Month Period is Calculated.

- (a) For employees not taking military caregiver leave, the 12-month period to take up to 12 workweeks of FML begins on the day the employee first takes leave for an FML-qualifying reason.
- (b) For employees taking military caregiver leave, the single 12-month period to take up to 26 workweeks of FML begins on the day the employee first takes leave to care for the covered servicemember.

Sec. 5 Certifications.

5.1 Certifications Related to Serious Health Conditions and Birth of a Child.

- (a) If the employee is requesting FML for the employee's own serious health condition or that of a family member, the employee must provide a health provider's signed medical certification to the Office of Employee Services. If the Office of Employee Services has reason to doubt the validity of the certification, it may require the employee to obtain a second opinion from a different health care provider at the expense of U. T. System Administration. If the two opinions disagree, the Office of Employee Services may require the employee to obtain a third opinion from a different health care provider at the expense of U. T. System Administration. The third opinion will be the final, binding determination.
- (b) The Office of Employee Services may require recertifications every six months or at any time a leave extension is requested, circumstances in the last certification change, or it wishes to confirm the validity of the last certification. New medical certifications will be required each FML benefit year.
- (c) The Office of Employee Services may request that the employee provide periodic reports during FML on the employee's status and intent to return to work.
- (d) Before an employee is cleared to return to work after taking continuous FML or intermittent/reduced leave schedule FML,

the Office of Employee Services may require him/her to present a fitness-for-duty certification from a health care provider. The Office of Employee Services may also require an employee on intermittent/reduced leave schedule FML to periodically submit this certification. However, the Office of Employee Services will not require an employee to provide this certification for each and every absence that occurs while on an intermittent/reduced leave schedule.

- 5.2 Certifications Related to Leave Taken to Care for a Covered Servicemember (Military Caregiver Leave).
- (a) If an employee requests FML to care for a covered servicemember with a serious injury or illness, the employee must provide the Office of Employee Services a certification completed by an authorized health care provider. Authorized health care providers include
 - i. Department of Defense health care providers;
 - ii. Department of Veterans Affairs health care providers; and
 - iii. Department of Defense TRICARE providers.
 - (b) The certification must contain particular information, so the employee is encouraged to consult with the Office of Employee Services to verify the information that is required.
 - (c) “Invitational travel orders” or “invitational travel authorizations” are automatic certifications for the duration of the time they specify. Once the certifications expire, the employee must provide the Office of Employee Services with certification from an authorized health care provider.
 - (d) The Office of Employee Services will not require employees to submit second and third certification opinions and recertifications for requests for leave to care for a covered servicemember.
- 5.3 Certification Related to Qualifying Exigencies Arising from Covered Active Duty or Call to Covered Active Duty.
- (a) The first time an employee requests leave for a qualifying exigency due to the military activation of a covered military member, the employee must provide the Office of Employee

Services with a copy of the covered active duty orders or other military documentation indicating that the covered military member is on covered active duty or call to covered active duty status and the dates of the covered active duty service. Covered active duty orders will be required once for each separate call to covered active duty per covered military member.

- (b) An employee will be required to complete certification to support leave for a particular covered military member and a particular qualifying exigency per each call to covered active duty. Separate certifications may be required for each particular exigency. Additional information and recertifications will not be requested for each particular qualifying exigency once related certification is received; however, the Office of Employee Services is entitled to verify meetings and covered active duty status.

Sec. 6 Other FMLA Provisions.

6.1 Notice by Employee.

- (a) When the need to take FML is foreseeable, the employee should give at least 30 days of advance notice to the employee's supervisor and to the Office of Employee Services. When the need to take FML is not foreseeable, the employee (or a spokesperson) should notify the supervisor and the Office of Employee Services as soon as possible after the employee learns of the need for leave.
- (b) The employee must provide at least verbal notice sufficient to inform the supervisor and the Office of Employee Services that the employee needs FML and to estimate the anticipated timing and duration of the leave. The employee need not expressly assert rights under, or even mention the FMLA, but may only state that leave is needed.
- (c) Employees who meet FMLA eligibility criteria may not waive their FMLA rights. An eligible employee who has given proper notice and met the certification requirements may not be denied FML.

6.2 Notice to the Employee.

- (a) After receiving appropriate documentation, the Office of Employee Services shall designate leave, paid or unpaid, as

FML. It shall also notify the employee in writing of that designation within five business days of receiving the documentation unless there are extenuating circumstances.

- (b) In general, if an employee fails to respond to the Office of Employee Services' questions designed to determine if an absence is FML-qualifying and/or fails to provide the certification(s) required for the employee's proposed use of FML, U. T. System Administration may deny the request for FML.
- (c) If a required certification is incomplete and/or insufficient, the Office of Employee Services will tell the employee in writing what additional information is required. The employee must then obtain the necessary documentation. U. T. System Administration may deny the request for FML if the employee does not provide the requested information or documentation within seven calendar days.

6.3 Use of Accrued Leave While on FML.

- (a) Eligible employees must use all accrued and applicable leave concurrently with FML hours while taking FML. However, an employee who is receiving workers' compensation income benefits or temporary disability benefits is not required to use all paid leave while receiving those particular benefits.
- (b) State compensatory time, Fair Labor Standards Act (FLSA) overtime, and holidays used by an employee during the employee's FML-covered absence do not count against the employee's FML entitlement.
- (c) In addition, leave taken by an employee that was not for an FML-covered reason may not be counted against the employee's FML entitlement. For example, if an employee takes sick leave on various occasions for a cough, cold, flu, or condition that is not an FML-qualifying reason, those sick leave days may not be counted against the employee's entitlement.
- (d) An employee who is the father of a child may use his sick leave in conjunction with FML only if the child is ill or to care for his spouse while she is recovering from labor and delivery.

- (e) An employee may use sick leave in conjunction with FML when a child under the age of three is adopted, regardless of whether the child is ill at the time of adoption, but is limited to the amount of sick leave that would be necessary to recover from pregnancy and childbirth.
 - (f) An employee's FML hours will begin to be deducted after the Office of Employee Services designates the leave as FML-qualifying. Any leave that is related to the FML-qualifying reason is considered FML and will count against the employee's entitlement.
 - (g) Leave taken for the birth or placement of a child or for a qualifying exigency due to the military activation of a covered military member may be taken intermittently or on a reduced leave schedule. Leave for any other FML-qualifying reason may be taken intermittently or on a reduced leave schedule only when medically necessary.
 - (h) If an employee takes leave intermittently or on a reduced leave schedule, only the amount of leave actually taken is counted against the employee's FML entitlement. When an employee has requested an intermittent or reduced schedule leave, the employee may be transferred temporarily and at the discretion of U. T. System Administration to an alternative position with equivalent pay and benefits for which the employee is qualified, if the alternative position better accommodates the recurring periods of leave than does the employee's current job.
- 6.4 Leave to Care for Qualified Family Member, Covered Military Member, or Covered Servicemember. An employee does not have to be the only individual available to care for a qualified family member, covered military member, or covered servicemember in order to meet FML eligibility. Care encompasses both physical and psychological care.
- 6.5 Premium Payments for Medical Insurance. When an employee is on unpaid FML for a full calendar month, U. T. System Administration will continue to contribute its applicable share of medical insurance premiums as if the employee were at work or on paid leave. For example, if the employee normally receives family medical coverage, U. T. System Administration will continue to contribute its share of the premiums at the family rate. An employee is required to pay his/her share of the health

plan premiums in any manner customarily used by U. T. System Administration.

6.6 Failure of Employee to Pay Share of Insurance.

(a) The employee's payment for his/her applicable insurance premium must be made during the month in which it is due. If the employee does not pay the premium as scheduled, U. T. System Administration will cancel the health coverage effective on the last day of the month in which premiums should have been paid and notify the employee that insurance coverage has been canceled.

(b) When the employee returns to work after his/her health insurance coverage has been canceled for his/her nonpayment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were in place when the FML began. The returning employee will not be required to meet any qualification requirements, such as a waiting period or preexisting condition requirements.

(c) If an employee fails to return to work after taking unpaid FML for a full calendar month, U. T. System Administration is entitled to recover the premiums it has paid unless the employee has failed to return to work because of a serious health condition that would entitle the employee to FML or because of other circumstances beyond the employee's control.

(d) An employee is considered to have returned to work after he/she has worked for 30 calendar days. Therefore, an employee who returns to work for only one week and then departs is not considered to have returned to work for the purposes of premium payments. If any employee fails to return to work, U. T. System Administration may recover health insurance premium payments it has made from sources such as travel reimbursement checks and will consult with U. T. System Administration's Office of General Counsel to ensure that the deduction is appropriate.

6.7 Returning Employee. On return from FML, an employee generally will be returned to the same position the employee held when the leave started or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. If the employee is returned to an equivalent

position, that position must involve the same or substantially similar duties and responsibilities that entail equivalent skill, effort, responsibility, and authority. A determination of whether a position is equivalent to the one held before the employee's FML will be made by the Office of Employee Services. U. T. System Administration cannot guarantee that the employee will be returned to the position held before the FML leave began.

6.8 Notice by Employer Requirement. U. T. System Administration has posted and distributes Wage and Hour Division (WHD) Publication 1420, a notice issued by the Department of Labor to advise employees of their rights and responsibilities under the FMLA.

6.9 Rights of Employees.

(a) Employees who exercise their rights under the FMLA are entitled to do so without restraint and will not be subject to discharge or discrimination by U. T. System Administration because they exercise their rights under the FMLA. U. T. System Administration may not discriminate against an individual for filing charges, instituting any proceeding under or related to the FMLA, or giving any information in connection with an inquiry or proceeding regarding the FMLA.

(b) U. T. System Administration may take employment action against an employee who is unable to perform the essential functions of his/her job, as long as it complies with the Americans with Disabilities Act (ADA) and its related regulations and does not act against the employee because the employee has exercised rights under the FMLA.

6.10 Record-Keeping Requirements.

(a) The following records must be kept by the Office of Employee Services and/or the appropriate U. T. System Administration department for no less than three years:

- i. basic payroll and identifying employee data, including name, address, occupation, rate/basis of pay, terms of compensation, daily and weekly hours worked per pay period, additions to and deductions from wages, and total compensation paid;

- ii. dates FML is taken by an FML-eligible employee. The leave must be designated in the records as FML;
 - iii. if FML is taken in increments of less than one full day, the hours of the leave;
 - iv. copies of employee notices of leave furnished to the Office of Employee Services under the FMLA, if in writing, and copies of all general and specific FMLA-related notices given to employees;
 - v. any documents (including written and electronic records) describing employee benefits or policies and practices of U. T. System Administration or the institution regarding the taking of paid and unpaid leaves;
 - vi. premium payments of employee benefits;
 - vii. records of any dispute between the employee and U. T. System Administration regarding the designation of leave as FML, including any written statements from U. T. System Administration or the employee of the reasons for the designation and the disagreement; and
 - viii. records and documents relating to medical certifications, recertification, and medical histories of the employee or employee's family members.
- (b) The last category of records must be maintained as confidential medical records in separate files/records from the usual personnel files. If necessary, however, these records may be disclosed to supervisors and managers as needed to evaluate and accommodate necessary work restrictions, to first aid and safety personnel if the employee's physical or medical condition might require emergency treatment, and to government officials investigating compliance with FMLA.
- 6.11 Coordination with Other Leave Entitlement. If U. T. System Administration normally provides more benefits than required by law, the FMLA does not restrict those benefits. Therefore, benefits such as the sick leave pool, when available, may be used in conjunction with and count toward the FML entitlement. The FMLA does not restrict or modify any federal or state antidiscrimination laws or U. T. System Administration's obligation to comply with the ADA. If leave is covered by

workers' compensation, ADA, or temporary disability benefits, U. T. System Administration may use the information obtained to determine eligibilities for those benefits to determine if leave is FMLA-qualifying.

3. Definitions

Covered Active Duty -

- for a member of the regular Armed Forces, duty during deployment with the Armed Forces to a foreign country; or
- for a member of a reserve component of the Armed Forces (including the Reserve, National Guard, Ready Reserve, Selected Reserve, Individual Ready Reserve, certain retired Regular Armed Forces, and certain retired members of the Reserves), duty during deployment with the Armed Forces to a foreign country under a call or order to active duty.

This term does not apply to members of the State military unless they are called into federal service.

Covered Military Member - the employee's spouse, son/daughter, or parent who is on covered active duty or call to covered active duty status.

Covered Servicemember -

- a member of the Armed Forces, including a member of the National Guard or Reserves, who is 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." A covered servicemember is in "outpatient status" if he/she has been assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. Also, a "serious injury or illness" is an injury or illness suffered by the covered servicemember in the line of duty while on covered active duty, or an injury or illness incurred because service on covered active duty aggravated an injury or illness that preexisted the covered active duty, that may render the covered servicemember medically unfit to perform the duties of his/her office, grade, rank, or rating; or
- a veteran who is undergoing medical treatment, recuperation, or therapy for a "serious injury or illness" and who was a member of the Armed Forces (including the National Guard or Reserves) at any time

during the five years before the date the veteran undergoes the medical treatment, recuperation, or therapy.

In Loco Parentis - the status of a person who holds day-to-day responsibilities to care for and/or financially supports a child, or who had such responsibility for a person when the person was a child. The status does not require a biological or legal relationship. Whether an employee stands in loco parentis to a child will depend on the particular facts.

Inpatient Care - 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 a serious health condition), or any subsequent treatment in connection with the inpatient care.

Intermittent Leave - FML taken in separate blocks of time due to a single qualifying reason, as opposed to FML taken during one continuous period of time. For example, intermittent leave may include FML taken on an occasional basis, such as for medical appointments, or FML taken several days at a time spread over a period of months, such as for chemotherapy.

Qualifying Exigency - one or more of the following:

- Short-Notice Deployment
 - the need to address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty seven or less calendar days before the date of deployment;
- Military Events and Activities
 - the need to attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; or attendance at family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty service of a covered military member;
- Childcare and School Activities
 - the need to perform one or more of the following due to the covered active duty or call to covered active duty service of a covered military member:

1. arrange alternative childcare for a covered military member's child;
 2. provide childcare to a covered military member's child on an urgent, immediate need basis;
 3. enroll in or transfer a covered military member's child to a new school or day care facility; or
 4. attend meetings with staff at a school or a day care facility regarding the covered military member's child;
- **Financial and Legal Arrangements**
 - the need to make or update financial or legal arrangements to address the covered military member's absence while he/she is on covered active duty or call to covered active duty status; or
 - the need to act as the covered military member's representative before a federal, State, or local agency to obtain, arrange, or appeal military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status;
 - **Counseling**
 - the need to attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the covered military member's child, if the need for counseling arises from the covered active duty or call to covered active duty status of the covered military member;
 - **Rest and Recuperation**
 - the need to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;
 - **Post-Deployment Activities**
 - the need to attend arrival ceremonies, reintegration briefings, and events and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; or
 - the need to address issues that arise from the death of a covered military member while on covered active duty status; and

- Additional Activities
 - the need to address other events that arise out of the covered military member's covered active duty or call to covered active duty status, as long as the need and reason for the leave, as well as its timing and duration, are mutually agreed upon by the employee and the Office of Employee Services.

Reduced Leave Schedule - a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

Serious Health Condition - an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

Continuing treatment by a health care provider includes one or more of the following:

- a period of incapacity that lasts more than three consecutive full calendar days, plus either (a) an in-person treatment by a health care provider at least once within seven days of the first day of incapacity followed by a regimen of continuing treatment supervised by the health care provider, or (b) two or more treatments within 30 days of the first day of incapacity;
- a period of incapacity due to pregnancy or for prenatal care;
- a chronic serious health condition, defined as one that requires at least twice-yearly visits for treatment by a health care provider, that continues over an extended period of time, and that may cause episodic rather than continuing incapacity;
- a permanent or long-term period of incapacity due to a condition for which treatment may not be effective. The patient must be under the continuing supervision of a health care provider, but need not be receiving active treatment; or
- conditions that require multiple treatments by a health care provider for restorative surgery after an accident, injury, or condition that would likely result in a period of incapacity lasting more than three full consecutive calendar days unless medically treated.

As used in this definition, "treatment" includes, but is not limited to, examinations to determine if a serious health condition exists and

evaluations of the condition. It does not include routine physical exams, eye exams, or dental exams. A course of prescription medicine or therapy requiring special equipment to resolve or alleviate the condition would qualify as a “regimen of continuing treatment.” On the other hand, a regimen that includes use of over-the-counter medicines, bed rest, fluid intake, exercise, and other similar activities than can be initiated without a visit to a health care provider would not, by itself, constitute a “regimen of continuing treatment.”

Substance abuse may be a “serious health condition” if the other requirements of the term are met. However, FML for substance abuse may be taken only for its treatment by a health care provider, and not for the employee’s absence from work due to the employee’s use of the substance.

Spouse/Child/Parent/Next of Kin -

- Spouse: a husband, wife, or partner to a common-law marriage, as those terms are recognized under the law of the state where the employee resides. Unmarried domestic partners do not qualify as “spouses” under the FMLA.
- Daughter or Son:
 - for purposes of military caregiver leave and qualifying exigency leave: the employee’s biological, adopted, foster or stepchild, legal ward, or a child for whom the employee stood *in loco parentis* and who is of any age; and
 - for all other FMLA-covered reasons: the employee’s biological, adopted, foster or stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is either (a) under 18 years old, or (b) 18 years old or older and incapable of self-care because of a mental or physical disability at the time the FML will begin.
- Parent: a biological, adoptive, step- or foster father or mother of the employee, or an individual who stood *in loco parentis* to the employee when the employee was a “daughter” or “son,” as defined in this policy. The term does not include parents-in-law.
- Next of Kin of a Covered Servicemember: the nearest blood relative other than the servicemember’s spouse, parent, son, or daughter, in the following order of priority:
 1. blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;

2. brothers and sisters;
3. grandparents;
4. aunts and uncles; and
5. first cousins.

However, if the servicemember has specifically designated another blood relative in writing as his/her nearest blood relative for the purposes of military caregiver leave under the FMLA, then that designee is the only next of kin. If the servicemember has made no designation and multiple family members have the same level of relationship to the servicemember, each of them shall be considered the next of kin and each may take FML to care for the servicemember, either consecutively or simultaneously.

Veteran - a person who served in the active military, naval, or air service of the United States, and who was discharged or released from that service under conditions other than dishonorable.

4. Relevant Federal and State Statutes

[Texas Government Code Section 661.912](#)

[29 U.S.C. Section 2601 et seq.](#)

[29 Code of Federal Regulations, Part 825](#)

5. Relevant System Policies, Procedures, and Forms

Please contact the Office of Employee Services at (512) 499-4587 for forms and tools/online processes.

6. Who Should Know

All employees of U. T. System Administration

7. System Administration Office(s) Responsible for Policy

Office of Employee Services

8. Dates Approved or Amended

February 1, 2006

June 29, 2010

August 4, 2011

9. Contact Information

Questions or comments about this policy should be directed to:

- bor@utsystem.edu