



## TEXAS TECH UNIVERSITY™

### Operating Policy and Procedure

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

**DATE:** January 27, 2012

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

**REVIEW:** This OP will be reviewed in June of odd-numbered years by the managing director of Human Resources with recommended revisions forwarded to the chief of staff for the president.

#### **POLICY/PROCEDURE**

##### **1. Definitions**

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

Family Medical Leave—An employee is eligible for up to 12 weeks (480 hours) in a 12-month period of Family and Medical Leave (FMLA leave) if the employee has been employed by the state for at least 12 months and has worked at least 1,250 hours during the preceding 12 months. In calculating the required 12 months of state employment for FMLA leave eligibility, the state employment need not be continuous. However, any state employment that was prior to a continuous break in service of seven years or more will not be counted. With this exception, all state employment will count toward eligibility. The 1,250 hours refers to hours actually worked and does not include any paid time off.

Parental Leave—Employees who do not qualify for FMLA leave because they have fewer than 12 months of total state service or because they have worked fewer than 1,250 hours in the 12-month period immediately preceding the commencement of leave, are eligible to take parental leave, not to exceed 12 weeks, for the birth of a natural child or the adoption or foster care placement of a child under three years of age.

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.

If an employee becomes eligible for FMLA leave while out on Parental Leave, the employee will receive only a combined total of 12 weeks leave.

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)

For purposes of FMLA leave taken for birth or adoption or to take care of a family member with a serious health condition, 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, and is incapable of self-care due to mental or physical disabilities. Incapable of self care is defined as requiring active assistance or supervision to provide daily self care in three or more activities of daily living.

For purposes of military family leave, the son or daughter age requirement of under 18 years of age does not apply.

d. Parent

A parent is the biological, adoptive, step, or foster father or mother of an employee **or** an individual who stood in loco parentis to an employee when the employee was a child. **Note:** This definition **does not** include parents “in-law.”

e. Next of Kin of a Covered Service Member

Next of kin of a covered service member is the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter. This provision is only applicable for military family leave to care for a member of the Armed Forces for a serious injury or illness incurred in the line of duty. Proof of next of kin should be provided as required by law.

f. Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves one of the following:

- (1) Inpatient Care - An overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care;
- (2) Continuing Treatment by a Health Care Provider—A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
  - (a) Treatment by a health care advisor two or more times within 30 days of the first day of incapacity; or
  - (b) Treatment by a health care provider on at least one occasion that results in a regimen of continuous treatment under the supervision of the health care provider.

Only taking over-the-counter medications is not considered a regimen of treatment.

- (c) The requirement of paragraphs (2)(a) and (2)(b) above for treatment by a healthcare provider means an in-person visit to a healthcare provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.
- (d) Whether additional treatment visits or a continuing treatment regimen is needed within the 30-day period shall be determined by the health care provider.

(3) Pregnancy or Prenatal Care;

(4) Chronic Conditions—Conditions that:

- (a) Require periodic visits of no less than two times per year for treatment by a healthcare provider;
- (b) Continue over an extended period of time; and
- (c) May cause episodic rather than continuous incapacity

(5) Permanent or Long-term Conditions; or

(6) Conditions Requiring Multiple Treatments

g. Exclusions from Definition of Serious Health Conditions

Conditions for which cosmetic treatments are administered such as most treatments for acne or plastic surgery are not “serious health conditions” unless inpatient hospital care is required or complications develop.

Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontic problems, periodontal disease, etc., do not meet the definition of serious health condition and do not qualify for FMLA leave.

h. 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; (Chiropractic treatment is limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. All other treatments by a chiropractor are not protected by the FMLA.)
- (3) A nurse practitioner or nurse midwife, clinical social worker, or physician assistant if performing within the scope of her/his 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.

- i. Twelve-Month Period

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

- j. Equivalent Position

An "equivalent position" is 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, but is not necessarily the exact position held at the time FMLA leave was taken.

- k. Intermittent Leave

FMLA leave may be taken intermittently under certain circumstances.

- (a) Intermittent leave is FMLA leave that is taken in separate blocks of time due to a single qualifying reason.
- (b) Intermittent leave must be medically certified; must address the medical necessity of intermittent leave; may only be taken because of the employee's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered service member's serious injury or illness; and may not be taken after the birth of a healthy child or placement of a healthy child for adoption or foster care.
- (c) If it is medically certified, an employee may be allowed to be absent for a period of one hour or more per week for a serious health condition of the employee, family member, or a covered service member. The time away from work will be applied toward the 12 weeks (480 hours) of FMLA within a 12-month period

- l. Reduced Schedule Leave

- (a) Reduced schedule leave is a leave schedule that reduces an employee's usual number of working hours per work week or workday. A reduced schedule leave is a change in the employee's schedule for a period of time normally from full-time to part-time.
- (b) Reduced schedule leave must be medically certified; must address the medical necessity of reduced schedule leave; may only be taken because of the employee's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered service member's serious injury or illness; and may not be taken after the birth of a healthy child or placement of a healthy child for adoption or foster care.

- (c) If it is medically certified, an employee may be permitted to work less than a normal workweek while participating in a treatment program, caring for a family member, or a covered service member. The difference in the scheduled hours will be applied toward the allowable 12 weeks (480 hours) of FMLA within a 12- month period.

- 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 retirement.

## 2. Family Leave

- a. Texas Tech will provide up to 12 weeks (480 hours) of FMLA leave in any 12-month period for a certified and approved FMLA event if requested in writing by an employee for one or more of the following reasons:
  - (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* and send it to the managing director of Human Resource Services. The notice must be provided 30 days in advance of the need to take FMLA leave when the need is foreseeable. When 30-days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with normal call-in procedures. The managing director of Human Resource Services or her/his designee shall respond to the employee in writing within five working days of receipt of the application in the Human Resource Services Department. The departmental contact will be notified by Human Resource Services when FMLA leave has been designated for an employee.
- c. Intermittent or reduced schedule leave is not permitted for the birth, adoption, or placement of a child. The FMLA 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 FMLA leave. 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 FMLA leave in any 12-month period for a certified and approved FMLA event 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 own serious health condition, including on-the-job injuries, which

renders the employee unable to perform her/his job functions.

- b. Employees must complete an *Application for Family and Medical Leave* form and send it to the managing director of Human Resource Services. The managing director of Human Resource Services or her/his designee shall respond to the employee's application in writing within five days of receipt in the Human Resource Services Department of the completed application and certification of the physician or practitioner, if applicable. The departmental contact will be notified by Human Resource Services when FMLA Leave has been designated for an employee.
- 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.
- 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* form 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, including doctor's appointments and/or continuing treatment, to minimize disruptions to the operations of the employee's department.
- i. Requiring exempt employees to use sick leave for partial days' absence and counting the time off for intermittent leave or reduced schedule as FMLA 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 FMLA leave. 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. **Military Family Leave**

- a. Ill or Injured Service Member—Eligible employees may receive up to 26 weeks (1,040 hours) of FMLA leave in a single 12-month period to care for a covered member of the Armed

Forces 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 incurred in the line of duty on active duty. Notice must be provided as is reasonable and practicable.

- b. Exigency Leave—Eligible employees may receive up to 12 weeks of FMLA leave in a single 12-month period while the employee’s spouse, son, daughter, or parent is on active duty or called to active duty for one or more of the following qualifying exigencies:
  - (1) Short notice deployment—Call to duty on seven days or less notice;
  - (2) Military and related events—Official military events and ceremonies and other military sponsored programs or briefings related to the covered military member;
  - (3) Child care and school activities—To arrange or provide childcare on an urgent or immediately-needed basis (not routine, regular, or everyday child care), and to arrange for school and attend school-related meetings for a covered military member’s child;
  - (4) Financial and legal arrangements—To make financial or legal arrangements to address the covered military member’s absence while on active duty or call to active duty or to act as the covered military member’s representative before a government agency for purposes of obtaining, arranging, or appealing military service benefits while on active duty or for 90 days following termination from active duty;
  - (5) Counseling—To attend counseling for the covered military member of her/his child;
  - (6) An employee may take up to five days leave to spend time with a covered military member on short term or temporary rest and recuperation leave;
  - (7) Post deployment activities—To attend ceremonies or events related to the covered military member’s termination from active duty status or to address issues that arise from the death of a covered military member.
  - (8) Additional activities—To address or attend other events that arise out of the covered military member’s active duty or call to active duty, provided that Texas Tech and the employee agree that the leave shall qualify as an exigency and agree to the timing and duration of the leave.
- c. Notice of the intent to use Military Family Leave must be provided as is reasonable and practicable.

#### **5. 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 FMLA leave. The *Certification*

- of Physician* must include the date the serious health condition began and the estimated duration of the condition. The *Certification of Physician* 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. It is the responsibility of the employee, not Texas Tech or the health care provider, to see that the required medical certification is received by Human Resource Services. Failure to provide proper medical certification, as required, will be considered job abandonment, and the employee will be separated from employment.
- c. The employee must keep her/his supervisor informed of her/his status at least once every two weeks. If an employee does not contact her/his supervisor at least every two weeks to report her/his status, the employee may be contacted by TTU for this purpose. A family member may call in for the employee only if the employee is medically unable to do so.
  - d. Texas Tech will return employees granted FMLA Leave to their same job or position or to one of equivalent status and pay at the conclusion of such leave. Employees who are unwilling or unable to return to work at the conclusion of FMLA leave will be terminated, and the employing department may fill the vacant position.
  - e. 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 a foster care or adoption, care for a seriously ill parent or child, exigency leave, or an aggregate of 26 weeks for the care of a covered military family member.
  - f. Texas Tech may temporarily reassign or transfer employees who qualify for intermittent or reduced schedule 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 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.
  - g. Employees granted FMLA leave 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.
- b. An employee is required to notify her/his supervisor of any events that require an extended absence from work. If the event qualifies under the FMLA or Parental Leave, the supervisor has the responsibility of notifying the employee of her/his rights and responsibilities. In addition, the supervisor should notify the managing director of Human Resource Services or her/his designee when an employee has notified the supervisor of a qualifying FMLA or Parental Leave absence.
- c. When an employee plans to take family or medical leave, the employee is required to submit the application and physician's certification forms to Human Resource Services and give

- her/his supervisor at least 30 days' notice or, if this is not possible, as much written notice as practicable. An employee's failure to provide notice of foreseeable leave may result in a delay of FMLA protected leave. An individual undergoing planned treatment is required to consult with her/his supervisor and make a reasonable effort to schedule the treatment to minimize disruptions to the department's operations.
- d. 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.
  - e. Texas Tech will require the medical recertification of an FMLA Leave if it receives information that casts doubt on the employee's stated reason for the absences or questions the continuing validity of the certification for which the employee is on FMLA Leave. 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.
  - f. For adoption of a child, the employee must submit a brief written statement to the managing director of Human Resource Services or her/his 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 FMLA leave. The employee also must submit similar proof of the placement of a foster child in her/his home.

#### 6. **Benefit Status during FMLA Leave without Pay**

- a. Texas Tech encourages employees on approved FMLA leave 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 FMLA leave may, effective the date they return to work, reinstate all reduced or canceled coverages that were in effect immediately prior to going on FMLA leave. 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 FMLA leave 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 FMLA leave that the employee does not intend to return to work following FMLA leave, 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 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 vacation or sick leave for such months. Furthermore, any full calendar months of FMLA leave without pay shall not be included in the calculation of the six continuous months of employment set forth under

vacation leave.

## 7. Parental Leave

Employees who are not entitled to FMLA leave may be entitled to a parental leave of absence, not to exceed 12 weeks (480 hours), for the birth of a natural child or the adoption of a child less than three years of age.

Employees on Parental Leave are not entitled to receive the state-paid portion of the group health insurance premium during any full calendar months of leave without pay. The employee is responsible for the entire cost of the insurance premiums.

## 8. Reporting Approved Leaves of Absence

### a. Leave Reporting

Employees on leave with pay will submit a record of the applicable leave usage in a manner and form prescribed by the university in order to meet the payroll processing deadlines.

Sick Leave usage is restricted and may only be used as follows with approval and proper medical certification:

- (1) A female employee may use sick leave for birth and recovery after birth of a child.
- (2) Sick Leave may be used when a child under the age of three is adopted, regardless of whether the child is ill at the time of adoption.
- (3) Neither a male or female employee may use sick leave when becoming an adoptive parent for a child three years and above unless the child is seriously ill and medical certification is provided.
- (4) Sick leave may be used if an employee has a serious health condition or is caring for a spouse, parent, or child with a serious health condition.
- (5) An employee who is the father using FMLA leave or Parental Leave for the birth of a child is not allowed to use his sick leave unless the child has a serious health condition or his wife has a serious health condition as a result of the birth. Normal recovery from child birth or Caesarian section is not considered serious health conditions.
- (6) Employees who are becoming foster parents may not use sick leave unless it is to care for the child who is sick.

Medical certification is required before the employee may use sick leave for any absences described in items (3), (4), or (5).

### b. Leave without Pay

- (1) If sick leave usage is allowed as described in section 8.a., all available sick and vacation leave balances must be exhausted prior to any leave without pay. If sick leave is not allowed as described in section 8.a., all available vacation balance must be exhausted prior to any leave without pay. The exception to this stipulation is an

employee who is off work due to an on-the-job injury or illness and has elected not to use any or a portion of her/his time accruals.

- (2) Leave without pay will be reported by the departmental representative by completing the appropriate documentation and forwarding it through the proper channels in order to meet the payroll processing deadlines.

#### **9. 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.

#### **10. Conflict between Policy and Law**

In the event of a conflict between this OP and either federal or state law, the law will prevail.

#### **11. Authoritative References**

- a. The Family and Medical Leave Act (FMLA), 29 U.S.C., Sections 2601 et seq.
- b. 29 CFR, Subchapter B, Chapter V, Subchapter C, PT 825, Chapter V, C, Part B25, Titles I and IV, Family and Medical Leave Act of 1993, and as amended November 17, 2008
- c. Texas Government Code, Sections 661.912 and 661.913
- d. Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
- e. National Defense Act 2008, H.R. 4986, Section 585(a)

All related forms are available on the Human Resources website:

<http://www.depts.ttu.edu/hr/forms.asp>