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Reference:
System Regulation 31.03.05 – Family and Medical Leave
http://tamus.edu/offices/policy/policies/pdf/31-03-05.pdf

Additional Information:
Standard Administrative Procedure 31.06.01.Z1.01, Sick Leave Pool Administration
Supplements System Policy 31.06 and System Regulation 31.06.01

Texas A&M Health Science Center Human Resources
http://tamhsc.edu/departments/finance-admin/payroll-hr/hr-forms.html
1. Introduction

The Family and Medical Leave Act (FMLA) is a benefit that allows qualified employees to take up to twelve weeks of leave per fiscal year for his or her own personal illness, for the birth or adoption of a child, or to care for a family member. Employees may also take FMLA leave to take care of personal and family matters in the event a spouse or another eligible family member is called to active duty in the Armed Forces.

Employees must qualify for leave under the FMLA before such leave can be granted; two criteria must be met:
- Must have a total of at least 12 months of state service (employment periods preceding a break in service of more than seven [7] years are not required to be counted); and
- Must have physically worked 1,250 hours with the state within the 12 months prior to the need for FMLA leave.

Note: Student employees, wage employees, and faculty are eligible for FMLA leave if the above requirements are met.

This manual is designed to provide departmental liaisons and supervisors with practical guidance on issues and procedures pertaining to FMLA benefits at the Texas A&M Health Science Center. The guidance and information provided in this manual is not intended to serve as official Texas A&M HSC policy, but is intended to assist in the application of FMLA leave where appropriate. All applicable laws and policies will apply to matters of FMLA administration and other topics discussed in this manual.

Administrators who have complex FMLA issues are encouraged to contact Payroll and HR Services to ensure a thorough review of any concerns that may arise in their respective areas.

2. FMLA Administrator / Liaison Responsibilities

The duties of a department FMLA administrator will vary according to each department, but the main duties will most likely consist of, among others:
- ensuring the department's compliance with the FMLA;
- determining the FMLA eligibility of employees who need leave due to FMLA-qualifying absences;
- overseeing the employee FMLA leave balances and periodically reviewing for accuracy;
- training supervisors and managers on FMLA procedures where necessary;
- communicating with Human Resources if questions arise regarding FMLA leave; and
- distributing packets of information to employees who may need FMLA leave as outlined in section 5.

After sending the packet to the employee, departmental administrator must inform in writing the HSC Central FMLA Administrator.

3. Supervisor / Manager Responsibilities

Supervisors and managers must establish themselves as a first step in the FMLA leave process. Supervisors are not required to be FMLA “experts”; however, supervisors must know which types of absences indicate an FMLA-related condition.

3.1 Supervisors must notify the department’s leave administrator when an employee absence indicates a potential need for FMLA leave. This need could be evident when an employee:
- notifies a supervisor, manager, or administrator of their own pregnancy or a spouse’s pregnancy, that his/her family will be adopting a child, or that the family will be receiving a child from foster care;
- misses more than three continuous days of work;
- is absent on an intermittent basis due to a chronic health condition (i.e. diabetes, migraine headaches, etc.);
- is placed in a hospital or day care facility for any length of time;
- is needed to care for a covered family member of the armed forces, or is needing leave due to a covered family member’s being called to active duty; and/or
- is needed to care for a family member (child, spouse, parent) who is suffering from a serious health condition.

3.2 Supervisors and managers must ensure, among other items, that employees who need FMLA leave:
- are returned to the same or equivalent position with equivalent benefits, pay, and other working conditions of employment;
- are not subjected to adverse employment action for absences attributed to such leave; and
- are otherwise not obstructed from exercising their right to take FMLA leave.

4. Employee Responsibilities

Employees have responsibilities to fulfill if the leave taken is to be granted or designated as FMLA leave. In general, employees must:
- provide 30 days’ advance notice of the need to take FMLA leave when the need for such leave is foreseeable;
- provide sufficient information, usually a certification form, in a timely manner so that the department may review for FMLA eligibility;
- inform the department if the requested leave is for a reason for which FMLA leave was previously taken or certified;
- provide re-certification of a condition upon request by the employing department; and
- maintain appropriate contact with the employee department regarding return-to-work status.

An employee’s failure to provide information in a timely manner may result in the delay or denial of FMLA benefits.

5. FMLA Packet

Administrators or designees are responsible for providing employees with a FMLA packet of information where necessary. This documentation, which includes an eligibility notice, must be provided to the employee within five (5) business days upon an employee’s request for FMLA leave or when the department acquires knowledge that an employee’s leave may be for an FMLA-qualifying reason as listed in 5.1.

5.1 The packet, available online on our HR Forms page under HRO and Liaisons, at http://tamhsc.edu/departments/finance-admin/payroll-hr/hr-forms.html, must be provided to employees who need leave for, or are anticipating the need to leave for:
- the birth and care of a child;
• the placement in the employee’s home of a child for adoption or for foster care;
• the care for a spouse, son, daughter or parent with a serious health condition;
• a serious health condition (as defined in section 3.1 above) of the employee that prevents the employee from performing the essential functions of his or her position;
• inpatient care in a hospital or residential care facility; or
• any qualifying exigency arising out of the fact that the employee’s son, daughter, or spouse has been notified of an impending call or order to active duty in support of a military operation.

5.2 Packets must be provided to all employees needing leave for the circumstances described in 5.1, regardless of whether or not the employee qualifies for FMLA leave.

5.3 The packet must be given directly to the employee, who is required to sign the cover letter in the designated space to confirm the document’s receipt. The department will retain a copy of the signed cover letter for its records and inform in writing to the Central FMLA Administrator that a packet was issued. An employee who is not able to personally receive the packet may choose to designate an individual (usually a family member or close friend) to receive and sign for the FMLA documents received from the employing department.

5.4 The employing department will mail the packet through certified mail to the employee’s last known mailing address in the event the employee is absent from work and is otherwise unavailable to receive the FMLA notification. The department will keep the returned receipt of signature card from the Post Office to confirm the employee received the documents.

6. Military Family Leave

The Family and Medical Leave Act was amended in 2008 to include special provisions for eligible family members of military personnel. The provisions include:

• Exigency Leave, which results from a call to active duty of an employee’s family member, and
• Caregiver Leave, which allows up to 26 weeks of leave for those employees who are a spouse, son, daughter, parent, or next of kin to care for family members who are military service members with a serious injury.

A packet must be issued if an employee needs leave for the circumstances in this section.

7. Designation of FMLA Leave and the 15-Day Deadline

Proper designation of FMLA leave is an important step in the administrative process. Administrators must present the FMLA packet to an employee in person and have him/her sign in the appropriate area as proof of receipt. Employees who are not available should be provided the packet through certified mail. Employees have at least 15 calendar days (absent extenuating circumstances) from the receipt of the packet to return the required documentation in order to receive FMLA benefits. The 15-day deadline for employees who are presented with the packet through certified mail begins on the date of the first attempted delivery. This deadline may be extended if the employee has failed to provide the information despite his/her diligent, good-faith efforts (physician is slow in returning the forms to the employee, employee
shows s/he does not have necessary transportation for timely submission, etc.). All FMLA leave will be designated in the department’s LeaveTraq program.

7.1 FMLA-related leave taken before the 15-day deadline will be provisionally designated as FMLA leave, as employees must be given sufficient time to produce the required documentation. Effectively, employees who take FMLA-related leave during this provisional period will be afforded the full benefits of FMLA leave.

7.2 FMLA-related leave taken after the 15-day deadline will be designated as FMLA leave, provided the employee has provided sufficient documentation to certify such leave as FML as per conditions/circumstances described in 5.1.

8. FMLA Certification

Employees must return sufficient and timely information to certify their FMLA leave. Certification of FMLA medical leave is relatively easy to determine, as the certification forms each contain a box which the practitioner will check if an FMLA condition is present.

8.1 Employees who fail to provide the required documentation to certify FMLA leave may have his/her provisional FML designation discussed in 6.1 removed from the leave records, and will therefore not receive benefits or job protection under the FMLA for those absences. Human Resources must be contacted prior to such removal of FMLA leave, as employees must be notified in writing in the event FMLA leave has been removed or denied.

8.2 Clarification or Authentication of the Certification Form

Employers who receive a complete and sufficient certification form signed by the health care provider may not request additional information from the provider. However, the employer may contact the health care provider for purposes of clarification or authentication of the document after the employer has given the employee an opportunity to cure any of the deficiencies in the document.

- Payroll and HR Services should be consulted prior to obtaining clarification or authentication of a document.
- An employee’s direct supervisor may not make contact with the health care provider; employer contact to the provider may be made only by a human resources professional, leave administrator, or a management official not in the employee’s chain of authority.
- “Clarification” means contacting the provider to understand the handwriting on the medical form, or to understand the meaning of a response to a question on the document.
- “Authentication” means providing the health care provider with a copy of the certification and requesting verification that the information contained on the form was completed and/or authorized by the health care provider who signed the document.
- Questions directed to the provider regarding clarification or authentication are strictly limited to the questions on the certification form.
8.3 Complete and Sufficient Certification
The employee must provide a complete and sufficient certification to the employer. The employer must advise the employee in writing whenever the employer finds a certification incomplete or insufficient.

- Payroll and HR Services should be consulted if information received is incomplete or otherwise insufficient.
- “Incomplete” means the submitted documentation is missing one or more of the applicable entries.
- “Insufficient” means means the document is complete but the requested information is vague, ambiguous, or non-responsive.
- The employee must be given at least seven calendar days (unless not practicable under the circumstances despite the employee’s diligent good faith efforts) to cure the deficiency.

8.4 Requesting an Updated Certification Form
In addition to requesting updated information for reasons as outlined in 8.2 and 8.3, administrators may request an updated certification form if:

- the employee is missing more work than the physician has indicated is needed; or
- the employee’s current certification form for the condition on file is no longer applicable (i.e., the physician has indicated the employee may return to work without restrictions).

The employee must be notified of the need for an updated certification form in writing and must be given at least 15 calendar days to provide the information. Additionally, employers may not request updates within a 6-month period if the certification form indicates a lifetime condition and the employee’s absences are consistent with the physician’s recommendations and estimations of time off needed. Administrators should contact Payroll and HR Services for guidance in the event an employee is missing work in excess of the time the physician has estimated is needed.

8.5 Administering FMLA Leave Which Extends Into the Next Fiscal Year
Employees may continue to take FMLA leave from one fiscal year to the next. However, employees must re-qualify for FMLA leave during the new fiscal year. The following examples illustrate how FMLA leave should be administered from one fiscal year to the next.

Example 1: An employee has been using intermittent FML in early August. Her illness subsides for a period of time and she returns to work in late August, but the same condition flares up again on September 15 and she begins to miss work on that date.

Administration: The employee must re-qualify for FML because a new fiscal year begins on September 1. Administrators must conduct a new 1,250-hour test for this employee. The employee’s length of service does not need to be considered, as the employee has already established that she has worked for the employer for at least 12 months. The new 1,250-hour test should be conducted for the period of September 15 (the new date she needs the FMLA leave) through September 15 of the previous year. The employee qualifies for a new 12-week period of FML if she has worked 1,250 during the 12-month period in question. If
records show she has not worked the requisite amount of hours, she must be notified in writing that she does not qualify for FML.

Example 2: An employee has been using continuous FML since July 1 and, according to certification, is not able to return to work until October 10.

Administration: The employee must re-qualify for FML because a new fiscal year begins on September 1. Administrators must conduct a new 1,250-hour test for this employee. The employee’s length of service does not need to be considered, as the employee has already established that she has worked for the employer for at least 12 months. The new 1,250-hour test should be conducted for the period of September 1 (the new fiscal year date she needs the FMLA leave) through September 1 of the previous year. The employee qualifies for a new 12-week period of FML if she has worked 1,250 during the 12-month period in question. If records show she has not worked the requisite amount of hours, she must be notified in writing that she does not qualify for FML.

8.6 The Genetic Information Nondiscrimination Act (GINA)

The Genetic Information Nondiscrimination Act requires that Texas A&M Health Science Center take affirmative steps to avoid receiving genetic information about employees or any of their family members. Administrators and Liaisons must use current GINA-compliant certification forms directly from our website, and must also limit the amount of information an employee’s direct supervisor receives about his/her employee’s health condition.

For example, a supervisor may know about the duration of an employee’s condition, the need for FMLA leave, or may know of any return-to-work restrictions placed on the employee; however, the supervisor should not know about the employee’s specific medical diagnosis.