



## Texas Tech University Operating Policy and Procedure

### **OP 70.32: Family and Medical Leave**

**DATE:** September 22, 2004

**PURPOSE:** The purpose of this Texas Tech Operating Policy and Procedure (OP) is to establish the Texas Tech University (TTU) policy for administering the provisions of the Family and Medical Leave Act of 1993 (FMLA) in compliance with Department of Labor guidelines pertaining to family and medical (F&ML) leave.

**REVIEW:** This OP will be reviewed on June 15 of each even-numbered year by the managing director of Personnel with recommendations for revision forwarded through administrative channels to the senior vice president for administration and finance by July 1.

### **POLICY/PROCEDURE**

#### **1. Definitions**

##### **a. Eligible Employee**

An eligible employee is one who has been employed by the state 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 F&ML 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 Standards 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.

##### **b. Spouse**

A spouse, defined in accordance with the Texas Family Code, includes qualified common law marriages as defined in the Code. **Note:** Unmarried domestic partners are not qualified for family leave to care for their partners.

##### **c. Son or Daughter (Child)**

A son or daughter refers to the biological, adopted, foster child, stepchild, legal ward of an employee, or the child of an employee, when the employee is standing in loco parentis to a child who is under 18 years of age, or 18 years of age or older, but who is *incapable of self-care* (of performing several of the activities of daily living without assistance) due to mental

or physical disabilities.

**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. **Note:** This definition **does not** include the parents of an employee's spouse.

**e. Serious Health Condition**

A serious health condition is any "illness, injury, impairment, or physical or mental condition" that involves:

- (1) Any period of incapacity or treatment in connection with or following inpatient care at a hospital, hospice, or residential medical care facility;
- (2) Any period of incapacity requiring absence from work, school, or other regular daily activities for more than three calendar days and continuing treatment by a health care provider; or
- (3) Continuing treatment by a health care provider for prenatal care or for a chronic or long-term health condition that is incurable or so serious that, if not treated, it would result in a period of incapacity of more than three calendar days.

**f. Continuing Treatment**

Continuing treatment includes:

- (1) Two or more visits to a health care provider for that condition;
- (2) Two or more treatments by a health care practitioner on referral from or under the supervision of a health care provider; or
- (3) A single visit to a health care provider that results in a regimen of continuing treatment under the provider's supervision.

**g. Health Care Provider**

A "health care provider" includes:

- (1) A doctor of medicine or osteopathy licensed by the state;
- (2) A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor;
- (3) A nurse practitioner or nurse midwife, if performing within the scope of his or 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.

**h. Twelve-Month Period**

The "12-month period" noted in this policy will be the 12 months measured forward from the first day that F&ML was taken.

**i. Equivalent Position**

An "equivalent position" does not mean just a similar or comparable position, but one with the same pay, benefits, 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.

**j. Leave on a Reduced Schedule**

Leave on a reduced schedule 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. The employee works only four days each week.

**k. Intermittent Leave**

Intermittent leave is leave that is interspersed during normal working hours, thereby reducing 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 some time during the workday.

**l. State Parental Leave**

Employees who are not entitled to F&ML may be entitled to a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption of a child less than three years of age. Refer to TTU OP 70.01 for additional information.

**m. Pregnancy**

"Pregnancy" includes pregnancy and pregnancy-related conditions.

**n. Employment Benefits**

"Employment benefits" refers to 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. Family Leave**

a. Texas Tech will provide up to 12 weeks of F&ML in any 12-month period (as described in section 1.h) if requested in writing by an employee for one or more of the following reasons, and provided the employee utilizes all vacation and applicable paid leave while taking the approved F&ML.

- (1) The birth of the employee's child or the care of 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) and forward through the employee's immediate supervisor to the managing director of Personnel, who shall respond to the employee by form letter (Attachment D) within five working days of receipt of the application in the Personnel Department.
- c. Family leave must be taken all at one time.
- d. If an employee has applicable accrued paid leave of less than 12 weeks, unpaid leave must be taken for the remainder of the approved F&ML. **Note:** Texas Tech requires employees to exhaust all applicable accrued paid leave before taking unpaid leave.

### 3. Medical Leave

- a. Texas Tech will provide up to 12 weeks of F&ML in any 12-month period (as described in section 1.h) if requested in writing by an employee for one or more of the following reasons and provided the employee utilizes all vacation and applicable paid leave while taking approved F&ML.
  - (1) Caring for a spouse, child, or parent with a serious health condition, or
  - (2) An employee's serious health condition (inpatient care at a hospital, hospice, or residential medical care facility, or continuing care by a doctor of medicine or osteopathy), which renders the employee unable to perform his or her job functions, including on-the-job injuries.
- b. Employees must complete an *Application for Family and Medical Leave* form (Attachment A) and forward through the employee's immediate supervisor to the managing director of Personnel, who shall respond to the employee's application by form letter (Attachment D) within five days of receipt in the Personnel Department of the completed application and certification of the physician or practitioner, if applicable.
- c. A request for leave from the Sick Leave Pool will also constitute a request for Family and Medical Leave.
- d. Employees applying for medical leave must provide acceptable medical certification by a physician of the existence of a serious health condition. See Attachment B.
- e. Texas Tech, at its discretion, may require a second or third medical opinion from an independent health care provider of Texas Tech's choosing when reason exists to question the necessity for the employee's medical leave. All second and third medical opinions will be paid for by Texas Tech. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the employee and Texas Tech. The third opinion will be the final opinion and the opinion rendered will be binding on both the employee and Texas Tech.
- f. In order to be eligible for 12 weeks of 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 the job.
- g. Medical leave may be taken, whenever it is medically necessary, as intermittent leave or leave on a reduced work schedule. The *Certification of Physician or Practitioner* form (Attachment B) for these 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.

- h. If medical leave is foreseeable, the employee is required to make a reasonable effort to schedule the leave to minimize disruptions to the operations of the employee's department.
- i. Docking exempt employees for partial days' absence for intermittent leave does not otherwise affect the employee's status as an exempt employee.
- j. If an employee has applicable accrued paid leave of less than 12 weeks, unpaid leave must be taken for the remainder of the approved F&ML. **Note:** Texas Tech 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.

#### 4. Family and Medical Leave General Provisions

- a. It is unlawful to interfere with, restrain, or deny the exercise of any right provided by the Family and Medical Leave Act, 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. Texas Tech requires medical certification regarding the medical need for leave and of the employee's release to return to work at the conclusion of the F&ML. The *Certification of Physician or Practitioner* (Attachment B) must include the date the serious health condition began and the estimated duration of the condition. The *Certification of Physician or Practitioner* supporting leave requests for the serious illness of a family member should include a statement indicating the necessity of the employee to care for the child, spouse, or parent.
- c. Fair Labor Standards Act (FLSA) compensatory time may be used during an approved F&ML absence; however, time off will not be counted against the employee's 12-week F&ML entitlement. State compensatory time is considered "other compensatory time" under FLSA and may be used and counted against an employee's 12-week F&ML entitlement.
- d. Employees on family or medical leave are required to provide a medical status report in writing, as well as an intent to return to work, to their departmental administrator every 30 days. Failure to make such a report will be considered job abandonment.
- e. Texas Tech will return employees granted F&ML 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 are unwilling or unable to return to work at the conclusion of F&ML will 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 F&ML or at the expiration of disability leave, whichever comes later, will be terminated and the employing department may refill the vacant position.
- f. If the spouse of the employee also works for Texas Tech 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 same birth, placement for adoption or foster care, or to care for a sick parent.
- g. Texas Tech will provide eligible employees with a total of 12 weeks (480 hours total) of family/medical leave per 12-month period. Any combination of such leave shall not exceed

12 weeks in the designated 12-month period.

- h. All leave, paid and unpaid, requested 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 weeks of F&ML eligibility during any specified 12-month period.
- i. Texas Tech 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 the employee is qualified for the position and if the position better accommodates recurring periods of leave, and if 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 only the actual hours worked.
- j. Employees granted F&ML are not permitted to perform work during regular working hours for another employer, attend training opportunities, or attend educational classes during regular working hours.

## 5. Notice

- a. Texas Tech will post notices that explain employees' rights under the Family and Medical Leave Act of 1993. See Attachment C.
- b. When an employee plans to take family or medical leave, the employee is required to give his or her supervisor 30 days' notice or, if this is not possible, as much written notice as practicable. An individual undergoing planned treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the department's operations.
- c. Texas Tech 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. The employee's supervisor must notify the employee of the certification requirement when leave is requested. Unless the need for leave was not foreseeable, Texas Tech may delay leave until the certification is provided. All certifications should be treated as confidential medical records and kept separate from personnel records.
- d. Texas Tech will require the medical recertification of an F&ML if it receives information that questions the continuing validity of the certification for which the employee is on F&ML. 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 managing director of Personnel or his or her designee specifying the age of the child, the anticipated or actual date of placement in the employee's home, and the number of requested days for F&ML. The employee also must submit proof of the placement of a foster child in his or her home.

## 6. Benefit Status during FMLA Leave without Pay

- a. Texas Tech encourages employees on approved F&ML to continue health benefits at the same level and conditions during such leave. Texas Tech 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, Box 41092, Lubbock, Texas, 79409-1092.

- b. Employees who return to work directly from F&ML may, effective the date they return to work, reinstate all reduced or canceled coverages that were in effect immediately prior to going on F&ML. Such reinstatement will be without penalty for pre-existing conditions and without the requirement to show proof of insurability. In addition, employees may add newly eligible dependents, drop dependents, drop or decrease coverages, provided the *Insurance Multipurpose Form* is completed within 30 days of returning to work.
- c. Texas Tech may recover from the employee any employer-paid premiums during any period of unpaid F&ML 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 during F&ML that the employee does not intend to return to work following F&ML, the entitlement to leave and employer-paid premiums cease at that time and the employee shall be separated with a *Personnel Action Form*.
- d. Employees on F&ML are not entitled to accrue state service credit for any full calendar month(s) of F&ML without pay and shall not accrue vacation or sick leave for such months. Furthermore, any full calendar months of F&ML without pay shall not be included in the calculation of the six continuous months of employment set forth under vacation leave.

## 7. Reporting Leaves of Absence

### a. Leave with Pay

Leave with pay will be reported in the following manner:

- (1) Employees who submit *Report of Hours Worked* forms (monthly or hourly) should report hours of family or medical leave taken on that form and attach doctors' certificates or other documentation as required. Family leave should be designated on the form with the initials "FL-V" (family leave - vacation leave) or "FLWOP" (family leave - without pay) and medical leave with either the initials "ML-V" (medical leave - vacation leave), "ML-S" (medical leave - sick leave), or "MLWOP" (medical leave - without pay).
- (2) Employees who submit *Application for Leave* forms should submit the form through normal administrative channels for all family and medical leave requested/taken, except for paid holidays, and should note that the leave requested is for approved family or medical leave. When reporting F&ML, use the same codes described in paragraph (1) of this section.

### b. Leave without Pay

- (1) Leave without pay will be reported by completing a *Personnel Action Form* (PAF) placing the employee on such leave (FLWOP or MLWOP) and, later, completing a PAF returning the employee to duty at the end of such leave.

## 8. Right to Change Policy

Texas Tech 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.

**9. Authoritative References**

- a. 29 CFR, Chapter V, C, Part B25, Titles I and IV, Family and Medical Leave Act of 1993, February 1993
- b. Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
- c. Chapter 661, Texas Government Code, Subchapter F, Section 661.912

*Attachment A: Application for Family and Medical Leave*

*Attachment B: Certification of Physician or Practitioner*

*Attachment C: Your Rights under the Family and Medical Leave Act of 1993*

*Attachment D: Personnel Department's response to employee's application for F&ML (form letter)*

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