

12.00 FAMILY AND MEDICAL LEAVE ACT POLICY FOR FACULTY MEMBERS AND OTHER EPA PERSONNEL NOT COVERED BY THE “EMPLOYMENT POLICIES FOR UNIVERSITY EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT”

1. Purpose

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men. Under this policy, employees may use vacation or sick leave (if available) or leave without pay for absences from work due to childbirth, adoption, or a serious health condition of an employee or an employee’s spouse, child or parent. An employee’s job and benefits are protected while an employee takes leave under this policy.

2. Definitions:

- a. Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.
 - b. Child - is a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is:
 - (1) a biological child
 - (2) an adopted child
 - (3) a foster child - a child for whom the employee performs the duties of a parent as if it were the employee’s child
 - (4) a step-child - a child of the employee’s spouse from a former marriage
 - (5) a legal ward - a minor child placed by the court under the care of a guardian
 - (6) a child of an employee standing in loco parentis
 - c. Spouse - a husband or wife
 - d. Serious Health Condition - an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider;
3. Eligible Employees - Faculty members and other EPA personnel who are not covered by the “Employment Policies for University Employees Exempt from the State Personnel Act” are eligible if they have been employed with state government for at least 12 months and have worked at least 1040 hours (half-time) during the previous 12-month period. Eligible employees are entitled to a total of 12 work weeks leave during any 12-month period for one

or more of the reasons listed below. A work week is defined as the number of hours an employee is regularly scheduled to work each week.

- a. For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth.
- b. For the employee to care for a child placed with the employee for adoption, provided the leave is taken within a 12-month period following adoption.
- c. For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or
- d. Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.

4. Leave Charges

- a. Birth - For the birth of a child, the employee may choose to exhaust available vacation and/or sick leave, or any portion, or go on leave without pay; except that sick leave may be used only during the period of disability. This applies to both parents.
- b. Adoption - For the adoption of a child, the employee may choose to exhaust available vacation leave, or any portion, or go on leave without pay.
- c. Illness of Child, Spouse, Parent - For the illness of an employee's child, spouse, or parent, the employee may choose to exhaust available sick and/or vacation leave, or any portion, or go on leave without pay.
- d. Employee's Illness - For the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available vacation leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 work weeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Policy.

5. Intermittent Leave or Reduced Work Schedule

Pursuant to this policy, the employee may not take leave intermittently or on a reduced work schedule for child birth and birth-related child care or for adoption unless the employee and university agree otherwise in writing. When medically necessary, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition.

If such leave is foreseeable, based on planned medical treatment, the university may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

When an employee is on a reduced work schedule, the time not worked is counted against the total 12 work weeks.

6. Employee Responsibility

The employee shall apply in writing to the supervisor for leave requested under this policy on forms available in the Office of Human Resources.

- a. Birth or Adoption - The employee shall give the university no less than 30 days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- b. Planned Medical Treatment - When the necessity for leave to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt operations, subject to the approval of the employee's health care provider or the health care provider of the employee's child, spouse or parent. The employee must also give 30 day's notice if practicable of the intention to take leave, subject to the actual date of the treatment.

The employee shall be deemed to have applied for leave under this policy when: (a) the employee is on approved leave but has not given written notice of the intent to take family or medical leave to the supervisor, (b) the employee utilizes leave for any purpose whether with or without pay for a period in excess of 30 days and (c) the basis for the leave falls within the scope of this policy. In these cases, before the leave has ended, the university shall notify the employee that time spent on paid leave or leave without pay during the 30-day period and thereafter is a part of the 12 work weeks of leave.

If the employee will not return to work after the period of leave, the university shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

7. Certification

For leave pursuant to this policy, the university may require that a claim for leave because of adoption be supported by reasonable proof of adoption.

The university may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a doctor's certification which includes the following:

- The date on which the serious health condition began
- The probable duration of the condition
- The appropriate medical facts regarding the condition
- A statement that the leave is needed to care for the child, spouse, or parent, and an estimate of the amount of time that is needed; or that the employee is unable to perform the functions of the position, whichever applies
- Where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment

Whenever possible, certification shall be made on forms developed by the U.S. Department of Labor.

Where the university has reason to doubt the validity of the certification, the university may require the employee to get the opinion of a second doctor designated or approved by the university. Where the second opinion differs from the opinion in the original certification provided, the university may require the employee to get the opinion of a third doctor designated or approved jointly by the employer and the employee. The third opinion is final and is binding on the university and the employee. The university may require that the employee get subsequent recertification on a reasonable basis. The second and third certification and the recertification must be at the university's expense.

8. Employment and Benefits Protection

- a. Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The university may require the employee to report at reasonable intervals to the employer on the employee's status and intention to return to work. The university also may require that the employee receive certification that the employee is able to return to work.
- b. Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.
- c. Health Benefits - The state shall maintain coverage for the employee under the state's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment.

The university may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

9. Interference with Rights

- a. Actions prohibited - It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.
- b. Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:
 - (1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this policy
 - (2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy
 - (3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy

10. Enforcement

A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal under the State Personnel Act. Violations can result in any of the following or a combination of any of the following and are endorsed by the U.S. Secretary of Labor:

- a. U.S. Department of Labor investigation, or
- b. Civil liability with the imposition of court cost and attorney's fees, or
- c. Administrative action by the U.S. Department of Labor.

APPROVED BY THE BOARD OF TRUSTEES ON MARCH 9, 1994.

Revised July 1994.