

# Family Medical Leave Act (FMLA) Information for Employees and Supervisors

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# DISCLAIMER

- The purpose of this presentation is to provide general information to UTRGV employees and supervisors regarding leave covered under the FMLA. This information is not exhaustive of all rights and responsibilities provided under the FMLA and is not intended as legal advice.
- For more information regarding FMLA rights, responsibilities and processes please see UTRGV Handbook of Operating Procedures, ADM 04-608, Family and Medical Leave (FMLA), UTRGV Human Resources' FMLA information page and other resources identified on the last slide of this presentation.
- Any questions regarding FMLA leave eligibility should be directed to UTRGV Human Resources Leave Administration ([leave@utrgv.edu](mailto:leave@utrgv.edu)).

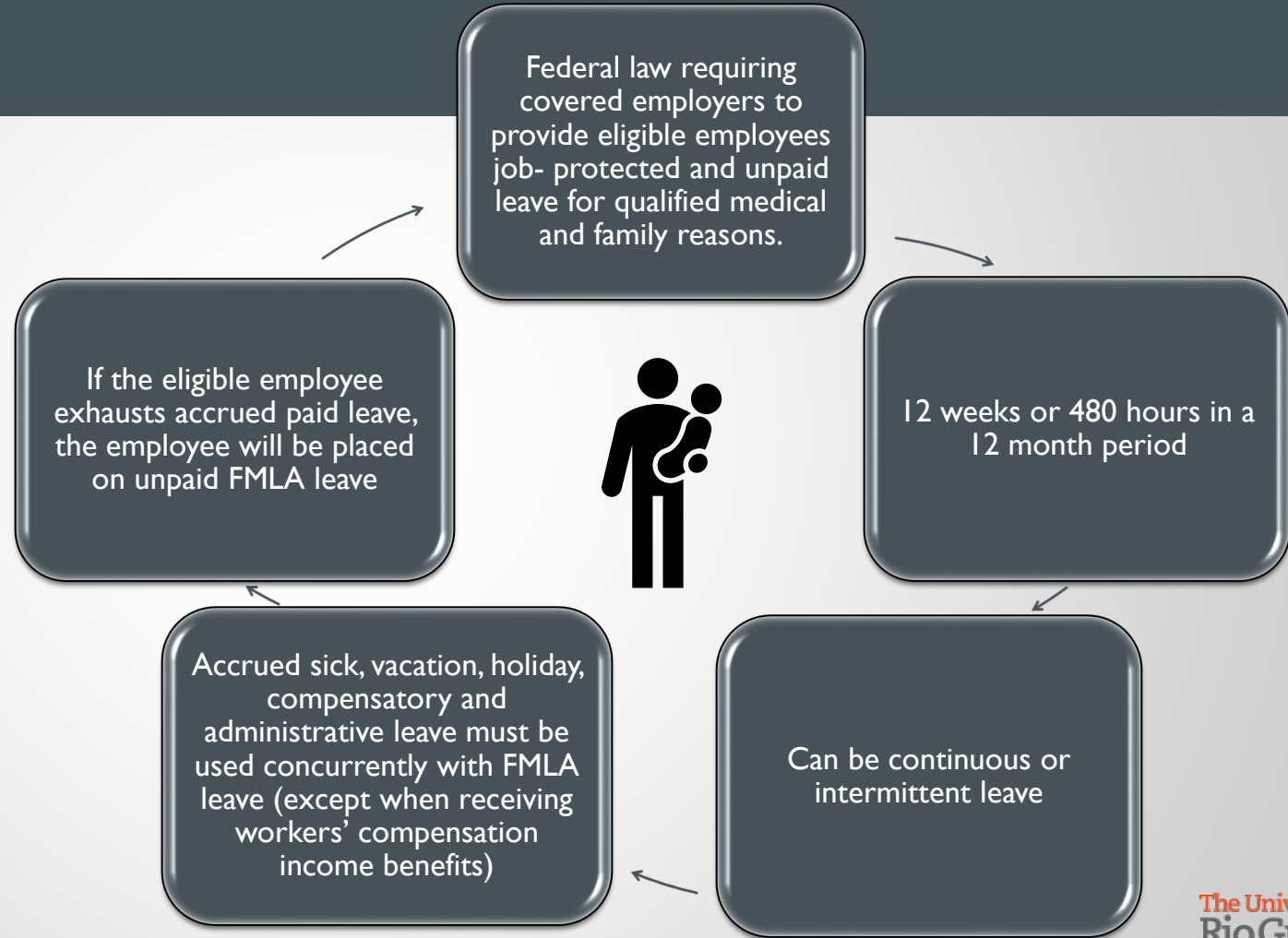
# WHAT IS FMLA?

- The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for qualifying family and medical reasons.
- Eligible employees may take up to 12 workweeks of leave in a 12-month period for family and medical reasons.
- Eligible employees may take up to 26 workweeks of leave in a single leave year to care for a covered military member with a serious injury or illness
- The 12 weeks (480 hours) can be either continuous (3 days or more) or intermittent.
- FLMA protects the eligible employee's position, salary level and benefits
  - Provides for reinstatement to same/similar position
  - UTRGV will continue to contribute its share of premium sharing for medical insurance as if the employee had continued in employment during the leave
  - Employee is required to pay his or her share of the premiums in the same manner required when working to maintain coverage
- 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.
- Employees are protected from interference and retaliation under FMLA

# UTRGV FMLA RESOURCES

- UTRGV's FMLA policy can be found in UTRGV Handbook of Operating Procedures, ADM 04-608, Family and Medical Leave (FMLA), [04-608: Family and Medical Leave FMLA](#).
- UTRGV Human Resources' FMLA information page can be found here, [Family and Medical Leave Act \(FMLA\) | UTRGV](#).
- UTRGV Human Resources Leave Administration may be contacted at [leave@utrgv.edu](mailto:leave@utrgv.edu) or at (956) 665-2451.

# FMLA: FAST FACTS



# “ELIGIBLE EMPLOYEES” UNDER FMLA

- Employees eligible for FMLA leave:
  - Must have at least 12 months of service with a State of Texas employer
  - Must have worked a minimum of 1,250 hours in the 12-month period immediately preceding the leave
    - 12-month period for FMLA leave is calculated as a “rolling” 12-month period measured backward from the date of any FMLA leave usage
  - Must have provided appropriate documentation of a qualifying reason to HR Leave Administration
- HR Leave Administration gathers information and determines employee’s FMLA leave eligibility
  - Supervisors do not determine whether employees are eligible for FMLA leave

# “QUALIFYING REASONS” FOR FMLA LEAVE

- Eligible employees may to take job protected leave for any of the following reasons:
  - Birth of a child and to bond with the newborn child within twelve months of birth (mothers and fathers)
  - Placement of a child for adoption or foster care and to bond with the newly-placed child within twelve months of placement
  - Care for the employee’s spouse, son, daughter, or parent who has a serious health condition
  - Employee’s own serious health condition that makes the employee unable to perform the functions of his or her job
  - Care of a covered military service member
  - Military qualifying exigencies

# WHAT IS A SERIOUS HEALTH CONDITION?



- A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.
  - Incapacity, meaning inability to attend work, perform regular daily activities due to condition, treatment, or recovery
  - Inpatient care (overnight stay)
  - Period of incapacity lasting more than 3 calendar days
  - Incapacity due to pregnancy, childbirth or for prenatal care
  - Ongoing treatment for a condition which (if untreated) would result in incapacity of more than 3 calendar days
  - Permanent or long-term conditions for which treatment may not be effective causing a period of incapacity
- An employee with a chronic health condition:
  - Must have at least 2 in-person visits to a health care provider each year for the same underlying condition
  - Need not visit a health care provider for every episode or flare-up
  - 3 consecutive day incapacity not required
- FMLA does not apply to routine physical exams, routine eye exams, or routine dental exams, or to common medical conditions, such as upset stomachs, colds or headaches, unless complications develop



# MILITARY-RELATED QUALIFYING REASON

## ■ Qualifying Exigency:

- Up to 12 weeks of leave because of any qualifying exigency arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Regular Armed Forces, National Guard or Reserves
- "Qualifying exigencies" include for example, short-notice deployment, military events/activities, childcare and school activities, financial & legal arrangements, counseling, rest & recuperation (15 days), post-deployment activities, parental care for military member's parent incapable of self-care

## ■ Military Caregiver:

- Up to 26 weeks of leave to care for a covered servicemember or veteran with a serious injury or illness if the employee is the servicemember's spouse, child, parent or next of kin (servicemember's nearest blood relative, other than the servicemember's spouse, parent, son or daughter).

# DEFINING FAMILY RELATIONSHIPS FOR PURPOSES OF FMLA LEAVE ELIGIBILITY

## Parent

- 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.
- *In loco parentis* means in the role of the parent.
  - Day-to-day responsibilities to care for or financially support the child
  - Biological or legal relationship to the child not required
- Does not include a parent-in-law

## Spouse

- Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex 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.

## Child

- Child means a biological, adopted, or foster child, stepchild, legal ward or child of someone standing in loco parentis, who is either:
  - Under the age of 18; or
  - 18 or over and incapable of self-care because of a mental or physical disability
- For military family leave, an employee's child may be any age

# TYPES OF FMLA LEAVE

- Continuous/Block of Time: a single, continuous period of leave
- Reduced Schedule: a leave schedule that reduces an employee's usual number of working hours per work week or hours per workday.
- Intermittent: 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

# FMLA AND ADA

- Employees eligible for FMLA leave for his or her own serious health condition also may qualify for a reasonable accommodation under the ADA
  - ADA's definition of "disability" is broad, and an employee's serious health condition may also meet definition of "disability"
- An employee is entitled to protection from the statute providing the most benefits (e.g., employee may exhaust all FMLA leave but be eligible for reduced work schedule or additional block of leave under ADA)
- Questions regarding FMLA leave or ADA accommodations should be directed to HR Leave Administration or other HR
- UTRGV's ADA policy can be found in UTRGV Handbook of Operating Procedures, ADM 03-200, Accommodations for Individuals with Disabilities, [03-200:Accommodations for Individuals with Disabilities](#).

# EMPLOYEE RESPONSIBILITIES – GENERALLY

- Must provide 30 days' advance notice of the need to take FMLA leave when the need is foreseeable.
  - In the event of an emergency or unforeseen illness, employee must provide notice to supervisor or department as soon as practicable
  - Provide sufficient information to Leave Administration ([leave@utrgv.edu](mailto:leave@utrgv.edu)) in a timely manner for a determination determine whether the leave may qualify for FMLA coverage and the anticipated timing and duration of the leave.
- Will be required to provide a healthcare provider certification, and may be required to provide periodic recertifications, supporting the need for leave covered by FMLA.
- Must periodically communicate with supervisor or department while out on leave on the employee's status and intent to return to work.
- Must provide a written Return to Work release to supervisor and Leave Administration.

Important Note: Your medical condition is to be provided only to Human Resources to maintain confidentiality.

# EMPLOYEE RESPONSIBILITIES – INTERMITTENT FMLA LEAVE

- Must comply with department's attendance and normal call-in procedures, absent unusual circumstances.
- Appropriately report time taken for FMLA leave on time sheets and submit monthly usage reports to Leave Administration
- Timely communicate any change in leave status to supervisor and Leave Administration

# SUPERVISOR RESPONSIBILITIES – GENERALLY

Supervisors must notify HR Leave Administration ([leave@utrgv.edu](mailto:leave@utrgv.edu)) when an employee's absences or request for absences indicate possible FMLA coverage

- Employees do not need to say "FMLA" to be eligible
- Absences of 3 or more days with the same serious health condition (intermittent or continuous) should be reported to Leave Administration, including when it involves the care of a child, spouse, or parent with a serious health condition
- Supervisor should identify the employee's needs such as start date, end date, and leave duration
- Supervisors must forward all FMLA leave request forms to Leave Administration immediately upon receipt and must not comment on the request or any submitted documentation
- If the employee is unavailable, Supervisor should submit the FMLA leave request on employee's behalf

Supervisors should direct employees to contact HR Leave Administration regarding FMLA Eligibility

- Supervisors must not ask employees to disclose specific details of their medical condition, illness or injury.
- All medical conditions and details regarding an employee's medical condition regarding an employee's FMLA leave are to be provided only to Human Resources.
- Employees may provide the supervisors with a doctor's note with general information as provided under the Sick Leave policy, ADM 04-603 (e.g. dates to be excused from work)
- A supervisor must NEVER contact an employee's physician directly or request medical documentation under any circumstances
- A supervisor should not ask invasive or insensitive questions about the nature of the serious health condition or treatment
  - e.g. – "Your FMLA leave is really burdensome on the department." "Your co-workers have been working a lot of overtime to do your job." "If you're not back by next week, you won't be eligible for that promotion."
- A supervisor should not make comments or ask questions that may be construed as discouraging the employee from taking FMLA leave or as retaliatory or discriminatory
  - e.g. – "Your FMLA leave is really burdensome on the department." "Your co-workers have been working a lot of overtime to do your job." "If you're not back by next week, you won't be eligible for that promotion."

# SUPERVISOR RESPONSIBILITIES - TRACKING FMLA LEAVE USE

Supervisors must fulfill the following responsibilities relating to an employee's leave under FMLA

- Accurately calculate and appropriately track all FMLA leave taken
- Confirm a Return to Work release has been received BEFORE employee returns to work (block of leave/continuous)
- Forward a copy of the Return to Work release to HR Leave Administration (except for intermittent leave)
- Keep HR Leave Administration informed of updates

Supervisors may only ask questions needed to determine if leave request is FMLA-related

- Is your absence related to the serious health condition previously approved for FMLA leave?
  - If yes, counts against FMLA leave entitlement
  - If no, what is the reason for your absence? Track according to appropriate leave policy (sick, vacation, holiday, etc.)
- When do you expect to return to work?
  - If an employee plans to be out more than 3 consecutive days, determine whether the employee or the supervisor need to submit new FMLA request



# SUPERVISOR RESPONSIBILITIES – MANAGING WORK PERFORMANCE DURING FMLA LEAVE

## Managing Employee Performance

- Quantity of work measures and deadlines should be adjusted
  - Must reasonably account for employee's time away
  - Other employees expected to support workload
- Quality measures do not need adjustment
- Misconduct is not protected
- FMLA time away cannot be counted in attendance measures (e.g., time/attendance policies, evaluations)
- Evaluations should avoid reference to FMLA use (unless to indicate not counted in attendance rating)

## Managing Intermittent Leave Absences

- Usual, customary call-in procedures ok if applied to everyone in working group
  - Should account for “unusual circumstances,” e.g., emergency treatment, unexpected incapacitation, supervisor not available
- Communicate regularly with employee
  - Can ask to schedule appointments on certain days or to provide advance notice for foreseeable appointments
  - Can discuss coordination of work assignments, behavior issues
- Medical documentation, return-to-work release not required for each absence
- Intermittent leave – watch for patterns of leave use that might indicate abuse (e.g. Monday/Friday, holidays, major projects) & advise Leave Administration

Please contact [hrpartners@utrgv.edu](mailto:hrpartners@utrgv.edu) for questions or clarification when managing employee performance or intermittent leave absences during FMLA.

# SUPERVISOR RESPONSIBILITIES – PROHIBITED ACTIONS

Supervisors must not:

- Interfere with, restrain, or deny employees' FMLA rights
- Discriminate or retaliate against an employee for having exercised FMLA rights
- Use the taking of FMLA leave as a negative factor in employment actions
- Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to the FMLA

# HR LEAVE ADMINISTRATION'S ROLE IN FLMA REQUEST PROCESS

- Determines whether an employee is eligible for FMLA leave
- Determines whether an employee's request for FMLA leave will be approved or denied
- Provides employee with required forms/notices upon approval or denial of leave request
- Contacts employee's medical provider for clarification or to correct incomplete certifications
- Communicates regularly with the supervisor
- Provides the supervisor advice and support regarding FMLA issues

# FMLA REQUEST AND APPROVAL PROCESS – GENERALLY

Determine FMLA eligibility.

Provide FMLA notice within 5 days, including required forms to be completed and supplemental FMLA guidance.

Employee provides HR Leave Administration with completed FMLA request form and Healthcare Certification within 15 calendar days. If additional time is needed, employee must inform HR Leave Administration.

A determination will be provided by HR Leave Administrator to the employee and supervisor within 5 business days.

# CONTINUOUS LEAVE APPROVED

## Continuous

1. Although your leave request will be submitted to your supervisor, your medical condition and details regarding your medical condition are to be provided only to Human Resources.
2. Provide your supervisor with weekly updates regarding your leave status (see *Employee & Supervisor Responsibilities attachment*).
3. Absences must be submitted weekly to ensure current leave balances are accurate and prevent delays in review. The FMLA designation does not necessarily correspond with set banked paid hours, employees on FMLA must use sick, vacation or LWOP, as available and applicable.
4. If all available leave balances are exhausted, you must inform HR and understand that you will be placed on a leave without pay status until returning to work.
  - a. Submit a [Leave Notification and Request form](#) for any time off needed beyond your FMLA approved date.
  - b. Available resources after leave without pay: [Sick Leave Pool](#)
5. Notify HR and your supervisor immediately of any change regarding your return-to-work date.

Other important resources to review:

- Employee & Supervisor Responsibilities (attached)
- Employee Rights and Responsibilities under the FMLA (attached)
- WH-382: Designation Notice under the FMLA (attached)
- [UTRGV HOP ADM 04-608: Family Medical Leave \(FMLA\)](#)

## Example

HR receives completed medical documentation indicating employee is to be out from 12/1/24-1/31/25.

- FMLA entitlement will cover from **December 1, 2024, through January 30, 2025, for a total of 280 hours with an expected return to work date of January 31, 2025.**

# INTERMITTENT LEAVE APPROVED

## Intermittent

1. Provide your supervisor and HR-Leave([leave@utrgv.edu](mailto:leave@utrgv.edu)) with a log of days and times you have been out for treatments/appointments no later than **M/D.Y.**
2. The log of days and times should be sent to your supervisor and our office on a **bi-weekly basis** or as **frequently as possible**.
3. Maintain your supervisor informed at all times with weekly updates regarding your leave status.
4. Timesheets are to be updated and Absence Requests submitted weekly to keep current leave balances and prevent delays. [The FMLA designation does not correspond with set banked paid hours, individuals on FMLA use sick, vacation or LWOP, as available and applicable.](#)
5. If all available leave balances are exhausted, you should inform HR and will be placed on a leave without pay status until returning to work.
  - a. Submit a [Leave Notification and Request form](#) for the dates on leave without pay.
  - b. Available resources after leave without pay: [Sick Leave Pool](#)
7. Notify HR-Leave([leave@utrgv.edu](mailto:leave@utrgv.edu)) and your supervisor immediately of any change of your return to work date.

### Other important resources to review:

- Employee & Supervisor Responsibilities (attached)
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- WH-382: Designation Notice under the FMLA(attached)
- [UTRGV HOP ADM 04-608: Family Medical Leave \(FMLA\)](#)

## Example

HR receives completed medical documentation indicating due to medical condition it is medically necessary for the employee to be out on intermittent basis from 12/1/24-1/30/25. Best estimate of how often(frequency) and how long (duration) the episodes of incapacity will last.

- Episodes of incapacity are estimated to occur 1-2 month and last approximately 4-8 hours per day.
- Entitlement will cover from 12/1/24-1/30/25 with expected return date of 1/31/25.

# FMLA LEAVE RESOURCES

- FMLA Questions or Leave Requests
  - Contact Leave administration at (956) 665-2991 or email [Leave@utrgv.edu](mailto:Leave@utrgv.edu)
- Applicable Policies
  - [ADM 4-601](#) - Leave of Absence without Pay
  - [ADM 4-602](#) - Annual Leave
  - [ADM 4 -603](#) – Sick Leave
  - [ADM 4-604](#) -Sick Leave Pool
  - [ADM 04-608](#): – Family and Medical Leave (FMLA)
  - [ADM 4-609](#) - Military Caregiver Leave under FMLA
- Online Resources
  - Department of Labor website [www.dol.gov](http://www.dol.gov)
    - [Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act - WH-380-E](#)
    - [Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act - WH-380-F](#)
  - UTRGV Human Resources website <http://www.utrgv.edu/hr/index.htm>

