TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Operating Policy and Procedure

HSC OP: 70.32, Family and Medical Leave (FML)

PURPOSE: The purpose of this Health Sciences Center Operating Policy and Procedure (HSC OP) is to establish the Texas Tech University Health Sciences Center (TTUHSC) policy for administering the provisions of the Family and Medical Leave Act (FMLA) of 1993 (amended 2008) in compliance with Department of Labor guidelines pertaining to Family & Medical Leave (FML).

REVIEW: This HSC OP will be reviewed on June 15 of each odd-numbered year (ONY) by the Assistant Vice President of Human Resources, with recommendations for revisions forwarded to the Executive Vice President for Finance and Administration by July 1.

POLICY/PROCEDURE:

1. Definitions.
   a. **Eligible Employee:** An "eligible employee" is one who has been employed by the State of Texas for at least 12 months and who has worked at least 1,250 hours during the preceding 12 months. In calculating the required 12 months of state employment for FML eligibility, all state employment will be counted and it need not be continuous. The 1,250 hours refers to hours actually worked and does not include any paid time off.

   Employees in positions that are exempt under the Fair Labor Standard Act and for which no time sheets are maintained are presumed to have met the 1,250 hours of service requirement if they have been employed full time for at least 12 months. Part-time exempt employees are considered to have been employed a pro-rata amount of hours based on the percent time of their appointment. Special hours of service eligibility requirements apply to airline flight crew employees.

   b. **Spouse:** A spouse, defined in accordance with the Texas Family Code, includes qualified common law marriages as defined in the Code.

   c. **Son or Daughter (Child):** A son or daughter refers to a biological, adopted, foster or step child, legal ward or the child of person standing in loco parentis who is under 18 years of age, or 18 years of age or older but who is incapable of self-care due to mental or physical disabilities. A son or daughter on active duty or call to active duty status is of any age.

   d. **Parent:** A parent is the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. **Important Note:** This definition does not include the parents of an employee's spouse.

   e. **A “Serious health condition”** means an illness, injury, impairment, or physical or mental condition that involves either:

      (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or

      (2) Continuing treatment by a health care provider, which includes:

         (a) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
- treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
- one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

(b) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

c) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

(d) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

(e) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

(f) A "Health Care Provider" means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
2. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor;
3. A physician’s assistant, clinical social worker, nurse practitioner, or nurse midwife performing within the scope of his/her practice as defined by state law; or
4. A Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

Treatment by a health-care provider includes treatment under the supervision of the provider.

(g) 12-Month Period: The "12-month period" noted in this policy will be the 12 months measured forward from the first day FML was taken.

(h) Equivalent Position: "Equivalent position" does not mean just a similar or comparable position, but one with the same pay, benefits and working conditions and same or substantially similar duties and responsibilities. It must entail substantially equivalent skill, effort and authority. It must involve no loss of pay status, accrued benefits or any other term or condition of employment.

(i) Leave on a Reduced Schedule: "Leave on a Reduced Schedule" is defined as leave that reduces the employee's usual hours per workweek. Example: In cases where it is certified medically necessary to work a modified workweek due to dialysis treatments scheduled regularly on Mondays. Employee works only four days each week.

(j) Intermittent Leave: "Intermittent Leave" is defined as leave that is interspersed during normal working hours such that it reduces the total hours worked during the workweek. Example: In a case where it is certified medically necessary for an employee to go to physical therapy for two or more hours sometime during the work day.

(k) State Parental Leave: Employees not entitled to FMLA leave may be entitled to a parental leave of absence, not to exceed twelve weeks, for the birth of a natural child or the adoption of a child under three years of age. Refer to HSC OP 70.01 for additional information.

(l) Pregnancy: "Pregnancy" includes pregnancy and pregnancy-related conditions.
m. **Employment Benefits:** "Employment benefits" means all benefits provided or made available to employees, including group life insurance, health insurance, disability insurance, sick leave, vacation leave, educational benefits and pensions.

2. **Requirement to Take Family and Medical Leave (FML).**

   a. **Employee Requirements:** TTUHSC employees are required to apply for FML coverage as outlined in this policy for any of the following Family and Medical Leave Act (FMLA) qualifying conditions/events requiring absence from work.

      **FAMILY LEAVE:**
      - Birth of a child.
      - The placement of a child with me for adoption or foster care.

      **MEDICAL LEAVE:**
      - Employee's own serious health condition which does not permit the performance of assigned job duties at TTUHSC (see item 1e).
      - To care for employee’s spouse, child, or parent who has a serious health condition (see item 1e).

      **SERVICEMEMBER FAMILY AND MEDICAL LEAVE:**
      - A “qualified exigency” arising out of a covered family member’s active duty or call to active duty in the Armed Forces in support of a contingency plan or
      - To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces.

   b. **Supervisor Responsibilities:** The employee’s supervisor is responsible for notifying the employee of the requirement to apply for FML when leave is requested/taken for any of the reasons listed in item 2a. (Submission of the FML application is not a guarantee of FML eligibility.)

3. **Family Leave.**

   a. TTUHSC will provide up to 12 weeks of paid and/or unpaid leave in any 12-month period (as described in 1, g) if requested in writing by an employee for one or more of the following reasons:

      (1) the birth of the employee’s child or to care for such child; or
      (2) the placement of a child with the employee for adoption or foster care.

   b. Employees must complete an APPLICATION FOR FAMILY AND MEDICAL LEAVE (Attachment A). If requested leave is for “the birth of the employee’s child or to care for such child,” the application must also include a complete and sufficient medical certification (Attachment B or C as applicable). Requests must be forwarded through the employee’s immediate supervisor to the Assistant Vice President of Human Resources or his/her designee who shall respond to the employee by form letter within five working days of receipt of the application in the Human Resources Office in Lubbock, Texas.

   c. Family leave must be taken all at one time.

   d. If an employee exhausts all eligible accrued paid leave during FMLA leave, unpaid leave must be taken for the remainder. **Note:** TTUHSC requires employees to exhaust all applicable accrued paid leave before taking unpaid leave.

4. **Medical Leave.**

   a. TTUHSC will provide up to 12 weeks of paid and/or unpaid leave in any 12-month period (as described in Section 1, g) if requested in writing by an employee for one or more of the following reasons:

      (1) caring for a spouse, child or parent with a serious health condition; or
(2) an employee's serious health condition (Note: See item 1.e for the definition of "serious health condition.")

b. Employees must complete an APPLICATION FOR FAMILY AND MEDICAL LEAVE form (Attachment A). (Submission of the FML application is not a guarantee of FML eligibility.) The application must also include a complete and sufficient medical certification (Attachment B or C as applicable). Requests must be forwarded through the employee's immediate supervisor to the Assistant Vice President of Human Resources or his/her designee who shall respond to the employee's application by form letter within five working days of receipt of the application in the Human Resources Office in Lubbock, Texas.

c. A request for leave from the Sick Leave Pool will also constitute a request for family and medical leave.

d. TTUHSC may, at its discretion, require a second or third medical opinion from an independent health care provider of TTUHSC's choosing when reason exists to question the necessity of the employee's medical leave. TTUHSC will be financially responsible for all second and third medical opinions. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the employee and TTUHSC. The third opinion will be the final opinion, and the opinion rendered will be binding on both the employee and TTUHSC.

e. In order to be eligible for 12 weeks medical leave for the employee's own serious illness, the employee must provide documentation that he or she is medically unable to perform the functions of his/her job before being eligible to take leave.

f. Medical leave may be taken, whenever it is medically necessary, as intermittent leave or leave on a reduced work schedule. The Certification of Health Care Provider for Employee's Serious Health Condition Form (Attachment B) for modified work schedules must include the expected dates for, and the planned duration of, the medical treatments, as well as a statement of the medical necessity for the intermittent leave or a reduced work schedule.

g. If medical leave is foreseeable, the employee is required to make a reasonable effort to schedule the leave at a time which will minimize disruptions to the employee's department's operations.

h. Docking exempt employees for partial day's absence for intermittent leave does not otherwise affect the employee's status as an exempt employee.

i. If an employee has applicable accrued paid leave of less than 12 weeks, unpaid leave must be taken for the remainder of the approved FML. Note: TTUHSC requires employees to exhaust all applicable accrued paid leave before taking unpaid leave. This requirement is waived if the leave is the result of a work-related injury or illness covered by Workers' Compensation Insurance.

5. Servicemember FMLA.

a. Servicemember FMLA provides eligible employees unpaid leave for any one, or for a combination, of the following reasons:

   (1) A "qualified exigency" arising out of a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency plan; and/or

   (2) To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank or rating.

b. Duration of Servicemember FMLA
(1) **When Leave is Due to a "Qualified Exigency":** An eligible employee may take up to 12 workweeks of leave during any 12-month period.

(2) **When Leave is to Care for an Injured or Ill Service Member.** An eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA qualifying leave, may not exceed 26 weeks in a single 12-month period. A covered service member is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

(3) **Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

c. Employees must complete an APPLICATION FOR FAMILY AND MEDICAL LEAVE form (Attachment A). (Submission of the FML application is not a guarantee of FML eligibility.) The application must also include a completed Certification of Qualifying Exigency (Attachment D) or Certification for Serious Injury or Illness of Covered Servicemember (Attachment E) as appropriate. Requests must be forwarded through the employee's immediate supervisor to the Assistant Vice President of Human Resources or his/her designee who shall respond to the employee's application by form letter within five working days of receipt of the application in the Human Resources Office in Lubbock, Texas.


a. It is unlawful to interfere with, restrain or deny the exercise of any right provided by the FMLA or to discharge or in any way discriminate against any individual because the individual opposed or complained about any unlawful practice under the Act, filed a charge, or gave information or testified in connection with any inquiry or proceeding related to this Act.

b. TTUHSC requires medical certification determining the medical need for FML, as well as certification for the employee's release to return to work at the conclusion of the leave. The Certification of Health Care Provider for Employee’s Serious Health Condition Form (Attachment B) must include the date that the serious health condition began and the estimated duration of the condition. The Certification of Health Care Provider for Family Member’s Serious Health Condition Form (Attachment C) Form supporting leave requests for serious illness of a family member should include a statement indicating the necessity for the employee to care for the child, spouse or parent.

Failure to complete documentation requirements does not preclude TTUHSC from designating leave under FML.

c. Fair Labor Standard Act (FLSA) compensatory time may be used during an approved FML absence; however, time off will not be counted against the employee’s 12-week (26-week for Service Member Family Leave) FML entitlement. State compensatory time is considered “other compensatory time” under FLSA and may be used and counted against an employee’s 12-week FML entitlement.

d. TTUHSC requires employees on family or medical leave to report, in writing, his/her status and intent to return to work to the appropriate department administrator at least every 30 days. Failure to comply with this reporting requirement will be considered job abandonment.
e. TTUHSC will return employees granted FML to their same job or position, or to one of equivalent status and pay, at the conclusion of such leave. Employees on family leave or medical leave to care for a family member who is unwilling or unable to return to work at the conclusion of FML may be terminated and the employing department may refill the vacant position. Employees on medical leave for their own serious health condition who are unwilling or unable to return to work at the conclusion of FML may be terminated and the employing department may refill the vacant position.

f. If the spouse of the employee also works for TTU/TTUHSC or any other agency or institution of the State of Texas, the employees are entitled to an aggregate of 12 weeks leave per 12-month period for the birth, placement for adoption or foster care, or for parental leave.

g. TTUHSC will provide eligible employees with a total of 12 weeks/480 hours total (26-week/1040 hours total for Service Member Family Leave) of family/medical leave per 12-month period. Any combination of such leave shall not exceed 12/26 weeks in the designated 12-month period.

h. All leave, paid and unpaid, for a family member's and/or employee's qualified medical condition(s) and/or employee's qualified family leave event(s), will be counted toward the employee's 12/26 weeks of FML eligibility during any specified 12-month period.

i. TTUHSC may temporarily reassign or transfer employees who qualify for intermittent or modified medical leave to any available alternate position with equivalent pay and benefits. Such transfers or reassignments may be made provided that the employee is qualified for the position, the position will better accommodate recurring periods of leave and assignment to the position will allow for less disruption to the department's operations. If the employee has exhausted all accrued leave, the employee will be paid for the actual hours worked only.

j. Employees granted FML are not permitted to perform work during regular working hours for another employer, attend training opportunities or attend educational classes during regular working hours.

7. **Notice.**

a. TTUHSC will post notices that explain employee's rights under the Family and Medical Leave Act. (Attachment F)

b. When an employee plans to take family or medical leave, the employee is required to give his/her supervisor 30 days notice or, if this is not possible, as much notice as is practicable. An individual undergoing planned treatment is required to make a reasonable effort to schedule the leave at a time which will minimize disruptions to the employee's department's operations.

c. TTUHSC requires certification of a serious health condition and need for leave from the employee's or family member's health care provider within 15 calendar days of the request for leave, unless 15 days is not practicable. Unless the need for leave was not foreseeable, TTUHSC may delay leave until the certification is provided. All certifications should be treated as confidential medical records and kept separate from personnel records.

d. TTUHSC will require the medical recertification of an FML if it receives information that questions the continuing validity of the certification for which the employee is on FML. Should this become necessary, the employee will have 15 calendar days to provide the requested recertification, and the recertification will be at the employee's expense.

e. For adoption of a child, the employee must submit a brief written statement to the Assistant Vice President of Human Resources or his/her designee specifying the age of the child, the anticipated or actual date of placement in the employee's home, and the number of days FML requested. The employee also must submit proof of the adoption or
8. **Benefit Status During Leave Without Pay.**

   a. TTUHSC encourages employees on approved FML to continue health benefits at the same level and conditions during such leave. TTUHSC will continue employer contributions at the same level during such leave, provided any employee paid premiums are kept current. Employees must pay premiums due, if any, to the Texas Tech Payroll Department, P.O. Box 41092, Lubbock, Texas 79409-1092.

   b. Employees who return to work directly from FML may reinstate all reduced or canceled coverages that were in effect immediately prior to going on FML effective the date of return to work. Such reinstatement will be without penalty for pre-existing conditions and without the requirement to show proof of insurability. Returning to work from FML or LWOP are considered qualifying life events and therefore changes may be made to an employee’s insurance coverages. Please contact the HR Benefits Office for further instruction within 30 days of returning to work.

   c. TTUHSC may recover from the employee any employer paid premiums during any period of unpaid FML if the employee does not return to work at the conclusion of an approved family or medical leave. If it becomes known to, and verified by, the department that the employee will not return following FML, the entitlement to leave and premium sharing dollars cease at that time, and the employee shall be separated from TTUHSC.

   d. Employees on FML are not entitled to accrue state service credit for any full calendar month(s) of FML without pay and shall not accrue vacation or sick leave for such months. Furthermore, any full calendar months of FML without pay shall not be included in the calculation of six continuous months of employment set forth under vacation leave.

9. **Reporting Leaves of Absence**

   a. **Leave With Pay:** Leave with pay will be reported in the following manner:

      (1) Non-exempt employees will access Web Time Entry (WTE) through their portal page and report appropriate hours of paid leave accrued or awarded through WTE.

      (2) Exempt employees will access Web Leave Report (WLR) through their portal page and report all absent days with appropriate leave code whether accrued, awarded or not accrued. Leave reported that is not in an available balance will fall into Nonpaid leave (NOPL) when submitted and will be docked on the following month payroll.

   b. **Leave Without Pay:** Leave without pay for a full month or longer will be reported by completing a Texas Tech Leave With/Without Pay form and submit to Human Resources and later completing a second form returning the employee to duty at the end of such leave.

10. **Right to Change Policy.**

    TTUHSC reserves the right to interpret, change, modify, amend or rescind this policy in whole or in part at any time without the consent of employees.

11. **Authoritative References.**


    (2) Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"); and

    (3) Chapter 661, Texas Government Code, Subchapter F, Section 661.912.