

Texas Woman's University University Regulation and Procedure

Regulation and Procedure Name: Family Medical Leave Act (FMLA)

**Regulation and Procedure
Number: URP: 05.510**

Policy Owner: Finance and Administration

POLICY STATEMENT

The purpose of this Texas Woman's University Operating Policy and Procedure is to establish guidelines for administration of and compliance with the use of leave time as it applies to the Family and Medical Leave Act ("FMLA") of 1993, as amended in 2009 and as amended by the Fiscal Year 2010 National Defense Authorization Act. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

APPLICABILITY

This policy is applicable to TWU Employees.

DEFINITIONS

1. "Adult Child" means an adult son or daughter must meet four requirements before the employee may take FMLA leave to provide care. The son or daughter must (1) have a mental or physical disability as defined under the Americans with Disabilities Act ("ADA") as amended by the ADA Amendments Act ("ADAAA"), (2) be incapable of caring for himself because of the disability, (3) have a serious health condition, and (4) be in need of care because of the serious health condition.
2. "Covered Active duty" means duty during the deployment of a member of the Armed Forces to a foreign country; and duty during the deployment of the member of a reserve component of the Armed Forces to a foreign country under a call or order to active duty.
3. "Covered Service Member" means 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; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy when the injury or illness was incurred or aggravated by service in the line of duty while on active duty.

4. The "FMLA Leave Period" is defined in weeks, for up to twelve (12) weeks in any twelve (12) month period. The FMLA leave period is prorated based on the employee's percentage appointment. An employee with a 50% appointment would receive 12 weeks at 50% time.
5. "Intermittent leave" means leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time and may include leave for periods from one hour to several weeks. Examples include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.
6. "Military caregiver leave" is allowed for up to 26 weeks in a 12-month period to care for an injured covered service member of the United States military. Such leave is limited to a total of 26 weeks of leave, not 26 weeks plus 12 weeks of FMLA leave for other reasons. The 26 weeks is in a single 12 month period and does not renew each year like FMLA for other qualifying reasons. The military caregiver leave applies per service member, per injury. More than one eligible leave could exist if they were different injuries to the same military service member or for different family members. The caregiver leave provision includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.
7. "Military exigency leave" is defined by referring to a number of broad categories for which employees can use FMLA leave: (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; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee. This leave applies to family members of covered active duty service members as well as National Guard and Military Reservists.

8. "Needed To Care For" a family member means: (1) physical and psychological care; and (2) when the employee is needed to fill in for others providing care or to arrange for third party care of the family member.
9. "Next of Kin" of Military Service Member is defined as the 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 service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins. Under some circumstances the covered military service member may have specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military-caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered military service member's next of kin.
 - a. All family members sharing the closest level of familial relationship to the military service member shall be considered the service member's next of kin, unless the service member has specifically designated an individual as his or her next of kin for military-caregiver leave purposes. (I.e. where a military service member has three siblings, and one has not been specifically designated, all three siblings will be considered the service member's next of kin).
 - b. The FMLA permits an employer to confirm an employee's status as a covered military service member's next of kin.
10. "Reduced Schedule Leave" means a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. This type of leave might be used, for example, when an employee is recovering from a serious health condition, and is temporarily not able to work a full-time schedule based on physician certification.
11. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one or more of the following:
 - a. "Inpatient Care" (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
 - b. "Continuing Treatment" by a health care provider including:

- i. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
 - 1. Treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - 2. One treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); or
- ii. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
- iii. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
- iv. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- v. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

12. "Spouse" means a husband or wife as defined in accordance with Texas state law, including common law marriages. Unmarried domestic partners do not qualify for spousal status.

13. "Child" means daughter or son who is the biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of

self-care because of a mental or physical disability. "Child" under the military exigency leave does not have to be a minor.

14. "Adult Son or Daughter" means a son or daughter under the age of 26 who meets the stated criteria and who is incapable of self-care because of an illness or disability.
15. "Parent" means the biological, adopted, foster, step, or legal parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. The term "parent" does not include a parent "in-law".
16. "Unable to Perform the Functions of His/Her Job" means an employee is: (1) unable to work at all; or (2) unable to perform one or more of the essential functions of his/her positions. The term "essential functions" is borrowed from the Americans with Disabilities Act ("ADA") to mean "the fundamental job duties of the employment position," and does not include the marginal functions of the position.

REGULATION AND PROCEDURE

I. Family Medical Act Leave

Eligible University employees may take up to twelve (12) weeks family/medical leave, military exigency leave or up to 26 weeks of military caregiver leave during a 12-month period. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

II. General Provisions

A. Eligibility

1. To qualify for family or medical leave under this policy, the employee must meet all of the following conditions:
 - a. The employee must have worked for the State of Texas for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations.

- b. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
2. Employees who are not eligible for FMLA leave may be eligible to use Parental Leave for the birth or adoption of a child. (See Faculty Handbook: Section C and Staff Handbook: Employee Benefits)

B. Type of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1. The birth of a child and to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child or parent with a serious health condition (described below).
4. The serious health condition of the employee as defined in the definitions section of this policy and that makes the employee unable to perform the functions of the employee's position.
5. Qualifying military exigency leave is for urgent needs related to a covered military member's active duty or call to covered active duty status.

An employee whose spouse, son, daughter or parent either has been notified of a call or order to active military duty or whose family member is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's service or call to covered active duty service. The qualifying military exigency is defined in the

definitions section of this policy. The leave may commence as soon as the individual receives the call-up notice.

6. Military caregiver leave is to care for an ill or injured military covered service member.

An employee whose spouse, son, daughter, parent or next of kin who is a covered service member or a veteran with a serious illness or injury incurred in the line of duty while on covered active duty may qualify for this leave to provide care for the covered service member.

C. Amount of Leave

1. An eligible employee may take up to 12 weeks for the FMLA leaves type (1) through (5) listed above under this policy during any 12-month period. The University will measure the 12-month period as a rolling 12-month period measured backward from the date an employee began using any leave under this policy. Each time an employee takes leave, the University will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.
 - a. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2013, four weeks beginning June 1, 2013, and four weeks beginning December 1, 2013, the employee would not be entitled to any additional leave until the next year on February 1, 2014. Beginning on February 1, 2014, the employee would be entitled to four weeks of leave, on June 1, 2014 the employee would be entitled to an additional four weeks, etc.
2. Military caregiver leave may extend up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin who is a covered service member or a veteran with a serious illness or injury incurred in the line of duty while on covered active duty.

3. If upon returning to work from a FMLA leave based on the employee's own serious health condition, the employee's release is for limited duty or "light duty", the time spent performing "light duty" work does not count against an employee's FMLA leave entitlement and the employee's right to restoration is held in abeyance during the period of time the employee performs light duty (or until the end of the applicable 12-month FMLA leave year). If an employee is voluntarily performing a light duty assignment, the employee is not on FMLA leave.
4. If a husband and wife both work for the University and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care the husband and wife may only take a combined total of 12 weeks of leave. If they each wish to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

D. Procedure for Requesting FMLA

1. Employees are responsible for notifying the University of their absence and the necessity of FMLA leave. Employees should submit a minimum of 30 days advance notice of the need for a family or medical leave covered by the FMLA, when it is foreseeable. When it is not possible to give such notice, such as premature birth, accident or medical illness, the notice should be given as soon as possible. Employees are required to comply with their department's customary procedure for reporting absences and for notification of the need for leave. The leave request should be made within one to two business days of when the employee learns of the need for leave.
2. In order for the University to determine whether the leave qualifies under the Act; an employee must explain reasons for the leave including the anticipated timing and duration of the leave. The employee need not expressly assert rights under the Act or even mention the FMLA, but, for example, should state that leave is needed for an expected birth or adoption.
3. Forms for requesting FMLA are available from the Office of Human Resources, TWU Request Form for FMLA, upon receipt of Application or notice the OHR will provide the employee with the DOL Notice of Eligibility and Rights and all other documents needed to

complete application process. An employee has up to 15 calendar days to provide the medical or other applicable certification form indicating the necessity for a FMLA leave.

4. If medical or other applicable certification forms have not been received, or if the information received is insufficient to designate the leave as covered under FMLA, the OHR shall make a tentative designation. If the information received is insufficient for a designation the OHR will state in writing what additional information is necessary to make the certification complete and sufficient.

E. Procedure for Obtaining Approval for FMLA

1. It is the University's responsibility to designate leave, paid or unpaid, as FMLA qualifying leave and to give notice of the designation to the employee.
2. After receipt of all required documentation and certifications, the University will evaluate and respond in writing with an approval or denial no more than five days after the date of receipt of the complete documentation.

F. Required Certifications

1. Certification for the Employee's Serious Health Condition:
 - a. The University requires certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition Form.
 - b. The Office of Human Resources may directly contact the employee's health care provider for verification or clarification purposes. The employee's direct supervisor will not make this contact. Before the Office of Human Resources makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical

Privacy Rules, the University will obtain the employee's permission for clarification of individually identifiable health information.

- c. The University has the right to ask for a second medical opinion if it has reason to doubt the certification. The University will pay for the employee to get a medical opinion from a second doctor, which the University will select. The University may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the University will require the opinion of a third doctor. The University and the employee will mutually select the third doctor, and the University will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

2. Certification for the Family Member's Serious Health Condition

The University will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition Form.

3. Certification of Qualifying Military Exigency Leave

The University will require certification of the qualifying military exigency leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave Form.

4. Certification for Serious Injury or Illness of Covered Military Service Member for Military Caregiver Leave

The University will require certification for the serious injury or illness of the covered military service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member Form.

G. Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate medical certification form, the leave coordinator will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice, or inform the employee of clarification or additional information that is needed to designate the leave as FMLA.

H. Employee Status and Benefits during Leave

1. While an employee is on leave, the University will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
2. Optional health insurance benefits for dependents and other optional coverage are not paid by the University. If optional coverage is dropped, it can be automatically reinstated upon the employee's return to work. During periods of paid FMLA leave the University will deduct the employee's portion of the insurance premiums as a regular payroll deduction. If the employee's FMLA leave is unpaid, the employee must pay their portion of the premium directly to the state insurance administrator, ERS. The employee's optional insurance coverage will cease if the premium payment is late. If the employee voluntarily elects not to return to work at the end of the FMLA leave period, the employee may be required to reimburse the University for the cost of the premiums paid by the University for maintaining coverage during the leave.

3. The University may recover health insurance premium payments from certain sums due to the non-returning employee such as travel reimbursement checks, etc. provided that prior to the deduction, the University Office of General Counsel is consulted to ensure that such deduction is appropriate.
4. An employee is not entitled to State service credit for any full calendar months of leave without pay taken while on FMLA leave and vacation and sick leave will not accrue during such periods of unpaid leave.

I. Recertification

1. The University may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave.
2. Otherwise, the University may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The University may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

J. Employee Status after Leave

1. If the employee takes leave because of their own serious health condition, the employee is required to provide medical certification that they are fit to resume work. TWU Return to Work Medical Certification Form may be obtained from the Office of Human Resources. Employees failing to provide the Return to Work Medical Certification Form will not be permitted to resume work until it is provided. Failure to provide clear certification within the time period requested may result in disciplinary action up to and including termination.
2. The University may request that the physician address the employee's ability to perform specific job duties in a safe, secure, productive and effective manner. Fitness for duty certifications for

intermittent leave may be sought if reasonable safety concerns exist. The University may require fitness for duty certifications every 30 days if safety concerns are present. The request must be based on a reasonable belief or substantial concern for the employee's, coworkers' or public safety.

3. Employees who are not key employees will 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 substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility, and authority. A determination of whether a job is equivalent to one held prior to FMLA leave will be made by the University.
4. A determination of whether or not a job can be held for reinstatement of a key employee will be made at the time an employee in this category applies for FML. A key employee is among the highest paid ten percent of all employees within 75 miles of the work site. The determination is based on the restoration causing substantial and grievous economic injury to operations.

K. Use of Paid and Unpaid Leave

1. FMLA does not provide paid leave. However, TWU requires employees to use all applicable paid leave before the leave is designated as unpaid. Leave will be designated in the following order: sick leave, compensatory leave, banked overtime hours, vacation leave, sick leave pool and sick leave pool exception. Sick Leave pool and sick leave exception will be awarded only if pre-approved. All applicable paid leave except banked overtime will count towards the twelve weeks of FMLA. The use of paid time does not extend the 12 week leave period.
2. The twelve-week entitlement may run concurrently with workers' compensation leave or leave while receiving temporary disability benefit payments, provided the employee is otherwise eligible for FMLA leave. Employees who are on FMLA leave and are receiving workers' compensation benefits or temporary disability benefit payments may use their paid vacation or sick leave while on FMLA leave.

3. A holiday that occurs during a week of FMLA leave is counted as part of FMLA leave. However, if the University closes for a full five day work week, for example during the Christmas holidays, then that week would not count toward an employee's FMLA leave.
4. The University is not permitted to count paid leave that was not for an FMLA leave purpose against an employee's FMLA leave entitlement. For example, if an employee has taken sick leave on various occasions for a cold, flu, or condition that is not an extended illness, those days may not be counted towards the twelve-week entitlement under the Act. If, however the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, the employer may require the employee to use sick and vacation leave, and limit the total amount of time away from the University to a total of twelve weeks.

L. Intermittent Leave or a Reduced Work Schedule

1. The employee may take FMLA leave in 12 consecutive weeks or 26 weeks for military caregiver leave, or may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hours schedule. In all cases, the leave may not exceed a total of 12 workweeks, or 26 workweeks to care for an injured or ill service member, over a 12-month period.
2. In instances when leave for the employee/employee's family member is foreseeable and for planned medical treatment, the University may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the employee's intermittent or reduced schedule.
3. For the birth, adoption or foster care of a child, the University and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hourly schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.
4. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the

employee should try to reach an agreement with the University before taking intermittent leave or working a reduced hourly schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

5. A reduced schedule is subject to availability depending on the business need of the department or the University. If intermittent or reduced schedule leave is unavailable for the employee's regular position the University may temporarily transfer the employee to an available alternate job which better accommodates recurring periods of leave than the employee's regular position. The employee will be returned to his/her regular position or an equivalent position when the employee is able to return to work full-time and no longer needs to continue on FMLA leave. If the leave is unpaid, the University will reduce the employee's salary based on the amount of time actually worked.

M. Reporting While on Leave

If an employee takes FMLA leave because of their own serious health condition or to care for a covered relation, the employee must contact their supervisor on a regular basis (twice per month) regarding the status of the condition and their intention to return to work. The supervisor is responsible for reporting this information to the Office of Human Resources.

N. Substance Abuse

Treatment of substance abuse by a health care provider may be included under the Act; however, absences because of an employee's use of a substance without treatment do not qualify for FMLA leave. The inclusion of the substance abuse leave under FMLA does not prevent the University from taking any employment action against an employee who is unable to perform the essential functions of the job provided the University complies with the Americans with Disabilities Act (ADA) and does not take action against the employee because the employee exercises rights under the Family and Medical Leave Act.

O. Intent to Return to Work from FMLA Leave

Employees with questions about this FMLA policy or the University's sick leave policy should consult the Office of Human Resources.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

[FMLA Rights and Responsibilities](#)

FORMS AND TOOLS

[TWU Request Form for FMLA](#)

[DOL Certification of Health Care Provider for Employee's Serious Health Condition Form](#)

[DOL Certification of Health Care Provider for Family Member's Serious Health Condition Form](#)

[DOL Certification of Qualifying Exigency for Military Family Leave Form](#)

[DOL Certification for Serious Injury or Illness of Covered Service Member Form](#)

[DOL Designation Notice](#)

[TWU Return to Work Medical Certification Form](#)

[Notice of FMLA Eligibility and Rights and Responsibilities \(Form WH-381\)](#)

[TWU Employee, Supervisor, and Human Resources FMLA Responsibilities](#)

[Return to Work Medical Certification Form](#)

[WH-381 Provisional Notice](#)

[WH-382 Designation Notice](#)

Publication Date:

Next Review: