

STEPHEN F. AUSTIN  
STATE UNIVERSITY

Office of the General Counsel

**POLICY SUMMARY FORM**

**Policy Name:** Family and Medical Leave

**Policy Number:** 12.9

**Is this policy new, being reviewed/revised, or deleted?** Review/Revise

**Date of last revision, if applicable:** 4/30/2019

**Unit(s) Responsible for Policy Implementation:** Vice President for Finance and Administration

**Purpose of Policy (what does it do):** This policy explains who is eligible for family and medical leave and defines related terms. It also provides information for employees who may need to request family and medical leave.

**Reason for the addition, revision, or deletion (check all that apply):**

- Scheduled Review       Change in law       Response to audit finding  
 Internal Review       Other, please explain:

*Please complete the appropriate section:*

**Specific rationale for new policy:** N/A

**Specific rationale for each substantive revision:**

**Specific rationale for deletion of policy:** N/A

*Additional Comments:*

Minor wording changes for consistency within the policy.

Reviewers:

Judith Kruwell, Interim Vice President for Finance and Administration  
John Wyatt, Interim Human Resources Director  
Damon Derrick, General Counsel

# Family and Medical Leave

**Original Implementation:** August 5, 1993

**Last Revision:** April 12~~30~~, 2022~~19~~

## Purpose

This policy explains who is eligible for family and medical leave and defines related terms. It also provides information for employees who may need to request family and medical leave.

## Definitions

**Applicable Paid Leave** - Sick leave and vacation accruals.

**Spouse** - Those recognized as spouses by the State of Texas.

**Parent** - Includes biological parents and individuals who act as the employee's parents, but does not include parents-in-law.

**Child/Son or Daughter** - Legally recognized, including biological, adopted, foster children, stepchildren, and legal wards, who are under eighteen (18) years of age or eighteen (18) years of age or older and incapable of self-care because of mental or physical disability. For purposes of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a child of any age.

**Serious Health Condition** - Any illness, injury, impairment, or physical or mental condition that involves: (1) any incapacity or treatment in connection with inpatient care; (2) any incapacity or treatment requiring absence of more than three calendar days and continuing treatment by a health care provider; or, (3) continuing treatment by a health care provider of a chronic or long-term condition that is incurable or will likely result in incapacity of more than three days if not treated.

**Continuing Treatment** - Includes: (1) two or more treatments by a health care provider; (2) two or more treatments by a provider of health care services (i.e., physical therapist) on referral by or under orders of a health care provider; (3) at least one treatment by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider (i.e., a program of medication or therapy); or, (4) under the supervision of, although not actively treated by, a health care provider for a serious long-term or chronic condition or disability which cannot be cured (i.e., Alzheimer's or severe stroke).

**Health Care Provider** - Includes: licensed medical (MD) and osteopathic (OD) doctors, podiatrists,

dentists, clinical psychologists, optometrists, chiropractors authorized to practice in the State, nurse practitioners and nurse-midwives authorized under state law, and Christian Science practitioners.

**Needed To Care For** - Encompasses: (1) physical and psychological care for a family member; and, (2) where the employee is needed to fill in for others providing care or to arrange for third party care of the family member.

**Unable to Perform the Functions of the Employee's Job** - Describes when an employee is (1) unable to work at all; or, (2) unable to perform any of the essential functions of ~~his/her~~their position. The term "essential functions" is borrowed from the Americans with Disabilities Act (ADA) to mean "the fundamental job duties of the employment position," and does not include the marginal functions of the position.

**Qualifying Exigencies** - Describes situations arising from the military deployment of an employee's spouse, son, daughter, or parent to a foreign country. Qualifying exigencies for which an employee may take FMLA leave include issues arising from the military member's short notice deployment; or making alternative child care arrangements—for a child of the military member when the deployment of the military member necessitates a change in the existing child care arrangement; attending certain military ceremonies and briefings; attending counseling for the employee, the military member, or the child of the military member; or taking leave to spend time with a military member on Rest and Recuperation leave—during deployment; or making financial or legal arrangements to address a covered military member's absence; or certain activities related to care of the parent of the military member while—the military member is on covered active duty; or any other event that the employee and employer agree is a qualifying exigency.

**Short Notice Deployment** - Deployment within seven or less days of notice.

**Covered Servicemember** - A current member of the Armed Forces, including a member of the National Guard or Reserves, 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. "Covered servicemember" also includes veterans discharged under conditions other than dishonorable within the five-year period before you first take military caregiver leave to care for that veteran. A serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of ~~his/her~~their office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

## General

Employees are eligible to take family/ and medical leave within any 12-month period and be restored

to the same or an equivalent position upon return from leave, provided that the employee has worked for the state of Texas for at least twelve (12) months and for at least 1,250 hours within the previous twelve (12) month period. Leave without pay may begin after all available applicable paid leave has been exhausted and will be included in the twelve (12) weeks of Family and Medical Leave Act (FMLA) time. Applicable Sick Leave Pool benefits, donated sick leave, and leave resulting from Workers' Compensation claims (See Workers Compensation Coverage, Policy 12.23) will be included in the twelve (12) week period.

### **Reasons for Family and Medical Leave**

Eligible faculty and staff may take up to 12 workweeks of leave in a 12-month period of family and medical leave for any of the following reasons:

1. The birth of a child or placement of a child with the employee for adoption or foster care;
2. To care for a spouse, child, or parent who has a serious health condition;
3. For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
4. For any “qualifying exigency” arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or has been notified of an impending call to covered active duty status.

*Eligible faculty and staff may take up to 26 workweeks of leave in a 12-month period of family and medical leave for the following reason:*

~~An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to~~ care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

For purposes of FMLA, a rolling twelve (12) month period will be measured backward from the date leave begins.

Leave because of birth of a child or placement of a child with the employee for adoption or foster care must be completed within the twelve (12) month period beginning on the date of birth or placement. An employee is allowed to use sick leave for the period of time that is certified by the physician to recover from childbirth. An employee may take additional time off before returning to work requesting up to 12 weeks of leave for the birth or placement of a child under FMLA. However, the employee may not use sick leave for the remaining time unless the employee or the child is actually sick. In addition, spouses employed by Stephen F. Austin State University who request leave because of these reasons or to care for an ill parent may only take a combined total of twelve (12) weeks during any twelve (12) month period.

Sick leave may be used in conjunction with FMLA leave when a child under the age of three is adopted regardless of whether the child is actually sick at the time of adoption. Furthermore, an employee, who is the father of a child, may use his sick leave in conjunction with the child's birth only if the child is actually ill, or to care for his spouse while she is recovering from labor and delivery.

Employees with less than 12 months of state service and/or less than 1,250 hours of work in the 12 months immediately preceding the start of leave are entitled to a parental leave of absence, not to exceed 12 weeks (480 hours). 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. Such parental leave may only be taken for the birth of a natural child or the adoption or foster care placement with the employee of a child under three years of age. The leave period begins with the date of birth or the adoption or foster care placement.

### **Notice of Leave**

If the need for family *and* ~~medical~~ leave is foreseeable, the employee must give thirty (30) days prior written notice. If this is not possible, the employee must give notice within one to two working days of learning of the need for leave or as soon as practicable. Failure to provide such notice may be grounds for delay of leave. Where the need for leave is not foreseeable, the employee is expected to notify the supervisor and Human Resources within 1 to 2 working days of learning of the need for leave, except in extraordinary circumstances. Requests for Family *and* ~~Medical~~ Leave forms are available from Human Resources. Employees should use these forms when requesting leave.

### **Medical Certification**

If an employee is requesting leave because of their own or a covered relation's serious health condition, the employee and the relevant health care provider must supply appropriate medical certification. Medical Certification Forms may be obtained from Human Resources. The form must be returned to the director of human resources or a designated leave administrator within fifteen (15) days after the date leave is requested. Failure to provide requested medical certification in a timely manner may result in denial of leave until the certification is provided. The university, at its expense, may require an examination by a second health care provider designated by the university. If the second health care provider's opinion conflicts with the original medical certification, the university, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The university may require subsequent medical re-certification on a reasonable basis.

### **Reporting While on Leave**

If an employee takes FMLA *leave* because of a personal serious health condition or to care for a covered

relation, the employee must contact the supervisor at least once each week, or as often as requested by the supervisor, regarding the status of the condition and the intention to return to work. The supervisor is responsible for reporting this information to the leave administrator. Additionally, the employee is required to call Human Resources on the 1st and 3rd Monday of each month during their leave to report their leave and/or return to work status. Failure to communicate with the supervisor and Human Resources on the approved reporting schedule may result in denial of leave.

### **Leave Is Unpaid**

Family *and* ~~medical~~ leave is unpaid leave after vacation, sick and all other applicable leaves have been exhausted. Employees may apply for sick leave from the Sick Leave Pool, which, if approved, will be included within the FMLA period. Employees may be eligible for short or long-term disability payments and/or workers' compensation benefits under the provisions of those plans. This leave time will also be included in the twelve (12) week period of FMLA. The use of applicable paid leave time does not extend the twelve (12) week leave period.

### **Medical and Other Benefits**

During an approved family *and* ~~medical~~ leave, the university will maintain the state contribution for the employee's health benefits as if the employee continues to be actively employed. During periods of paid FMLA leave, the university will deduct the employee's portion of the insurance premiums as a regular payroll deduction. If the employee's FMLA leave is unpaid, the employee portion of the premium must be paid by the employee through the benefits ~~manager~~-*personnel* in Human Resources. The employee's insurance coverage will cease if the premium payment is more than thirty (30) days late. If the employee elects not to return to work at the end of the FMLA leave period, the employee will be required to reimburse the university for the cost of the premiums paid by the university for maintaining coverage during the leave, unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control. An employee on FMLA *leave* is not entitled to accrue state service credit for any full calendar months of leave without pay taken while on FMLA *leave* and does not accrue vacation or sick leave for such months of leave without pay.

### **Intermittent and Reduced Schedule Leave**

Leave because of a serious health condition may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours worked per workweek or workday), if medically necessary. A reduced schedule is subject to availability depending on the business need of the department or the university. If leave is unpaid, the university will reduce the employee's salary based on the amount of time actually worked. In addition, while the employee is on an intermittent leave or reduced schedule, the university may temporarily transfer the employee to an alternative position which better accommodates recurring leave and which has

equivalent pay and benefits.

### **Returning From -Leave**

If the employee takes leave because of a personal serious health condition, the employee is required to provide ~~medical certification~~ *a release to return to work* to their supervisor and the leave administrator that *states that* the employee is fit to resume work. *An example of a R* ~~release to return to work~~ **Work Medical Certification Forms** may be obtained from Human Resources. Employees failing to provide ~~the Return to Work Medical Certification Form~~ *an acceptable release to return to work* will not be permitted to resume work until it is provided.

**Cross Reference:** The Family and Medical Leave Act of 1993 (FMLA), 29 C.F.R. § 825; Tex. Gov't Code § 661.912; Workers Compensation Coverage (12.23)

**Responsible for Implementation:** Vice President for Finance and Administration

**Contact for Revision:** Director of Human Resources

**Forms:** *Family and Medical Leave Request for Leave Form, Certification of Health Care Provider for Employee's Serious Condition under the Family and Medical Leave Act, Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act, Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act, Certification for Military Family Leave for Qualifying Exigency under the Family and Medical Leave Act* ~~Physician or Practitioner Form,~~ *Family and Medical Leave Certification of Placement/Bonding Leave Due to Adoption or Foster Care.* ~~Family/Medical Leave Return to Work Medical Certification Form~~

**Board Committee Assignment:** Academic and Student Affairs