

Memo to: All UH-Downtown/PS Holders  
From: William Flores, President  
Subject: Family and Medical Leave Policy

UH-Downtown/PS 02.A.11  
Issue No. 6  
Effective Date: 07/09/2015  
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## 1. PURPOSE

This PS outlines the University of Houston-Downtown (UHD) family and medical leave benefits and the procedures for requesting and handling such leave requests in accordance with the [Family and Medical Leave Act \(FMLA\)](#).

## 2. DEFINITIONS

2.1 Eligible employee is defined as one who:

2.1.1 Has at least 12 calendar months of service with the State of Texas prior to the date of leave; and

2.1.2 Has worked at least 1,250 hours for the State of Texas in the 12 months immediately preceding commencement of the leave.

2.2 Child: A 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 mental or physical disability.

2.2.1 Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child or in the case of an employee, who had such a responsibility for the employee when the employee was a child. A biological relationship or legal relationship is not necessary.

2.3 Incapable of self-care: An individual who requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or the instrumental activities of daily living. Activities of daily living include caring for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone and directories, using a post office, etc.

2.4 Parent: A biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who has (or had during an employee’s childhood) daily responsibility to care for and financially support a child. Parent does not include a parent-in-law.

2.5 Spouse: Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into, or, in the case of a marriage entered into outside of any State, if the

marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in same-sex or common law marriage that either: (1) was entered into in a State that recognizes such marriages; or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

2.6 Serious health condition: An illness, injury, impairment, or physical or mental condition that involves the following:

2.6.1 Inpatient care in a hospital, hospice, or residential medical care facility; or

2.6.2 Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three calendar days, that also involves continuing treatment by a health care provider; or

2.6.3 Continuing treatment by or under the orders of a health care provider for a chronic or long-term health condition which include but is not limited to any period of incapacity due to pregnancy or prenatal care; any period of incapacity due to a chronic serious health condition; or any period of incapacity that is permanent or long-term for which treatment may not be effective.

2.7 A serious health condition requires a health provider to certify that the employee:

2.7.1 Is needed to care for a family member, in the case of leave requested to care for a family member; or

2.7.2 Is unable to perform the essential functions of the position, in the case of leave requested for the serious health condition of the employee.

2.8 Health care provider: A health care provider is:

2.8.1 A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

2.8.2 Any other person determined by the Secretary of Labor to be capable of providing health care services such as podiatrists, dentists, clinical psychiatrists, optometrists, chiropractors, and nurse practitioners. A complete list can be found in Employment Services and Operations.

2.9 Chronic health condition is defined as one that meets all the following requirements:

2.9.1 Requires periodic visits for treatment by a health care provider;

2.9.2 Continues over an extended period of time;

- 2.9.3 May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy).
- 2.10 Intermittent or reduced leave schedule: family and medical leave taken in separate blocks of time due to a single qualifying reason. Intermittent leave is calculated on an hourly or daily basis, as a proportion of the employee's normal workweek. A reduced leave schedule is a change in the employee's schedule for a period of time normally from full-time to part-time.
- 2.11 Rolling year is defined as a unique date for each individual that begins on the first day of Family and Medical Leave and is not a fixed date in time.
- 2.12 Active Duty Leave: Up to 12 weeks unpaid leave for a qualifying exigency for a spouse, child, or parent of a servicemember who is on active duty, or notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard, in support of a contingency operation).
- 2.13 Military Caregiver Leave: Up to 26 weeks of unpaid leave during a 12-month period for an employee who is the spouse, child, parent or next of kin of a servicemember undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or on the temporary disability retired list for a serious illness.
- 2.14 Employees employed in positions that require student status as a condition of employment are not eligible for Family and Medical Leave.

### **3. POLICY**

- 3.1 Family and Medical Leave (FML) is provided to eligible employees for any of the following qualifying events or conditions:
- 3.1.1 The birth or care of a child;
  - 3.1.2 The placement of a child for adoption or foster care of the child by the employee;
  - 3.1.3 The serious health condition of a child, parent, or spouse of the employee;
  - 3.1.4 A serious health condition of the employee.
  - 3.1.5 A qualifying exigency for a spouse, child, or parent of service member who is on active duty, or notified of an impending call or order to active duty;
  - 3.1.6 The injury or illness in the line of duty of servicemember who is the spouse, child, parent or next of kin of the employee.
- 3.2 An eligible employee is entitled to twelve weeks of approved Family and Medical Leave in a rolling year for a qualifying event or condition under 3.1 above. The employee may

request a shorter leave. For Military Caregiver Leave, the employee is entitled to twenty-six weeks of approved Family and Medical Leave in a rolling year for a qualifying event or condition under 3.1.6 above. The total of paid and unpaid leave under an approved FML request will not exceed twelve weeks or twenty-six weeks for Caregiver Leave in a rolling year.

- 3.3 An eligible employee must use all applicable accrued paid leave balances at the beginning of the leave, including sick leave and vacation leave, before taking unpaid Family and Medical Leave, unless the employee is receiving temporary disability benefit payments or workers' compensation benefits. The amount of Family and Medical Leave granted is not dependent on the amount of accrued paid leave. The use of accrued sick leave is restricted to those circumstances that would otherwise qualify the employee for sick leave usage under state law and University of Houston System and UHD policies. (Please refer to [SAM 02.D.01, Vacation and Sick Leave](#).) Any vacation and sick leave earned while on a paid Family and Medical Leave may not be used until the employee actively returns to work. The employee may choose to use accrued compensatory time instead of unpaid Family and Medical Leave, but may not be required to do so. (Please refer to [SAM 02.B.02, Overtime and Compensatory Time](#).) Any compensatory time taken may not be counted against the employee's Family and Medical Leave entitlement.
- 3.4 Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious conditions must be counted as Family and Medical Leave if the leave requires two or more doctor's visits or at least one doctor's visit results in a regimen of continuing treatment. When there is any question about whether a condition qualifies for Family and Medical Leave, the employing department should contact Employment Services and Operations (ESO). If it is determined that this leave qualifies as Family and Medical Leave, the procedures for applying for and reporting Family and Medical Leave must be followed.
- 3.5 If both spouses are employed by the University of Houston-Downtown, they are entitled together to a total of twelve weeks of Family and Medical Leave between them during the year (rather than twelve weeks each) for the birth or placement of a child, or to care for a sick parent or child. A jointly filed request form is required from spouses who are both requesting leave for the same qualifying event or condition under 3.1 above.
- 3.6 Leave for the birth or placement of a child must take place within twelve months after the event. Leave may begin prior to the birth or adoption, as circumstances dictate. Leave for birth or placement of a child is available equally to both parents.
- 3.7 An intermittent or reduced leave schedule may be requested for the serious health condition of the employee or his or her spouse, child, or parent.
  - 3.7.1 For intermittent leave or reduced leave schedule, a doctor's certification of the medical need for the leave must be presented to Employment Services and Operations. The certification must state that such medical need can be best accommodated through an intermittent or reduced leave schedule.

- 3.7.2 Employees requesting intermittent leave or reduced leave schedule must attempt to schedule their leave so as not to disrupt the University's operations.
- 3.7.3 If intermittent leave or reduced leave schedule is requested, the University may require the employee to transfer temporarily to an alternative position that better accommodates recurring periods of absence or a part-time schedule, provided the position has equivalent benefits and an equivalent pay rate for the hours worked. However, a reduction in hours may not result in a reduction in FTE.

## 4. PROCEDURES

- 4.1 Requests for Family and Medical Leave shall be made in accordance with the following guidelines:
  - 4.1.1 When the need for Family and Medical Leave can be planned, such as for the birth or placement of a child, or for scheduled medical treatment, employees must provide reasonable prior notice to their supervisor (at least 30 days), and make efforts to schedule the leave to minimize disruption of the University's operations.
  - 4.1.2 In cases of sudden illness or other unforeseeable need for leave, employees are required to complete a leave request as soon as possible, and to report periodically during the leave (at least once per week), if possible, or have a representative report for them to the appropriate supervisor on their leave status and intention to return to work.
- 4.2 A [Family and Medical Leave/Parental Leave Request](#), available in the Employment Services and Operations website, shall be completed by the employee and submitted to ESO, accompanied by all required documentation.
  - 4.2.1 It is the employee's responsibility to complete and sign the form and submit it to ESO at least one month before any planned scheduled leave, or within three days of receipt for unscheduled leave.
- 4.3 To request leave based on a serious health condition, the employee must provide with the request form or as soon as possible thereafter, a copy of the [FMLA Certification of Health Care Provider for Employee](#) or [FMLA Certification of Health Care Provider for Family Member](#), completed by the health care provider certifying the following:
  - 4.3.1 That the employee is unable to perform the functions of his or her position, if the request is based on the serious health condition of the employee; or
  - 4.3.2 That the employee is needed to provide care to a child, parent, or spouse of the employee, if the request is based on the serious health condition of the child, parent, or spouse; or

4.3.3 That the employee or the employee's spouse is expecting the birth of a child on a certain date.

These forms must be submitted to ESO within 15 calendar days from the date of the written eligibility notification by ESO, unless not practicable due to extenuating circumstances:

4.4 The physician certification described in 4.3 must also include the following information:

4.4.1 The date on which the condition commenced;

4.4.2 The probable duration of the condition;

4.4.3 The appropriate medical facts regarding the condition;

4.4.4 An estimate of the time needed to care for the individual involved, if the request is based on the serious health condition of the child, parent, or spouse of the employee.

4.5 To request intermittent leave or a reduced leave schedule, the employee must provide the following additional information from the health care provider:

4.5.1 For a request based on the serious health condition of the employee:

- (a) A statement of medical necessity for the employee's intermittent leave or reduced leave schedule;
- (b) The expected duration of the schedule; and
- (c) A listing of the dates of the employee's planned medical treatment and the duration of the treatment.

4.5.2 For a request based on the serious health condition of the child, parent, or spouse of the employee:

- (a) A statement attesting to the necessity of intermittent leave or reduced leave for the employee to provide care or to assist in the person's recovery; and
- (b) An estimate of the expected duration and schedule of the intermittent or reduced leave.

4.6 To request leave for Military Family Leave the employee must provide with the request form or as soon as possible thereafter, the [Certification for Serious Injury or Illness of Covered Servicemember](#) or [Certification of Qualifying Exigency for Military Family Leave](#).

- 4.6.1 Written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation must be included.
- 4.7 ESO may request recertification from the employee's health care provider every 30 days during the approved leave, and
  - 4.7.1 Upon request for any extension of leave;
  - 4.7.2 When circumstances described by the original certification have changed significantly; or
  - 4.7.3 When ESO receives information that casts doubt upon the continuing validity of the certification.
- 4.8 At its discretion, the University may require a second medical opinion at the University's expense. If the second medical opinion differs from the employee's medical certification provided under 4.3, the University may require the opinion of a third health care provider, approved by both the University and the employee, at the University's expense. This third opinion is binding on both the University and the employee. An employee who refuses to cooperate with the third health care provider is bound by the opinion of the second health care provider.
- 4.9 Employees on Family and Medical Leave qualify for the following:
  - 4.9.1 Continued group insurance coverage by arranging to pay their portion of the premium contributions during the period of unpaid leave;
  - 4.9.2 Continued state contributions of its monthly portion of insurance premiums to ERS during the period of unpaid leave;
  - 4.9.3 No loss of employment benefits accrued prior to the leave, unless a benefit is used by the employee during the leave, such as accrued paid leave;
  - 4.9.4 No additional seniority or employment benefits may be accrued during any period of unpaid leave; and
  - 4.9.5 Calculation of benefit entitlements are based upon length of service as of the last paid work day prior to the start of the unpaid leave of absence. Any full calendar month (i.e., from the first day of a month through the last day of the month, inclusive) in which an employee is on Family and Medical Leave without pay, shall not be counted in the calculation of total state service for the purposes of longevity pay or vacation leave entitlements. No employee shall accrue vacation or sick leave for such month. Any full calendar month of unpaid Family and Medical Leave shall not constitute a break in the continuity of employment but shall not be included in the calculation of the minimum of continuous months of employment.

- 4.9.6 If Family and Medical Leave is unpaid, ESO must notify the Employee Retirement System (ERS) of a change in employment status in accordance with ERS procedures.
  - 4.9.7 In the event of an on-the-job injury or illness, the Vice President for Employment Services and Operations and the Environmental Health & Safety Manager shall communicate with each other, providing pertinent leave data, such as start and end dates.
  - 4.9.8 Employees' probationary period will be extended by the same amount of time they are out on Family and Medical Leave.
- 4.10 Employees taking leave for a purpose approved by this policy will be entitled upon return from such leave to be restored to the same position of employment as held when the leave began, or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees offered an equivalent position who choose to decline the position waive any rights to reinstatement. An employee who believes that a position offered is not an equivalent position is entitled, on that basis, to file a grievance under the appropriate grievance procedures.
- 4.11 The University may decline to restore an employee on Family and Medical Leave to his/her original or equivalent position under the conditions listed below:
- 4.11.1 If the employee on leave is a salaried employee and is among the highest paid ten percent of the University of Houston System's employees and restoring employment of the employee would result in substantial economic injury to the University; in this situation, the employee will be notified that he/she may be ineligible for reinstatement as soon as possible after requesting the leave.
  - 4.11.2 If the employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan.
  - 4.11.3 If misconduct by the employee which constitutes grounds for termination occurs or is discovered, the employee is subject to termination even if the employee is on Family and Medical Leave at the time of the misconduct or the discovery of the misconduct.
  - 4.11.4 If an employee is scheduled for termination for any other reason prior to notification of Family and Medical Leave and has received written notice of the termination.
- 4.12 Employees who have been on approved leave based on the employee's serious health condition for more than three days will be required to submit a medical release certifying fitness for duty to ESO before reporting to work upon. "Light duty" is not available in most positions.

4.13 FML leave must be requested through Absence Management using the appropriate reason code, as described below:

4.13.1 FML Sick Leave

4.13.2 FML Vacation

4.13.3 FML

4.14 If an employee elects not to return to work upon completion of an approved unpaid Family and Medical Leave, the employee is obligated to reimburse the University for the amount of the State's or University's contribution of insurance premium during any complete months of unpaid leave. The employee need not reimburse the University if the failure to return to work was for reasons beyond the employee's control, or if the employee retires directly from leave or within 30 days of returning from leave

## **5 EXHIBITS**

There are no exhibits associated with this policy.

## **6. REVIEW PROCESS**

Responsible Party (Reviewer): Vice President for Employment Services and Operations

Review: Every three years on or before April 1<sup>st</sup>.

Signed original on file in Employment Services and Operations.

## **7. POLICY HISTORY:**

Issue #1: 09/30/94

Issue #2: 09/13/99

Issue #3: 02/05/07

Issue #4: 02/17/10

Issue #5: 04/05/11

## **8. REFERENCES**

[SAM 02.D.01, Vacation and Sick Leave](#)

[SAM 02.B.02, Overtime and Compensatory Time](#)

[SAM 02.D.06, Family and Medical Leave](#)

[Texas Human Resources Management Statutes Inventory 2014-2015](#)