Institutional Handbook of Operating Procedures Policy 3.6.9	
Section: Human Resources	Responsible Vice President: Executive Vice President, Chief Business and Finance Officer
Subject: Leave Administration	Responsible Entity: Human Resources

I. Title

Family and Medical Leave

II. Policy

The Family Medical Leave Act of 1993 (FMLA) is designed to allow employees to balance their work and family life by taking job-protected leave in a 12 month period for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered service member with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status in support of a contingency operation. This policy provides guidance as to an employee's rights under the FMLA.

The FMLA is not intended to cover short-term conditions for which treatment and recovery are brief. For short-term conditions, employees should refer to their elected Short Term Disability Insurance policy. UTMB complies, with applicable federal and state laws and regulations, strives to maintain an environment which does not discriminate against applicants or employees on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, genetic information, or veteran status.

III. UTMB's Responsibilities to Employees

A. UTMB will grant its employees up to 12 workweeks of leave in a 12-month rolling year for one or more of the following reasons:

1. Birth of a son/daughter and care after such birth;

2. Placement with an employee of a son/daughter for adoption or foster care;

3. Serious health condition of spouse, child or parent of employee,

4. Serious health condition of an employee that makes the employee unable to perform (one or more) essential functions of his/her job;

5. "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. In the interim, UTMB will provide this type of leave to qualified employees who are related to covered active duty members as defined above.),

6. UTMB will grant military caregiver leave for covered service members as defined below. An eligible employee granted military caregiver leave may receive up to 26 workweeks of leave in a single 12 month period. This military caregiver leave is available during "a single 12 month period" during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave.

IV. Leave Requirements

A. *Accrual Use* - Except for leave covered by workers compensation benefits, employees are required to utilize all accumulative vacation and applicable sick leave while taking FMLA leave. Sick leave must be exhausted first, followed by any other accruals. If the employee qualifies for sick leave pool, all other accruals must be exhausted before use of sick leave pool. WCI Leave use of accruals must conform to guidelines in IHOP Policy3.11.1, Worker's Compensation Insurance.

B. *Second Opinions* – If UTMB wishes to obtain another opinion, a second opinion at the University's expense may be obtained. If the two opinions differ, a third opinion may be obtained at UTMB's expense, and will be the final determination. The healthcare provider responsible for providing the third opinion must be approved jointly by UTMB and the employee.

C. When an employee is taking leave to care for a spouse, child, or parent with a serious health condition, or due to his/her own serious health condition, the employee will be required to support the leave request with a completed medical certification from the health care provider. When the need to take leave is foreseeable, the employee ***must*** give at least 30 days advance notice to their Supervisor. When the need to take leave is not foreseeable, the employee ***must*** give notice to their Supervisor as soon as possible after the employee learns of the need for leave.The completed Medical Certification must be furnished no later than 15 calendar days after the employee notifies UTMB of a FLMA eligible leave. Failure to provide medical certification within the 15 calendar days may result in denial of FMLA.

D. When absent from work, the employee must notify the supervisor if the leave is FMLA related in order for the leave to be tracked appropriately.

V. Supervisor's Responsibility

A. Supervisors are required to direct employees to the Human Resources Employee Leave Management (ELM) website for information and documents to be downloaded. Verbal notice is sufficient to inform the supervisor that the employee will need the FMLA leave.

B. Supervisors should also notify their employee of department expectations regarding calling in while on intermittent/continuous FMLA.

C. Employees must give at least 30 days advance notice to their supervisor of the need to take FMLA leave when it is foreseeable for the birth or adoption of a child or for medical treatment. When it is not practical under any circumstances to give such notice, such as premature birth or medical illness, the notice should be given as soon as practical within one to two business days of when the employee learns of the need for leave.

VI. Human Resources – Employee Leave Management (ELM)

A. The FMLA documentation is required to be submitted to the Employee Leave Management office.

B. The employee should not submit their FMLA documentation to their supervisor.

C. ELM will determine if the request for leave qualifies under the FMLA after reviewing the completed documents. It is the employee's responsibility to ensure that all of the FMLA documents are completed.

D. If adequate information is not included to make a decision, the request may be denied, and the employee will be required to obtain a new physician certification.

E. An employee who has given notice under the FMLA and has met the medical certification requirements may not be denied FMLA leave if qualified. ELM will communicate the decision regarding the request to the employee and supervisor. ELM makes the final decision regarding the request for FMLA.

F. ELM will track FMLA usage and remaining entitlement. ELM will communicate with both the employee and supervisor during the course of the employee's leave. This communication does not replace communication that should occur directly between the employee and supervisor.

VII. Record Keeping

All FMLA documents will be maintained in Employee Leave Management in accordance with the law. Reporting of FMLA leave time taken will be accomplished through the appropriate time reporting procedures. Billing of employee insurance premiums while on FMLA without pay will be handled within the current billing process. The medical information may be disclosed to: supervisors and managers, if needed, regarding work restrictions, first aid and safety personnel in the employee's physical and medical conditions require medical treatment, or government officials investigating compliance with the FMLA.

VIII. Intermittent Leave

Intermittent FMLA leave must have a Physician Certification annually. The employee is responsible for renewing their FMLA in a timely manner. UTMB may ask for a new physician certification no more frequently than every 30 days. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

1. Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.
2. Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.
3. Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave.
4. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave.
5. Employers may account for FMLA leave in the shortest period of time that their payroll systems use provided it is one hour or less.
6. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

IX. Pregnancy and Use of Paid Accruals

A. Pregnant employees may use sick leave for doctor's visits, illnesses associated with pregnancy, delivery, and recuperation after delivery. The amount of sick leave used for recuperation will be based on a doctor's statement. The remaining FMLA entitlement may be used from other accruals such as vacation, compensatory time, or leave without pay. Only absences related to a serious health condition, such as complications of pregnancy, may be deducted from the employee's FMLA entitlement prior to the birth of the child.

B. Fathers may use sick leave only if the child is actually ill or to care for his spouse while she is recovering from labor and delivery. A doctor's statement indicating the need for care by another person during recovery from childbirth will be required. The remaining FMLA entitlement will be paid from other accruals such as vacation, compensatory time or given as leave without pay.

X. Both Spouses Employed by the State of Texas

Spouses employed by the State of Texas are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, to a combined total of 12 workweeks (or 26 workweeks if leave to care for a covered service member with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

XI. Substance Abuse

Treatment of substance abuse may be included under the FMLA. However, absences because of an employee's use of a substance without treatment do not qualify for the FMLA. The inclusion of substance abuse does not prevent UTMB from taking any employment action against an employee who is unable to perform the essential functions of the job provided UTMB complies with the Americans with Disabilities Act (ADA) and does not take action against the employee because such employee exercises his rights under the FMLA.

XII. Returning to Work

When an employee returns to work under the FMLA, they are entitled to be restored to the same position held when the leave started or to an equivalent position with equivalent pay. An equivalent position is one that has the same pay, benefits, and working conditions and involves the same or substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility and authority.

XIII. "Key" Employee Exception

Under limited circumstances where restoration to employment will cause "substantial and grievous economic injury" to its operations, UTMB may refuse to reinstate certain highly-paid, salaried "key" employees. In order to do so, UTMB must notify the employee in writing of his/her status as a "key" employee (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.

XIV. Health Benefits Payments

When an employee is on unpaid FMLA leave, UTMB will continue to contribute its share of the premium payment for health/dental as if the employee had continued in employment during the leave. For example, if the employee normally has family medical coverage, UTMB will continue sharing the cost of the premiums with the employee at the family rate. The employee is required to pay his or her share of the premiums in the same manner required when working. An employee is required to pay his or her share of insurance premiums on a monthly basis in accordance with applicable billing procedures.

XV. Premium Payments

If the employee fails to make a timely insurance(s) premium payment, a 30-day grace period will be provided after the agreed upon date for which payment is due. If the employee does not make payment within 30 days, UTMB will cease to maintain the coverages on the date the grace period ends. Prior to expiration of the grace period, UTMB will notify the employee of the discontinuation of the insurance coverages.

XVI. Restoring Benefits

If UTMB discontinues coverages as a result of non-payment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave commenced. Therefore, the restored employee shall not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements, when they have failed to continue their health coverage for non-payment of premiums.

XVII. Failure to Return to Work

If an employee fails to return to work after a period of unpaid FMLA and UTMB has paid for maintaining health coverage, UTMB is entitled to recover the premiums paid unless the reason the employee does not return to work is due to: continuation of a serious health condition that entitled the employee to FMLA leave or other circumstances beyond the control of the employee. An employee is considered to have returned to work after they have worked for a period of 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 the premium payments.

XVIII. UTMB Notice Requirement

UTMB is required to post a notice, Your Rights Under the FMLA, in a prominent place to notify employees of their rights and responsibilities under the FMLA. UTMB must also supply this same notice to employees.

XIX. Employee Rights

Employees who exercise their rights under FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by UTMB. UTMB strictly prohibits retaliation against employees who have filed charges, instituted any proceeding under or related to the FMLA, given any information in connection with the inquiry proceeding with the right under the FMLA, or testified in any right or proceeding regarding the FMLA.

XX. Leave Coordination

The FMLA regulations state that if UTMB provides more benefits than required by the FMLA, the FMLA will not restrict those benefits. Therefore, benefits such as the sick leave pool and extended disability leave, when available, shall be used in conjunction with and count towards the 12 weeks of FMLA leave. It should also be noted that the FMLA does not restrict or modify any federal or state anti-discrimination rules or UTMB's obligation to comply with the ADA.

XXI. Guidelines for Airline Flight Crew

Under the FMLA, special eligibility, leave calculation, and recordkeeping rules apply for airline flight crew employees and their employers. For FMLA purposes, an airline flight crew employee is an airline flight crewmember or flight attendant. An airline flight crew employee will meet the FMLA hours of service requirement if during the previous 12-month period, the employee has worked or been paid for at

least 60% of the applicable monthly guarantee and has worked or been paid for not less than 504 hours. An eligible airline flight crew employee is entitled to 72 days of leave for one or more of the FMLA-qualifying reasons other than military caregiver leave and 156 days for military caregiver leave. Employers must account for FMLA leave for intermittent or reduced schedule leave for airline flight crew employees in an increment no greater than one day. Finally, employers of airline flight crew employees must maintain certain records, including any records or documents that specify the applicable monthly guarantee for each category of employee to whom the guarantee applies, including any relevant collective bargaining agreements or employer policy documents that establish the applicable monthly guarantee as well as records of hours scheduled. For more information regarding the special rules applicable to airline flight crew employees, please see
http://www.dol.gov/whd/regs/compliance/whdfs28j.pdf

XXII. Definitions

Birth or Adoption Leave: FMLA leave may be used for birth or placement for adoption and can be taken prior to the actual birth or adoption. An employee's entitlement to leave for the birth or placement (An employee may not use FMLA to care for an adult child after the birth of a grandchild.)

Covered Active Duty for:

1. *Members of the Regular Armed Forces* – duty during deployment of the member with the Armed Forces to a foreign country; or

2. *Members of the Reserve components of the Armed Forces* – duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Covered Service Member: A current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or
A veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.

Covered Service Member 's Next of Kin: Nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

Eligible for leave: For the purpose of FMLA, an employee's spouse, children, and parents are considered next of kin. Spouse is defined in accordance with the applicable State Law including common law marriages when recognized by the State. Unmarried domestic partners do not qualify for family leave. The term 'parent' does not include parent "in law." Persons who have day to day responsibilities to care

for and financially support a child or, in the case of an employee, had such responsibility for the employee when the employee was a child are covered by FMLA (loco parentis). In this case, a biological or legal relationship is not necessary. Son or daughter is defined under the FMLA to include a child under 18 years or one who is 18 years or older who is incapable of self-care because of a mental or physical disability. For purposes of confirmation of family relationship, UTMB may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship.

Documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. UTMB is entitled to examine documentation such as birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

FMLA Qualified Employee: An employee is eligible for leave if he or she has worked for UTMB at least 12 months and worked at least 1,250 hours during the 12 month period immediately preceding the leave.

Military Caregiver Leave: Leave for up to a total of 26 workweeks of unpaid, job protected leave during a single 12 month period to care for a covered service member with a serious injury or illness.

Qualifying Exigency Leave: Leave of up to 12 workweeks of unpaid, job-protected leave during any 12 month period for qualifying exigency for foreign deployment of the employee's spouse, son, daughter, or parent who is on covered active duty or has been notified of an impending call or ordered to covered active duty.

Serious health condition: An illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

Serious injury or illness for a covered veteran: An injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; or

2. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating ("VASRD") of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or

3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

XXIII. Relevant Federal and State Statutes

Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601 et seq.
Texas Government Code, §661.912

XXIV. Relevant System Policies and Procedures

Rules and Regulations of the Board of Regent, Rule 30201, Leave Policies

XXV. Related UTMB Policies and Procedures

IHOP Policy 3.11.01, Workers Compensation Insurance
IHOP Policy 3.9.6., Parental Leave
IHOP Policy 3.6.10, Sick Leave

XXVI. Dates Approved or Amended

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