

Section 3	Human Resources Policies	09/15/95 -Originated
Subject 3.9	Leave Administration	07/02/09 - Reviewed w/ changes -Reviewed w/o changes
Policy 3.6.9	Family and Medical Leave	Human Resources - Author

Family and Medical Leave

Definitions

Next of kin of a covered service member : 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. *See also* § 825.127(b)(3).

Eligibility

In accordance with the Family and Medical Leave Act (FMLA), UTMB employees who meet the following criteria are eligible for up to twelve (12) weeks of family and medical leave per year for certain family and medical reasons. Employees must be:

- employed by the State of Texas for at least twelve (12) months (Note: This time does not have to be consecutive or continuous), and
- worked for the State of Texas for at least 1250 hours during the 12-month period immediately preceding commencement of the leave.

The University of Texas Medical Branch, in compliance with applicable federal laws and regulations, strives to maintain an environment free from discrimination against individuals on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, genetic information, or veteran status.

Leave Requirements

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

- Birth of a son/daughter and care after such birth;
 - Placement with an employee of a son/daughter for adoption or
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foster care;

**Leave
Requirements,
continued**

- Serious health condition of spouse, child or parent of employee,
- Serious health condition of employee that makes the employee unable to perform his or her job functions, or
- “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. (Note: this provision requires the Secretary of Labor to issue regulations defining “any qualifying exigency.” In the interim, UTMB will provide this type of leave to qualified employees.),

UTMB will grant an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty 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.

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.

Leave for birth or placement for adoption can be taken prior to the actual birth or adoption. An employee’s entitlement to leave for the birth or placement of a child expires 12 months after the birth or placement.

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 medical certification from the health care provider. The medical certification must be furnished at least 15 days after the employee notifies UTMB of the requirement of FMLA. Failure to provide medical certification within the 15 days may result in denial of FMLA.

Intermittent FMLA leave must have a new physician certification

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annually. UTMB may ask for a new physician certification no more frequently than every 30 days.

Leave Requirements, continued

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.

Medical certification is required if an employee is planning to use sick leave accruals for the birth of a child. Documentation to support adoption or foster care may be required.

Adoption or Placement of a Child

Up to six weeks of sick leave may be used for the adoption of a child under 3 years of age. Remaining leave under FMLA entitlement must be taken using other accruals or leave without pay. Sick leave may not be used for adoption of a child over 3 years of age. Other accruals or leave without pay may be used in those instances.

Immediate Family Members Covered

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- 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 employees 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. This documentation may take the form of a simple statement from the employee, or a child’s birth certificate, a court document, etc. UTMB

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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.

Serious Health Condition Defined

The term "serious health condition" means 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.

The FMLA is not intended to cover short-term conditions for which treatment and recovery are brief.

Pregnancy and Use of Paid Accruals

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.

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.

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 does 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.

Both Parents Employed by

A mother and father who are both eligible for FMLA leave and are employed by the state of Texas, regardless of whether they work at different agencies or institutions, may be limited to a combined total

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State of Texas

of twelve work weeks of leave during any twelve month period if they leave is taken:

**Both Parents
Employed by
State of Texas,
continued**

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- for birth of the employee’s son or daughter or to care for the child
 - after birth;
 - for placement of a son or daughter with the employee for adoption or foster care, or
 - to care for the child after placement; or, to care for the employee’s child with a serious health condition.

Where the mother and father both use a portion of the total 12-week FMLA leave entitlement for one of the purposes listed above, the mother and father would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those purposes above. (For example, if each parent took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.) If one parent is ineligible for FMLA leave, the other parent would be entitled to the full twelve weeks of FMLA leave.

WCI Leave

Use of accruals must conform with guidelines in IHOP Policy 3.11.1, Worker’s Compensation Insurance.

**Intermittent
Leave**

Leave taken due to the serious health condition of the employee or a qualifying family member may be taken at the time it is needed. There is no minimum limitation on the number of hours of intermittent leave that may be taken. For example, the leave may be taken in increments of 2 hours, 4 hours, etc., provided proper notice has been given if the need for the leave is foreseeable. When an employee has requested intermittent leave, UTMB may transfer the employee to an alternative position with equivalent pay and benefits if qualified for the position, and if it better accommodates the recurring periods of leave more so than the employee’s current job.

Paid Leave Usage

Employees are required to use all accumulated vacation and sick leave, if applicable, when taking leave under the FMLA. However, UTMB is not permitted to count paid leave which was not for a FMLA purpose against an employee’s FMLA leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, cold, flu or something that is not an extended illness, those days may not be counted towards the 12-week entitlement under the FMLA. If however,

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the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, UTMB may require the employee to use their sick and vacation leave, and limit the total amount of time away for the employment to a total of 12 weeks. UTMB must inform the

Paid Leave Usage, continued

employee that paid leave must be taken when an individual requests FMLA leave.

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 their share of insurance premiums on a monthly basis in accordance with applicable billing procedures.

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.

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.

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.

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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.

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.

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.

Human Resources - Employee Leave Management (ELM)

Supervisors are required to supply the FMLA Physician Certification, Employee Statement, and Leave Request to any employee requesting leave under the FMLA. Supervisors should also notify their employee of department expectations.

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. Verbal notice is sufficient to inform the supervisor that the employee will need the FMLA leave.

The supervisor shall notify ELM of the date that the employee was given the FMLA documents. When the employee returns the documents to the supervisor, the employee is responsible for completing the Employee Notice with the supervisor. The supervisor will send all of the documents to ELM. 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

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Human Resources - Employee Leave Management (ELM), continued

documents are completed. 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. An employee who has given notice under the FMLA and has met the medical certification requirements, if needed, 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.

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

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. It is unlawful for any person to discharge or in any other manner discriminate against an individual for having 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.

If an employee's FMLA rights have been violated, the FMLA provides that the employee may file a complaint with the Department of Labor or file a private law suit against UTMB to obtain damages and other relief. There is also an assessment of penalties for willfully failing to post the attached notice.

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Record Keeping

All original requests will be filed 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.
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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.

References

Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.).

Texas Government Code, §661.912

IHOP Policy 3.11.1, *Workers Compensation Insurance*

IHOP Policy 3.9.7, *Parental Leave*

IHOP Policy 3.9.8, *Sick Leave*
