

FAMILY LEAVE POLICY

PREAMBLE

The university has long recognized the importance of family issues as an integral component of a responsive human resource environment in which its employees will prosper. It has heretofore provided a number of benefits including leaves of absence for personal and family reasons. Both State and Federal government have recently determined to specifically legislate in this regard by affording unpaid leave to employees under certain specific circumstances. The result demands that university policies, State law and federal law be properly recognized and promulgated in lawful, equitable and contemporary policy. The university therefore, certifies the following Family Leave Policy which incorporates as appropriate (and shall be interpreted consistent with) the university's other standing leave policies.

I. Available Leave

Under prescribed parameters as set out hereafter, an eligible employee may take a leave of absence from employment for up to twelve (12) weeks during a defined twelve (12) month period for anyone of the following reasons:

- A. Birth and child care of an employee's biological child during the child's first year of life.
- B. Adoption or foster care placement and care for the infant/child in his/her first year following adoption or foster care placement.
- C. Serious illness or health related, disabling condition of a spouse, child(ren), or parent.
- D. Serious illness or health related, work disabling condition of the employee.

II. Twelve Week Period (Parameters)

- A. While the university may, under other provisions of employment or of its own discretion, authorize leaves of absence greater than twelve weeks and for other purposes, under this policy a maximum of twelve weeks' leave for any and all enabling reasons may be taken during the same twelve month period for leaves pursuant to I. A., B. or C. above. One twelve week leave pursuant to I. D. above may also be taken in each defined twelve month period. The twelve month period is defined in provision V. below.

- B. For leaves taken pursuant to I. A. or B. above, the maximum twelve week period must commence prior to the child's first year following birth (I. A.) or prior to the first anniversary date of an adoption or foster care placement (A. 2.).
- C. The twelve week period amounts to sixty (60) work days that may be taken as set out below.
- D. The leave may be taken on a **consecutive week, intermittent weeks or reduced time** basis as follows:
 - 1. Intermittent leave consists of at least one week intervals that are not necessarily consecutive, and within the twelve month period. Intermittent leave may only be scheduled and taken with the consent of the university, when invoking leave under provisions I. A. or B. above.
 - 2. Reduced time leave consists of a work reporting schedule that allows a shortened work day or shortened work week. Reduced time leave may only be scheduled and taken with the consent of university when invoking provisions I. A. or B. above. An employee on reduced time leave may, at the discretion of the university, be transferred for the term of leave, to another position of equivalent pay and benefits that better accommodates the university. Leave under this provision shall be accounted for and charged on an hour for hour basis.
 - 3. Requests for reduced time leave or intermittent leave under provisions I. A. and B. above, shall be forwarded to the Department of Human Resources for a case by case review and determination following consultation with the department head or other appropriate supervisor of the applicant.
 - 4. All leaves, for all reasons, are predicated upon the employee providing the university as much notice as possible. Absent extraordinary circumstances, at least fifteen (15) days advance notice of leave is required. Failure to provide such notice except where appropriately waived, shall result in a delay in commencement of leave, if otherwise entitled, for the requisite fifteen (15) day period.

III. **Leave Validation**

Each leave, as set out in provision I. above, is subject to the prerequisite validation as follows:

- A. Both I. A. & B. leaves must be validated, at the university's request, as to the enabling facts of the leave. For example, it must be established by the applicant for leave hereunder that he/she is the parent, within the express meaning of that term as hereinafter defined.

- B. Leave, under A. & B. above, must be validated by a written certification from a qualified, licensed, health care provider, that the employee is needed and able to provide care directly related to and on account of an acutely or chronically debilitating health condition requiring hospitalization and/or continuing licensed health provider intervention and treatment. The certification must also specify the debilitating condition and the prognosis for abatement or recovery with medical opinion as to time anticipated for abatement or recovery. Finally, upon request by the university, the employee must validate, through reasonable means, the enabling family relationship.
- C. Leave, under I. D. above, must be validated by a written certification of expert opinion by a qualified, licensed health care provider, describing the work debilitating illness or other work debilitating health related condition and its disabling onset, affect and anticipated duration.
- D. Under leave enabling provisions I. C. & D. above, when the university reasonably believes a submitted certification is suspect, in significant degree, it may require a second opinion from a licensed health care provider who is qualified in the field of the contended disability/illness. An opinion concurring with the employee's submitted validation shall result in leave validation. An opinion dissenting from a suspect/faulty validation shall result in referral, as set out hereunder, to a third, independent health care provider, qualified in the field of the contended disability/illness, for final, binding opinion either validating or invalidating the leave.
1. Referral for a third, binding health care professional's opinion shall be by agreement of the employee selected health care provider and the university selected health care provider. Failing agreement, referral shall be by agreement of the employee and the university. Failing secondary agreement, referral shall be made by the university.
 2. Both second and third health care provider's opinions shall be arranged and paid for by the university.
 3. Failure by an employee to provide a certification which, on its face, purports to meet the primary validation requirements set out above, shall result in denial of leave and its benefits, and not a second or third opinion, as the original certification is the sole responsibility of the employee as prerequisite to either any leave entitlement or a second or third opinion by a licensed health care provider.
- E. While an employee is on Family Leave, pursuant to provisions I. C. or D. above, the university may request and is then entitled to periodic formal updates or recertifications as appropriate to the original certification parameters. The university imposed requirement for update or recertification hereunder shall not be unreasonably applied, and the university will consider, in good faith, the

necessity and frequency of update or revalidation unique to each individual leave based upon the nature and parameters of the original certification and any factual change in individual circumstance.

- F. Prior to an employee's return to the university from leave provided pursuant to provision I. D. above, the university may request and receive health care provided certification that the employee on leave is no longer work disabled from the originally certified health condition and can return to the workplace as sufficiently recovered to perform the regular, necessary functions of the job. The university will cooperate fully with the health care provider in making this assessment by providing, if necessary, a position description and/or thorough discussion of the dimensions of the position not easily gleaned from such position description.
- G. All medical records provided in accordance with policy and consistent with law shall remain confidential with the university and within the university, shall remain disclosable only to the Department of Human Resources or those officers of the university with a need to know the certified rationale, including by way of illustration, the President, Senior Vice President for Administration and Treasurer, the Vice President and General Counsel and the Associate General Counsel and Assistant Vice President of the Office of Legal and Employment Affairs. The employee may choose to disclose the health condition diagnosis to his/her immediate supervisor or others in which case the legal confidentiality of the information is waived with respect to such agents to which such information is disclosed or to which disclosure is reasonably to be anticipated by the employee's disclosure.

IV. **Leave Prerequisites**

- A. Prerequisite to family leave:
 - 1. An employee must have worked for the university at least one (1) year (365 days) prior to commencement of leave. However, the time need not be consecutive nor need it be full-time.
 - 2. An employee must have worked a minimum of 1,000 hours in the year (12 consecutive months) immediately preceding the leave for leaves under provision I. A. B. & C., above.
 - 3. An employee must have worked a minimum of 1,250 hours in the year (12 consecutive months) immediately preceding the leave for leave pursuant to I. D., above.
- B. The hours prerequisites set out above refer to actual hours worked at the university and do not refer to excused or unexcused absences.

- C. FLSA exempt employees (professional/administrative staff and faculty) will be presumed to have worked the requisite number of hours if they have met the twelve (12) months of prior employment requirement. The presumption is rebuttable. The burden of rebuttal is with the university.

V. **Leave Year**

The university will calculate available leave by the "rolling" method. This means that when requesting otherwise available leave under this policy, the university will calculate the amount of leave used within the immediately preceding twelve (12) months of employment and subtract that number from the total number of days equal to twelve (12) work weeks (60 days). Each leave year is then unique to each employee of the university.

VI. **Leave Entitlements**

A. **Compensation:** Family Leave is, of itself, an unpaid leave.

1. For leave under provisions I. A. & B. above, an employee will be afforded an option to charge accrued vacation and/or administrative day leave for the absence.
2. For leave under provisions I. C. & D. above, an employee will be required to charge any and all accrued sick leave, until exhausted, as prerequisite to taking unpaid leave under this policy. Additionally, an employee may elect to charge accrued vacation and/or administrative day leave for leave invoked under these provisions.
3. Charged vacation, administrative day or sick leave banked accruals will be taken in hour for hour increments of time taken to time charged for FLSA non-exempt employees. For FLSA exempt employees the charge will be to the nearest half day. (For example, a professional staff employee who takes four full days and one five hour day leave in one week will be charged five full days as accrued 35 hours of banked time).
4. Elected or required utilization of paid vacation, administrative day, or sick leave accruals does not extend family leave or otherwise modify those other leaves available to employees of the university.

B. **Health Benefits:** That health benefits coverage in effect and covering the employee immediately prior to leave shall be maintained throughout the period of family leave subject only to program participation and parameters alteration as appropriately negotiated and/or implemented, consistent with law.

C. **Other Benefits:** Other benefits available to employees on leave shall be governed by the provision applicable to the leave. If for example, the employee is drawing paid sick leave while depleting Family Leave, the provisions of sick leave policy not inconsistent with this policy shall govern, while the provisions of unpaid leave policy that are not inconsistent with this policy shall govern an unpaid Family Leave or any portion thereof.

- D. **Worker's Compensation:** Time away from regular employment reporting appropriately governed by Worker's Compensation Law and program regulation is, if and when all enabling prerequisites are met, chargeable as Family Leave pursuant to enabling provision I. D. above.
- E. **Reinstatement:** An employee ready and able to return to his/her position of employment immediately following exhaustion of family leave will be returned to his/her position or, at the university's discretion, to an equivalent position with equivalent pay and benefits unless the employee would have been terminated in the absence of any leave (e.g., layoff, contractual non-reappointment, or natural term expiration of a terminal or temporary position of employment).
1. **Key Employee Exception:**
- a. Employees of the university who, during a period of family leave taken pursuant to I. A., B., or C. above, are within the top 5% of the university's employees with respect to gross income paid by the university, are "Key Employees" and may be denied leave as set out above if such leave will, as can be established by the university, cause substantial and grievous economic or other organizational harm to the university.
 - b. Employees of the university who, during a period of family leave taken under any enabling provision, are within the top 10% of the university's employees with respect to gross income paid by the university are also "Key Employees" and may be denied reinstatement as set out above, if such reinstatement will, as can be established by the university, cause substantial and grievous economic or other organizational harm to the university.
 - c. Key Employees must be individually noticed by the university, prior to taking leave, that they are Key Employees and that leave and/or position restoration may be denied them depending upon their Key Employee status and type of leave desired.
 - d. An employee on leave who, during the leave, becomes a Key Employee or a Key Employee who failed to receive such notice prior to commencement of leave and who would not otherwise be entitled to leave or would not otherwise be reinstated pursuant to this provision, will be notified by the university immediately and given an opportunity to immediately return from leave with full restoration to his/her position prior to denial of further leave or denial of reinstatement.

VII. **Definitions**

1. **Child:** A child is the biological, adopted or formally placed, foster care child, step child or legal ward of the employee requesting leave and under eighteen years of age or eighteen years and over but certifiably incapable of self-care because of mental or physical impairment.

2. Parent: A parent is the biological or legally recognized parent of a child. For leave pursuant to provision I. C. above, a parent shall include parents-in-law.
3. Spouse: A spouse is the legally recognized, married partner of the employee requesting leave.
4. Serious illness or health related condition: This is defined as an illness, injury or physical or mental impairment that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three (3) days' absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable.
5. Health Care Provider: A "health care provider" is defined as any doctor of medicine or osteopathy, podiatry, optometry, or psychiatry or any nurse practitioner or psychologist performing within the scope of their licensed practice as defined under law.

VIII. **Jurisdiction**

This policy applies to all employees of the university and shall be administered consistent with other university policies, including collectively negotiated policies, and the law.