



### 4.7.13 Family Medical Leave Act (FMLA)

Chapter 4 - General Personnel	Original Effective Date: November 2000
Section: 4.7 Work and Leave Administration	Date Last Reviewed: June 2012
Responsible Entity: Vice President and Chief Human Resources Officer	Date Last Revised: June 2012

#### I. Purpose

The purpose of this policy is to ensure compliance with the provisions of the Family and Medical Leave Act of 1993.

#### II. Scope

This policy applies to all faculty, administrative and professional (A&P), and classified employees of UT Health San Antonio.

#### III. Policy

##### A. General Policy

It is the policy of UT Health San Antonio (UTHSA) to comply with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The FMLA protects an employee's job and benefits for up to twelve (12) work weeks in the event that time off is taken for any one or more of the following reasons:

1. The serious non-work-related or work-related health condition of the employee that prevents the employee from performing his or her job;
2. The serious health condition of a spouse, child, or parent of the employee;
3. The placement with the employee of a child for adoption or foster care during the first year following placement;
4. A "qualifying exigency" relating to the active-duty status or call to active-duty in the armed forces of a spouse, son, daughter, or parent of the employee, including those contingencies set forth in the applicable regulations.

Employees are entitled to twenty-six (26) weeks of FMLA to care for a spouse, son, daughter, parent, or next of kin who suffers a serious injury or illness while

#### 4.7.13 Family Medical Leave Act (FMLA)

on active duty in the Armed Forces, including the activated National Guard or Reserves.

For married employees who work for UTHSA, the total combined amount of FMLA leave between the two employees cannot exceed twelve (12) weeks. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness or injury, this limitation does not apply.

##### B. Eligibility

To be eligible for FMLA benefits, an employee must have been employed by an agency of the State of Texas for at least twelve (12) months prior to the commencement of the leave and worked at least 1,250 hours at a Texas state agency during the 12-month period immediately preceding commencement of the leave.

##### C. Duration of Leave

Under FMLA, employees are entitled to only one cumulative twelve (12) week period of time off during a twelve (12) month rolling calendar year. For purposes of this policy, a twelve (12) month rolling calendar refers to a 12-month period that starts the day that FMLA starts and continues for 12 consecutive months. Employees must use their accrued paid time off concurrently with FMLA leave before going into an unpaid FMLA leave status. The exception is for Workers' Compensation cases where the employee has an option to use or not use accrued leave.

FMLA leave can be requested in the following durations:

1. Continuous: A leave of absence for which the employee is unable to work for an uninterrupted period of time (up to 12 weeks).
2. Intermittent: FMLA taken in separate blocks of time due to a single qualifying reason. There is no minimum number of hours of leave that can be taken at one time, but you must provide proper notice to your department, assuming your need for the leave is foreseeable. If not childbirth, adoption or foster care placement, intermittent leave must include all of the following criteria to be considered a serious health condition under FMLA regulations:
  - a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
  - b. Continuous over an extended period (including episodes of a single underlying condition).
  - c. Requires multiple treatments (including a period of recover) by a health care provider for a condition that would likely result in a period of

#### 4.7.13 Family Medical Leave Act (FMLA)

inactivity of more than three (3) consecutive days in the absence of medical intervention or treatment.

- d. When an employee has requested intermittent leave, the department may transfer the employee to another position with equivalent pay and benefits if the employee is qualified for the position and if it better accommodates the recurring periods of leave more so than the employee's current position.
  - e. Intermittent leave to take care of a newborn child who does not have a serious health condition is not a right under FMLA. However, employers do have the discretion to allow their employees to take FMLA on an intermittent basis to take care of a newborn child who does not have a serious health condition.
3. **Reduced Schedule:** A leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

#### D. Employee Notice and Scheduling Requirements

Employees seeking FMLA leave must provide the Office of Human Resources at least thirty (30) days prior notice of the proposed leave. Where advance notice is not possible, such as in the event of a medical emergency, notice should be given as soon as practical. Failure to provide adequate notice may result in denial of leave under the FMLA.

Employees using intermittent leave on a reduced schedule must make a reasonable effort to avoid disrupting department operations, including scheduling doctor's appointments outside of work hours or during lunch. Employees using intermittent leave due to medical necessity should notify their supervisors as soon as they know they will be unable to work, but no later than starting time of the employee's work day.

UTHSA may request that the employee provide periodic reports during FMLA on the employee's status and intent to return to work.

#### E. Procedures for Responding To and Placing Employees on FMLA

The Office of Human Resources is responsible for determining eligibility and for responding to the request for time off under FMLA. The Office of Human Resources is also responsible for continued communication with the employee and department and complying with the recordkeeping requirements of the law.

1. The Office of Human Resources shall determine the eligibility of the employee who may qualify for FMLA time off and the eligibility of the qualifying event

#### 4.7.13 Family Medical Leave Act (FMLA)

for the FMLA leave request. If the employee and qualifying event are eligible under FMLA leave, the employee shall be granted the leave. If eligible, the Office of Human Resources must notify the employee of the approved FMLA time off. The FMLA time off will be effective from the date of the employee's initial FMLA-related absence.

2. In some situations, upon notification of a FMLA qualifying event, the Office of Human Resources can initiate commencement of FMLA. For example, if the employee is involved in a car accident and is incapacitated and cannot request FMLA, or if the employee suffers a work-related injury, then the Office of Human Resources can place the employee on FMLA without a request from the employee.
3. Upon receipt of a FMLA request form, the Office of Human Resources will request medical certification and/or supporting documentation within fifteen (15) days. If the Office of Human Resources does not agree with the medical certification, a second opinion at the department's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at the department's expense and that opinion will be the final determination. The decision whether to obtain a second and/or third opinion will be made by the department in collaboration with the Office of Human Resources.

If the medical certification and all applicable documents returned to the Office of Human Resources are not satisfactory, the Office of Human Resources may contact the employee to acquire more complete information regarding the nature of the ailment, the duration of leave, a schedule and regimen of treatment, or other relevant information needed to determine if the event qualifies for FMLA leave. Failure to provide a complete and sufficient medical certification may result in the deferral or denial of the employee's FMLA request.

UTHSA has the right to require re-certification of an employee's serious health condition or a family member's serious health condition, including lifelong or chronic ailments.

4. Should a dispute arise with regard to the requested FMLA leave or the terms and conditions of the leave, the employee may appeal such disputes to the Vice President for Human Resources. The decision made by the Vice President for Human Resources is final in all disputes.

#### F. Recordkeeping

Federal recordkeeping policies require that all FMLA leave be indicated as such on time and leave records and other documents. It shall be the responsibility of the department to maintain leave records for any employee on FMLA leave. The leave time taken by the employee shall be recorded in departmental records as leave with pay under FMLA (using the employee's available leave entitlements)

#### 4.7.13 Family Medical Leave Act (FMLA)

or leave without pay under FMLA. Paid leave under FMLA is taken from the employee's leave balances and must be recorded in the departmental records and entered in the leave accounting Document Review System (DRS). Unpaid leave under FMLA will be entered in the institutional Human Capital Management system (PeopleSoft HCM) as leave without pay.

All original requests for FMLA are kept by the Office of Human Resources.

##### G. Health Insurance Coverage and Premium Payments

Employees on paid leave under FMLA will continue their health insurance coverage on a shared cost basis between UTHSA and the employee, if applicable. The employee's share of the cost, if any, will be deducted from the employee's paycheck.

When an employee is on unpaid leave under FMLA, UTHSA will continue to contribute its share of premium sharing for medical insurance and the employee will pay his or her share of the cost, if any, through the Office of Human Resources. Employees must contact the Benefits Office if all or part of their FMLA leave is unpaid. Should a full-time employee choose not to continue the current coverage or fails to pay his or her portion of the premium, the level of coverage will be reduced to no less than employee-only coverage. However, if the employee is a part-time employee, insurance coverage may be cancelled completely.

If an employee fails to return to work after taking unpaid FMLA for a full calendar month, UTHSA is entitled to recover the premiums it has paid unless the employee has failed to return to work because of a serious health condition that would entitle the employee to FMLA, or because of other circumstances beyond the employee's control.

##### H. Returning to Work

When an employee returns to work after taking leave under FMLA, he or she is entitled to be restored to the same position held when the leave started or to an equivalent position with equivalent pay within the provisions and limitations of the law. 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.

The Office of Human Resources will require the returning employee to provide a work release notification from the employee's physician before being allowed to work if the employee takes leave due to a serious health condition.

#### 4.7.13 Family Medical Leave Act (FMLA)

##### I. Termination of Employment

Upon exhaustion of all leave and FMLA entitlements or if the employee fails to return to work upon expiration of the FMLA period, an employee may be terminated from UTHSA. All other UTHSA employment policies apply to employees regardless of FMLA status.

##### J. Employee Rights

Employees who exercise their rights under the FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by the institution. The institution may not discriminate against an individual for having filed complaints, initiated any proceeding under or related to the FMLA, or given any information in connection with an inquiry or proceeding regarding the FMLA. Should a dispute arise between the employee and the department with regard to the requested FMLA leave or the terms and conditions of the leave, either the employee or the department may appeal such disputes to the Vice President for Human Resources. The decision of the Vice President for Human Resources shall be final in the resolution of such disputes.

If an employee feels his or her rights may have been violated, he or she should first consult Human Resources and/or file a grievance in accordance with the grievance policy. The FMLA provides that an employee may file a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief.

#### **IV. Definitions**

*There are no defined terms used in this Policy.*

#### **V. Related References**

*There are no related documents associated with this Policy.*

4.7.13 Family Medical Leave Act (FMLA)

**VI. Review and Approval History**

- A. The approving authority of this policy is the University Executive Committee.
- B. The review frequency cycle is set for three years following the last review date, a time period that is not mandated by regulatory, accreditation, or other authority.

<b>Effective Date</b>	<b>Action Taken</b>	<b>Approved By</b>	<b>Date Approved</b>
<b>11/2000</b>	Policy Origination		
<b>06/2012</b>	Policy Revision		