

Family and Medical Leave

Section: V: Human Resources

Chapter: 17

Date Updated: August 12, 2014

17.1 Policy

In accordance with the Family and Medical Leave Act of 1993 (FMLA), the University will provide up to 12 weeks of unpaid, job-protected leave, or 26 weeks for military caregiver leave, to all eligible employees for certain family and medical reasons. Employees are eligible if they have worked at least 1,250 hours at the University during the 12-month period preceding the requested leave. It is the University's requirement that the employee's available paid leave be substituted for unpaid leave.

17.2 Reasons for Taking Leave

Unpaid leave under the FMLA will be granted to employees when they have documented that:

- a. they must provide care following the birth of their child, or to care for their child following the legal placement of a child for adoption or foster care;
- b. they must care for their spouse, child (including biological, adopted, foster and stepchildren or a legal ward or a child of a person standing in loco parentis), or parent, who has a serious health condition;
- c. a serious health condition that makes the employee unable to perform their job;
- d. they have a "qualifying exigency" arising out of active military duty or a notice of impending call or an order to active duty of an employee's spouse, parent, or child;
- e. they have a spouse, parent, child or next of kin of an injured service member who is recovering from a serious illness or injury; an eligible employee may qualify for up to 26 weeks in a 12-month period to care for the service member.

17.3 Advance Notice and Medical Certification

Employees requesting FMLA leave are required to submit a request to their supervisor and supporting medical certification to the Human Resource (HR) Benefits Unit in advance of the leave, when foreseeable. A request for FMLA leave may be denied if these requirements are not met.

17.3.1 Advance Notice. The employee ordinarily must provide thirty (30) days advance notice when the leave is foreseeable. When the need to take leave is not foreseeable, the

employee (or spokesperson for the employee) shall notify the supervisor and HRS as soon as possible after the employee learns of the need for leave.

17.3.2 Medical Certification. The University requires that leave requests due to serious health conditions, or the need to care for an eligible family member with a serious health condition, be supported by a medical certification issued by the health care provider of the employee or employee's eligible family member. The employee must provide medical certification (at their expense) to Human Resource (HR) Benefits Unit within fifteen (15) calendar days following their request for leave, unless after a good faith effort to provide this certification, circumstances prevented the timely submittal of the certification, or the University extended the time period for the submittal.

17.3.2.1 Complete and Sufficient Certification. A medical certification must be both complete and sufficient. Complete and sufficient means the certification is clear, responsive, and provides the information necessary for the University to make a well-informed and reasonable determination. Human Resource (HR) Benefits Unit will advise the employee when a certification is incomplete or insufficient, and if additional information is necessary. If the employee fails to provide a complete and sufficient certification, after such additional information is requested, the request for FMLA leave may be denied.

17.3.2.2 Second Opinions. If the University has reason to doubt the validity of a medical certification, an employee may be required to obtain a second opinion from a health care provider at the University's expense.

17.3.2.3 Third Opinions. Where the opinions of the health care provider designated by the employee and the University differ, the University may require the employee to obtain certification from a third health care provider at the University's expense. The health care provider for the third opinion must be jointly agreed to in good faith by the employee and the University. The opinion of the third health care provider shall be final and binding.

17.3.2.4 Annual Medical Certification. Where an employee's need for leave due to the employee's own serious health condition or that of an eligible family member lasts beyond a single leave year, the University may require the employee to provide a new medical certification in each subsequent leave year. New medical certifications may be subject to employer requests for authentication and clarification, and for second and third opinions.

17.3.3 Intermittent and Reduced Work Schedule Medical Leave. Leave due to a serious health condition may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours an employee works per workweek or workday), if medically necessary. If leave is unpaid, the University will reduce the employee's salary based on the amount of time actually worked.

17.3.3.1 Upon approval of a request for intermittent FMLA leave, the employee and the employee's supervisor will be notified of the authorized schedule of absences on the medical certification form. For example, four hours a day once a week. If the employee is absent for more than the medical certification allows, the employee may be required to obtain an updated medical certification.

17.3.3.2 Employees on intermittent FMLA are required to consult with their supervisors to schedule absences when they will be least disruptive to the office and the business of the University. An employee must provide thirty (30) days advance notice of the need for leave, when foreseeable. If the need for leave is not foreseeable, the employee must follow their department's call-in procedure to notify their supervisor of the need to be absent. If the employee is unable to provide notice following the call-in procedure due to medical necessity, the employee is required to notify them as soon as practicable but no later than two days after the absence begins.

17.3.3.3 When an employee requests intermittent leave, or a reduced leave schedule, that is foreseeable and based on a planned medical treatment or reoccurring condition, the University may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and has equivalent pay and benefits and better accommodates the recurring leave.

17.3.3.4 Intermittent Certification. For intermittent leave, medical certification must contain information showing the medical necessity for intermittent or reduced schedule leave and either the dates of any planned leave or the estimated frequency and duration of expected incapacity due to the medical condition

17.3.4 Recertification. The University will require an employee on intermittent leave or reduced schedule leave to recertify medical need for leave every six (6) months.

17.3.4.1 The employee must provide the recertification (at the employee's expense) within fifteen (15) calendar days after the date of its request. The recertification is subject to the same provisions as the original certification.

17.3.4.2 The University may further require recertification, in accordance with the provisions of the FMLA, in circumstances where the employee requests an extension of leave, the previous certification has changed significantly, or the University receives information that casts doubt upon the employee's stated reason for the leave or the continuing validity of the certification.

17.3.4.3 Recertifications are subject to provisions for clarification and authentication; recertifications are not subject to provisions for second and third opinions.

17.4 Job Benefits and Protection

17.4.1 For the duration of FMLA leave, the University will maintain the employee's applicable medical coverage under the UT Select group health plan.

17.4.2 Upon return from FMLA leave, the employee will be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

17.4.3 The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

17.5 Return to Work

17.5.1 Before an employee can return to work after a continuous FMLA leave which was granted because of their own serious health condition, the employee must provide a written return to work medical release from the health care provider to the Human Resource Benefits Unit in advance of their return to work. If the employee does not provide the release, the employee will be sent home and remain on leave until the release is obtained.

17.5.2 The UTEP HRS Benefits Unit will notify the employee's department supervisor of the medical release, and any work limitations, or restrictions. As appropriate, the HRS Benefits Unit will involve the University's ADA Coordinator with regard to the work limitations or restrictions and reasonable accommodations for a qualified disability under the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008.

17.6 Unlawful Acts by Employers

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. Thus, the University will not discriminate against any employee who files charges, institutes a proceeding under or related to the rights provided by Family and Medical Leave Act, or gives information in connection with an inquiry or proceeding regarding that Family and Medical Leave Act. Employees who believe that they have been subject to retaliation or discrimination as a result of exercising their rights under the Family and Medical Leave Act may bring a complaint to the Office of Equal Opportunity.