

System-wide Policy: HR0338 - Family and Medical Leave	
Version: 3	Effective Date: 10/01/2017

HR0338 – Family and Medical Leave

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Objective:

To provide time off to eligible university employees consistent with the federal Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (“FMLA”) and Tennessee Parental Leave Act, Tennessee Code Annotated § 4-21-408 (“TPLA”) for the following reasons: childbirth, or adoption; foster care placement; serious health condition of the employee; serious health condition of the employee’s family member; to provide care for a family member injured while on active military duty; or for qualifying exigent circumstances arising from a family member’s military service.

Policy:

Definitions

1. Child - A child is the biological, adopted, or foster child, stepchild, legal ward, or child of an employee standing in place of a parent, who is either under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.

2. Covered service member – A covered service member is a current member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical

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treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A covered service member includes a covered veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA for care of that individual. See [29 C.F.R. §§ 825.122 and 825.127](#).

3. Medical leave – Leave provided under either the FMLA or the TPLA.

4. Next of kin – With respect to a service member in the Armed Forces, including the National Guard or Reserves, next of kin is the nearest blood relative of that individual.

5. Parent - A parent is the biological parent of an employee or an individual who stood in place of a parent (or who stood in the place of a parent to an employee when the employee was a child). (Note: this definition does not include parent-in-law.)

6. Qualifying exigency – Any of the following situations involving a spouse, child or parent who, as member of the Armed Forces, including National Guard or Reserves, (a) is deployed to a foreign country or (b) is on or receives a call to active duty status in support of a contingency operation as defined by applicable law:

- a. Short-notice deployment: to address any issue that arises from the impending call or order to active duty in the seven calendar days immediately prior to deployment;
- b. Military events and related activities: to attend any official military-sponsored ceremony, program, or event or certain family support or assistance programs and informational briefings related to active duty or the call to active duty;
- c. Childcare and school activities of the covered service member's child: to make alternative childcare arrangements, to provide childcare on an urgent, immediate need basis, to enroll in or transfer schools or daycare facilities, and/or to attend meetings with school or daycare staff;
- d. Financial and legal arrangements: to make or update financial or legal arrangements to address the covered service member's absence and/or to act

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as the covered service member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits;

- e. Counseling activities: to attend counseling if the need arises from active duty or the call to active duty status, it is provided by someone other than a health care provider for oneself, and it is for the employee, the covered service member, or the covered service member's child;
- f. Rest and recuperation activities (limited to fifteen calendar days per instance): to spend time with a covered service member who is granted short-term, temporary rest and recuperation leave;
- g. Post-deployment activities: to attend military-sponsored, official ceremonies or programs or to address issues that arise from the death of the covered service member while on active duty status;
- h. Parental care activities: as a result of being called to active duty status, to do any of the following activities for a parent of a military member who is incapable of self-care: (i) arrange for alternative care, (ii) provide care on an urgent, immediate need basis, (iii) admit or transfer to a care facility; (iv) attend non-routine meetings with staff at a care facility; and/or
- i. Additional activities: to address other issues provided (i) the need arises out of the covered service member's active duty or call to active duty status, (ii) the University and the employee's supervisor agree that the leave is considered a qualifying exigency, and (iii) the University and the employee's supervisor agree upon the timing and duration of the leave.

7. Serious health condition – An illness, injury, impairment, or physical or mental condition that involves:

- a. Any inpatient care (an overnight stay) in a hospital, hospice, or residential care facility; including any period of incapacity or any subsequent treatment in connection with such inpatient care;
- b. Continuing treatment by a health care provider that results in a period of incapacity of more than three consecutive, full calendar days (including any

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subsequent treatment or period of incapacity relating to the same condition) that also involves (i) treatment by or under the direction of a health care provider on two or more occasions within 30 days of the first day of incapacity, absent extenuating circumstances, or (ii) treatment at least once by a health care provider which results in a regiment of continuing treatment. The employee must have an in-person visit to the health-care provider within seven days of the first day of incapacity;

- c. Any period of incapacity due to pregnancy, or for prenatal care;
- d. Any period of incapacity (or treatment) due to a chronic serious health condition. A chronic serious health condition is one that (i) requires visits to a health care provider at least twice a year, (ii) that continues over an extended period of time (including recurring episodes of the condition, and (iii) may cause episodic periods of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
- e. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases) provided that the employee or family member is under the continuing supervision of a health care provider;
- f. Any period of absences to receive multiple treatments (including recovery) by a health care provider for restorative surgery or for conditions that would likely result in incapacity in the absence of treatment (e.g., chemotherapy, physical therapy, dialysis).

Eligibility

8. In accordance with federal law, any employee is eligible for FMLA leave if he or she meets both of the following conditions:

- a. The employee has been employed for at least 12 months (based on the date the leave is scheduled to begin). The 12 months of employment need not be consecutive in order to satisfy this eligibility requirement.
- b. The employee has performed at least 1,250 hours of work during the preceding 12-month period (based on the date the leave is scheduled to begin). Full-time

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faculty with 12 months of service are presumed to satisfy the 1,250-hour requirement.

Leave-qualifying Events

9. The twelve-month period during which FMLA benefits are calculated begins on the first day of the employee's first FMLA leave period of the year. For example, if an employee commences FMLA leave on February 1 and exhausts his or her leave, he or she will not be entitled to FMLA leave until February 1 of the following year. Upon return from FMLA leave, the employee will be restored to his or her position or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

- a. The following events provide an eligible employee up to twelve (12) weeks of leave per year:
 - i. **Foster care placement.** FMLA provides up to twelve (12) weeks for foster care placement. Leave in advance of the placement of the child can be taken if the leave is necessary for the placement to proceed. Otherwise, the leave must be taken within 12 months after foster-care placement of the child. With the approval of the department and Human Resources, a portion of this leave may be taken to establish a reduced schedule for the purpose of transitioning back to full-time employment. If both spouses are employees of the university, their combined total of available leave is 12 weeks.
 - ii. **Serious health condition of employee.** FMLA provides up to 12 weeks of medical leave for eligible employees who experience a serious health condition. This may include an injury covered by workers' compensation. This type of leave can be taken on an intermittent basis if medically necessary. With the approval of the department and Human Resources, a portion of this leave may be taken to establish a reduced schedule, including the purpose of transitioning back to full-time employment. Medical certification and/or approval may be required. The University may require medical certification that the employee can perform the essential

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functions of his or her position before permitting the employee to return to work following FMLA leave.

- iii. **Serious health condition of family member.** FMLA provides up to twelve (12) weeks of medical leave for serious the health condition of a spouse, child or parent. This type of leave can be taken on an intermittent basis if medically necessary. With the approval of the department and Human Resources, a portion of this leave may be taken to establish a reduced schedule. Medical certification and/or approval may be required.
- iv. **Qualifying exigency arising out of a family member's armed service.** This type of leave can be taken on an intermittent basis. With the approval of the department and Human Resources, a portion of this leave may be taken to establish a reduced schedule.
- b. The following events provide an eligible employee up to four (4) months of leave:
 - Childbirth and adoption.** The State of Tennessee provides up to four (4) months of leave for pregnancy, childbirth and adoption for full-time employees who have been employed at least twelve (12) consecutive months. In the case of an adoption, leave begins at the time the parents receive custody of the child. This leave runs concurrently with the twelve (12) weeks provided by the federal FMLA (i.e., eligible employees are entitled to four (4) months total leave). If both spouses e are employees of the university, their combined total of available leave is four (4) months. With the approval of the department and Human Resources, a portion of this leave may be taken to establish a reduced schedule for the purpose of transitioning back to full-time employment.
- c. The following events provide an eligible employee up to twenty-six (26) weeks of leave:
 - Service member family leave.** An eligible employee who is the spouse, child, parent or next of kin of a covered service member or a covered veteran may take up to twenty-six (26) weeks of leave in a single 12-month period to care for a covered service member or covered veteran who has incurred a qualifying injury. This type of leave can be taken on an intermittent basis, and a portion of this leave may be taken to establish a reduced schedule. If both spouses are employed by the university, their combined total of available leave is 26 weeks.

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Notice of Need for Medical Leave

10. Employee notice

- a. **Timing of notice.** An employee must provide at least thirty (30) days' notice to the University of the Need for medical leave when the need for leave is foreseeable. If the need for medical leave is not foreseeable, notice must be given as soon as practicable under the circumstances. Forms must be completed by the employee or the university and are available from the local human resources offices.
- b. **Content of notice.** An employee must provide sufficient information for the university to determine whether the FMLA may apply to the leave request. When seeking leave for the first time, an employee need not mention the FMLA. When seeking leave for which the university has previously provided FMLA leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.
- c. **Compliance with University policy.** When the need for leave is not foreseeable, an employee must comply with the usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
- d. **Failure to provide timely or proper notice.** When the need for FMLA leave is foreseeable and the employee does not provide at least 30 days advance notice, the university may delay FMLA coverage until 30 days after the employee provides notice. When the need for FMLA leave is foreseeable fewer than 30 days in advance and the employee fails to give notice as soon as practicable under the circumstances, the university may delay FMLA coverage depending on the facts and circumstances of the case. If an employee does not comply with the usual notice and procedural requirements and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

11. University notice – When an employee requests medical leave, the university will generally determine within five (5) business days whether an employee qualifies for medical leave and will so notify him or her. Notification by the university is retroactive to the commencement of the leave unless (i) the university does not provide the

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notification within five (5) business days and (ii) the late designation would cause harm or injury to the employee.

Relationship to Other University Benefits

12. University holidays – For purposes of determining the amount of medical leave used, holidays and administrative closings will be included as part of the medical leave, unless the employee is using medical leave in increments of less than one week, in which case the holiday or closing will not count against the employee's medical leave entitlement unless the employee was otherwise scheduled to work that day. However, if the University is closed for an entire week, for example between Christmas Day and New Year's Day, that period of time does not count toward medical leave entitlement.

13. Paid leave vs. unpaid leave – An employee who takes leave that is designated as medical leave must first exhaust, in order, all unused compensatory time, sick leave, annual leave, and personal leave. However, an employee may opt to retain up to five (5) days or 40 hours of sick leave, whichever is less. Once the employee has exhausted his or her paid leave, he or she will go on unpaid leave for the remainder of the medical leave period.

14. Insurance

- a. **Basic group insurance.** While an employee is on paid medical leave, the university will continue to pay the employer's share of the premium up to 12 weeks as required by federal law. If the employee is on unpaid medical leave and wishes to continue the medical insurance, the employee must pay in advance a monthly or quarterly sum equal to his or her share of the premium to the campus insurance office or the Treasurer's Office. If the employee does not return from such leave of absence, the university may, with the approval of the Chief Financial Officer, require the employee to reimburse the university's share of the premiums paid.

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If the employee does not pay premiums while on medical leave, coverage will lapse. Upon return from leave, the employee will have 30 days to reinstate prior coverage without providing evidence of insurability. Such coverage will apply to pre-existing conditions.

- b. **Optional insurance plans.** During medical leave without pay, membership may be continued in any of the group optional insurance plans to which the employee belongs prior to the leave. To do so, the employee must pay in advance a monthly or quarterly sum equal to the total of the premiums due on the plans that he or she wishes to maintain in force to the campus insurance office or the Treasurer's Office.

Employees on medical leave who allow coverage to lapse due to non-payment of premiums have 30 days from the leave return date to initiate reinstatement of coverage without evidence of insurability.

Relationship with Federal and State Laws

15. Nothing contained in this policy is intended to waive sovereign immunity or to create a cause of action that is not otherwise recognized by state or federal law.

PROCEDURES:

To view links to campus policies and procedures, click here:

<https://policy.tennessee.edu/campus-policies-procedures>

Related Policies: [HR0375 - Retirement Plans](#), [HR0385 - Social Security Benefits](#), [HR0390 - Deferred Compensation](#)