


<b>Name of Policy:</b> <u><a href="#">Family and Medical Leave Act.</a></u>		 <b>Original effective date:</b> January 16, 2009	
<b>Policy Number:</b> 3364-25-30			
<b>Approving Officer:</b> President			
<b>Responsible Agent:</b> Vice President for Human Resources and Campus Safety		<b>Original effective date:</b> January 16, 2009	
<b>Scope:</b> all University of Toledo campuses, University of Toledo Medical Center/Hospitals and Clinics			
<input type="checkbox"/>	New policy proposal	<input type="checkbox"/>	Minor/technical revision of existing policy
X	Major revision of existing policy	<input type="checkbox"/>	Reaffirmation of existing policy

(A) Policy Statement

The University of Toledo is subject to the Family and Medical Leave Act (“FMLA”), a federal law enforced by the United States Department of Labor, and strives to comply with its FMLA obligations.

(B) Purpose

To establish and notify employees of rules and procedures concerning FMLA leave. The university administers FMLA leave in accordance with the rights and restrictions in the FMLA statutes, regulations, and interpretive case law. The University of Toledo reserves the right to use any procedures or requirements permissible under law whether or not specifically mentioned in this policy. See 29 U.S.C. 2601, et seq. and 29 C.F.R. 825 for specific statutes and regulations governing the FMLA.

(C) Generally

At the university, a rolling twelve-month period is used measured backward from the date an employee uses any FMLA leave other than FMLA leave to care for a covered servicemember.

For FMLA leave taken to care for a covered servicemember, a twelve month period beginning on the first day the employee takes FMLA leave to care for a covered servicemember and ending twelve months after that date is used.

A workweek of FMLA leave is a prorated workweek based upon employment status, e.g., a forty-hour workweek for a full-time employee, or a twenty hour workweek for half-time employee (based on actual hours worked in the twelve weeks preceding the leave). All FMLA leave time runs concurrently with any other applicable leave. An employee must exhaust sick, vacation, and other paid leave before being placed on unpaid leave.

(D) Qualifying reasons for and total permitted FMLA leave

- (1) An employee is entitled to a total of twelve workweeks of leave during any twelve month period for one or more of the following reasons:
  - (a) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
  - (b) Because of the placement of a son or daughter with the employee for adoption or foster care;
  - (c) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition;
  - (d) Because of a serious health condition that makes the employee unable to perform the functions of the position of the employee;
  - (e) Because of a qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces in support of a contingency operation.
- (2) An employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is entitled to a total of twenty-six workweeks of leave during a twelve month period to care for the covered servicemember.
- (3) During a twelve month period described in paragraph (2), an employee is entitled to a combined total of twenty-six workweeks of leave under paragraphs (1) and (2). The twelve month period is measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.
- (4) If spouses are both employed by The University of Toledo, and are both eligible for FMLA leave, the spouses are limited to a combined total of twelve workweeks of leave during any twelve month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. Where both spouses each use a portion of the total twelve workweeks of leave for the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses each remain entitled to the difference between the amount he or she took individually and twelve workweeks of FMLA leave for other purposes.
- (5) For purposes of determining the amount of FMLA leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect and the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count

against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

(E) Notice of a request for FMLA leave

(1) Foreseeable FMLA leave:

- (a) An employee must provide the university with at least a thirty day advance notice of the need to take FMLA leave if the need is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. When the need for FMLA leave and the approximate date leave would have been taken is clearly foreseeable at least thirty days in advance and an employee fails to give timely notice with no reasonable excuse, the university may deny FMLA coverage until thirty days after the date the employee provides notice.
- (b) If thirty days notice is not practicable, notice must be given as soon as practicable. When the need for FMLA leave is foreseeable fewer than thirty days in advance and an employee fails to give notice as soon as practicable, the university may deny FMLA coverage for leave for a period equivalent to the period during which the employee knew the leave was foreseeable, but failed to provide notice.
- (c) For foreseeable leave due to a qualifying exigency notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.
- (d) Notice for the need for FMLA leave must be sufficient to make the university aware of the need for FMLA qualifying leave, the anticipated duration of leave, and the anticipated start and end dates of the leave.
- (e) The employee must notify the university as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(2) Unforeseeable FMLA leave:

- (a) For unforeseeable FMLA leave, an employee must provide notice to the university as soon as practicable. The employee must provide sufficient information for the university to reasonably determine whether the leave request may be FMLA qualifying.
- (b) When an employee seeks leave due to a qualifying reason for which the university has previously provided FMLA leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in "sick" without providing more information is not

sufficient for leave to be considered FMLA leave. The university will attempt to obtain any additional required information through informal means. An employee must respond to the university's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable inquiries regarding the leave request may result in denial of FMLA protection if the university is unable to determine whether the leave is FMLA-qualifying.

- (c) When the need for FMLA leave is unforeseeable and an employee fails to give notice as soon as practicable, the university may deny FMLA coverage for leave for the period during which the employee knew of the need for leave, but failed to provide notice.
- (d) Notice may be given by the employee's spokesperson if the employee is unable to do so personally.

(F) Intermittent or reduced leave schedule

- (1) When medically necessary due to the serious health condition of the employee or family member or the serious injury or illness of a covered servicemember, an employee may take FMLA leave intermittently or on a reduced leave schedule. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.
- (2) If intermittent leave or a reduced leave schedule is medically necessary for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the university's operations.
- (3) FMLA leave taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, is at the discretion of the university. The university will permit intermittent or reduced leave schedule FMLA leave if it is due to the mother's serious health condition in connection with the birth of the child or if the newborn child has a serious health condition.
- (4) If an employee requests intermittent leave, or leave on a reduced leave schedule due to the serious health condition of the employee or the employee's family member or the serious injury or illness of a covered servicemember and the leave is foreseeable based on planned medical treatment, the university may temporarily transfer or assign, on a temporary basis with equivalent pay and benefits, an employee needing intermittent leave or a reduced leave schedule for leave taken to an alternative position that better accommodates recurring periods of leave during the period that the intermittent or reduced leave schedule is needed.
- (5) FMLA leave taken due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

(G) Maintenance of health benefits during FMLA leave

- (1) During any FMLA leave, the university will maintain the employee's group health plan coverage on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire FMLA leave period. If the employee receives pay while on FMLA leave, the employee's contribution toward health insurance will remain the same as if the employee were not on FMLA leave. Employees on unpaid FMLA leave must make payment arrangements with the human resources department at the university. The employee will be entitled to any changes to the health care plan or benefits that are made while the employee is on FMLA leave to the same extent as if the employee were not on FMLA leave.
- (2) To receive health benefits during an unpaid FMLA leave, monthly employee contribution amounts are due, in advance, on the first of the month following unpaid status for the remainder of eligibility (twelve week maximum). Upon the expiration of eligibility, employees may continue their health insurance coverage by paying the entire premium in advance each month to the human resources department of the university. Individuals choosing to discontinue their health insurance coverage during the twelve week period of eligibility will have the opportunity to re-enroll, unconditionally, upon their return. Those who elect to discontinue coverage, and whose twelve week eligibility has expired, will have the opportunity to re-enroll only during the open enrollment period of each year.
- (3) Upon expiration of twelve weeks of FMLA leave, and expiration of paid leave, an employee will be responsible for the full monthly premium of health insurance, including the employer's share.
- (4) Unless another university policy or contract provides a longer grace period, the university's obligations to maintain health insurance coverage for an employee on FMLA leave cease if the employee's premium payment is more than thirty days late.

(H) Right to return after FMLA leave

- (1) Generally, upon return from FMLA leave, an employee is entitled to be returned to the same position the employee held when the FMLA leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment as those terms are defined by federal law. The employee has no greater right to reinstatement or other benefits of employment than if the employee had been continuously employed during the FMLA leave period.
- (2) If the employee's FMLA leave was due to the employee's own serious health condition that made the employee unable to perform the employee's job, the university requires the employee to obtain, at the employee's expense, and present

certification from the employee's health care provider that the employee is able to resume work. This fitness-for-duty certification is only with regard to the particular health condition that caused the employee's need for FMLA leave.

An employee may be returned to work prior to the originally scheduled expiration of the leave, if such return is agreed upon by both the employee and his or her department director or chairman, provided the employee can perform the essential duties of the job and a physician has certified it. If an employee is able to return to work earlier than the anticipated end date, the employee should provide advance notice to the employee's department, and no later than three days before returning to work.

An employee is not entitled to reinstatement in his or her former or an equivalent position if a reduction in work-force/layoff occurs to their position while the individual is on FMLA leave if an employee would have lost his or her job if no leave had been taken.

If, due to documented medical reasons, a returning employee is incapable of performing within his or her classification with or without reasonable accommodation, the human resources department will inform the employee of the right to apply for open positions that the employee may be capable of performing. This policy is no way intended to limit the employee's rights under the Americans with Disabilities Act.

If an employee does not intend to return to work, he or she must notify human resources in writing of this intent as soon as possible and in no event later than three days of the scheduled return to work date. An employee who resigns or gives notice of resignation while on a paid or unpaid FMLA leave shall be separated from the university effective the date of such notice.

An employee who fails to return to work within three consecutive days following the end of his or her approved FMLA leave will be considered to have abandoned their job and will be treated as a voluntary resignation, except for documented reasons of his or her own health condition confirmed by a health care provider or other reasons beyond his or her reasonable control.

- (I) Medical certification, authentication, and clarification, and second or third opinions
  - (1) The university requires that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position be supported by a certification issued by a health care provider.
  - (2) An employee must provide certification of the need for leave at the time the employee gives notice of the need for leave or within five business days thereafter if the need for leave is foreseeable. If the need for leave is unforeseeable, the

employee must provide certification of the need for leave within five business days after the leave commences.

- (3) Employees must provide requested certifications or recertifications within fifteen calendar days after the university's request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Failure to provide a complete and sufficient certification within the appropriate timeframe may result in the denial of FMLA leave.
- (4) Completeness and sufficiency; authentication and clarification of medical certifications
  - (a) The employee must provide a complete and sufficient certification to the university. Failure to provide complete and sufficient certification, or failure to provide certification, means the university may deny the taking of FMLA leave.
    - (i) Certification is incomplete if one or more of the applicable entries have not been completed.
    - (ii) A certification is insufficient if the information provided is vague, ambiguous, or non-responsive.
  - (b) If the university determines that a certification is incomplete or insufficient, the university will provide written notice to the employee what additional information is necessary to make the certification complete and sufficient. The university will generally provide an employee seven calendar days in which to cure the identified incompleteness or insufficiency. If the incompleteness or insufficiency is not cured in the resubmitted certification, the University may deny the taking of FMLA leave.
  - (c) After giving the employee an opportunity to cure any such deficiencies, The university may contact the health care provider completing a certification for purposes of clarification and/or authentication. A health care provider, a human resources professional, a leave administrator, or a management official other than the employee's direct supervisor may contact the health care provider. If contact is to be made with a health care provider.
    - (i) "Authentication" means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.

- (ii) “Clarification” means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. It may be necessary for the university to obtain a HIPAA release from an employee to permit the university to seek clarification of a medical certification. If an employee chooses not to provide the university with an authorization allowing the university to clarify the certification with the health care provider, and does not otherwise clarify the certification, the university may deny the taking of FMLA leave if the certification is unclear.
- (d) No additional medical information beyond that required by the certification form may be requested from the health care provider.
- (5) If the employee’s need for leave due to the employee’s own serious health condition or the serious health condition of the employee’s family member lasts beyond a single leave year, the university requires the employee to provide a new medical certification in each subsequent leave year.
- (6) Content of certification. For leave taken because of an employee’s own serious health condition, or the serious health condition of a family member, the university requires the medical certification from a health care provider to include all information requested in the current version of the U.S. Department of Labor’s “Form WH-380-E, Certification of Health Care Provider for Employee’s Serious Health Condition” or “Form WH-380-F, Certification of Health Care Provider for Family Member’s Serious Health Condition.”
- (7) The university may require a second medical opinion at the university’s expense should the university have reason to doubt the validity of a medical certification.
- (8) The university may require a third medical opinion at the university’s expense should the opinions of the employee’s health care provider and the university’s designated health care provider differ.
- (9) Recertification of medical certifications
  - (a) The university may request recertification no more often than every thirty days in connection with an absence by the employee, except that, if the medical certification indicates that the minimum duration of the condition is more than 30 days, the university must wait until that minimum duration expires before requesting recertification, unless the employee requests an extension of leave or circumstances described in the previous certification have changed significantly, or if the university receives information that casts doubt upon the employee’s stated reason for the absence or on the continued validity of the certification. In all cases, including those where the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months, the

university may request recertification of a medical condition every six months in connection with an absence by the employee.

- (b) Requested recertifications must be provided within the timeframe requested by the university, which will allow at least fifteen calendar days, unless it is not practicable to do so despite diligent, good faith efforts.
- (c) Any recertification requested by the university will be at the employee's expense and no second or third opinion on recertification may be required.
- (d) As part of the recertification for leave taken due to a serious health condition, the university may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(J) Qualifying exigency certification

- (1) The first time the leave is requested, the university requires an employee who requests leave because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.
- (2) The university requires that leave for any qualifying exigency be supported by a certification from the employee that sets forth all of the information requested in the current version of the U.S. Department of Labor's "Form WH-384, Certification of Qualifying Exigency for Military Family Leave."
- (3) The university may contact a unit of the United States Department of Defense to verify that a covered military member is on active duty or call to active duty status.
- (4) If the qualifying exigency involves meeting with a third party, the university may contact the third party for purposes of verifying a meeting or appointment schedule and the nature of the meeting.

(K) Covered servicemember leave

- (1) The university requires leave taken to care for a covered servicemember with a serious injury or illness to be supported by certification completed by an authorized health care provider of the covered servicemember. For purposes of this certification, the following are authorized health care providers:
  - (a) A United States Department of Defense health care provider;

- (b) A United States Department of Veterans Affairs health care provider;
  - (c) A United States Department of Defense TRICARE network authorized private health care provider;
  - (d) A United States Department of Defense non-network TRICARE authorized private health care provider.
- (2) The university requires that the health care provider and the employee and/or covered servicemember provide all information requested in the current version of the U.S. Department of Labor’s “Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember—for Military Family Leave.”

(L) Key employees

The university may deny job restoration to key employees if the university determines that the restoration of the employee will cause substantial and grievous economic injury, as that term is defined by federal law, to the operations of the university.

(M) Fraud

An employee who fraudulently obtains FMLA leave is not entitled to job restoration or maintenance of health benefits.

(N) Protection, non-discrimination, and non-retaliation

The university does not interfere with, restrain, or deny the exercise of, or attempts to exercise any rights provided by the FMLA. The university will not discharge or in any other manner discriminate against an individual for opposing any practice made unlawful by the FMLA or for instituting or participating in an inquiry or proceeding relating to any FMLA protected right.

(O) Notice

The university posts in conspicuous places, including on the internet, a notice explaining the FMLA’s provisions and providing information concerning the procedures for filing complaints of FMLA violations with the Wage and Hour Division of the Department of Labor. The notice is also included in the university’s policy manual or is provided to each new employee upon hiring.

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 within five business days, absent extenuating circumstances. The notice will state whether the employee is eligible to take FMLA leave, and if the notice is that the employee is not eligible, will state at least one reason why the employee is ineligible.

The university provides written notice detailing specific expectations and obligations of the employee and explaining consequences of a failure to meet these obligations each time the eligibility notice is provided.

The university will provide notice to employees when designating leave as FMLA leave. When the university has enough information to determine whether the leave is taken for an FMLA qualifying reason, the university will notify the employee in writing whether leave will be designated as FMLA leave within five business days, absent extenuating circumstances. If a fitness-for-duty certification will be required to be restored to employment, the university will provide notice of such requirement with the designation notice.

(P) Definitions

Terms used in this policy are used and defined in the same manner as in the FMLA and its regulations. These terms and definitions include, but are not limited to:

Active duty: duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B).

Chronic serious health condition: a condition that requires periodic visits (at least twice per year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; continues over an extended period of time; and may cause episodic rather than a continuing period of Incapacity.

Continuing treatment: a serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- (1) Incapacity and treatment: a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - (a) Treatment two or more times, within thirty days of the first day of incapacity by a health care provider, by a nurse 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, unless circumstances beyond the employee's control prevent the follow-up visit from occurring as planned by the health care provider;
  - (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.
- (2) Any period of incapacity due to pregnancy, or for prenatal care, even though the employee or the covered family member does not receive treatment for a health care provider during the absence, an even if the absence does not last more than three, consecutive, full calendar days.

- (3) Any period of incapacity or treatment for incapacity due to a chronic serious health condition, even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three, consecutive, full calendar days.
- (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, and where the eligible employee or family member is under the continuing supervision of a health care provider.
- (5) Any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for
  - (a) restorative surgery after an accident or other injury; or
  - (b) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment.

**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.

**Employee:** generally, an employee who has been employed for at least twelve months and for at least 1,250 hours of service during the twelve month period immediately preceding commencement of the leave by the university. For purposes of calculating whether 1250 hours were worked, actual worked hours are counted and do not include paid but unworked hours or hours spent in an on-call status. Any hour worked at premium pay will be counted as a single hour worked.

**Family member:** spouse, son or daughter, or parent.

**Incapacity:** the inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for the serious health condition, or recovery from the treatment.

**Inpatient care:** an overnight stay in a hospital, hospice, or residential care facility, including any period of incapacity or any subsequent treatment in connection with the inpatient care.

**Key employee:** a salaried, FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the university within seventy-five miles of the employee's worksite.

**Next of kin:** the nearest blood relative of a covered servicemember, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority unless the covered servicemember has specifically designated in writing another blood relative as his or her

nearest blood relative for purposes of military caregiver FMLA leave: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, first cousins.

Outpatient status: with respect to a covered servicemember, means the status of a member of the armed forces assigned to a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients.

Parent: a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee (or covered servicemember) when the employee (or covered servicemember) was a son or daughter. "Parent" does not include parents-in-law.

Qualifying exigency: as described in 29 C.F.R. 825.126:

- (1) Short-notice deployment;
- (2) Military events and related activities;
- (3) Childcare and school activities;
- (4) Financial and legal arrangements;
- (5) Counseling;
- (6) Rest and recuperation;
- (7) Post-Deployment activities;
- (8) Additional activities.

Serious health condition: an illness, injury, impairment, or physical or mental condition that involves

- (1) Inpatient care in a hospital, hospice, or residential medical care facility; or
- (2) Continuing treatment by a health care provider.

Serious injury or illness: with respect to a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in a line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Son or daughter:

- (a) for purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self care because of a mental or physical disability," as those terms are defined in the FMLA and its regulations, at the time FMLA leave is to commence.
- (b) Son or daughter on active duty or call to active duty status: the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

- (c) Son or Daughter of a covered servicemember: the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis and who is of any age.

Spouse: a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.

Treatment: includes 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.

<p>Approved by:</p> <p><u>/s/ laj</u> Lloyd A. Jacobs, M.D. President</p> <p><u>June 11, 2009</u> Date</p> <p><i>Review/Revision Completed by: Vice President for Human Resources and Campus Safety; Office of Legal Affairs</i></p>	<p><b>Policies Superseded by This Policy:</b></p> <ul style="list-style-type: none"> <li>• <i>05-072 Family and Medical Leave Act, former Health Science Campus policy, previous revision date January 1, 2007</i></li> </ul> <p>Initial effective date: January 16, 2009 Review/Revision Date: Next review date: January 16, 2012</p>
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## EMPLOYEE RIGHTS AND RESPONSIBILITIES

UNDER THE FAMILY AND MEDICAL LEAVE ACT**Basic Leave Entitlement**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

**Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

**Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

**Eligibility Requirements**

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

**Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a *period of incapacity* of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

**Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

**Substitution of Paid Leave for Unpaid Leave**

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

**Employee Responsibilities**

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is **not possible**, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

**Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

**Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

**Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights. **FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.**

For additional information: 1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627

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