

TEXAS SOUTHERN UNIVERSITY

MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES

SECTION: Human Resources
AREA: Benefits

NUMBER: 02.03.02

TITLE/SUBJECT: Family and Medical Leave Policy

I. POLICY STATEMENT:

Family and medical leave is provided to eligible employees for any of the events or conditions listed below. Leave taken for these events must be reported as family and medical leave:

- The birth of a child and the care of the newborn;
- The placement of a child with an employee in connection with the adoption or state-approved foster care of the child;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- The serious health condition of a child, parent, or spouse of the employee;
- A serious health condition of the employee; or
- Because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a member of the National Guard or Reserves on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

In addition, an eligible employee who is a spouse, child, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness is eligible for up to a combined total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member (military caregiver leave).

II. PURPOSE AND SCOPE:

This policy has been established to comply with the Federal Family and Medical Leave Act of 1993, as amended, (FMLA) and related Department of Labor regulations, and the General Provisions of the State General Appropriations Act. The policy describes the leave benefits available to eligible employees under these laws. It applies to all faculty and staff employees who meet the eligibility requirements defined in section III of this policy. Procedures are included for the following:

- Applying for family and medical leave,
- Processing applications,
- Insurance premium billing,
- Employee reporting requirement,
- Employee reporting and return to work requirements, and
- Family and medical leave utilization record keeping.

III. ELIGIBILITY REQUIREMENTS:

An employee who works for a covered employer must meet three criteria to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave*; and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

* Special "hours of service" requirements apply to airline flight crew employees.

An eligible employee is entitled up to a maximum of 12 weeks of approved family and medical leave in a year, as defined in this policy, unless the employee is the primary caregiver for a "recovering service member". In all circumstances, it is the employer who determines whether leave qualifies as FMLA leave.

The twelve (12) month period is a "Rolling Year" 12-month period, which is measured backward from the date an employee uses any FMLA leave. The "rolling year" means that the first time that an employee takes FMLA leave, the employee's leave year begins. Thereafter, each time the employee takes additional FML leave, the employer will look backward twelve (12) months and determine how much FML leave has been used during that twelve 12-month period and how much FMLA leave remains.

An employee who does not meet the eligibility requirements for family and medical leave may be eligible for parental leave for the birth of a natural child or the adoption or state approved foster care placement of a child under three years of age in accordance with the provisions outlined in MAPP 02.03.03.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

IV. DEFINITIONS:

- A. Active Duty Leave: Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- B. Caregiver Leave: An eligible employee who is the spouse, son, daughter, parent, or next of kin (i.e. nearest blood relative) who needs to take time off from work to care for a "recovering service member" shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member. The time off may be taken incrementally.

- A “recovering service member” is defined as a member of the Armed Forces who is undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.
- C. Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a person for whom the employee has (or had during the person's youth) daily responsibility to care and financially support and who is either under 18 years of age or is incapable of self-care because of a physical or mental disability.
- D. Continuing treatment: Refer to “serious health condition.”
- E. Chronic serious health condition: One that meets all the following requirements:
- Requires periodic visits for treatment by a health care provider.
 - Continues over an extended period of time.
 - May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy).
- F. Eligible employee: Any employee who:
- Has worked for the State of Texas a total of at least 12 months prior to the date of leave (the 12 months need not be consecutive); and
 - Has at least 1,250 hours actually worked for Texas Southern University in the 12 months immediately preceding the leave.
- G. Health care provider: A person authorized to practice as a health care provider in Texas who is performing within the scope of that practice as one of the following:
- Doctor of medicine;
 - Doctor of osteopathy;
 - Podiatrist;
 - Dentist;
 - Clinical psychologist;
 - Optometrist;
 - Chiropractor (for manipulation of spine to correct subluxation);
 - Nurse practitioner;
 - Nurse midwife;
 - Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts;
 - Clinical social worker;
 - Any health care provider from whom the University’s group plan will accept certification of a serious health condition; or
 - Any health care provider within the scope of practice listed above practicing in another country who is authorized to practice in that country.

- H. Incapacity: For the purposes of FMLA, the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment therefore, or recovery there from.
- I. Intermittent leave or reduced leave schedule: A leave schedule that reduces the usual number of hours per work week or hours per work day of an employee. Intermittent leave is calculated on an hourly or daily basis, as a proportion of the employee's normal work week.
- J. Parent: A biological, foster, or adoptive parent; a stepparent; a legal guardian; or a person who has (or had during the employee's childhood) daily responsibility to care for and financially support the employee. Parents-in-law are not included in this definition.
- K. Regimen of continuing treatment: Includes a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.
- L. Serious health condition: An illness, injury, impairment, or physical or mental condition that involves either or both of the following:
- In-patient care in a hospital, hospice, or residential care facility; or
 - Continuing treatment by a health care provider.

For an employee to qualify for family and medical leave for a serious health condition, the employee or family member must be under continuing supervision of, but not necessarily receiving active treatment by, a health care provider, who must certify to one of the following:

- In the case of leave requested to care for a family member, the employee is needed to care for the family member; or
- In the case of leave requested for the serious health condition of the employee, the employee is unable to perform the essential functions of the position.

A serious health condition involving continuing treatment by a health care provider includes any of the following conditions:

- A period of incapacity of more than three consecutive calendar days, involving treatment by a health care provider two or more times, or at least one time that results in a regimen of continuing treatment;
- Any period of incapacity due to pregnancy or prenatal care;
- Any period of incapacity due to a chronic serious health condition;

- A period of incapacity that is permanent or long-term for which treatment may not be effective (e.g. Alzheimer's, severe stroke, terminal stages of a disease);
- Any period of absence to receive multiple treatments either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three or more days in the absence of medical treatment (e.g., cancer, severe arthritis);
- Allergies or mental illness resulting from stress, but only if they meet all of the other criteria of a serious health condition; or
- Substance abuse, but only if the employee is taking leave for treatment by a health care provider.

M. Spouse: A husband or wife, as recognized under the laws of the State of Texas, including a husband or wife in a common-law marriage.

N. Treatment: For the purposes of FMLA, includes, but is not limited to, examinations to determine if a serious health condition exists. Treatment does not include routine physical, eye, or dental exams. Specific conditions for which treatment does not qualify for FMLA leave include: cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental, or orthodontia problems and periodontal disease. Cosmetic treatments are not considered a serious health condition unless medically required or complications arise.

O. Year: Twelve months measured backward from the first date family and medical leave begins.

V. **POLICY PROVISIONS:**

- A. An eligible employee must use all applicable accrued paid leave balances (including sick leave and vacation) while taking family and medical leave. The use of accrued sick leave is, however, restricted to those circumstances that would otherwise qualify the employee for sick leave usage under state law and University rules and regulations governing the use of sick leave (MAPP 02.03.06 – Employee Leave Policy). The employee may choose to use accrued compensatory time (MAPP 02.02.03 – Overtime/Compensatory Time) instead of unpaid family and medical leave, but may not be required to do so. Any FLSA compensatory time taken may not be counted against the employee's 12-week family and medical leave entitlement.
- B. Any sick leave of more than three (3) consecutive days or intermittent leave of any duration for qualifying serious or chronic health conditions must be counted as family and medical leave. When there is any question about whether a condition qualifies as family and medical leave, the employing department should contact the Human Resources Department. If it is determined that the leave qualifies as family and medical leave, the procedures for applying for and reporting family and medical leave must be initiated, including noting "Family and Medical Leave" on the employee's timesheet.

- C. An employee on Workers' Compensation who wishes to continue to receive state insurance premium sharing is required to apply for family and medical leave.
- D. If a holiday falls during a week when an employee is on family medical leave, the entire week is treated as a week on family medical leave, except when the University is closed for the entire week (five or more consecutive working days).
- E. If both spouses are employed by Texas Southern University as eligible employees, they are entitled together to a total of 12 weeks of leave between them (rather than 12 weeks each) for the birth or placement of a child. A jointly-filed request form is required from spouses who are both requesting leave for the birth or placement of a child. Spouses who are eligible employees are entitled to 12 weeks each for other qualifying events or conditions.
- F. Leave for the birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption. Leave for birth or placement of a child is available equally to both sexes.
- G. An intermittent or reduced leave schedule is available under the Family and Medical Leave Act for the serious health condition of the employee, employee's spouse, child, or parent.
- H. For the period of the family and medical leave that is without pay, the employee may continue insurance benefits (excluding disability insurance plans) and will receive the premium sharing from the state or the University toward the cost of health insurance. The employee is responsible for self-paying by personal check or money order that part of his/her insurance cost that would otherwise be deducted from the employee's paycheck. (If an employee's premium payment is more than 30 days late, the University will reduce the employee's insurance coverage to self-coverage only, following prescribed notification of the employee.)
- I. For the period of the family and medical leave that is without pay, the employee on family and medical leave will accrue state service credit for any full calendar month of family and medical leave and will not accrue vacation or sick leave for such months.
- J. Family and medical leave is not considered a break in continuity of employment. However, when an employee who has at least two years of lifetime service credit with the State of Texas on the first workday of the month is on family and medical leave without pay, that month is not counted when computing total state service for purposes related to longevity pay or to the rate of accrual of vacation leave. An employee also does not accrue vacation or sick leave for a full calendar month during which the employee is on leave without pay.
- K. Except under the conditions outlined in section L below, employees returning from approved family and medical leave must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. An employee

offered an equivalent position who chooses to decline the position waives any rights to reinstatement. An employee who believes that a position offered is not an equivalent position is entitled to file a grievance under the University Complaint and Grievance Policy, MAPP 02.05.01.

- L. 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:
- If an employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan, the employee's family and medical leave rights (including rights to restoration of employment) end on the scheduled termination date;
 - 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 discovery of misconduct;
 - 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, the employee's family and medical leave rights end on the previously scheduled termination date; or
 - If the employee is among the highest paid ten percent employed by Texas Southern University and a determination is made by the president that restoring employment to the employee would result in substantial economic injury to the University, the employee's right to restoration of employment may end at the close of the family and medical leave period. At the time an employee in this category applies for family and medical leave, the employee must be notified that he/she may be ineligible for reinstatement.

In such cases, the employee maintains only those rights provided by such regulations as COBRA and, in the case of a reduction in force, MAPP 02.05.04 (Reduction in Force).

- M. 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.
- N. For an intermittent or reduced leave schedule, the following provisions apply:
1. The health care provider's certification must state that medical need can best be accommodated through an intermittent or reduced leave schedule;

2. The employee must attempt to schedule the leave so as not to disrupt the University's operations; and
 3. The University may require the employee to transfer temporarily (not to exceed the 12-week family and medical leave period) to an alternative position that better accommodates recurring periods of absence or a part-time schedule, provided the position provides equivalent pay and benefits.
- O. 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 in accordance with the policy, 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.
- P. The University may request recertification from the employee's health care provider under certain conditions, such as when any extension of leave is requested, when circumstances described by the original certification have changed significantly, or when the University receives additional information that makes recertification necessary.

Prior to the department's requesting recertification for any reason, the appropriateness of such a request under the law should be verified by contacting the Human Resources Department.

VI. NOTIFICATION OF THE NEED FOR FAMILY AND MEDICAL LEAVE:

- A. 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, the employee is responsible for submitting both required forms to his or her supervisor at least 30 calendar days in advance of the leave and for making efforts to schedule the leave to minimize disruption of the University's operations. The supervisor must, in turn, ensure that the forms are forwarded to the Human Resources Department within three days of receipt.
- B. In case of sudden illness or other unforeseeable need for leave, the employee is required to give notice to the supervisor as soon as possible and practicable (preferably within two days of learning of the need for leave), except under extraordinary circumstances. The notice may be oral.
- C. Within five (5) business days after being informed that an employee is taking sick leave involving a condition that may qualify for family and medical leave, the supervisor/department head must notify the employee in writing that the paid leave may also be designated as family and medical leave and will be counted toward the 12-week entitlement. The supervisor/department head must also provide the employee with a summary of employees' rights and requirements under FMLA. The notice must be

provided in a language which the employee understands and must explain the consequences of failure to pay for optional benefits and circumstances under which coverage may lapse.

- D. If the employee is determined to be *not* eligible for FMLA leave, state at least one reason why.
- E. The required forms under Section VII (A) must be submitted to the Human Resources Department within 15 calendar days from the date of the written notification by the supervisor unless not practicable under the circumstances.

VII. APPLYING FOR FAMILY AND MEDICAL LEAVE:

- A. All requests for family and medical leave must be submitted on the forms listed below and available through the following links:
 - <https://www.dol.gov/whd/forms/WH-380-E.pdf> (Employee Form); or
 - <https://www.dol.gov/whd/forms/WH-380-F.pdf> (Family Member Form).
- B. A jointly-filed request form is required from spouses who are both requesting leave for the same qualifying event or condition.
- D. To request leave based on a serious health condition, the employee must provide the following information on the forms noted or, in the case of the health care provider's form, the same information may be provided in a letter:
 - 1. The health care provider must certify that one of the following conditions exists:
 - If the leave is requested based on the serious health condition of the employee, 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 child, parent, or spouse of the employee, that the employee is needed to provide care to the child, parent, or spouse; or
 - That the employee or the employee's spouse is expecting the birth of a child.
 - 2. The medical certification must also include the following information:
 - The date on which the condition commenced;
 - The probable duration of the condition;
 - The appropriate medical facts regarding the condition for which the current need for leave exists; and

- 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.
- E. To request leave based on the adoption or placement of a child, a copy of the legal orders of adoption or placement is required.
- F. To request intermittent leave or leave on a reduced leave schedule, the employee must provide the following information from the health care provider:
1. For a request based on the serious health condition of the employee:
 - A statement of medical necessity for his or her intermittent leave or reduced leave schedule;
 - The expected duration of the schedule; and
 - A listing of the dates of his or her planned medical treatment and the duration of the treatment.
 2. For a request based on the serious health condition of the child, parent, or spouse of the employee:
 - A statement from the employee certifying the relationship of the child, parent, or spouse to the employee;
 - 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
 - An estimate of the expected duration and schedule of his or her intermittent or reduced leave.

VIII. PROCESSING THE APPLICATION:

- A. The employee submits his/her application for family and medical leave and health care provider's certification, as prescribed in Section VII, to the Human Resources Department.
- B. The Human Resources Department then completes the application based on the medical necessity of the leave and any prior usage of family and medical leave.
- C. The Human Resources Department must approve the period of leave that is supported in the medical certification and available to the employee up to a maximum period of 12 weeks or combined total of 26 weeks, as applicable.
- In no instance may an employee be granted more than 12 weeks of family and medical leave in a 12-month period, unless the eligible employee qualifies for Caregiver Leave for a "recovering service member" as detailed in Section IV (B) of this policy.

- The Human Resources Department does not have the option of approving less than the requested leave period as long as the employee has that amount of family and medical leave available and the physician certification indicates that the employee has an eligible condition and at least that length of time is needed.
- D. The Human Resources Department provides the employee with a copy of the application for the employee's records. If disapproved, the reason for disapproval must be provided to the employee (*e.g.*, inadequate medical certification/other information, lack of available leave, or etc.).
- E. When the application has been approved by the Human Resources Department, notice is sent to the department and to the employee. If the employee is eligible for benefits under the University's disability plans, the Benefits section will provide the employee with the appropriate applications.

IX. INSURANCE COVERAGE:

- A. As long as paid leave is available during family and medical leave, insurance coverage continues as usual.
- B. If/when paid leave is exhausted, the department must place the employee on leave without pay and should indicate "Family and Medical Leave" on the timesheet.
- C. The timesheet will be processed by the Payroll Department.
- D. The Benefits section will bill the employee for any premium due after application of the state premium sharing toward the cost of health insurance.
- E. The state or University will continue to contribute its monthly portion of insurance premiums to the Employee Retirement System of Texas (ERS), during the period of family leave. However, if an employee's premium payment is more than 30 days late, insurance coverage will be reduced to employee-only coverage. Prior to making the reduction in coverage, the Benefits section of the Human Resources Department will mail written notice that the payment has not been received and coverage will be dropped, providing at least 15 days notice to allow for the employee to provide payment.
- F. The Benefits section of the Human Resources Department must be contacted within 30 days of birth/adoption to include the new baby/child in the employee's insurance coverage.

X. EMPLOYEE REPORTING REQUIREMENTS:

- A. The employee is required to report to the supervisor periodically during the leave on the status of his/her leave on a case-by-case basis. As an alternative, a representative may

- report for the employee. Failure to report periodically during the leave may result in the suspension of the family and medical leave.
- B. The employee must report to the supervisor if he/she will be unable to return to work at the end of the leave period. Failure to report by the date intended to return to work will be considered abandonment by the employee of his/her job. Job abandonment may not be appealed (MAPP 02.05.03).
- C. The employee must be notified in writing prior to suspension of family and medical leave or termination of employment that his/her status with the University is in jeopardy.
- The employee must be given a sufficient amount of time to contact the supervisor and comply with policy requirements.
 - If the employee fails to comply, the Human Resources Department should be contacted prior to suspension of family and medical leave or termination of employment. If the decision is made to suspend the family and medical leave or to terminate the employment, the employee must be notified in writing by the department and a copy of the correspondence sent to the Human Resources Department.
 - The employee has a right to appeal any such action under the University's complaint and grievance policy (MAPP 02.05.01).
- D. Any additional leave beyond what is afforded under FMLA (12 weeks or combined total of 26 weeks, as applicable) is subject to the approval of the department in accordance with regulations governing leave of absence without pay.
- E. If an employee plans to return to work earlier than expected by the department, the employee shall provide the department with two business days notice where feasible.

XI. EMPLOYEE REQUIREMENT FOR RETURN TO WORK:

Upon return to work, an employee who has been on approved family and medical leave for more than three days based on the employee's serious health condition will be required to present to the supervisor a health care provider's release certifying fitness to return to work. A request to return to duty with restrictions will be considered on a case-by-case basis, based on the needs of the department and the essential functions of the job.

XII. RECORD KEEPING:

- A. It is the responsibility of the employing department to designate all leave that constitutes family and medical leave on the appropriate payroll documents (time sheet and, in the case of leave without pay, Personnel Action Form) and to ensure that copies of all family and medical leave forms and correspondence are forwarded to the Benefits section of the Human Resources Department. All family and medical leave shall be

reported on the time sheet by indicating "Family and Medical Leave" in the Remarks section.

- B. The Human Resources Department must maintain records of all family and medical leave taken by the employee for as long as the employee is employed by Texas Southern University and for at least two years past termination. Records maintained in the employing department must be handled with confidentiality and filed in a secure and confidential location.
- C. The Benefits section of the Human Resources Department must maintain records of all payments made by the employee for insurance premiums. The premium payments will be reported on a monthly basis to the Employees Retirement System of Texas group insurance division.

XIII. ENFORCEMENT:

- Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.
- The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law that provides greater family or medical leave rights.

XIV. REVIEW AND RESPONSIBILITIES:

Responsible Party: Senior Associate Vice President of Human Resources

Review: Every 3 years, on or before August 31

XV. APPROVALS:

Uplanda Elman

Responsible Party/Policy Owner

Kenneth Huewitt

Vice President

Art. H. Lane

President

Effective Date August 16, 2019