

FAMILY AND MEDICAL LEAVE (FMLA)

A. Purpose

The purpose of this policy is to provide for the administration of leave under the Family and Medical Leave Act of 1993, as amended (FMLA), and its implementing regulations, 29 CFR Part 825.

B. Persons Affected

This policy applies to all employees of The University of Texas Rio Grande Valley (UTRGV).

C. Definitions

Any terms used in this policy but not expressly defined below shall have the meaning set forth in the FMLA's implementing regulations, 29 CFR Part 825. To the extent any of the definitions below conflict with the regulations, the regulations should be followed.

1. Continuing Treatment by a Health Care Provider - is defined as:

- a. a period of incapacity (inability to work, attend school, or perform other regular daily activities due to the serious health condition) for more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that involves seeing a healthcare provider within the first seven (7) days of incapacity and: (i) treatment two (2) or more times by a health care provider within 30 days of the first day of incapacity; or (ii) treatment by a health care provider on at least one (1) occasion that results in a regimen of continuing treatment under the health care provider's supervision;
- b. any period of incapacity or treatment due to pregnancy, childbirth, or for prenatal care;
- c. any period of incapacity or treatment for such incapacity due to a chronic serious health condition, defined as one that requires periodic visits (at least twice a year) for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than continuing incapacity (e.g., asthma, severe morning sickness);
- d. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider; and
- e. any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three (3) or more days in the absence of medical treatment (e.g., cancer, severe arthritis).

2. Covered Active Duty - In the case of a member of the Regular Armed Forces, duty under a call or order to active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country; and, in the case of a member of the reserve components of the Armed Forces, duty under a call of order to active duty (or notification of an impending call or order to active duty) during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty).
3. Covered Service Member – A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
4. Covered Veteran – An individual 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 leave to care of the covered veteran.
5. Eligible Employee – an employee that (a) has worked for the State of Texas for at least 12 months and (b) has worked at least 1,250 hours during the 12-month period immediately preceding the leave. The 12 months the employee must have worked for the State of Texas need not be consecutive months; however, periods of employment that precede a break in state service of seven (7) years or more do not count toward the 12-month requirement, unless (i) the break is due to the fulfillment of the employee’s National Guard or Reserve military service obligations, or (ii) there is a written agreement stating the State of Texas’ intent to re-employ the employee after the break.
6. Incapacity – inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment thereof, or recovery therefrom.
7. Intermittent and Reduced Schedule Leave –
 - a. Employees with a serious health condition or with a spouse, parent or child with a serious health condition (but not those taking leave due to the birth or placement of a child) are also entitled to take “intermittent” or “reduced schedule” leave, if the leave is medically necessary.
 - b. Intermittent leave may also be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee’s own serious health condition, or a serious injury or illness of a covered serve member which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.
 - c. “Intermittent leave” is defined as leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave for periods from one hour to several weeks. Examples include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

- d. "Reduced schedule leave" is defined as a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. This type of leave might be used, for example, when an employee is recovering from a serious health condition, but is not strong enough to work a full-time schedule.
 - e. If an employee takes an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.
 - f. When an employee has requested intermittent or reduced schedule leave, the University may transfer the employee to an alternative 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 than the employee's current job.
8. Military Caregiver Leave - The FMLA entitles eligible employees who work for covered employers to take unpaid, job-protected leave to care for a family member who is a current service member with a serious injury or illness. FMLA leave for this purpose is called "military caregiver leave." For more information about Military Caregiver Leave, please see HOP ADM 4-609.
 9. Parent – means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."
 10. Parental Leave – An employee's entitlement to leave for the birth or placement of a child expires 12 months after the birth or placement. If both parents work for the University of Texas, regardless of whether they work at different work sites or different component institutions, the total amount of leave cannot exceed 12 weeks. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness, this limitation does not apply.
 11. Reserve Components of the Armed Forces - For purposes of qualifying exigency leave, reserve components of the Armed Forces includes: Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.
 12. Serious Health Condition -
A serious health condition is defined as an injury, impairment, or physical or mental condition that involves either:
 - a. inpatient care in a hospital, hospice or residential care facility, or
 - b. Continuing treatment by a health care provider. The term "serious health condition" is intended to cover those conditions which affect one's health to the

extent that in-patient care is required or continuing treatment by a provider of health care is necessary on a recurring basis for more than a few days for treatment or recovery. The FMLA is not intended to cover short term conditions for which treatment and recovery are brief.

Examples of serious health conditions include heart attacks, heart conditions, most cancers and back conditions requiring extensive therapy or surgical procedures, strokes, respiratory conditions, appendicitis, pneumonia, emphysema, severe nervous disorders, injuries caused by serious accidents on or off the job, pregnancy, severe morning sickness, need for prenatal care, childbirth, and recovery from childbirth. A serious health condition includes treatment for a serious chronic condition which, if left untreated, would likely result in an absence of work for more than three (3) days.

13. Son or Daughter of Covered Service Member - A covered service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
14. Son or Daughter on Covered Active duty (or impending call or order to covered active duty) - An employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on or has received notice of a call of order to covered active duty, and who is of any age.
15. Spouse - For purposes of the FMLA, spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or a common-law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state. Unmarried domestic partners do not qualify for spouse status.
16. Son or daughter – means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under 18 years or one who is 18 years or older who is incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence.
17. Substance Abuse - Treatment of substance abuse may be included under the Act in order to undergo treatment by a health care provider; however, absences because of an employee's use of a substance without treatment do not qualify for family leave. The inclusion of substance abuse does not prevent the employer from taking any employment action against an employee who is unable to perform the essential functions of the job provided the employer complies with the Americans with Disabilities Act (ADA) and does not take action against the employee because such employee exercises rights under the Act.
18. Treatment - Treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine physical exams, routine eye exams, or routine dental exams. A course of prescription medicine or therapy would qualify as a "regimen of continued treatment," but over-the-counter medicines would not.

D. Policy

It is the policy of UTRGV to provide eligible employees leave in accordance with the FMLA and its implementing regulations for one or more of qualifying reasons:

- The birth of a son or daughter and care after such birth;
- The placement with the employee of a son or daughter for adoption or foster care;
- The employee's own serious health condition that makes the employee unable to perform the functions of the employee's position;
- To provide care for the employee's spouse, parent, or son or daughter with a serious health condition;
- A qualifying exigency arising out of the fact the employee's spouse, son or daughter, or parent is on covered active duty or has been notified of an impending call or order to covered active duty ("military exigency leave"); or
- To provide care for a covered service member with a serious injury or illness if the service member is the employee's spouse, son or daughter, parent, or next of kin ("military caregiver leave") - please see ADM 4-609, Military Caregiver Leave Under the FMLA.

To the extent any FMLA implementing regulations conflict with this policy or its related procedures, the regulations should be followed.

It is the responsibility of the employee or supervisor to report the need for FMLA involving a serious or chronic health condition that would necessitate the employee being absent from work for three (3) or more days to the Office of Human Resources.

Because it is UTRGV's responsibility to designate leave as FMLA leave, UTRGV may require complete, sufficient documentation from an employee to determine if the leave requested is for an FMLA qualifying reason. If UTRGV does not have the information necessary to determine if the leave requested is for an FMLA qualifying reason, the FMLA leave request may be denied.

1. Medical Examinations:

UTRGV may require:

- a. Certification from the health care provider to support the leave request when an employee is taking leave to care for a family member, or due to his or her own serious health condition. If UTRGV does not agree with the medical certification, a second opinion at UTRGV's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at UTRGV's expense and will be the final determination. There is no certificate requirement if an employee is taking leave for the birth of a child or placement of a child;
- b. Periodic recertification;
- c. Periodic reports during FMLA leave on the employee's status and intent to return to work;
- d. Medical certification to show that intermittent leave is medically necessary;
- e. A fitness-for-duty certification to return to work; or

- f. Medical certification if an employee claims inability to return to work after the expiration of leave because of the continuation of a serious medical condition.

D. Procedure

1. *How the 12-Month Period is Calculated:*

Eligible employees are entitled to take up to 12 work weeks of family leave during any 12-month period measured forward from the date the employee's first family leave begins.

2. *Notice by the Employee to UTRGV:*

To be approved for FMLA leave, an employee must provide UTRGV appropriate notice regarding the need for leave. Appropriate notice means enough information about the reason for the leave, its timing, and the anticipated duration for UTRGV to be able to determine whether the need for leave may be covered by the FMLA. If possible, employees should give notice of the need for leave using forms available through the Office of Human Resources. At a minimum, employees must verbally notify their supervisors or managers that leave is needed and the anticipated timing and duration of the leave. Employees do not have to specifically ask for or mention the FMLA when first making a request; however, employees do need to provide enough information for UTRGV to be able to determine whether the leave may be covered by the FMLA. Employees must follow any usual notice or call-in procedures for their working unit unless unable to do so because of unusual circumstances (e.g., the employee is receiving emergency medical care).

- a. When the need for FMLA leave is foreseeable (e.g., expected birth, placement for adoption or foster care, planned medical treatment, etc.), an employee should give UTRGV at least thirty (30) days advance notice of the need for leave. If 30 days' notice is not practicable (e.g., because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, a medical emergency, etc.) notice must be given as soon as practicable after the employee learns of the need for leave.
- b. When the need for FMLA leave is not foreseeable, an employee should give UTRGV notice that leave is needed as soon as practicable, preferably the same day or next business day of when the employee learns of the need for leave. Absent unusual circumstances, employees must follow any usual notice or call-in procedures for their working unit. If an employee is incapacitated or otherwise unable to personally give UTRGV notice that FMLA leave is needed, notice may be given on the employee's behalf by a spouse, adult family member, or other responsible party.
- c. An eligible employee who has given appropriate notice of a qualifying reason under the FMLA and has met the documentation requirements, if applicable, will be granted FMLA leave.
- d. An employee who calls in "sick" without providing more information regarding the need for leave, timing and duration will not be considered to have put UTRGV on notice that the employee is making a request for FMLA leave.

3. Notice by UTRGV to the Employee:

- a. Upon receipt of a request for FMLA or other notice of the need for leave, the Office of Human Resources will determine whether an employee is eligible for FMLA leave and, within five (5) business days (absent extenuating circumstances), will issue the employee a notice discussing their eligibility and their rights and responsibilities. Employees should review this notice carefully, as it contains important information about their eligibility for as well as rights and responsibilities under the FMLA.
- b. When UTRGV has the information necessary to determine if leave is FMLA-qualifying, the Office of Human Resources will provide the employee with written notice designating whether the requested leave is FMLA-qualifying and will count towards an employee's FMLA leave entitlement within five (5) business days (absent extenuating circumstances). If UTRGV determines that the leave will not be designated as FMLA-qualifying (e.g., if the leave is not for a reason covered by the FMLA, or if the FMLA leave entitlement has been exhausted), UTRGV will notify the employee of the determination.

4. Requirement of Using Sick, Vacation, and Compensatory Leave:

With the exception of employees receiving workers' compensation income benefits, eligible employees must use all accumulated sick, vacation, holiday, compensatory, and administrative leave concurrently with FMLA leave. All leave taken for a FMLA-qualifying reason, paid or unpaid, will count toward the employee's FMLA leave entitlement. The 12-week entitlement may run concurrently with workers' compensation leave, provided the employee is otherwise eligible for FMLA leave. UTRGV will not count paid leave that was not for a FMLA-qualifying reason against an employee's family leave entitlement.

5. Premium Payments for Medical Insurance:

When an eligible employee is on unpaid FMLA leave, UTRGV will continue to contribute its share of premium sharing for medical insurance as if the employee had continued in employment during the leave. For example, if the employee normally has family medical coverage, UTRGV will continue sharing the cost of the premiums with the employee at the family rate. The employee is required to pay his or her share of the premiums in the same manner required when working. An employee may pay his or her share of premiums of the health plan in any manner customarily used by UTRGV.

6. Failure of Employee to Pay Share of Insurance:

- a. If the employee fails to pay a timely health plan premium, a 30-day grace period will be provided after the agreed upon date for which payment is due. If the employee does not make payment within 30 days, UTRGV may cease to maintain the health coverage on the date the grace period ends. Prior to expiration of the grace period, UTRGV will notify the employee of the discontinuation of insurance coverage.
- b. If UTRGV discontinues health coverage as a result of non-payment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave 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 his or her health coverage for non-payment of premiums.

- c. If an employee fails to return to work after a period of unpaid family leave, and UTRGV has paid for maintaining health coverage, UTRGV is entitled to recover the premiums paid unless the reason the employee does not return to work is due to
 - i. continuation of a serious health condition that would entitle the employee to family leave, or
 - ii. Other circumstances beyond the control of the employee.
- d. An employee is considered to have returned to work after he or she has worked for a period of 30 calendar days. Therefore, an employee who returns to work for only one week and then departs is not considered to have returned to work for purposes of premium payments. UTRGV may recover health insurance premium payments from certain sums due to the non-returning employee such as travel reimbursement checks, etc., provided that prior to the deduction of any amounts the Office of Legal Affairs is consulted to ensure that such deduction is appropriate.

7. *Returning Employee:*

On return from an approved FMLA leave, an employee generally will be returned to the same position the employee held when the leave started or to an equivalent position. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, and involves the same or substantially similar duties and responsibilities and with substantially equivalent skill, effort, responsibility, and authority. A determination of whether a position is equivalent to the one held before the approved FMLA is made by the Office of Human Resources.

An employee has no greater right to reinstatement or to other benefits or conditions of employment than if the employee had been continually employed during the FMLA period. An employee may be denied restoration to a position if UTRGV can show the employee would not otherwise have been employed at the time reinstatement is requested (e.g., the position is subject to a legitimate reduction-in-force action; the employee is unable to perform an essential function of the position because of a physical or mental condition; FMLA leave is fraudulently obtained by the employee, etc.). If an employee gives unequivocal notice of intent not to return to work, UTRGV is no longer obligated to restore the employee to his or her position, or maintain health benefits (subject to COBRA requirements).

8. *Rights of Employees:*

Employees who exercise their FMLA rights are entitled to do so without restraint, and UTRGV prohibits interference with, restraint, or denial of any person's exercise or attempted exercise of any FMLA right. Any employee who disciplines, discharges, or discriminates or retaliates against an individual for having exercised or attempted to exercise any FMLA right, for instituting a complaint or proceeding under or related to the FMLA, or for providing information or testimony in good faith in connection with an inquiry or proceeding regarding the FMLA may be subject to disciplinary action, up to and including termination of employment or nonrenewal of appointment. An employee's

exercise or attempt to exercise FMLA rights, complaint under or related to the FMLA, or providing of information or testimony in good faith in connection with an inquiry or proceeding regarding the FMLA may not necessarily stop or delay any evaluation or disciplinary action related to the employee who is otherwise not meeting performance expectations or who has violated UTRGV rules or policies. All other UTRGV employment policies apply to employees regardless of FMLA status.

9. *Record Keeping Requirements:*

All offices and individuals responsible for handling FMLA-related records must maintain the confidentiality of that information on a need-to-know basis to the extent required by law. Copies of all FMLA requests and related records should be maintained separately from the official institutional personnel file in accordance with state and federal law and UTRGV policies. Reporting of FMLA leave time taken should be accomplished through appropriate time reporting procedures. Billing of employee insurance premiums for employees on unpaid FMLA leave will be handled within current billing processes. Records and documents related to medical certifications, recertification, and medical histories may be disclosed to: (a) supervisors and managers only as needed to evaluate and accommodate necessary work restrictions; (b) first aid and safety personnel, if the employee's physical or medical conditions require emergency treatment; or (c) governmental officials investigating compliance with the FMLA.

10. *Coordination with Other Leave Entitlement:*

The FMLA implementing regulations state that if UTRGV provides more benefits than required by the FMLA, the FMLA will not restrict those benefits. Therefore, benefits such as the sick leave pool and extended disability leave, when available, may be used in conjunction with and count toward the 12 weeks of FMLA leave. It should also be noted that the FMLA does not restrict or modify any federal or state anti-discrimination law or the employer's obligation to comply with those laws.

E. Relevant Federal and/or State Statute(s), Board of Regents' Rule(s), UTS Policy(ies), and/or Coordinating Board Rule(s)

The Family and Medical Leave Act of 1993

29 CFR Part 825

Texas Government Code Section 661.912

The University of Texas System Board of Regents' *Rules and Regulations Rule 30201*, Leave Policies

ADM 4-609 Military Caregiver Leave Under the FMLA