



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Operating Policy and Procedure

HSC OP 70.32, Family and Medical Leave Act (FMLA Leave)

Purpose: The purpose of this Health Sciences Center Operating Policy (HSC OP) is to establish Texas Tech University Health Sciences Center's (TTUHSC) policy and procedures for administering the provisions of the federal Family and Medical Leave Act (FMLA) of 1993 (amended 2008) and Texas Government Code FMLA regulations.

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

Policy: It is the policy of TTUHSC to provide its employees with FMLA benefits and protections in compliance with regulations of the U.S. Department of Labor (DOL) and with Texas Government Code.

To apply for FMLA Leave an employee or representative may apply online ([Click here for online form](#)) or contact their local HR office or the TTUHSC Human Resources Leave Administrator (HR Leave Administrator) by email at HRleaveadmin@ttuhsc.edu.

1. Definitions

- a. The **FMLA** entitles eligible employees of TTUHSC to take 12 workweeks (26 workweeks for covered military servicemember) unpaid, job protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.
- b. The **State** is the State of Texas.
- c. TTUHSC as a **State agency** is a **covered employer** for FMLA Leave.
- d. **Eligible employee** is an employee who has at least 12 months qualified employment with the State (months do not have to be consecutive) and who has worked at least 1250 hours (excluding unpaid or paid leave time) with the State in the 12 months preceding the onset of FMLA Leave.
- e. **Eligible family member** is the eligible employee's:
 - 1) **Spouse:** the husband or wife as recognized by the state where the employee was married and individuals in a same-sex or common law marriage.
 - 2) **Son or Daughter:** a biological, adopted, foster child, stepchild, a legal ward, or a child of a person standing in loco parentis (one who cares for the child in place of the parent) who is under the age of 18; or 18 or older if the son or daughter is a qualified military service member or if he or she is incapable of self-care because of a physical or mental disability (reference ADAAA) at the time FMLA Leave is to commence, such as a serious medical complication arising during the daughter's pregnancy.
 - 3) **Parent:** a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. FMLA Leave is not provided to care for parents-in-law.
- f. A **Key Employee** under FMLA is a salaried FMLA Leave eligible employee who is among the highest paid 10 percent of all TTUHSC employees.

- g. **Qualifying reasons for FMLA Leave** include:
- 1) the birth of a child and to care for or bond with the newborn child within one year of birth,
 - 2) the placement with the employee of a child for adoption or foster care and to care for or bond with the newly placed child within one year of placement,
 - 3) to care for the employee's spouse, son or daughter, or parent who has a serious health condition,
 - 4) the serious health condition of the employee that makes the employee unable to perform any of the essential functions of their job,
 - 5) a qualifying exigency arising out of the fact that the eligible employee's spouse, son, daughter, or parent is a military member called to or on covered active duty, and
 - 6) to care for a servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.
- h. A **serious health condition** is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider and for which the employee is unable to perform the essential functions of the job or the family member is unable to work, attend school, and perform other regular daily activities.

Unless qualifying complications arise, common ailments such as colds, flu, ear aches, upset stomach or minor ulcer flare-ups, headaches (other than migraine), routine dental, orthodontia or periodontal disease, cosmetic treatments, or plastic surgery do not qualify for FMLA Leave.

The most common serious health conditions that qualify for FMLA Leave include:

- 1) conditions requiring an overnight stay in a hospital, hospice, or residential medical care facility and any subsequent treatment provided in connection with such inpatient care.
 - 2) conditions that incapacitate the employee or the employee's qualified family member for more than three consecutive, full calendar days and require ongoing medical treatment that includes in-person treatment by a health care provider in the first seven days of incapacity, and at least one more in-person treatment by a health care provider within 30 days or an ongoing regimen of continuing treatment under the supervision of the health care provider. The ongoing regimen of treatment includes, for example, a course of prescription medication or therapy requiring special equipment.
 - 3) chronic conditions that cause occasional periods when the employee or qualified family member is incapacitated and require treatment at least twice a year by a health care provider or a nurse under the direct supervision of a health care provider. Examples of chronic conditions that may meet the FMLA definition of a serious health condition include asthma, diabetes, epilepsy, and migraine headaches.
 - 4) permanent or long-term conditions for which treatment may not be effective but require continuing supervision by a health care provider.
 - 5) any period of incapacity due to pregnancy or for prenatal care including absences occasioned by complications such as severe morning sickness or medically required bed rest qualify even though the employee or the covered family member does not receive treatment from a health care provider during the absence and if the absence does not last more than three consecutive full calendar days.
 - 6) any period of absence to receive multiple treatments by a health care provider for restorative surgery after an accident or injury.
 - 7) qualified treatment for substance abuse excluding any absences because of the employee's use of the substance. An employee may take FMLA Leave to care for a covered family member who is receiving treatment for substance abuse and the employer may not take action against the employee for such leave.
- i. A **health care provider** is one of the following who is authorized to practice by a state or, outside the United States, by the provider's country, and who is working within the scope of their practice: a doctor of medicine or osteopathy, a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (with limited scope), a nurse practitioner, nurse-midwife, clinical social worker, physician assistant, a Christian Science Practitioner listed

with the First Church of Christ, Scientist in Boston, Massachusetts, or any health care provider from whom the group health plan benefits manager will accept a medical certification.

- j. The **12-month FMLA Leave period** is the 12 months measured forward from the first day FMLA Leave was taken.
- k. **Intermittent and reduced schedule FMLA Leave** is leave that is interspersed during the leave period in which the employee continues to work or that reduces the scheduled hours worked.
- l. **FMLA Leave for qualifying exigency** is available when the eligible employee's spouse, son, daughter, or parent is on covered active duty or is called to covered active duty (deployment to a foreign country) under a federal order. State calls to active duty are covered only if ordered by the President of the United States.
- m. **FMLA Leave for a military caregiver** up to 26 workweeks in a 12-month period is available for an eligible employee who is the spouse, parent, son, daughter, or next of kin of a covered servicemember with a serious health condition. Next of kin is the servicemember's nearest blood relative other than the servicemember's spouse, son or daughter, or parent.
 - 1) A covered servicemember is either:
 - A current member of the Armed Forces of the United States, including a member of the National Guard or Reserves who has a serious injury or illness for which he or she is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
 - A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces of the United States including the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the period of five years preceding the date on which the employee first takes leave to care for the veteran (the five-year period).
 - 2) A serious injury or illness for a covered servicemember is an injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of their office, grade, rank, or rating, or an injury or illness that existed before the beginning of the servicemember's active duty and was aggravated by service in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of their office, grade, rank, or rating.
 - 3) A Veteran's serious injury or illness is an injury or illness incurred in the line of duty on active duty that has manifested itself before or after the servicemember became a veteran and that is:
 - A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating.
 - A physical or mental condition for which the veteran has received a U.S. Department of Veteran's Affairs Service-Related Disability Rating of 50 percent or greater and the VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave.
 - A physical or mental condition that subsequently impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment.
 - An injury that is the basis of the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

- An injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces that otherwise meets any of the definitions above.
- 4) Servicemember FMLA Leave runs concurrent with other leave entitlements provided under federal, state and local law.
- n. **HR Leave Administrators** are the individuals designated by the Associate Vice President for Human Resources to manage the FMLA Leave processes.
- o. **Texas Parental Leave.** Employees who do not qualify for family and medical leave are entitled to parental leave not to exceed 12 weeks for the birth of a child or the adoption or foster care placement of a child under the age of three.

To be eligible for parental leave, an employee does not meet the eligibility requirements for family and medical leave because:

- The employee has worked for the State for less than 12 months, or
- The employee has worked fewer than 1,250 hours during the 12-month period preceding the leave.

The employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay. Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.

To apply for Parental Leave an employee or representative may apply online ([Click here for online form](#)) or contact their local HR office or the TTUHSC Human Resources Leave Administrator (HR Leave Administrator) by email at HRleaveadmin@ttuhsc.edu .

2. **Notice of Need for FMLA Leave**

- a. An employee absent from work for a FMLA-qualifying reason or seeking FMLA Leave should provide notice as soon as possible by completing the FMLA Leave Application ([Click here for online FMLA Leave form](#)) or contact their supervisor or local HR office. At least 30 days advance notice is required if the need for leave is foreseeable.
- b. Supervisors or administrative staff who are contacted by an employee or a representative of the employee and informed of the employee's need for FMLA Leave or who become aware that an employee's absence may be for an FMLA-qualifying reason should immediately contact their local HR office or the HR Leave Administrator via email at HRleaveadmin@ttuhsc.edu .
- c. Where time is of the essence for the employee, department or HR staff should provide whatever forms or information are appropriate to assist the employee and then immediately follow-up with their local HR office.

Note: The employee's absences due to an FMLA-qualifying reason may be protected during the notice period even though the employee has not yet been designated for FMLA Leave.

3. **Notice of Eligibility**

- a. The HR Leave Administrator will determine the employee's eligibility and provide the employee with written Notice of Eligibility within five business days, absent extenuating circumstances, from the date the employee gave notice of the need for FMLA Leave.
- b. In the event the employee is not eligible for FMLA Leave the written Notice of Eligibility will provide the employee the reason why the employee was not eligible.

- c. Notice of Eligibility will be mailed to the employee's home address of record and emailed to the employee's TTUHSC email address and/or to other locations if needed based on the employee's special circumstances. The employee's supervisor, local HR office, and other offices as appropriate will be provided information regarding the Notice of Eligibility.

4. **Rights and Responsibilities Notice** ([Click here for Notice](#))

The HR Leave Administrator will provide the employee written notice detailing the specific expectations and obligations of the employee regarding FMLA Leave and stating the consequences to the employee of not meeting the responsibilities. The Rights and Responsibilities Notice will be included in the Notice of Eligibility. Failure of the employee to meet their responsibilities in applying for and taking FMLA Leave may result in delay, denial, or loss of FMLA Leave protections.

5. **A Certification of Health Care Provider (CHCP)**

- a. TTUHSC requires an employee seeking FMLA Leave for their own serious health condition or that of a qualified family member to provide the HR Leave Administrator with a complete and sufficient certification issued by the health care provider.
- b. The HR Leave Administrator will provide the eligible employee with the appropriate CHCP form at the time the employee is provided the Notice of Eligibility or the employee may obtain the appropriate CHCP form from the links provided below.
([Click here For Employee CHCP form](#)) ([Click here for Family Member CHCP form](#))
- c. In cases where the employee is seeking FMLA Leave for their own serious health condition, the employee is required to present to the health care provider a copy of the employee's Position Description in order for the health care provider to adequately assess and describe how and to the degree the employee's serious health condition may limit the employee's ability to perform one or more of the essential functions of their job.
- d. A CHCP will not be requested or required for FMLA Leave to care for a healthy newborn child, or for placement with the employee of a child for adoption or foster care. A CHCP is required for the mother for the birth of the child.
- e. The employee must provide the HR Leave Administrator with a complete and sufficient CHCP within 15 calendar days of the employee's receipt of the Notice of Eligibility. The employee should contact the HR Leave Administrator when circumstances arise that prevent the employee from providing the CHCP timely. Additional time to provide the CHCP may be granted for extenuating circumstances. Failure of the employee to provide the HR Leave Administrator with a complete and sufficient CHCP may result in delay, denial, or loss of FMLA Leave.
- f. TTUHSC treats the employee's FMLA Leave related medical information, protected health information, and CHCP as a confidential medical record.
- g. The employee is responsible for any costs or expense of obtaining and providing the CHCP.
- h. Only the HR Leave Administrator may contact the health care provider for the purpose of clarification and authentication of the CHCP.
- i. Under no circumstances may the employee's supervisor or department administrative staff contact the health care provider regarding the employee's FMLA Leave or CHCP.
- j. At its own expense, TTUHSC may request a second CHCP from a provider other than the one used by the employee. If the first and second opinion differ a third and binding opinion may be required at the employer's expense. The third health care provider must

be approved jointly by the employer and employee. Copies of the second and or third CHCPs will be provided to the employee within five business days, absent extenuating circumstances.

- k. TTUHSC may request recertification for FMLA Leave taken by the employee when circumstances described in the original CHCP have changed significantly, when there is doubt of the validity of the information provided by the employee, once every 30 days, or when the minimum duration of the leave exceeds 30 days. The recertification is at the employee's expense.

6. **Documentation of relationship**

TTUHSC may require the employee giving notice of the need for FMLA Leave to provide documentation of family relationship. Such documents may include marriage licenses, birth certificates, court orders, foster care placement or adoption papers, etc. Failure to provide sufficient documentation may result in delay, denial, or loss of FMLA Leave.

7. **Documentation of qualifying exigency**

TTUHSC may require documentation of qualifying exigency. Documentation may include military orders, letters from superior officers, or other documentation providing the nature and dates of military service associated with the need for leave. Failure to provide sufficient documentation may result in delay, denial, or loss of FMLA Leave.

8. **Designation of FMLA Leave**

- a. Within five business days, absent extenuating circumstances, of receiving the required documents and information needed to determine if the leave requested qualifies for FMLA Leave, the HR Leave Administrator will provide the employee with a written Designation Notice indicating if the employee is approved or denied for FMLA Leave. If approved, the employee will be provided with additional information such as the start date and end date of the leave and whether or not an Intermittent FMLA Leave Time Record or a Return-to-Work / Fitness-for-Duty certification will be required.
- b. The Designation Notice along with appropriate forms will be mailed to the employee's home address of record, emailed to the employee's TTUHSC email address, and/or to other locations if needed based on the employee's special circumstances. The employee's supervisor, local HR office, and other offices as appropriate will be provided certain Designation information.
- c. An employee designated for FMLA Leave need not submit interim status or intent to return to work notices to the department during the designated leave period.
- d. Changes in the employee's or family member's serious health condition or FMLA Leave-qualifying reason must be communicated timely to the HR Leave Administrator and may result in revised or additional designations.

9. **FMLA Leave General Provisions**

- a. **Protected Activity:** It is unlawful to discourage, refuse, interfere with, restrain, or deny the exercise of any right provided under federal or State FMLA regulations or by this policy or to discharge from employment or in any way discriminate against any individual because the individual opposed or complained about any unlawful practice under the FMLA, filed a charge, gave information, or testified in connection with any inquiry or proceeding related to FMLA.
- b. **Good Faith Participation:** An employee is required to participate in the FMLA Leave benefit in good faith including in all communications, giving of notice, making application, providing documentation, in taking leave for the purpose it was approved, in receiving paid

leave and benefits, and in returning to work. Failure to demonstrate good faith may result in delay, denial, or loss of FMLA Leave benefits and in corrective action up to and including termination.

Supervisors must not allow employees who have been designated for FMLA Leave who are absent from work for the FMLA- qualifying reason to receive regular pay or to make up work time missed due to FMLA Leave. Such practices may violate State laws and HSC policies and may subject supervisors and employees to corrective action up to and including termination.

- c. **FMLA Leave for employees absent due to work related injuries or illness:** Eligible employees who are absent from work due to a work-related injury or illness which meets the FMLA criteria may be designated for FMLA Leave. (reference [HSC OP 70.13, Worker's Compensation Insurance](#))
- d. **Return-to-Work / Fitness-for-Duty Certification:** TTUHSC requires a Return-to-Work / Fitness-for-Duty certification from the employee's health care provider in order for the employee who has been on FMLA Leave for their own serious health condition to return to work. This form will be provided to the employee with the Designation Notice. In addition to the form, the employee should provide their health care provider a copy of their Position Description. The employee is responsible for any costs or expense of obtaining and providing the Return-to-Work / Fitness-for-Duty certification.

The completed form must be returned to the HR Leave Administrator at least two days prior to the employee's intended return date.

An employee designated for intermittent FMLA Leave may also be required to provide a Return-to-Work / Fitness-for-Duty certification when reasonable safety concerns exist regarding the employee's ability to perform their duties.

- e. **Pay during FMLA Leave:** The supervisor of the employee on FMLA Leave shall ensure that the employee uses and is paid applicable accrued leaves, if any, for work time missed by the employee while on FMLA Leave. It is essential that the employee's supervisor or designee gives timely notice to payroll to ensure the employee is paid on time.
- f. **Working during FMLA Leave:** Employees, other than those designated for intermittent or reduced schedule FMLA Leaves, should not perform their job duties while on FMLA Leave. Supervisors must not request or permit such employees who are on FMLA Leave to perform job duties or to work from home or other locations.
- g. **Benefit Coverage:** TTUHSC will maintain an employee's health benefit coverage for the duration of the FMLA Leave at the same level and under the same terms and conditions that coverage would have been provided if the employee had not been on FMLA Leave.
 - 1) Any premiums normally due from the employee should be paid by the employee during the FMLA Leave period. An employee considering or designated for FMLA Leave should consult with HR Benefits, local HR, and Payroll for additional benefits and pay guidance.
 - 2) Upon timely return from FMLA Leave, the employee may reinstate all benefit coverages which were reduced or canceled during the FMLA Leave period that were in effect immediately prior to the designation of FMLA Leave. Such reinstatement will be without penalty, pre-existing conditions, and without proof of insurability.
 - 3) Certain FMLA Leaves, such as for the birth of a child, may qualify as a life-changing events enabling the employee to make changes in certain benefits (please consult with HR Benefits within 30 days).
 - 4) TTUHSC may recover from the employee or former employee any premiums it paid on behalf of the employee during the employee's FMLA Leave and any premiums it paid for its share of the employee's benefits due to the employee failing to return from FMLA Leave for reasons other than those beyond the employee's control related to the serious medical condition for which FMLA Leave was designated.

- h. **Intermittent FMLA Leave Time Record:** An employee designated for intermittent FMLA Leave must record any work time missed due to FMLA-qualifying reason on the Intermittent FMLA Leave Time Record (Record), sign, and submit the Record to their supervisor by the 10th of the following month or as requested. The supervisor reviews, approves, signs, and emails the Record to the HR Leave Administrator by the 10th of the following month as well. FMLA Leave may be cancelled if complete Records are not provided timely to the HR Leave Administrator.
- i. **Both Spouses:** Spouses employed by TTUHSC are limited to a combined total of 12 workweeks FMLA Leave per 12-month period for the birth or placement of a healthy child, to care for a healthy child after birth or placement, or to care for a parent with a serious health condition. Such spouses are entitled to 12 workweeks each for their own serious health conditions or to care for a spouse, son, or daughter with a serious health condition.
- j. **Use of accrued leave benefits:** TTUHSC requires employees on FMLA Leave, other than those on Worker's Comp, to use appropriate accrued leave for any work time missed due to FMLA Leave. Sick leave may be used for FMLA Leave only for worktime missed related to designated serious health conditions. (Please see [HSC OP 70.01](#), Leave Administration)
- k. **FMLA Leave without Pay:** The employee on FMLA Leave who exhausts all applicable accrued leave prior to the expiration of the FMLA Leave must be placed on FMLA Leave without Pay (using the [Texas Tech Leave With/Out Pay form](#)) by the supervisor for the remainder of the employee's FMLA Leave. Failure to change the employee's status timely could result in loss of health benefits coverage for the employee, or for exempt employees, overpayment of wages.
- l. The FMLA Leave without Pay status must be revised by the supervisor when the employee returns to work or at the conclusion of FMLA Leave by completing a [Texas Tech Return from Leave With/Out Pay form](#) and submitting to your local HR office.
- m. **State Service Accrual:** Employees on FMLA Leave are not entitled to accrue State service credit for any full calendar month(s) of FMLA Leave without Pay and shall not accrue leave for such months.

10. **Job Restoration**

Upon return from FMLA Leave, an employee (other than a Key Employee) is entitled to be restored to the position held when the Leave began or to an equivalent position with equivalent duties, benefits, pay, and other terms and conditions.

11. **Return to work from FMLA Leave**

- a. Employees returning to work from FMLA Leave must contact the HR Leave Administrator at least five days prior to the intended date of return.
- b. In cases where the employee's health care provider certifies that the employee may return to work with restrictions, the HR Leave Administrator will initiate an administrative review of the employee's return to work. The review may involve the employee, the supervisor, local HR, and other parties as appropriate. The HR Leave Administrator will document the decision of whether the employee's restrictions can be accommodated in a Notice of Return-to-Work / Fitness-for-Duty letter.
- c. An employee cleared by the HR Leave Administrator to return to work with restrictions should report to their department as scheduled and should comply with the restrictions and accommodations for the duration of the restrictions. The employee and supervisor

should consult with their local HR office if complications arise with the employee assuming or performing work duties.

- d. For employees cleared to return to work the HR Leave Administrator will provide the employee, the supervisor, the local HR office, and other offices as appropriate with a Notice of Return- to- Work / Fitness-for-Duty letter and the employee should return to work on the date specified.
- e. Employees with restrictions whose restrictions cannot be accommodated will remain on FMLA Leave, if available, and may be provided with revised Designation by the HR Leave Administrator.

12. **Conclusion of FMLA Leave**

- a. FMLA Leave is concluded on the date specified by the HR Leave Administrator for the employee to return to work from FMLA Leave or upon the designated expiration date of the FMLA Leave.
- b. Upon expiration of FMLA Leave, an employee requiring additional leave for the serious health condition for which the FMLA Leave was granted may petition their supervisor for additional leave consideration using appropriate accrued leaves in compliance with departmental leave procedures and HSC leave policies.
- c. If the employee is unable to return from work from FMLA Leave and appropriate accrued leave is exhausted the department may request to place the employee on leave without pay (please reference [HSC OP 70.01](#), Leave Administration) or request termination of the employee (please reference [Texas Tech System Regulation 07.07](#) , Employee Conduct, Coaching, Corrective Action and Termination).

13. **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 notice to or the consent of employees.

Policy References:

[29 CFR Part 825, The Family and Medical Leave Act of 1993; Final Rule, March 2013](#)
DOL Employee's Guide to FMLA, <http://www.dol.gov/whd/fmla/employeeeguide.htm>
[Texas Government Code, Chapter 661](#)
[HSC OP 70.01](#), Leave Administration, and [HSC OP 70.03](#), Sick Leave Pool
[Texas Tech System Regulation 07.07](#), Employee Conduct, Coaching, Corrective Action and Termination