

FAMILY AND MEDICAL LEAVE POLICY

Updated and passed by University Council on 12-11-2008

1.0 Purpose

1.1 The UHCL Family and Medical Leave policy establishes guidelines for ensuring university compliance with the federal Family and Medical Leave Act of 1993, **UH system Administrative Memorandum 02.D.06**, related Department of Labor regulations, and the Government Code.

1.2 UHCL is an affirmative action, equal opportunity employer. The university provides equal treatment and opportunity to all persons without regard to race, color, sex, religion, national origin, disability, age, veteran status, genetic information or sexual orientation.

2.0 Definitions

2.1 Child means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis, and who is either under 18 years of age or is incapable of self-care because of a physical or mental disability.

2.2 Chronic health condition means one that meets all of the following requirements:

- a. Requires periodic visits for treatment by a healthcare provider or by a nurse or physician's assistant under direct supervision of a healthcare provider.
- b. Continues over an extended period of time, including recurring episodes of a single underlying condition.
- c. May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy)

2.3 Clearance means the process of checking out of paid employment status at UHCL. This process consists of returning to the university all university property in an individual's possession at the time of clearance and arranging cancellation of an individual's access to university business systems such as university provided e-mail accounts and telephone access.

2.4 Continuing treatment: see "serious health condition."

2.5 For purposes of this policy, an eligible employee is defined as one who has:

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

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

2.6 Healthcare provider means specific healthcare providers who are licensed to practice in Texas and who are performing within the scope of their practice. These include:

- a. doctors of medicine;
- b. doctors of osteopathy;
- c. podiatrists;
- d. dentists;
- e. psychologists;
- f. optometrists;
- g. chiropractors (for manipulation of spine to correct subluxation);
- h. nurse practitioners;

- i. nurse midwives;
- j. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, MA;
- k. Licensed clinical social workers, professional counselors, and marriage and family therapists;
- l. Any healthcare provider within the scope of practice listed above practicing in another country who is authorized to practice in that country;
- m. Physician's assistant or nurse under direct supervision of healthcare provider; and
- n. Alternative healthcare providers.

2.7 Incapacity means the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment for the condition or recovery from the condition.

2.8 Intermittent leave is FML taken in separate blocks of time due to a single reason. An eligible employee is entitled to a total of 12 weeks (480 hours) of intermittent FML in a year for a qualifying condition. Intermittent leave is calculated on an hourly or daily basis as a proportion of the employee's normal workweek.

2.9 Key employee means an employee who is among the highest paid ten percent of employees paid by UHCL. The term "key employee" may refer to a tenured faculty member, if that employee is among the highest paid ten percent of UHCL employees. However, a tenured faculty member may not be dismissed except as provided in the Dismissal of Faculty Member with Tenure and Special or Probationary Appointment Before the End of the Specified Term of Appointment (Section 5.4 of the Faculty Handbook).

2.10 Parent means 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 of and financially support the employee. Parent does not include a parent-in-law.

2.11 Regimen of continuing treatment means 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 taking 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 healthcare provider.

2.12 Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either or both of the following:

- a. In-patient care in a hospital, hospice or residential care facility;
- b. Continuing treatment by a healthcare provider.

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

- a. In the case of leave requested to care for a family member, the employee is needed to care of the family member (which may be by providing psychological comfort, emotional support, or transportation),
- b. 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 healthcare provider includes any of the following conditions:

- a. A period of incapacity of more than 3 consecutive calendar days involving treatment by a healthcare provider two or more times, or at least one time that results in a regimen of continuing treatment.
- b. Any period of incapacity due to pregnancy or prenatal care;
- c. Any period of incapacity due to a chronic, serious health condition;

- d. 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);
- e. 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 3 or more days on the absence of medical treatment (e.g., cancer, severe arthritis);
- f. Allergies or mental conditions resulting from stress, but only if they meet all of the other criteria of a serious health condition;
- g. Substance abuse, but only if the employee is taking leave for treatment by a healthcare provider to resolve the substance abuse.

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

2.14 Treatment 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 FML include: cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems and periodontal disease. Cosmetic treatments are not considered a serious health problem unless medically required or unless complications arise.

2.15 Year means 12 months measured forward from the first date FML begins.

3.0 Policy

3.1 The University of Houston-Clear Lake complies with the Family and Medical Leave Act of 1993 (FMLA), and provides for leave for eligible employees in covered situations as required by the law. Nothing in this policy will be used as a basis for illegal discrimination or retaliation against any employee or group of employees. The university will not interfere with, restrain, or deny the exercise of any right provided under the FMLA. Discharge of any employee for exercising his-her rights under the FMLA is prohibited.

3.2 An eligible employee may take family and medical leave for any of the following qualifying events or conditions:

- a. The birth of a child and the care of the newborn.
- b. The placement of a child with an employee in connection with the adoption or state-approved foster care of the child.
- c. The serious health condition of a child, parent, or spouse of the employee.
- d. A serious health condition of the employee.

3.3 An eligible employee is entitled to a maximum of 12 weeks (480 hours) of approved FML in a year, as defined by this policy. The employee may request a shorter leave.

3.4 An eligible employee must use all accrued sick leave (if applicable) and vacation while on FML, except:

- an employee on leave because of a work-related injury or illness covered by worker's compensation insurance may use, but is not required to use, accrued sick leave and vacation once an initial 7 day waiting period is satisfied. The employee may use, but is not required to use, accrued paid leave during the 7 day waiting period.

3.5 If an employee is ineligible for FML, or if more than 12 weeks (480 hours) leave is needed by an employee in a year, the Office of Human Resources will determine if the employee is eligible and qualified for other leave, which may include:

- worker's compensation leave
- sick leave pool
- extended sick leave
- short-term disability
- long-term disability
- leave of absence without pay
- parental leave

3.6 An employee who does not meet the eligibility requirements for FML may be eligible for parental leave for the birth of a natural child or the adoption or foster care placement of a child under 3 years of age. For information on parental leave, refer to the [UHCL Policy on Parental Leave](#).

3.7 After the university has notified an employee of eligibility and potential qualification for FML, the employee is responsible to provide timely information in sufficient detail to enable a determination of the employee's qualification for FML. If the employee fails or refuses to provide such information in a timely manner, and fails to make a good faith effort to provide required documentation, the employee will be considered to have voluntarily waived the FMLA entitlement and its provisions. Time frames for providing information and the specifics of the information to be provided are stated in Section 5.0 of this policy.

3.8 An employee on approved FML is entitled to any unconditional pay increase (e.g., mandated cost of living increases) that may occur during the period of FML. FML may not be used as a reason to deny any employee a planned pay increase based on work already performed, such as a scheduled merit pay increase.

3.9 UHCL reserves the right to employ personnel on the basis of business necessity, individual qualification, job performance, and the ability to fund jobs. If an employee's job is scheduled to end while the employee is on FML, the employee's rights under FMLA end on the scheduled termination date and the employee loses all rights to restoration of employment as well as rights to continuation of benefits. This clause applies to:

- probationary employees who have been notified of dismissal during probation;
- employees who have been notified before beginning FML of impending dismissal for cause;
- employees whose positions have been scheduled for elimination as part of an approved reduction in force (RIF) plan;
- employees hired for a specific length of time and notified when hired of the scheduled duration of employment; and
- similar situations involving impending suspension or termination.

3.10 No UHCL employee is authorized to contact an employee's healthcare provider to obtain information about an employee's medical or physical condition. However, a healthcare provider authorized by UHCL to provide a second or third medical opinion may contact the employee's original healthcare provider for information about the employee's condition.

4.0 Policy Provisions

4.1 Role of the UHCL Office of Human Resources The UHCL Office of Human Resources serves as the control center for administration of the FML policy. The office is responsible for interpretation of FMLA policy and procedures, maintaining records related to FML, calculating applicable leave balances, and decisions as to employee eligibility and qualification for FML. An employee on approved FML is required to report to the Office of Human Resources on a regular basis and any failure to report as scheduled may result in suspension of that employee's FML coverage. If the Office of Human Resources is able to determine that an eligible employee's personal circumstances qualify for FML, the Office of Human Resources may designate such leave as FML to be counted against the employee's annual 12-week entitlement.

If the Office of Human Resources designates an employee's absence as FML, the employee written notice of the FML designation will be mailed to the employee within 2 working days. FML begins when an employee is notified by certified letter from the UHCL Office of Human Resources. If such notice is not provided by the Office of Human Resources, the leave may not be designated as FML or counted against the employee's annual 12-week entitlement.

4.2 Except as provided in Section 3.4, paid leave must be exhausted before unpaid FML begins. An eligible employee must use all applicable accrued paid sick leave and vacation leave balances while taking FML. After all such balances are exhausted, the employee may begin unpaid FML. The use of accrued sick leave is, however, restricted to those circumstances that would otherwise qualify the employee for sick leave under state law and UHCL policy governing the use of sick leave.

4.3 Overtime Comp time may not be included in calculating FML. The supervisor may not require an employee to substitute accrued overtime comp time for unpaid FML, and any comp time taken off by an employee, for whatever reason, may not be counted against the employee's 12-week FML entitlement.

4.4 Leave situations that may qualify for FML must be reported immediately to the Office of Human Resources. Any sick leave of more than 3 consecutive days or intermittent leave of any duration for the same purpose may qualify the employee for FMLA. The employing department must report such absences and the general reason for such absences to the Office of Human Resources to determine if FML is applicable. An absence of more than 3 consecutive days must be reported not later than the fourth day of the absence. If the Office of Human Resources determines that this leave may qualify for FML, the procedures for applying for and reporting FML must be followed.

4.5 Relationship of FML to Worker's Compensation Leave. An employee on Worker's Compensation who wishes to continue to receive state insurance premium sharing contributions is required to apply for FML. Such an application may include a certification from the employee's healthcare provider.

4.6 Amount of leave taken. If an employee needs only part of a day off for FML, the supervisor may not require the employee to take more time than the employee needs. Leave increments are limited to the shortest period of time used by the automated payroll system to account for absences, i.e... 1/10th of an hour. The use of single hours or days of FML by exempt employees does not compromise their FLSA exempt status.

4.7 Total FML available for spouses. If spouses are both employed by the university, and are both eligible for FML, they are entitled together to a total of twelve weeks of leave (rather than twelve 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 same qualifying event or condition.

4.8 Birth or placement of a child. Leave for the birth or placement of a child must take place within 12 months after the event. FML based on pregnancy or legal arrangements for adoption may be taken prior to the birth or adoption. Leave for birth or placement of a child is available equally to both genders.

4.9 Effect of FML on benefits. For a portion of FML that is without pay, the employee may continue insurance benefits and will receive the premium sharing contribution from the state or university toward the cost of health insurance. The employee may be responsible for self-paying that part of the insurance premium cost directly to ERS.

4.10 For any portion of FML that is without pay, the employee on FML will accrue state service credit for any full calendar month of FML but will not accrue vacation or sick leave for such months.

4.11 FML is not considered a break in service. Benefit entitlements based upon length of service will be calculated including any period of FML.

4.12 Restoration of employment following FML. Subject to fiscal constraints determined by UHCL administration, an employee returning from approved FML within the provisions of this policy shall be restored to the original or equivalent position, with equivalent pay, benefits, and other employment terms, provided the employee remains able to perform the essential functions of the position.

- a. An employee offered an equivalent position who chooses to decline the position waives any rights to reinstatement.
- b. An employee who believes that a position offered is not an equivalent position is entitled to file a grievance under the UHCL faculty or staff grievance policy.

4.13 Key employees – non-restoration of employment following FML. The university may decline to restore an employee on FML to the original or equivalent position under the following conditions:

- the employee is among the highest paid ten percent of employees paid by UHCL; and
- a determination is made by the President of UHCL or Chancellor of the UH System that restoring employment to the employee would result in substantial economic injury to the university; and
- in the case of a tenured faculty member, dismissals must be in accordance with the **Dismissal of Faculty Members** with Time and Special or Probationary Appointment before the End of the Specified Term of Appointment.

At the time an employee in this category applies for FML, the employee must be notified of the possibility that employment will not be restored.

4.16 Intermittent or reduced leave schedule. An intermittent or reduced leave schedule is available under the FMLA for serious health condition of the employee, employee's spouse, child, or parent (but not parent-in-law). Intermittent or reduced FML is calculated on an hourly or daily basis, as a proportion of the employee's normal workweek. An employee is entitled to a cumulative total of 12 weeks (480 hours) intermittent or reduced leave during a year, and this cumulative total may include both paid and unpaid FML.

- a. For the serious health condition of the employee or his or her spouse, child, or parent, leave may be requested and taken on an intermittent or reduced leave schedule.
- b. For intermittent leave or leave on a reduced leave schedule, there must be a doctor's certification of the medical need for the leave, and the certification must state that such medical need can be best accommodated through an intermittent or reduced leave schedule.
- c. An employee requesting intermittent leave or leave on a reduced leave schedule must attempt to schedule the leave so as not to disrupt the employing department's operation.
- d. If intermittent leave or leave on a reduced leave schedule is requested, the department 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 pay and benefits. Such a temporary transfer may not exceed the 12 week (480 hours) FML period.

5.0 Responsibilities

5.1 Responsibilities of the Employee

The employee is responsible to:

- a. Keep the supervisor informed about reasons for absences from work, especially those involving chronic or acute medical conditions of the employee or a covered family member which may be covered under FMLA.
- b. Complete and submit required forms to the Office of Human Resources in a timely manner, as stated in this document.
- c. Make timely and good faith efforts to assure that required forms to be completed and returned to the Office of Human Resources by another party, such as a medical care provider, are sent to the Office of Human Resources.
- d. Report to the supervisor regularly as scheduled during continuing FML regarding the status of the leave. As an alternative, a representative may report for the employee. Failure to report to the supervisor as scheduled during leave may result in suspension of the FML.
- e. Provide advance notice of at least 2 working days before returning to work following continuous or extended FML.

- f. Provide the UHCL Office of Human Resources with a healthcare provider's release to return to work before returning to work after continuous or extended FML.

5.2 Responsibilities of the Supervisor

- a. Report any employee absence of more than 3 consecutive days or any repeated occurrences of sick leave to the Office of Human Resources to enable a determination of eligibility and qualification for FML.
- b. Consult with the Office of Human Resources to determine appropriate actions when dealing with an employee requesting or taking FML.
- c. Prepare and submit personnel forms to place an employee on unpaid FML or return an employee to pay status following an FML.

5.3 Responsibilities of the Office of Human Resources

- a. Develop and provide procedures consistent with the UHCL FML policy. Make such procedures available upon request.
- b. Provide notice about FML to an affected employee within 2 working days of learning of a situation that may qualify as FML for an eligible employee. Such notice will be provided in printed form and will explain the employee's rights and responsibilities under FMLA.

If the employee is on leave for the qualifying condition at the time of notification, notice will be sent via certified mail to the employee at the most current address on file in human resources. Such notice will be mailed within 2 working days and will advise the employee that the current leave is also designated as FML and will be counted against the employee's total 12 week (480 hours) entitlement.

- c. Provide information about FMLA in terms that the employee can understand.
- d. Maintain documentation of the employee's FML use and related issues in a file separate from the employee's official personnel file.
- e. Communicate with the employee or employee's representative during the course of the FML as necessary to keep the employee informed about rights and responsibilities under FMLA.
- f. Interpret FMLA regulations and their application to each case of FML by an eligible UHCL employee.
- g. Assist employees and employing departments by calculating the duration of FML entitlements.

6.0 General Information

6.1 Applications for FML

- a. Use only UHCL FML forms. Applications for FML must be made using university forms. UHCL forms meet the standards set by the Department of Labor. No other forms may be substituted for required UHCL forms, although additional information may be requested from employees or healthcare providers to document FML situations.
- b. Provide as much notice as possible. When an employee has advance notice of a need for FML, such as the birth or placement of a child, or scheduled medical treatment, the employee must provide at least 15 calendar days' notice to the supervisor or department head and the UHCL Office of Human Resources. When possible, the employee should attempt to schedule the leave to minimize disruption of departmental operations.

In case of sudden illness or other unforeseeable need for leave, the employee is required to inform the Office of Human Resources promptly. Except under extraordinary circumstances, such notice must be received by the Office of Human Resources or the department head within 3 working days of learning of the need for leave. The notice may be oral, but must be followed by submission of UHCL required forms within 15 working days after oral notice. If required UHCL forms are not submitted within these 15 days, the employee may lose the protections of the FMLA, and may become subject to disciplinary action.

The Office of Human Resources will contact the employing department immediately after being informed of an employee's need for FML. The Office of Human Resources will maintain contact with the employing department as necessary to explain entitlements and obligations and to assist the employee and the employing department with the FML process.

- c. Second and third medical certifications may be required. UHCL may require an employee to obtain a second medical certification, at the expense of the employing department.

If the opinions of the first two healthcare providers conflict, UHCL may require a third certification, also at the expense of the employing department. The employee and the department will agree on the third healthcare provider and the third certification will be final and binding. The employee and the employing department must make a good faith effort to agree on the third healthcare provider. If the employee does not make such a good faith effort, the employee will be bound by the second certification. If the employing department does not make such a good faith effort, the department will be bound by the first certification.

Pending receipt of second or third medical certification, the employee will be entitled to the provisions of the FMLA. If the certifications do not ultimately establish the need for FML, the leave may be disallowed or treated as some other form of paid or unpaid leave.

- d. Certification of relationship may be required. UHCL may request certification of a familial relationship if an employee requests time off to care for a family member.

William A. Staples
Title: President
University of Houston-Clear Lake

Approval Date: November 12, 1998

Sunset Date: December 11, 2018