



Angelo State University
Operating Policy and Procedure

OP 52.16: Family Medical Leave Act (FMLA)

DATE: September 1, 2007

PURPOSE: Establish policy and procedures for leave under the Family Medical Leave Act (FMLA).

REVIEW: This Operating Policy (OP) will be reviewed in September of each year by the director of human resources with recommended revisions forwarded through the vice presidents to the president by October 15.

POLICY/PROCEDURE

1. Policy

It is the policy of the University to comply with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The FMLA protects an employee's job and benefits for up to 12 work weeks in the event that time off is taken due to certain medical or family-related reasons.

2. Eligibility

All University employees, if qualified, can take up to 12 work weeks of time off per year under FMLA for certain medical and family reasons, provided they have been employed by the State of Texas for at least 12 months prior to the commencement of the leave and worked at least 1,250 hours during the 12-month period immediately preceding commencement of the leave.

Employees who are not eligible for FMLA leave may be eligible to use Parental Leave for the birth or adoption of a child. Refer to the ASU Operating Policies and Procedures, OP 52.33, for more information.

3. Reasons for Family Medical Leave

Under FMLA, employees are entitled to only one cumulative 12 week period of time off during a 12 month period for any one or more of the following reasons:

- a. the serious non-work-related or work-related health condition of the employee that prevents the employee from performing his or her job;
- b. the serious health condition of a spouse, child, or parent of the employee;
- c. the birth of a child and care after birth during the child's first year of life;

- d. the placement with the employee of a child for adoption or foster care during the first year following placement.

When an employee is taking leave to care for a family member or due to his or her own serious health condition, the employee may be required to support the leave request with a medical certification from the health care provider. If the employee's department does not agree with the medical certification, a second opinion at the department's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at the department's expense and that opinion will be the final determination.

4. Serious Health Condition of Employee or Family Member

According to the FMLA, a "serious health condition" means a non-work-related or work-related illness, injury, impairment, or physical or mental condition that involves:

- a. Inpatient care (i.e., an overnight stay in a medical facility such as a hospital), including any period of incapacity or any subsequent treatment in connection with the inpatient care; or
- b. "Continuing treatment" by a health care provider which includes any period of incapacity as a result of: a health condition lasting more than three (3) consecutive days and any subsequent treatment or period of incapacity relating to the same condition that also includes treatment two or more times by or under the supervision of a health care provider; or
- c. Treatment for a serious chronic condition which, if left untreated, would likely result in an absence of work for more than three days.
- d. Treatment of substance abuse may be included under FMLA where a stay at an in-patient treatment facility is required. However, absences due to an employee's use of a substance without undergoing treatment, does not qualify for FMLA time off. The inclusion of substance abuse under the serious health condition definition does not prevent the University from taking any employment action against an employee who is unable to perform the essential functions of the job provided the institution complies with the Americans with Disabilities Act and does not take action against the employee because such employee exercises his or her rights under the FMLA.

Examples of serious health conditions include:

- i. Heart attacks;
- ii. Heart conditions;
- iii. Most cancers requiring extensive therapy and surgical procedures;
- iv. Strokes;
- v. Respiratory conditions;
- vi. Appendicitis;
- vii. Pneumonia;

- ix. Emphysema;
- x. Severe nervous disorders;
- xi. Injuries caused by serious accidents on or off the job;
- xii. Pregnancy;
- xiii. Severe morning sickness;
- xiv. Prenatal care;
- xv. Childbirth and recovery from childbirth;
- xvi. Back conditions requiring extensive therapy or surgical procedures.

The FMLA is not intended to cover short-term conditions for which treatment and recovery are brief. It should also be noted that the FMLA does not restrict or modify any Federal or State antidiscrimination rules or the Health Science Center's obligation to comply with the Americans with Disabilities Act.

5, Eligible Family Members

An employee may take FMLA time off to care for the serious health condition of a spouse, dependent child or parent. A spouse is defined in accordance with the applicable state law, including common law marriages when recognized by the state (Texas recognizes common law marriages). Unmarried domestic partners (same or opposite sex) do not qualify for FMLA leave. Son or daughter includes a child (biological, adopted, stepchild, or foster) under 18 years or one who is 18 years or older who is incapable of self care because of a mental or physical disability. A parent is the biological parent or an individual who stands or stood as a parent when the employee was a child. Grandparents and in-laws are excluded.

6. Childbirth, Child Care, and Child Adoption

An employee's entitlement to leave for the birth or placement of a child expires twelve months after the birth or placement. There is no medical certification required if an employee is taking leave for the birth of a child. Documentation to support child placement for adoption or foster care may be required. In some cases, time off for birth or placement for adoption can be taken prior to the actual birth or adoption. This will occur when there is a need for prenatal care or the mother is no longer able to work before childbirth or for court appearances, counseling or home visits in the case of a placement of a child for adoption.

7. Married Employees Working for the University

For married employees who work for the University, the total combined amount of FMLA leave between the two employees cannot exceed 12 weeks. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness or injury, this limitation does not apply.

8. Workers' Compensation

FMLA-eligible employees will be placed on FMLA by the Office of Human Resources in conjunction with any Workers' Compensation Insurance (WCI) leave resulting from a work-related injury or disease.

9. Leave Administration Under FMLA

In accordance with the law, the University will allow an employee to take up to 12 work weeks of time off in a 12-month period. The 12 month period begins from the date of the employee's first FMLA-related date of absence or the date that the Office of Human Resources approves the time off under FMLA, whichever is later. During the FMLA period, employees are required to first use their available paid leave (sick and vacation), if any, and then will be placed on a non-paid status (leave without pay) for the remainder of the 12 week FMLA leave entitlement, if necessary. The exception is for Workers' Compensation cases where the employee has an option to use or not use accrued leave.

The FMLA regulations state that if an employer provides more benefits than required by the Act, the FMLA will not restrict those benefits. Therefore, benefits such as the Sick Leave Pool or workers' compensation may be used in conjunction with and count towards the 12 weeks of FMLA leave. Also, employees may continue to use the balance of their leave entitlements, even if such balance exceeds the 12 week period allowed by FMLA.

The University is not permitted to count paid leave that was not for an FMLA reason against an employee's FMLA leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, flu, or condition that is not an extended illness, those days may not be counted towards the 12 week entitlement for a bona fide FMLA reason. If, however, the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, the University may require the employee to use their sick and vacation leave and limit the total amount of time away from work to a total of 12 weeks.

A holiday that occurs during a week off under FMLA is counted as part of FMLA leave. However, if the University closes for a few days (due to inclement weather or emergency closure, for example), then that period would not count toward an employee's FMLA leave.

If at the end of the FMLA period an employee has not returned to work and has exhausted all of his or her leave and FMLA entitlements, employment with the University may be terminated.

10. Intermittent Leave

FMLA time taken due to the serious health condition of the employee or a member of the employee's family may be taken on an intermittent basis. There is no minimum limitation on the number of hours of intermittent leave that may be taken, i.e., the leave may be taken in
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increments of two hours, four hours, etc., provided that proper notice has been given if the need for the leave is foreseeable. The accumulated time taken on intermittent basis may not exceed the 12 weeks. When an employee has requested intermittent leave, the department may transfer the employee to another position with equivalent pay and benefits if the employee is qualified for the position and if it better accommodates the recurring periods of leave more so than the employee's current position.

Intermittent leave to take care of a newborn child who does not have a serious health condition is not a right under FMLA. However, departments do have the discretion to allow their employees to take FMLA on an intermittent basis to take care of a newborn child who does not have a serious health condition.

11. Procedures for Employees Requesting FMLA Time Off

- a. All FMLA leave requests must be presented by the employee to the Office of Human Resources and the employee's supervisor or the person in the employee's department who is responsible for granting any other types of leave. It is not required that the request specifically mention FMLA. The request can be either verbal or in writing. The request must be made with at least a 30 day advance notification before the time off commences. If the event is not foreseeable, the request should be made as soon as possible within one to two business days of when the employee learns of the need for time off.
- b. A medical certification from the employee's treating physician can accompany the request, or, the Office of Human Resources may request a medical certification. If requested, the employee has 15 days from the date of the Human Resources' request to provide a medical certification. If a medical certification is necessary, employees may use the form, *FMLA Certification of Physician or Practitioner* (Attachment).

12. Procedures for Departments for Responding To and Placing Employees Under FMLA

The Office of Human Resources is responsible for determining eligibility and for responding to the employee's request for time off under FMLA. Human Resources is also responsible for continued communication with the employee and complying with the recordkeeping requirements of the law.

- a. The Office of Human Resources shall determine the eligibility of the employee to qualify for FMLA time off and the eligibility of the qualifying event for the FMLA leave request. If the employee and qualifying event are eligible under FMLA leave, the employee shall be granted the leave. If eligible, Human Resources will notify the employee of the approved FMLA time off within two (2) working days of the employee's request. Human Resources' response will be made using the form, Notification to Employee of Family Medical Leave Act (FMLA) Status. If granted, the FMLA time off will be effective from the date of the employee's initial FMLA-related absence or the date that Human Resources approves the time off under FMLA, whichever is later. The original form is given to the employee with a copy sent to the employee's supervisor and a copy kept in the Office of Human Resources.
- b. In some situations, the Office of Human Resources will initiate commencement of FMLA. For example, if the employee is involved in a car accident and is incapacitated and cannot request FMLA, or if the employee suffers a work-related injury, then the department can notify Human Resources about the potential for an FMLA situation. Human Resources can then place the employee under FMLA without a request from the employee using the Notification to Employee of Family Medical Leave Act (FMLA) Status.
- c. The Office of Human Resources may request a medical certification from the employee. If requested, the employee has 15 days from the date of the request to provide a medical certification. If Human Resources does not agree with the medical certification, a

second opinion at Human Resources' expense may be obtained. If the two opinions disagree, a third opinion may be obtained at Human Resources' expense and that opinion will be the final determination.

- d. The *Notification to Employee of Family Medical Leave Act (FMLA) Status* form must be sent to the employee for each period of absence covered by FMLA, regardless of reason. This may occur when an employee is out due to an illness or injury, returns to work for a period of time, and then requests time off again for surgery or therapy for that illness or injury.

Should a dispute arise between the employee and the employee's department, with regard to the requested FMLA leave or the terms and conditions of the leave, either the employee or the department may appeal such disputes to the Director of Human Resources. The decision of the Director of Human Resources shall be final in the resolution of such disputes.

13. Recordkeeping

Federal recordkeeping policies require that all FMLA leave be indicated as such on time and leave records and other documents. It shall be the responsibility of the Office of Human Resources to maintain leave records for any employee on FMLA leave. The leave time taken by the employee shall be recorded on institutional records as leave with pay under FMLA (using the employee's available leave entitlements) or leave without pay under FMLA. Paid leave under FMLA is taken from the employee's leave balances and must be recorded in the institutional records. Unpaid leave under FMLA will be entered in the institutional records as leave without pay.

All original requests for FMLA must be maintained by the Office of Human Resources. The following information must be kept regarding FMLA time off:

- a. Records of no less than three years which contain the basic payroll and identifying employee data, including name, address, occupation, rate of pay, terms of compensation, hours worked, additions and deductions to wages, and total compensation. This information is kept in the institutional human resource management system.
- b. The dates that family leave is taken by an employee. The leave must be designated in the records as leave taken under FMLA. This information is kept by the Office of Human Resources.
- c. Documentation of leave taken under FMLA in increments of less than one full day (intermittent leave), as well as hours of the leave. This information is kept by the employee's department.
- d. Copies of employee notices of leave furnished to the department or Human Resources under FMLA, if in writing, and copies of all general and specific notices given to employees under FMLA and copies of the regulations. This information is kept by Human Resources.
- e. Any documents describing employee benefits or University policies. This information is kept by Human Resources. Also, written and electronic records regarding the taking of paid and unpaid leave. This information is kept by the department and Human Resources.

- f. Premium payments of employee benefits
- g. Records of any dispute between the employee and the department regarding any designation of leave as FMLA leave, including any written statements from the department or the employee and the reasons for the designation and disagreement. This information is kept by Human Resources.

It should be noted that records and documents relating to medical certifications, recertification, and medical histories of the employee or the employee's family members will be maintained in separate files and treated as confidential medical records by the department. The medical information may be disclosed to: supervisors and managers, if needed, regarding work restrictions; the first aid and safety personnel if the employee's physical and medical conditions require medical treatment; and governmental officials investigating compliance with FMLA.

14. Health Insurance Coverage and Premium Payments

Employees on paid leave under FMLA will continue their health insurance coverage on a shared cost basis between the University and the employee, if applicable. The employee's share of the cost, if any, will be deducted from the employee's paycheck.

When an employee is on unpaid leave under FMLA, the University will continue to contribute its share of premium sharing for medical insurance and the employee will pay his or her share of the cost, if any, through the Employee Retirement System (ERS). For example, if the employee has family medical coverage, the University will continue sharing the cost of the premiums with the employee at the "employee plus family" rate. The full-time or part-time employee, on unpaid leave, may choose to pay his or her out of pocket cost of the premiums for the current insurance coverage. Should a full-time employee choose not to continue the current coverage or fails to pay his or her cost, the level of coverage will be reduced to no less than employee-only coverage.

The employee has 30 days from the due date to pay his or her insurance premium. If a full-time employee does not make payment within 30 days, the University will reduce the employee's current coverage to no less than employee-only coverage effective the first date of the month for which the payment was due. Prior to expiration of the 30 day period, the University will notify the employee of the cancellation of insurance coverage.

If the University discontinues health coverage as a result of non-payment of insurance premiums and the employee returns from FMLA time off, the employee's benefits must be restored to at least the same level and terms as were in place when the FMLA period commenced. Therefore, the returning employee shall not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements, when the employee has failed to continue health coverage for non-payment of premiums.

In accordance with FMLA regulations, the University may be entitled to recover its share of the cost of non-health care benefits, such as life insurance, short-term disability, etc., from the employee who returns to work from FMLA time off.

15. Returning to Work

When an employee returns to work after taking leave under FMLA, he or she is entitled to be restored to the same position held when the leave started or to an equivalent position with

equivalent pay within the provisions and limitations of the law. An equivalent position is one that has the same pay, benefits, and working conditions and involves the same or substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility, and authority.

Departments may require the returning employee to provide a work release notification from the employee's physician before being allowed to work.

16. Termination of Employment

Upon exhaustion of all leave and FMLA entitlements or if the employee fails to return to work upon expiration of the FMLA period, an employee may be terminated from employment with the University. All other University employment policies apply to employees regardless of FMLA status.

17. Employee Rights

Employees who exercise their rights under the FMLA are entitled to do so without restraint and shall not be subject to discharge or discrimination by the institution. The University may not discriminate against an individual for having filed complaints, initiated any proceeding under or related to the FMLA, or given any information in connection with an inquiry or proceeding regarding the FMLA. Should a dispute arise between the employee and the department with regard to the requested FMLA leave or the terms and conditions of the leave, either the employee or the department may appeal such disputes to the Director of Human Resources. The decision of the Director of Human Resources shall be final in the resolution of such disputes.

If an employee's rights may have been violated, he or she should first consult Human Resources and/or file a grievance in accordance with the grievance policy. The FMLA provides that an employee may file a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief if an employee's FMLA rights have been violated.