


Name of Policy: <u>Family and Medical Leave Act.</u>		 Review date: July 9, 2020 Original effective date: January 16, 2009	
Policy Number: 3364-25-30			
Approving Officer: President			
Responsible Agent: Associate Vice President and Chief Human Resources Officer			
Scope: 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
<input checked="" type="checkbox"/>	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 of policy

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. To the extent the policy is silent on a matter, federal law will prevail.

(C) Scope

This policy applies to all University of Toledo campuses, the University of Toledo Medical Center and clinics.

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).

(D) Eligibility Requirements

An employee must meet the following criteria to be eligible for FMLA leave:

- (1) The employee must have worked for the University for at least 12 months. Employee service breaks of 7 years or less will have the previous time of employment counted towards the 12-month eligibility requirement. Service breaks of employees of seven years or more due to their fulfillment of National Guard or Reserve military service obligations will have this time counted toward the 12-month eligibility requirement. The University will comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) when determining an employee's eligibility for FMLA.
- (2) The employee must have worked at least 1,250 hours in the 12-month period immediately preceding the commencement of leave.
- (3) The employee must incur a qualifying event.
- (4) The employee must be able to document relationships. For purposes of confirming a family relationship, the University may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship.

(E) Leave Entitlements for Eligible Employees

- (1) Eligible employees can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:
 - (a) The birth of a child of the employee or placement of a child for adoption or foster care with the employee;
 - (b) To bond with a child (leave must be taken within one year of the child's birth or placement);
 - (c) To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
 - (d) For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
 - (e) For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.
- (2) An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness incurred by a servicemember in the line of duty on active duty or was aggravated by service in the line of active duty.
 - (a) During the twelve-month period 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. If all leave is not taken, it is forfeited.
- (3) The maximum FMLA leave may not exceed 26 workweeks for employees with qualifying events that pertain to both paragraphs (1) and (2) above.
- (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 work weeks 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.
 - (6) An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule under certain circumstances.
 - (7) All FMLA leave time runs concurrently with any other applicable leave. An employee must exhaust sick, vacation, compensatory time and other paid leave before being placed on unpaid leave. The employee must comply with the University's normal paid leave policies.
- (F) Benefits and Protections
- (1) While employees are on FMLA leave, the University will continue to offer health insurance coverage as if the employee was not on leave.
 - (2) 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 is paid 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.

- (3) 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.
- (4) 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.
- (5) 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.
- (6) Upon return from FMLA leave, most employees will be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions. The University will not interfere with an individual's FMLA rights or retaliate against an employee for using or seeking to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.
 - (a) 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. If reasonable safety concerns exist regarding the employee's

ability to perform his or her duties due to the serious health condition for which the employee took such leave, the University is entitled to a fitness-for-duty certification for such absences up to once every 30 days.

- (b) 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 supervisor, 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.
- (c) 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.
- (d) 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 his or her 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.
- (e) 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.

(G) Requesting Leave

- (1) Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an

employee must notify the University as soon as possible and, generally, follow the employer's usual procedures.

- (2) Employees do not have to share a medical diagnosis when reporting off work but must provide enough information to the University so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer at the time of reporting off work if the need for leave is for a reason for which FMLA leave was previously taken or certified.
- (3) The University can require a written medical certification or periodic recertification supporting the need for leave. If the University determines that the certification is incomplete, it will provide a written notice indicating what additional information is required.
- (4) The university reserves the right to request a second opinion if the validity of a medical certification is questioned. If the first and second opinions differ significantly, the University may request that the employee obtain a final and binding third opinion of a jointly selected health care provider. The second and third opinions are done at university expense.

(H) University Responsibilities

- (1) Once the University becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the University will notify the employee if he or she is eligible for FMLA leave and, if eligible, will also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the University will provide a reason for ineligibility.
- (2) The University will notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

(I) Fraud

- (1) An employee who fraudulently obtains FMLA leave is not entitled to job restoration or maintenance of health benefits. Employees who fail

to comply with this policy will be held accountable for their actions under University policies, rules, and applicable law, including but not limited to corrective action up to and including termination.

- (2) Employees who are on FMLA leave are prohibited from working second jobs or engaging in other activities inconsistent with the stated need for leave.

<p>Approved by:</p> <p><i>/s/</i> Gregory C. Postel, M.D. Interim President</p> <p><u>July 9, 2020</u> Date</p> <p><i>Review/Revision Completed by:</i> <i>Vice President and Chief HR Officer,</i> <i>SLT</i></p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none"> • <i>Previous 3364-25-30, effective date September 13, 2013</i> <p>Initial effective date: January 16, 2009</p> <p>Review/Revision Date: September 13, 2013, July 9, 2020</p> <p>Next review date: July 10, 2023</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](tel:1-866-4US-WAGE) (1-866-487-9243) TTY: 1-877-889-5627
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