

Memo to: All UH-Downtown/PS Holders
From: Dr. Loren J. Blanchard, President
Subject: Family and Medical Leave Policy

UH-Downtown/PS 02.A.11
Issue No. 7
Effective Date: 04/20/2023
Page 1 of 11

1. PURPOSE

This PS outlines the University of Houston-Downtown (UHD) family and medical leave benefits and the procedures for requesting and handling such leave requests in accordance with the [Family and Medical Leave Act \(FMLA\)](#).

2. DEFINITIONS

- 2.1 Active-Duty Leave: Up to 12 weeks unpaid leave for a qualifying exigency for a spouse, child, or parent of a servicemember who is on active duty or notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard, in support of a contingency operation).
- 2.2 Child: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in “loco parentis” who is under 18 years of age; or 18 years of age or older and incapable of self-care because of mental or physical disability.
 - 2.2.1 Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child or in the case of an employee, who had such a responsibility for the employee when the employee was a child. A biological relationship or legal relationship is not necessary.
- 2.3 Chronic serious health condition is defined as one that meets all the following requirements:
 - 2.3.1 Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
 - 2.3.2 Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - 2.3.3 May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy).
- 2.4 Covered military member: The employee’s spouse, child, or parent who is on active duty or call to active-duty status.
- 2.5 Covered servicemember: The employee’s spouse, child, parent or next of kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves, 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.

2.6 Eligible employee is defined as one who:

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

2.6.2 Has worked at least 1,250 hours for the State of Texas in the 12 months immediately preceding commencement of the leave. Full-time (100% FTE) exempt staff and faculty are presumed to have worked 1,250 hours.

2.7 Health care provider: A health care provider is:

2.7.1 A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

2.7.2 Any other person determined by the Secretary of Labor to be capable of providing health care services such as podiatrists, dentists, clinical psychiatrists, optometrists, chiropractors, and nurse practitioners. A complete list can be found in the Office of Human Resources. .

2.8 Incapable of self-care: An individual who requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or the instrumental activities of daily living. Activities of daily living include caring for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone and directories, using a post office, etc.

2.9 Intermittent or reduced leave schedule: family and medical leave taken in separate blocks of time due to a single qualifying reason. Intermittent leave is calculated on an hourly or daily basis, as a proportion of the employee's normal workweek. A reduced leave schedule is a change in the employee's schedule for a period of time normally from full-time to part-time.

2.10 Military Caregiver Leave: Up to 26 weeks of unpaid leave during a 12-month period for an employee who is the spouse, child, parent or next of kin of a servicemember undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or on the temporary disability retired list for a serious illness.

2.11 Next of kin of a covered servicemember: The nearest blood relative other than the covered servicemember's spouse, parent, or child, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and

first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative under the FMLA. When such a designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

- 2.12 Parent: A biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who has (or had during an employee's childhood) daily responsibility to care for and financially support a child. Parent does not include a parent-in-law.
- 2.13 Qualifying Exigencies: Arise out of the fact that the employee's spouse, child, or parent is a military member who is on active duty or call to active-duty status for any of the qualifying exigencies listed in 29 C.F.R. § 825.126 of the FMLA.
- 2.14 Rolling year is defined as a unique date for each individual that begins on the first day of Family and Medical Leave and is not a fixed date in time.
- 2.15 Serious health condition: An illness, injury, impairment, or physical or mental condition that involves the following:
 - 2.15.1 Inpatient care in a hospital, hospice, or residential medical care facility; or
 - 2.15.2 Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three calendar days, that also involves continuing treatment by a health care provider; or
 - 2.15.3 Continuing treatment by or under the orders of a health care provider for a chronic or long-term health condition which include but is not limited to any period of incapacity due to pregnancy or prenatal care; any period of incapacity due to a chronic serious health condition; or any period of incapacity that is permanent or long-term for which treatment may not be effective. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider
- 2.16 A serious health condition requires a health provider to certify that the employee:
 - 2.16.1 Is needed to care for a family member, in the case of leave requested to care for a family member; or
 - 2.16.2 Is unable to perform the essential functions of the position, in the case of leave requested for the serious health condition of the employee.
- 2.17 Spouse: Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into, or, in the case of a marriage entered into outside of any State, if the

marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in same-sex or common law marriage that either: (1) was entered into in a State that recognizes such marriages; or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

3. POLICY

- 3.1 Family and Medical Leave (FML) is provided to eligible employees to take job-protected leave for up for any of the following qualifying events or conditions:
 - 3.1.1 birth of a child and to care for the newborn child;
 - 3.1.2 the placement of a child for adoption or foster care of the child
 - 3.1.3 the serious health condition of a child, parent, or spouse of the employee;
 - 3.1.4 a serious health condition of the employee.
 - 3.1.5 a qualifying exigency for a spouse, child, or parent of service member who is on active duty, or notified of an impending call or order to active duty, or;
 - 3.1.6 the injury or illness in the line of duty of servicemember who is the spouse, child, parent or next of kin of the employee.
- 3.2 An eligible employee is entitled to twelve weeks of approved Family and Medical Leave in a rolling year for a qualifying event or condition under 3.1 above. The employee may request a shorter leave. For Military Caregiver Leave, the employee is entitled to twenty-six weeks of approved Family and Medical Leave in a rolling year for a qualifying event or condition under 3.1.6 above. The total of paid and unpaid leave under an approved FML request will not exceed twelve weeks or twenty-six weeks for Caregiver Leave in a rolling year.
- 3.3 An eligible employee must use all applicable accrued paid leave balances at the beginning of the leave, including sick leave and vacation leave, before taking unpaid Family and Medical Leave, unless the employee is receiving workers' compensation benefits. The amount of Family and Medical Leave granted is not dependent on the amount of accrued paid leave. The use of accrued sick leave is restricted to those circumstances that would otherwise qualify the employee for sick leave usage under state law and University of Houston System and UHD policies. (Please refer to [SAM 02.D.01, Vacation and Sick Leave](#).) Any vacation and sick leave earned while on a paid Family and Medical Leave may not be used until the employee actively returns to work. The employee may choose to use accrued compensatory time instead of unpaid Family and Medical Leave, but may not be required to do so. (Please refer to [SAM 02.B.02, Overtime and Compensatory Time](#).) Any compensatory time taken may not be counted against the employee's Family and Medical Leave entitlement.

- 3.4 Any sick leave of more than three consecutive days or intermittent leave of any duration for qualifying serious conditions must be counted as Family and Medical Leave if the leave requires two or more doctor's visits or at least one doctor's visit results in a regimen of continuing treatment. When there is any question about whether a condition qualifies for Family and Medical Leave, the employing department should contact the Office of Human Resources (HR). If it is determined that this leave qualifies as Family and Medical Leave, the procedures for applying for and reporting Family and Medical Leave must be followed. An employee on Workers' Compensation out for three days is required to apply for family and medical leave.
- 3.5 If both spouses are employed by the University of Houston-Downtown, they are entitled together to a total of twelve weeks of Family and Medical Leave between them during the year (rather than twelve weeks each) for the birth or placement of a child, or to care for a sick parent.
- 3.6 Leave for the birth or placement of a child must take place within twelve months after the event. Leave may begin prior to the birth or adoption, as circumstances dictate. Leave for birth or placement of a child is available equally to both parents.
- 3.7 An intermittent or reduced leave schedule may be requested for the serious health condition of the employee or his or her spouse, child, or parent.
 - 3.7.1 For intermittent leave or reduced leave schedule, a doctor's certification of the medical need for the leave must be presented to Human Resources and Operations. The certification must state that such medical need can be best accommodated through an intermittent or reduced leave schedule.
 - 3.7.2 Employees requesting intermittent leave or reduced leave schedule must attempt to schedule their leave so as not to disrupt the University's operations.
 - 3.7.3 If intermittent leave or reduced leave schedule is requested, the University may require the employee to transfer temporarily to an alternative position that better accommodates recurring periods of absence or a part-time schedule, provided the position has equivalent benefits and an equivalent pay rate for the hours worked. However, a reduction in hours may not result in a reduction in FTE.
- 3.8 In certain cases, employees may be eligible for additional unpaid leave beyond FMLA in accordance with [PS 02.A.13, Leave Without Pay](#) or [SAM 02.E.09, Reasonable Workplace Accommodations for Employees With Disabilities](#).
- 3.9 An employee who does not meet the eligibility requirements for Family and Medical Leave may be eligible for parental leave for the birth of a natural child or the adoption or state approved foster care placement of a child under three years of age. See [PS 02.A.27, Parental Leave](#) for more information.

- 3.10 If leave qualifies as both leave to care for a covered servicemember with a serious injury or illness and leave to care for a qualifying family member with a serious health condition, the leave must be designated as leave to care for a covered servicemember

4. PROCEDURES

- 4.1 Requests for Family and Medical Leave shall be made in accordance with the following guidelines:
- 4.1.1 When the need for Family and Medical Leave can be planned, such as for the birth or placement of a child, or for scheduled medical treatment, employees must provide reasonable prior notice to their supervisor (at least 30 days) and make efforts to schedule the leave to minimize disruption of the University's operations.
 - 4.1.2 In cases of sudden illness or other unforeseeable need for leave, employees are required to complete a leave request as soon as possible and report periodically during the leave, at least once per week. If a return date was not indicated on the application and certification for leave, the employee is required to report periodically during the leave, at least once per week. As an alternative, a representative may report on behalf of the employee.
 - 4.1.3 Eligibility notice: When an employee requests FMLA leave, or when the university acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the university must notify the employee of the employee's eligibility to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days, absent extenuating circumstances.
 - 4.1.4 When the university has enough information (including all required forms and certifications) to determine that leave is being taken for a FMLA-qualifying reason, the university must, absent extenuating circumstances, notify the employee that the leave is designated and counted as FMLA leave within five business days. The university must also provide notice if the leave does not qualify for FMLA.
- 4.2 A [Family and Medical Leave/Parental Leave Request](#), as well as FMLA reference and guides outlining employee rights and responsibilities are available in the Office of Human Resources website. The application shall be completed by the employee and to HR, accompanied by all required documentation.
- 4.2.1 It is the employee's responsibility to complete and sign the form and submit it to HR at least one month before any planned scheduled leave, or within three days of receipt for unscheduled leave.
 - 4.2.2 It is the employee's responsibility to indicate on the application if spouses who both work at the University are requesting leave for the same qualifying event or condition.

- 4.2.3 Once all documentation has been submitted, HR shall notify the manager of the FMLA decision and dates of leave. HR will also place employees on leave and return them from leave in our system of record.
- 4.3 To request leave based on a serious health condition, the employee or family member must be under continuing supervision of, but not necessarily receiving active treatment by, a health care provider. A completed Certification of Health Care Provider for Employee's Serious Health Condition form or a Certification of Health Care Provider for Family Member's Serious Health Condition form is required (both available [online](#)). Forms must be completed in their entirety.
- 4.3.1 These forms must be submitted to HR within 15 calendar days from the date of the written eligibility notification by HR, unless not practicable due to extenuating circumstances.
- 4.4 To request leave based on the adoption or placement of a child, a copy of the legal orders of adoption or placement is required. To request leave for bonding with a newborn child, a written statement with a copy of an official document, such as a child's birth certificate, is required.
- 4.5 To request leave for Military Family Leave the employee must provide HR with the request form or as soon as possible thereafter, the [Certification for Serious Injury or Illness of Covered Servicemember](#) or [Certification of Qualifying Exigency for Military Family Leave](#).
- 4.5.1 Written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation must be included.
- 4.6 HR may request recertification every 30 days in connection with an absence by the employee unless the medical certification indicates that the minimum duration of the condition is more than 30 days; in which case, a recertification may not be requested until that minimum duration expires. The employee must provide the requested recertification to HR within 15 calendar days of the request. Recertification is not permitted for a covered servicemember's serious injury or illness or for a covered military member's qualifying exigency. HR may request recertification in less than 30 days for any of the following situations:
- 4.6.1 Upon request for any extension of leave;
- 4.6.2 When circumstances described by the original certification have changed significantly; or
- 4.6.3 When HR receives information that casts doubt upon the continuing validity of the certification.

- 4.6.4 In all cases, HR may request a recertification of a medical condition every six months in connection with an absence by the employee; even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period more than six months.
- 4.7 At its discretion, the University may require a second medical opinion at the University's expense. If the second medical opinion differs from the employee's medical certification provided under 4.3, the University may require the opinion of a third health care provider, approved by both the University and the employee, at the University's expense. This third opinion is binding on both the University and the employee. An employee who refuses to cooperate with the third health care provider is bound by the opinion of the second health care provider. Second and third opinions are not permitted for certification of a covered servicemember's serious injury or illness or of a qualifying exigency.
- 4.8 If an employee submits a medical certification or other appropriate documentation that HR determines is incomplete, HR will provide the employee with a written statement describing the additional information necessary to make the medical certification, or alternative documentation, complete and sufficient. The employee has seven calendar days to submit the additional information.
- 4.9 Employees on Family and Medical Leave qualify for the following:
- 4.9.1 The State or University will continue to contribute its monthly portion of insurance premiums to the Employees Retirement System of Texas (ERS), during the period of Family and Medical Leave. ERS will bill the employee for any premium due after application of the state premium sharing toward the cost of the employee's health insurance if the employee is on an unpaid leave for a full calendar month.
- 4.9.2 The employee is responsible for submitting payment directly to ERS. If an employee's premium payment is more than 30 days late, insurance coverage will be reduced to employee-only coverage.
- 4.9.3 No loss of employment benefits accrued prior to the leave, unless a benefit is used by the employee during the leave, such as accrued paid leave;
- 4.9.4 No additional seniority or employment benefits may be accrued during any period of unpaid leave; and
- 4.9.5 Calculation of benefit entitlements are based upon length of service as of the last paid work day prior to the start of the unpaid leave of absence. Any full calendar month (i.e., from the first day of a month through the last day of the month, inclusive) in which an employee is on Family and Medical Leave without pay shall not be counted in the calculation of total state service for the purposes of longevity pay or vacation leave entitlements. No employee shall accrue vacation or sick leave for such month. Any full calendar month of unpaid Family and

Medical Leave shall not constitute a break in the continuity of employment but shall not be included in the calculation of the minimum of continuous months of employment.

- 4.9.6 If Family and Medical Leave is unpaid, HR must notify the Employee Retirement System (ERS) of a change in employment status in accordance with ERS procedures.
- 4.9.7 Employees' probationary period will be extended by the same amount of time they are out on Family and Medical Leave.
- 4.10 Employees taking leave for a purpose approved by this policy will be entitled upon return from such leave to be restored to the same position of employment as held when the leave began, or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees offered an equivalent position who choose to decline the position waive any rights to reinstatement. An employee who believes that a position offered is not an equivalent position is entitled, on that basis, to file a grievance under the appropriate grievance procedures.
- 4.11 The University may decline to restore an employee on Family and Medical Leave to the original or equivalent position under the conditions listed below:
 - 4.11.1 if the employee on leave is a salaried employee and is among the highest paid ten percent of the University of Houston System's employees and restoring employment of the employee would result in substantial economic injury to the University; in this situation, the employee will be notified that he/she may be ineligible for reinstatement as soon as possible after requesting the leave;
 - 4.11.2 if the employee's position is scheduled for elimination as part of an approved reduction in force (RIF) plan;
 - 4.11.3 if misconduct by the employee which constitutes grounds for termination occurs or is discovered, the employee is subject to termination even if the employee is on Family and Medical Leave at the time of the misconduct or the discovery of the misconduct, and/or;
 - 4.11.4 if an employee is scheduled for termination for any other reason prior to notification of Family and Medical Leave and has received written notice of the termination, the employee's Family and Medical Leave rights end on the previously scheduled termination date.
- 4.12 Employees who have been on approved leave based on the employee's serious health condition for more than three days will be required to submit a medical release certifying fitness for duty to HR before reporting to work. A request to return to duty with restrictions will be considered on a case-by-case basis, considering the needs of the department and the essential functions of the job.

- 4.13 The employee must report to HR if unable to return to work at the end of the leave period. Failure to report by the date intended to return to work will be considered abandonment by the employee. Additional leave beyond the maximum time provided under FMLA is subject to approval per section 3.8.
- 4.14 If an employee plans to return to work earlier than expected, the employee shall provide sufficient notice to HR.
- 4.15 FML must be reported through Absence Management using the appropriate FMLA reason code. Managers are responsible for ensuring absences are being reported. Managers must report any updates to HR. Manager must inform HR if an employee has been out sick for more than three days.
- 4.16 If an employee elects not to return to work upon completion of an approved unpaid Family and Medical Leave, the employee is obligated to reimburse the University for the amount of the State's or University's contribution of insurance premium during any complete months of unpaid leave. The employee need not reimburse the University if the failure to return to work was for reasons beyond the employee's control, or if the employee retires directly from leave or within 30 days of returning from leave

5. REVIEW PROCESS

Responsible Party (Reviewer): Vice President for the Office of Human Resources

Review: Every three years on or before April 1st.

Signed original on file in the Office of Human Resources. .

6. POLICY HISTORY

Issue #1: 09/30/94

Issue #2: 09/13//99

Issue #3: 02/05/07

Issue #4: 02/17/10

Issue #5: 04/05/11

Issue #6: 07/09/15

7. REFERENCES

[SAM 02.D.01, Vacation and Sick Leave](#)

[SAM 02.B.02, Overtime and Compensatory Time](#)

SAM 02.D.06, Family and Medical Leave
Texas Human Resources Management Statutes Inventory 2022-2023