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

This policy establishes the basis and procedure for Texas Woman's University ("TWU" or "University") in administering the Family and Medical Leave Act ("FMLA") in compliance with federal law.

APPLICABILITY

This policy is applicable to FMLA eligible TWU Employees.

DEFINITIONS

1. "Adult Child" means an adult son or daughter that must meet four (4) requirements before the employee may take FMLA leave to provide care. The son or daughter must:

    a. Have a mental or physical disability as defined under the Americans with Disabilities Act ("ADA") as amended by the ADA Amendments Act ("ADAAA");

    b. Be incapable of caring for themselves because of the disability;

    c. Have a serious health condition; and

    d. Be in need of care because of the serious health condition.

2. "Child" means a 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 eighteen (18) years of age or eighteen (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.

3. “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.

4. “Covered Service Member” means one of the following:

    a. A member of the Armed Forces (including a member of the National Guard or Reserves) who is either 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

    b. A veteran who is either 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 five (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.

5. “Employee” for purposes of this policy, means an individual who is employed by TWU and is eligible for FMLA as defined by the Eligibility section of this policy (II.A.).

6. “Faculty” means an individual who is employed by TWU as a member of the faculty and whose duties include teaching, research, service, and administration. Professional librarians and graduate assistant titles are excluded from the definition of faculty.

7. “Family Member” means a child, spouse, or parent.

8. “FMLA Leave Period” means, up to twelve (12) weeks in any twelve (12) month period. The FMLA Leave Period is prorated based on the employee's percentage appointment and is always defined in weeks. An employee with a 75% appointment would receive twelve (12) weeks at 75% time.

9. “Health Care Provider” means individuals licensed or authorized to practice under applicable federal and state laws and is performing within the scope of their practice as defined under such laws such as:

a. A doctor of medicine or osteopathy;

b. Any other individual determined by the Secretary of Labor to be capable of providing health care services, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, or Christian Scientist practitioners, listed with the First Church of Christ Scientists in Boston, Massachusetts; or

c. An individual listed above in either (a) or (b) who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and is performing within the scope of their practice.

10. "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 (6) months, such as for chemotherapy.

11. “Light Duty” means temporary work that is physically or mentally less demanding than normal job duties.

12. “Military caregiver leave” means an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to a total of twenty-six (26) work weeks of unpaid leave during a single 12-month period to provide care for the service member.

13. “Military exigency leave” means the below list of broad categories for which employees can use FMLA leave. This leave applies to family members of covered active duty service members as well as National Guard and Military Reservists.

a. Short-notice deployment;

b. Military events and related activities;

c. Childcare and school activities;

d. Financial and legal arrangements;

e. Counseling;

f. Rest and recuperation;

g. Post-deployment activities; and

h. Additional activities not encompassed in the other categories, but agreed to by the Office of Human Resources and employee.

14. “Needed To Care For" a family member means the following:

a. Physical and psychological care; and

b. When the employee is needed to fill in for others providing care or to arrange for third party care of the family member.

15. "Next of Kin" of Military Service Member means 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 Covered Service Member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins. Under some circumstances the Covered Service Member may have specifically designated in writing another blood relative as their nearest blood relative for purposes of military-caregiver leave under FMLA, in which case the designated individual shall be deemed to be the Covered Service Member’s next of kin.

a. All family members sharing the closest level of familial relationship to the Covered Service Member shall be considered the Covered Service Member’s next of kin, unless the service member has specifically designated an individual as their next of kin for military-caregiver leave purposes. (i.e. where a Covered Service Member has three (3) siblings, and one has not been specifically designated, all three (3) siblings will be considered the Covered Service Member’s next of kin).

b. The FMLA permits an employer to confirm an employee’s status as a Covered Service Member’s next of kin.

16. “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”.

17. "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.

18. “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 (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

            1. Treatment two (2) or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); or

            2. One treatment by a health care provider (*i.e.*, an in-person visit within seven (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 (3) days if not treated.

19. “Spouse” means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state. Unmarried domestic partners do not qualify for spousal status.

20. “Staff” means each classified, administrative, and professional employee appointed to work in a full, part-time, or temporary position, excluding students employed in positions for which student status is required as a condition of employment and those holding teaching or research positions classified as faculty.

21. “Unable to Perform the Functions of Their Job" means an employee who is:

a. Unable to work at all; or

b. Unable to perform one or more of the essential functions of their positions. The term "essential functions" is governed by 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 or medical leave, military exigency leave, or up to twenty-six (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 twelve (12) months or fifty-two (52) weeks. The twelve (12) months or fifty-two (52) weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations.

b. The employee must have worked at least one thousand two hundred fifty (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 one thousand two hundred fifty (1,250) hours eligibility test for an employee under FMLA.

c. A part-time employee and one who works variable hours must have at least fifty-two (52) weeks of state service, not necessarily within twelve (12) consecutive months, and must have worked one thousand two hundred fifty (1,250) hours for State of Texas during the twelve (12) months immediately preceding the beginning of the leave. Time spent on military leave counts as time worked in determining if the employee has been employed for at least twelve (12) months by the state and also for the one thousand two hundred fifty (1,250) hours worked requirement.

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* URP 05.500: Employee Attendance, Vacation, Sick, and Other Leave Policy)

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 as defined in the definitions section of this policy;

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 for urgent needs related to a Covered Service Member's active duty or call to covered active duty status.

   a. 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 twelve (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 leave is defined in the definitions section of this policy. The leave may commence as soon as the individual receives the call-up notice; or

6. Qualifying military caregiver leave allows for up to twenty-six (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 twenty-six (26) weeks of leave, not twenty-six (26) weeks plus twelve (12) weeks of FMLA leave for other reasons. The twenty-six (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.

C. Amount of Leave

1. An eligible employee may take up to twelve (12) weeks for the FMLA leaves type (1) through (5) listed above under this policy during any 12-month period. The University will calculate 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 twelve (12) months and subtract it from the twelve (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 (8) weeks of leave during the past twelve (12) months, an additional four (4) weeks of leave could be taken. If an employee used four (4) weeks beginning February 1, 2021, four (4) weeks beginning June 1, 2021, and four (4) weeks beginning December 1, 2021, the employee would not be entitled to any additional leave until the next year on February 1, 2022. Beginning on February 1, 2022, the employee would be entitled to four (4) weeks of leave, on June 1, 2022 the employee would be entitled to an additional four (4) weeks, etc.

2. Military caregiver leave may extend up to twenty-six (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. When the employee's release to return to work is for "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 suspended during the period of time the employee performs light duty (or until the end of the applicable 12-month FMLA leave year).

4. Eligible spouses who work for the University are limited to a combined total of twelve (12) weeks of leave in a 12-month period for the following FMLA-qualifying reasons:

    a. The birth of a son or daughter and bonding with the newborn child,

b. The placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child, and

c. The care of a parent with a serious health condition.

d. Eligible spouses who work for the University are also limited to a combined total of twenty-six (26) weeks of leave in a single twelve (12)-month period to care for a Covered Service Member with a serious injury or illness (commonly referred to as "military caregiver leave") if each spouse is a parent, spouse, son or daughter, or next of kin of the Covered Service Member. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

5. The limitation on the amount of leave for spouses working for the University does not apply to FMLA leave taken for certain qualifying reasons. Eligible spouses who work for the University are each entitled to up to twelve (12) weeks of FMLA leave in a 12-month period, without regard to the amount of leave their spouses use, for the following FMLA-qualifying leave reasons:

a. The care of a spouse or son or daughter with a serious health condition;

b. A serious health condition that makes the employee unable to perform the essential functions of their job; and

c. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

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 thirty (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 two (2) 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 FMLA; 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 FMLA 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 ("OHR"). Upon receipt of Application or notice, the OHR will provide the employee with the Department Of Labor ("DOL") Notice of Eligibility and Rights and all other documents needed to complete application process. An employee has fifteen (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 OHR'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 (5) business 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 fifteen (15) calendar 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 University is permitted to contact an employee's healthcare provider, with the employee's permission, to clarify

a medical certification submitted in support of the employee's request for a leave of absence. If an employee chooses not to provide the University with authorization to clarify the certification with the employee's health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.

c. The University has the right to ask for a second medical opinion if it has reason to doubt the first certification. The University will pay for the employee to get a medical opinion from a second doctor, which the University will select. 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 or third opinion. 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.

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

The University will require certification for a family member's serious health condition. The employee must respond to such a request within fifteen (15) calendar 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 fifteen (15) calendar 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 Service Member for Military Caregiver Leave

The University will require certification for the serious injury or illness of the Covered Service Member. The employee must respond to such a request within fifteen (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

Human Resources must give notice of FMLA designation to the employee within five (5) business days of receipt of all required and completed documentation, except in the case of extenuating circumstances. If advance notice is impractical, a period of leave which is still in progress may be retroactively designated by the University as FMLA.

1. In all cases, it is the University's responsibility to designate leave, paid or unpaid, as FMLA qualifying based on information provided by the employee or employee spokesperson (e.g., spouse, parent, physician, etc.) if the employee is incapacitated.

2. The University is responsible for designating whether the leave is qualified as FMLA leave even if the employee does not specify FMLA in their leave request.

3. For intermittent leave or reduced schedule leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent leave or reduced schedule leave. Employees needing intermittent leave or reduced schedule leave schedule must attempt to schedule such leave so as not to disrupt departmental operations. Where appropriate, the employee will be asked to provide a treatment schedule to the University that will assist in determining the leave required for intermittent leave or reduced schedule leave.

4. An employee may not be disqualified from awards not linked to performance or production criteria because they took FMLA.

5. An employee may not be penalized or disciplined for qualified absences under FMLA, nor may poor attendance resulting from FMLA qualified absences be used against an employee when considering eligibility for any term or privilege of employment including promotion or reduction in force.

6. An employee may not be required to return to work on light duty or with accommodation if the employee's FMLA entitlement is not exhausted.

H. Benefits Administration

1. Employee-only health coverage will continue during the FMLA leave period.

2. The employee's optional insurance coverage will continue as long as premiums are paid directly to the state insurance administrator. The employee's optional insurance coverage will cease if the premium payment is late.

3. The employee must continue to make contributions to a medical flexible spending account during unpaid leave to continue participation.

4. 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 employee-only health coverage during the leave.

5. An employee on FMLA leave will not accrue State service credit for any full calendar months of leave without pay.

6. Vacation and sick leave will not accrue during full calendar months 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 every six (6) months in connection with an FMLA absence. The University may provide the health care provider with a record of the employee's absences and ask if the serious health condition and need for leave is consistent with the leave pattern.

2. The University may request recertification for the serious health condition of the employee or the employee's family member no more than every thirty (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 their leave.

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 via the TWU Return to Work Medical Certification Form or sufficient document from their health care provider. The employee will not be permitted to resume work until such documentation 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 health care provider 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 thirty (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 key employee is among the highest paid ten (10) percent of all employees within seventy-five (75) miles of the work site. 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 FMLA. In order to deny restoration to a key employee, the University must determine that restoration of the key employee to employment will cause substantial and grievous economic injury to the operations of the University, not whether the absence of the key employee will cause such substantial and grievous economic injury.

K. Use of Paid and Unpaid Leave

1. FMLA does not provide paid leave. TWU requires employees to use all applicable paid leave before the leave is designated as unpaid. Leave will be exhausted in the following order: sick leave, compensatory leave, banked overtime hours, vacation leave, sick leave pool, donated sick leave, and lastly family leave pool. Sick

leave pool, donated sick leave, or family leave pool will be awarded only if pre-approved.

2. FMLA leave runs concurrently with paid or unpaid leave when the reasons for leave meet the FMLA criteria.

3. All applicable paid leave will count towards the twelve (12) weeks of FMLA.

4. The use of paid leave does not extend the FMLA 12-week leave period.

5. Sick leave may be taken only in situations when such leave would normally be permitted in accordance with State requirements.

6. If a leave of absence is due to worker's compensation injury or illness and is designated as FMLA leave, such leave runs concurrent with FMLA leave provided the employee is otherwise eligible for FMLA leave. Employees who are on FMLA leave and are receiving temporary disability benefits or worker's compensation benefits are not required to use accrued vacation leave or sick leave concurrent with their FMLA leave.

7. 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 (5) day work week, for example during the Winter holidays, then that week would not count toward an employee's FMLA leave.

8. 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 FMLA. If, however, the employee is expecting the birth of a child and has taken FMLA 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 (12) weeks.

L. Intermittent Leave or a Reduced Schedule Leave

1. The employee may take FMLA leave in twelve (12) consecutive weeks or twenty-six (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 twelve (12) weeks or twenty-six (26) weeks to care for an injured or ill service member, over a 12-month period.

2. In instances when leave for the employee or 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 leave.

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 schedule. Leave for birth, adoption, or foster care of a child must be taken within one (1) year of the birth or placement of the child.

4. If the employee is taking intermittent leave or working a reduced schedule 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 supervisor and the University before the leave begins when possible. Medical documentation is required for intermittent leave or a reduced schedule due to a serious health condition of the employee or employee's family member

5. A reduced schedule leave 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 their 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. Instructional Assignments

Faculty members requesting FMLA leave may not be able to return to teaching for the duration of the current academic term, if in the judgement of the academic component administrators and Dean, a return to work would be disruptive to the instructional process. If teaching duties are paused, workload may be re-evaluated and redistributed in a manner agreed upon by the academic component administrators and the faculty member. For example: a faculty member's regular workload is 1/3 teaching, 1/3 research, and 1/3 service. The modified workload may be 2/3 research and 1/3 service.

N. Reporting While on Leave

An employee, while on continuous FMLA leave, is required to respond to their supervisor or HR representative when they inquire about the status of the condition and their intention to return to work up to twice per month. When a supervisor conducts the inquiry, they are responsible for reporting this information to the Office of Human Resources.

O. Substance Abuse

Treatment of substance abuse by a health care provider may be included under the Family and Medical Leave 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.

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

URP 05.500: Employee Attendance, Vacation, Sick, and Other Leave Policy

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

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