

PROCEDURE LIT.5.09.01
FAMILY MEDICAL LEAVE ACT

SCOPE: Faculty and Staff

1. **Eligibility:** To be eligible for leave under the Family Medical Leave Act, an employee must have:
 - 1.1. Been an employee of the State of Texas at least twelve (12) months. In calculating the required twelve (12) months, all state employment will be counted and it need not be continuous.
 - 1.2. Worked at least 1250 hours during the preceding twelve (12) months. The 1250 hours refers to hours actually worked and does include paid time off.
2. **Qualifying Events:** Eligible employees are entitled to a total of twelve (12) weeks of unpaid leave during any twelve (12) month period for one (1) or more of the of the following:
 - 2.1. For incapacity due to pregnancy, prenatal medical care or child birth;
 - 2.2. To care for the employee's child after birth, or placement for adoption or foster care;
 - 2.3. To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
 - 2.4. For a serious health condition that makes the employee unable to perform the employee's job.
3. **Military Family Leave Entitlements:** Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies.
 - 3.1. Qualifying exigencies may include:
 - 3.1.1. attending certain military events,
 - 3.1.2. arranging for alternative childcare,
 - 3.1.3. addressing certain financial and legal arrangements,
 - 3.1.4. attending certain counseling sessions, and
 - 3.1.5. attending port deployment reintegration briefings.
 - 3.2. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has serious injury or illness incurred in the list of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical

treatment, recuperation, therapy or is in outpatient status, or is on the temporary disability retired list.

4. Administration: Lamar Institute of Technology (LIT) will calculate the twelve (12) month period of leave usage by a roll forward method.
 - 4.1. Eligible employees must utilize all available applicable leave when taking family medical leave (FML). After all paid leave is utilized; the State will pay for the State paid portion of the employee's coverage under the group health plan for any remaining calendar months of leave without pay which may be taken under FML.
 - 4.1.1. FML is unpaid although the employee may be eligible for short- or long-term disability payments and/or workers' compensation benefits under those insurance plans.
 - 4.1.1.1. If the employee requests leave because of a birth, adoption or foster care placement of a child, any accrued paid vacation and compensatory leave or applicable sick leave first will be substituted for any unpaid FML.
 - 4.1.1.2. If the employee requests leave because of his/her own serious health condition, any accrued sick leave, paid vacation, or compensatory leave, will be substituted first for any unpaid FML.
 - 4.1.1.3. Federal (FLSA) compensatory time cannot be used concurrently with FML. If an employee elects to use FLSA comp time while on FML, that time is not counted toward the 12- week FML entitlement.
 - 4.1.2. *Medical and Other Benefits*: Health care coverage will cease if premium payment for dependent coverage is more than thirty (30) days late. If the employee elects not to return to work at the end of the leave period, he/she will be required to reimburse the State for the cost of the premiums paid to maintain coverage during leave, unless he/she cannot return to work because of a serious health condition or other circumstances beyond his/her control.
 - 4.1.3. Sick leave may be used in conjunction with FML when a child under the age of three is adopted, regardless of whether the child is ill at the time of adoption. Conversely, a state employee who is the father of a child may use sick leave only if the child is ill due to childbirth or to care for his spouse while she is recovering from labor and delivery.
 - 4.1.4. If FML is used in one continuous block, a business closing will count against the employee's entitlement. The exception to this is a closing of a week or more.
 - 4.2. An employee on FML shall not earn state service credit, vacation leave, or sick leave for any full calendar months of leave without pay (LWOP). Further, any full calendar months of LWOP shall not be included in the calculation of six (6) continuous months of employment for vacation purposes.
 - 4.3. *Notice of Leave*:
 - 4.3.1. If need for FML is foreseeable, employees must give LIT thirty (30) days prior written notice. If that is not possible, notice should be given at least as soon as practicable (within 1 to 2 business days of learning of that need for leave). Failure to provide such notice may be grounds for delay of leave.

- 4.3.2. Where the need for leave is not foreseeable, notification must be given within 1 to 2 working days of learning of need for leave, except in extraordinary circumstances.
- 4.3.3. Requests for FML shall be made by the employee through the Office of Human Resources.
 - 4.3.3.1. Supervisors are responsible for notifying the Office of Human Resources of situations which may qualify an employee for FML coverage.
- 4.4. *Medical Certification*: If requesting leave because of an employee's or a covered relation's serious health condition or military caregiver's leave, the employee must provide appropriate medical certification. Medical certification forms are available from the Human Resources Department. Failure to provide requested medical certification in a timely manner may result in denial of leave.
- 4.5. *Reporting While on Leave*: The employee must contact the Human Resources Office regarding the status of his/her condition and intention to return to work.
- 4.6. *Intermittent and Reduced Schedule Leave*: Leave because of a serious health condition, may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours worked per workweek or workday) if medically necessary. If leave is unpaid, LIT will reduce the employee's salary based on the amount of time actually worked. In addition, while he/she is on an intermittent or reduced schedule leave, LIT may temporarily transfer the employee to an alternative position which better accommodates the recurring leave and which has equivalent pay and benefits.
 - 4.6.1. Employees requesting intermittent leave to care for a child that is newborn, during adoption, or during foster care must get supervisor approval for the intermittent leave.
- 4.7. *Returning from Leave*: If leave is taken because of employee's serious health condition, he/she will be required to provide medical certification to resume work. Return to work forms may be obtained from the Office of Human Resources. Employees failing to provide the return to work form or a doctor's release will not be permitted to resume work until it is provided. Employees must provide the Office of Human Resources and the supervisor a copy of the release form prior to returning to their work station.
- 4.8. *Extended Leave for Serious Health Condition*: Leave taken because of an employee's own serious health condition may be extended additional weeks with approval (see Leave Without Pay Policy). If an employee does not return to work on the originally scheduled return date nor requests in advance an extension of the agreed upon leave with appropriate documentation, he/she will be deemed to have voluntarily terminated employment with LIT.
- 5. *Definitions*: For the purposes of this policy, the following definitions apply:
 - 5.1. "Spouse" is defined in accordance with applicable State law.

- 5.2. "Parent" includes biological parents and individuals who acted as parents, but does not include parents-in-law.
- 5.3. "Son" or "daughter" includes biological, adopted, foster children, stepchildren, legal wards, and other persons for whom the employee acts in the capacity of a parent and who is under 18 years of age, or over 18 years of age but incapable of caring for themselves.
- 5.4. "Serious health condition" means any illness, injury, impairment, or physical or mental condition that involves: (1) any incapacity or treatment in connection with inpatient care; (2) an incapacity requiring absence of more than three calendar days and continuing treatment by a health care provider; or (3) continuing treatment by a health care provider of a chronic or long-term condition that is incurable or will likely result in incapacity of more than three (3) days if not treated.
- 5.5. "Continuing treatment" means: (1) two or more treatments by a health care provider; (2) two or more treatments by a provider of health care services (e.g., physical therapist) on referral by or under orders of a health care provider; (3) at least one treatment by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a program of medication or therapy); or (4) under the supervision of, although not actively treated by, a health care provider for a serious long-term or chronic condition or disability which cannot be cured (e.g., Alzheimer's or severe stroke).
- 5.6. "Health Care Provider" includes: licensed MD's and OD's, podiatrists, dentists, clinical psychologist, optometrist, chiropractors authorized to practice in the State, nurse practitioners and nurse-midwives authorized under the State law, and Christian Science practitioners.
- 5.7. "Needed to care for" a family member encompasses: (1) physical and psychological care, and (2) where the employee is needed to fill in for others providing care or to arrange for third party to care for the family member.
- 5.8. The phrase "unable to perform the functions of his/her job" means an employee is: (1) unable to work at all; or (2) unable to perform any of the essential functions of his/her position. The term "essential functions" is borrowed from the Americans with Disabilities Act ("ADA") to mean "the fundamental job duties of the employment

Related Policies: LIT.5.09 Employee Leave

Relevant Forms/Documents:

Relevant TSUS Policies/Forms/Documents:

Relevant Statutes: Texas Government Code §661.909; State Auditor's Leave Interpretation Letter No. 97-01; Texas Human Resources Management Statutes Inventory (2006-2007 Biennium); Family Medical Leave Act, 1993, 29CFR825

Relevant SACSOC Standards:

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