

SUPPLEMENT TO PERSONNEL MANUAL

NO.: 5

DATE:

SUBJECT: **Family Medical Leave Act.**

Chapter VI, Subpart C. is amended by substituting the following for the current provision:

C. FAMILY AND MEDICAL LEAVE (FMLA) POLICY

1. Employee Eligibility

Employees of the University are eligible for family and medical leave (FMLA) if they have at least 12 months of service, and have worked at least 1,250 hours within the preceding 12-month period. If eligible, an employee may be able to take up to 12 weeks of unpaid leave during a 12-month period for the following reasons:

- The birth of a child or to care for a child within the first 12 months after birth;
- The placement of a child with the employee for adoption or foster care and to bond with and care for the child (within the first 12 months after placement);
- To care for an immediate family member who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the functions of his/her position; or
- An employee eligible for FMLA leave may take up to twelve weeks of FMLA leave during a twelve-month period because of any “qualifying exigency” arising from the employee’s spouse, child, or parent being:

- (1) on active duty or called to active duty in a reserve component of the Armed Forces and is deployed to a foreign country under a call or order to active duty pursuant to certain statutory provisions; or
- (2) a member of a regular component of the Armed Forces and is deployed to a foreign country.

2. Military Caregiver Leave

An eligible employee may be eligible for up to 26 weeks of FMLA leave in a 12-month period, including the types of leave listed above, to care for a parent, spouse, child, or relative to whom the employee is next of kin when the family member was a:

- (1) member of the regular or reserve Armed Forces who was undergoing treatment, recuperation, or therapy, was in outpatient status, or was on a temporary disability retired list, for a serious injury or illness incurred; or
- (2) veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness and the family member was a member of the regular or reserve Armed Forces at any time during the period of five years before

the date the veteran undergoes the medical treatment, recuperation, or therapy.

“Serious injury or illness” means:

- (1) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or 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) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- (2) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or 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) and that manifested itself before or after the member became a veteran.

3. Notice of Leave

When requesting leave, the employee must:

- Supply sufficient information for the University to be aware that the FMLA may apply to the leave request, as well as information regarding the anticipated timing and duration of leave;
- Provide notice of the need for leave at least 30 days in advance or as soon as practicable.
- Cooperate with all requests for information regarding whether absences are FMLA-qualifying.

Failure to comply may result in leave being delayed or denied.

4. Intermittent Leave

When medically necessary, employees may take FMLA leave intermittently or on a reduced schedule basis for their own serious health condition, the serious health condition of a family member, or for military caregiver leave. Employees are required to cooperate with the University to arrange reduced work schedules or intermittent leave so as to minimize disruption of business operations.

Qualifying exigency leave may be taken intermittently without regard to medical necessity or disruption of business operations.

Leave because of the birth or adoption of a child may not be taken intermittently and must be completed within the 12-month period beginning on the date of birth or placement of the child.

5. Medical and Other Certifications

Employees will be required to provide a medical certification if the leave request is: 1) for the employee's own serious health condition, 2) to care for a family member's serious health condition, or 3) military caregiver leave. Failure to provide the requested certification in a timely manner may result in denial of the leave until it is provided. If an employee refuses to provide a certification, his/her leave request may be denied and the employee may be disciplined.

The University, at its expense, may require a medical examination by a health care provider of its own choosing if it has a reasonable question regarding the medical certification provided by the employee. In lieu of a second opinion, the University may contact the health care provider directly to clarify or authenticate a medical certification, including certifications for military caregiver leave. Second opinions may not be required for military caregiver leave.

Separate certification may also be required regarding the nature of the family member's military service and/or the existence of a qualifying exigency.

6. Fitness for Duty Certifications

Because the University wishes to ensure the well-being of all employees, any employee returning from FMLA leave for his/her own serious health condition will need to provide a Fitness for Duty (FFD) certification (see page 53) signed by his/her health care provider. An employee who fails to provide an FFD certification will be prohibited from returning to work until it is provided. An employee who fails to provide an FFD certification may be disciplined or terminated.

FFD certifications may be required when an employee returns from intermittent FMLA leave if serious concerns exist regarding the employee's ability to resume his/her duties safely.

7. Maintenance of Benefits

The University maintains health care benefits for the employee while on FMLA leave, but the employee is responsible for paying the normal monthly contribution. If the employee elects not to return to work at the end of the leave period, the employee will be required to reimburse the University for the cost of premiums paid for maintaining coverage during the leave period. All other benefits cease to accrue during the unpaid portion of the leave.

8. Concurrent Leave

Employees must use any accumulated sick leave, vacation time, or paid time off (PTO) to the extent available during FMLA leave. Absences in excess of these accumulated days will be treated as FMLA leave without pay.

Any employee who takes FMLA leave for a condition which also qualifies for workers' compensation or disability leave will not be entitled to substitute accrued paid leave for the period covered by workers' compensation or disability benefits, but such time will be counted against the employee's 12-week FMLA entitlement. The employee may use accumulated leave time only for the purpose of satisfying any waiting period. If an employee is certified to return to a light duty position, but chooses not to do so, and instead chooses to remain on FMLA leave, or if such employee's workers' compensation or disability benefits cease for any reason, such employee will then be required to substitute accrued paid leave for the duration of the FMLA leave. If the employee exhausts his/her accrued paid leave, the remainder of the leave will be unpaid.

9. Married Couples Who Work for the University

If an employee and his/her spouse both work for the University they are both eligible for leave. The employee and employee spouse may be limited to a combined total of 12 weeks of FMLA leave in a 12-month period if the leave is taken for:

- The birth, adoption, or foster placement of a child;
- To care for and bond with such child who does not suffer from a serious health condition;
- To care for a parent with a serious health condition; or
- A combination of the above.

For military caregiver leave, the employee and employee spouse may be limited to a combined total of 26 weeks of leave in a 12-month period, including the types of leave listed above in this paragraph.

10. Return from Leave

Upon return from leave, the employee will be restored to his/her original or an equivalent position. An employee who fails to return at the end of FMLA leave will in most cases be considered to have voluntarily resigned his/her position with the University. Employees who do not return to work at the end of their leave will be terminated unless they are entitled to additional leave as a reasonable accommodation under the Americans with Disabilities Act.

11. No Retaliation or Interference

The University will not discriminate or retaliate against an employee who exercises his or her rights under the FMLA, or otherwise interfere with those rights.

12. Definitions

"Child" may be a biological, adopted, foster, or step child or legal ward, or child of a person standing "in loco parentis" by providing day-to-day care and financial support, where the child is under age 18, or age 18 or older and incapable of self care because of a mental or physical disability.

"Family Medical Leave Act" (FMLA), is the Family Medical Leave Act of 1993, 29 USCA 2601, et seq., as amended, and as implemented by 29 CFR Part 825.

"Next of Kin" means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

"Parent" means a biological, adoptive, step or foster parent, or other person who stood "in loco parentis" to a child by providing day-to-day care and financial support. In-laws are not covered by this policy.

"Qualifying exigencies" include:

- Issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;

- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

"Spouse" means a legal spouse or a common law spouse. This policy also covers domestic partners. Both spouses and domestic partners must have on file an Affidavit of Domestic Relationship to be eligible for leave to care for the spouse or partner.

NOTE: The foregoing is a summary of the FMLA and an employee should contact HR as soon as they anticipate a need for FMLA to get a complete description of their rights and responsibilities. This information is current as of the October 28, 2009, amendments at which time some of the regulations implementing the 2009 amendments had not been approved.