

31.03.05 Family and Medical Leave

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Regulation Statement

This regulation establishes the basis and procedure for administering the Family and Medical Leave Act (FMLA) in compliance with federal law and parental leave under state law. Each member of The Texas A&M University System (system) must grant an eligible employee up to 12 workweeks of FMLA per fiscal year for certain medical reasons.

Reason for Regulation

This regulation establishes uniform FMLA procedures and is required by System Policy *31.03, Leaves of Absence*.

Procedures and Responsibilities

1. ELIGIBILITY

- 1.1 A system employee is covered under Titles I and IV of the Family and Medical Leave Act of 1993 (FMLA) if he or she has been employed for at least 12 months by the state (not necessarily 12 consecutive months) and has worked at least 1,250 hours (based on Fair Labor Standards Act (FLSA) hours-worked principles) for the state during the 12 months immediately preceding the beginning of the leave. A part-time employee and one who works variable hours must have at least 52 weeks of service, not necessarily within 12 consecutive months, and must have worked 1,250 hours for the state during the 12 months immediately preceding the beginning of the leave. Time spent on military leave counts as time worked in determining if the employee has been employed for at least 12 months by the state and also for the 1,250 hours worked requirement. Employment periods preceding a break in service of more than seven (7) years are not required to be counted in determining if the employee has been employed by the state for at least 12 months unless the break in service is due to military service obligation. An employee on the payroll for any part of a week is credited with a week of service for purposes of calculating the 12-month requirement.

- 1.2 An employee who is not eligible for FMLA leave may be eligible for parental leave under state law, as described in Section 11 of this regulation, for the birth of a natural child or the adoption or foster care placement of a child younger than three (3) years.

2. LEAVE REQUIREMENTS

- 2.1 An eligible employee may take up to 12 weeks of leave during a fiscal year for any of the following reasons:

- (a) birth and care of a child;
- (b) placement in the employee's home of a child for adoption or for foster care;
- (c) care for a spouse, son, daughter or parent with a serious health condition;
- (d) a serious health condition of the employee that prevents the employee from performing the essential functions of his or her position; and
- (e) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty in support of a contingency operation. Federal regulations provide that qualifying exigencies include short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and certain additional activities arising out of the covered military member's active duty or call to active duty status provided that the system member and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

- 2.1.1 Entitlement to leave for birth or placement of a child begins on the date of the birth or date of placement in the home, unless absence from work is required for the placement for adoption or foster care to proceed. Entitlement to leave expires 12 months after the birth or placement. Any period before and after birth, when a mother is not able to work for medical reasons, will be considered leave for a serious health condition.

- 2.1.2 An employee may take leave to care for a family member, as defined in Section 2.1(c), who requires physical and/or psychological care. An eligible employee's right to take leave is not limited by the availability of another family member or third-party care provider.

- 2.2 An employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to a total of 26 workweeks of leave during a single 12-month period to care for the servicemember. This military caregiver leave is only available during a single 12-month period; however, the employee is entitled to a combined total of 26 workweeks of leave under Sections 2.1 and 2.2. The employee is entitled to no more than 12 weeks of leave for the reasons stated in Section 2.1 during this single 12-month period. The entitlement for military caregiver leave as described in this section does not limit the availability of leave under 2.1 during any other 12-month period.

- 2.2.1 The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. If the eligible employee does not take all of the 26 workweeks of leave during this single 12-month period, any remaining portion of the 26 workweeks is forfeited.
- 2.2.2 An eligible employee is entitled to more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or the same covered servicemember with a subsequent serious illness or injury; however, no more than 26 workweeks of leave may be taken during any single 12-month period.
- 2.2.3 System members must designate military caregiver leave in accordance with Section 9 of this regulation. If leave qualifies as military caregiver leave and leave to care for the same family member with a serious health condition during the single 12-month period, the leave must be designated as military caregiver leave and must not be designated and counted as both types of leave.

3. GENERAL

- 3.1 An eligible employee who takes FMLA leave is entitled to be returned to the same position that the employee held when the leave commenced or to an equivalent position with equivalent benefits, pay and other terms and working conditions of employment. In order to deny restoration to employment, the system member must show that the employee would not otherwise have been employed at the time reinstatement is requested.
- 3.2 The employee's right to reinstatement does not override any other action a system member is entitled to take under any other system policy.
- 3.3 It is unlawful to interfere with, restrain or deny the exercise of any right provided by the FMLA or to discharge or in any way discriminate against any individual because the individual opposed or complained about any unlawful practice under the FMLA, filed a charge or gave information or testified in connection with any inquiry or proceeding related to the FMLA.

4. LEAVE DURATION AND USE

4.1 Intermittent Leave or Reduced Hours

- 4.1.1 An employee may request intermittent leave (separate blocks of time due to a single qualifying reason) or a reduced work schedule (less hours per workweek or work day) due to a qualifying exigency or if medically necessary because of 1) an employee's or an employee's family member's serious health condition, or 2) to care for a covered servicemember with a serious injury or illness. The medical necessity of intermittent or reduced leave must be certified as described in Section 6.2. Such leave may be taken for birth or adoption/foster care purposes only if the employee and system member agree.

4.1.2 If intermittent leave or reduced hours are medically necessary and foreseeable, the employee must make a reasonable effort to schedule the treatments so as to not unduly disrupt the system member's operations. If the treatments would be disruptive to the work schedule, the system member may alter the employee's existing job or require the employee to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the employee's current position. The alternative position must be one for which the employee is qualified and it must provide equal pay and benefits. The new position must not create a hardship for the employee, such as being located a significant distance from the regular position or being on a different shift.

4.1.3 For an employee who works part-time or variable hours, the FMLA leave duration is calculated on a pro rata or proportional basis.

4.2 Use of Leave

4.2.1 An employee will be required to take all accumulated paid leave, including approved leave from the sick leave pool, as part of his or her 12 weeks. If an employee has less than 12 weeks of accrued paid leave, the rest of the leave will be unpaid. An employee who is receiving temporary disability benefit payments or workers' compensation benefits is not required to use paid leave while on FMLA leave. If the employee remains on FMLA after these benefits end, the employee will then be required to use available paid leave before using unpaid leave.

4.2.2 Sick leave may be taken only in situations when such leave would normally be permitted.

4.2.3 FMLA leave runs concurrently with vacation leave or other paid or unpaid sick leave or other leave when the reasons for those leaves meet the FMLA criteria.

4.2.4 An employee may not be required to use compensatory time as part of an FMLA leave. However, if an employee chooses to use FLSA or state compensatory time, that time will count as part of the 12 weeks of FMLA entitlement although it may fall in the middle of an FMLA leave.

4.2.5 An employee who is granted a partial day of FMLA leave will not lose his or her exempt status under the FLSA.

4.2.6 When a holiday falls during a week, the week counts as a full week of FMLA leave. However, when a system member is closed for five (5) consecutive working days or longer, such as the December holidays, those days will not count as FMLA time.

4.2.7 An employee on leave is required to report periodically (two-week intervals are recommended) on his or her status and intention to return to work. An employee should be encouraged to keep his or her supervisor informed about his or her intention to return to work.

5. SYSTEM MEMBER NOTICE REQUIREMENTS

- 5.1 General Notice: Each system member is required to post a notice where it can be seen by employees and applicants that explains an employee's rights and responsibilities under the FMLA. The text must be fully legible and in languages in which significant portions of the workers are literate. Electronic posting is sufficient as long as it meets all requirements. A prototype notice is available on the Department of Labor website. The notice is available at all system member human resources offices.

The system member must also provide this notice to each employee to ensure that the employee is aware of FMLA obligations. This should be done by including the notice in employee handbooks or other written guidance on benefits or leave rights, if any. Distribution may be accomplished electronically.

- 5.2 Eligibility Notice: When an employee requests FMLA leave or when the system member acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the system member must provide oral or written notice to the employee within five (5) business days, absent extenuating circumstances, regarding the employee's FMLA eligibility. The eligibility notice must state if the employee is eligible for FMLA leave. If the system member determines the leave is not for an FMLA-qualifying reason or if the employee is not eligible for FMLA leave, oral or written notice must be provided stating the reasons. A prototype notice is available on the Department of Labor website.

- 5.3 Rights and Responsibilities Notice: In addition to providing the eligibility notice referenced above, the system member must provide written notice detailing the specific expectations and obligations of the employee and explaining the consequences of failure to meet these obligations. The notice must be in a language in which the employee is literate. A prototype notice is available on the Department of Labor website. At a minimum, the information must include:

- (a) that the leave will be counted against the employee's annual FMLA entitlement and the applicable 12-month period for FMLA entitlement;
- (b) any certification requirements of a serious health condition, serious injury or illness or qualifying exigency arising out of active duty or call to active duty status and consequences of the employee's failure to provide the certification;
- (c) the requirement that paid vacation and sick leave, if applicable, be used before unpaid leave and the employee's entitlement to take unpaid FMLA leave if not eligible for paid leave;
- (d) that the employer contribution for benefits will continue during paid and unpaid FMLA leave, and the potential liability for payment of the employer contribution if the employee fails to return to work after taking FMLA leave;
- (e) that any employee share of benefit premiums will continue to be deducted from pay during paid leave, that the employee will be billed for premiums during unpaid leave and that coverage will be cancelled as of the last day of the last month for which premiums were paid if premiums are not paid within 30 days of the due date;

- (f) whether the employee will be required to present a fitness-for-duty certificate before returning to work; and
- (g) the employee's rights to maintenance of benefits during FMLA leave and to be reinstated in the same or an equivalent job when returning from FMLA leave.

The notice should also outline the schedule for any periodic reports the supervisor will require during the leave and the process for notifying the supervisor of the expected return date. A new notice must be issued if circumstances require a change from the original notice.

5.4 Designation Notice: Each system member must designate FMLA leave in accordance with Section 9.

5.5 Each system member must keep related records for four (4) years.

6. EMPLOYEE NOTICE AND CERTIFICATION REQUIREMENTS

6.1 Notice

6.1.1 When an employee plans to take unpaid leave under the FMLA, the employee should give the system member 30 days notice when possible or as soon as practicable under the circumstances.

6.1.2 Normal sick leave notice requirements apply for the paid portions of leave. The notice must comply with the usual rules for requesting leave, except in emergency situations. However, FMLA leave may not be denied if the employee gives timely oral, written or other notice of the need for leave, but fails to follow the system's or a system member's leave request procedures.

6.1.3 Notice may be given by the employee's spouse, other adult family member or designee if the employee is unable to personally provide notice.

6.1.4 If the employee is undergoing planned medical treatment, the employee must consult with the system member and make a reasonable effort to schedule the treatments so as to minimize disruption to the system member's operations, subject to the approval of the health care provider.

6.1.5 For adoption of a child, the employee must submit a brief written statement to the system member chief executive officer (CEO) or designee specifying the child's age, the anticipated or actual date of placement in the employee's home and the number of days of FMLA leave requested. Proof of the placement of a foster child in an employee's home must also be provided.

6.2 Certification of Condition

6.2.1 Paid – When using sick leave concurrently with FMLA leave in cases of serious health conditions, the employee must provide the same physicians' certifications required by System Regulation 31.03.02, *Sick Leave*.

6.2.2 Unpaid – Each system member should require certification of a serious health condition and need for leave from the employee's or family member's health care provider within 15 calendar days of the request for leave, unless 15 days is not practicable under the circumstances despite the employee's diligent, good faith efforts. The system member must notify the employee of the certification requirement when leave is requested. All certifications should be treated as confidential medical records and kept separate from personnel records.

The certification may be submitted on the form available on the Department of Labor website, or the same information may be submitted in a different format. No additional information may be required.

6.2.3 If the system member finds the submitted certification form to be incomplete or insufficient, the system member must provide written notification to the employee stating what additional information is necessary to make the certification complete and sufficient and provide the employee with seven (7) calendar days (unless not practicable despite the employee's diligent, good faith efforts) to cure any such deficiency. A certification is considered incomplete or insufficient if one or more of the applicable entries have not been completed or if the information provided is vague, ambiguous or non-responsive. A certification that is not returned to the system member is not considered incomplete or insufficient, but constitutes a failure to provide certification.

6.2.4 If the employee fails to provide the system member with a complete and sufficient certification despite the opportunity to cure the certification as per Section 6.2.3 or fails to provide any certification, the system member may deny the FMLA leave as follows:

6.2.4.1 Foreseeable leave – If the employee fails to provide certification within 15 calendar days per Section 6.2.2, the system member may deny FMLA coverage until the required certification is provided. For example, if the employee does not provide the certification for 45 days without sufficient reason for the delay, the system member can deny FMLA coverage for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

6.2.4.2 Unforeseeable leave – If the employee fails to provide certification within 15 calendar days per Section 6.2.2, unless not practicable due to extenuating circumstances, the system member may deny FMLA coverage for the leave following the expiration of the 15-day time period until sufficient certification is provided.

6.2.5 If the employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. If the system member needs clarification or authentication on a medical certification, a valid Health Insurance Portability and Accountability Act (HIPAA) authorization must be provided by the employee before contacting the employee's HIPAA-covered health care provider. A system member must use a health care provider representing the

system member, a human resources professional, a leave administrator or a management official to contact the employee's health care provider to clarify and authenticate a medical certification. Under no circumstances may the employee's direct supervisor contact the employee's health care provider. The system member may not ask for information not requested on the form. When FMLA runs concurrently with workers' compensation, the system member may contact the employee's workers' compensation health care provider if allowed by workers' compensation statutes to request additional information and the information received under those statutes may be considered in determining the employee's entitlement to FMLA leave.

6.2.6 If the system member has reason to doubt the certification's validity, the system member can pay (including reasonable out-of-pocket travel expenses) for an opinion from another health care provider, but the provider may not be employed on a regular basis by the system. If the second opinion disagrees with the first opinion, the system member and employee must agree on a health care provider to give a third opinion. The system member will pay for the third opinion and it will be final and binding on all parties. Upon the employee's request, a system member must provide copies of any second or third medical opinion within five (5) business days, unless extenuating circumstances prevent compliance.

6.2.7 With 15 days notice, recertification of the medical condition may be required every 30 days or more frequently if the circumstances of the illness or injury change or if the system member receives information that the most recent certification may not be valid. Recertification will be at the employee's expense and no second or third opinions can be requested.

6.3 Certification of the employee's ability to resume work may be required if leave was due to the employee's serious health condition. The system member may delay restoring the employee to employment without such certification relating to the health condition which caused the employee's absence. The certification provision does not supersede valid state or local laws that govern the employee's return to work. The employee must be notified when requesting leave if this certification will be required and this requirement must be uniformly applied to employees in similar situations.

6.4 If an employee is able to return to work earlier than anticipated, the employee must give his or her supervisor two (2) work days' notice of the return date, when feasible. The employee must be reinstated.

7. CERTIFICATION FOR QUALIFYING EXIGENCIES

An employee requesting FMLA leave for a qualifying exigency must comply with the certification requirements set out in 29 C.F.R. § 825.309 (see link below).

8. CERTIFICATION FOR MILITARY CAREGIVER LEAVE

An employee requesting FMLA military caregiver leave must comply with the certification requirements set out in 29 C.F.R. § 825.310 (see link below).

9. SYSTEM MEMBER DESIGNATION OF FMLA LEAVE

- 9.1 When the system member has received sufficient information from the employee or the employee's spokesperson to determine if the leave is for an FMLA-qualifying reason, the system member must notify the employee and designate the leave, whether paid or unpaid, as qualifying or nonqualifying for FMLA in writing within five (5) business days absent extenuating circumstances. The written confirmation should include the notice requirements outlined in Section 5.3. A prototype notice is available on the Department of Labor website. If the leave is not designated as FMLA leave because it does not meet the requirements of the FMLA, the notice may be in the form of a simple written statement. The system member must make this designation if the paid or unpaid leave is for an FMLA reason even if the employee does not specify FMLA in his or her leave request.

The system member must notify the employee of the number of hours, days or weeks that will be counted against the employee's FMLA entitlement. If this is not possible, such as in the case of unforeseeable intermittent leave, then such notice must be provided upon the employee's request, but not more than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the FMLA leave entitlement may be made orally, but must be followed by written confirmation no later than the following payday or the next payday if the following payday is less than one week after the oral notice.

- 9.2 The system member may retroactively designate leave as FMLA leave with appropriate notice to the employee as required under Section 5 provided that the system member's failure to timely designate leave does not cause harm or injury to the employee. The system member and employee can mutually agree that leave be retroactively designated as FMLA leave.
- 9.3 The system member is considered to have learned the reason for a leave when an employee informs his or her supervisor or designee of the reasons for his or her absence. If the employee does not provide enough information to make a designation, the system member may request the additional information needed to determine if the leave qualifies for FMLA.
- 9.4 If an employee requests FMLA leave before he or she is eligible, the system member must notify the employee that he or she is not eligible for FMLA leave. Otherwise, the employee will be considered eligible for FMLA leave. If the employee is not eligible, the system member must notify the employee when he or she becomes eligible.

10. BENEFITS DURING LEAVE

- 10.1 An employee may continue to participate in all insurance benefit plans while on FMLA leave. Coverage can continue for the leave's duration at the same level of benefits and contributions as if the employee had continued in employment. If an employee chooses not to retain coverage during FMLA leave, the employee is entitled to have his or her benefits reinstated upon returning to work on the same terms as prior to taking the leave.

- 10.2 While an employee is on paid leave, the employee's share of premiums will continue to be deducted from pay. Once an employee goes on unpaid leave, the employee's share of premiums for health care and other coverage will be collected monthly. Arrangements for premium payments must be specified before the leave begins or as soon as practicable in case of an emergency. If the employee on unpaid leave fails to make arrangements to pay premiums or fails to make payments within 30 days of the due date, all benefits will be dropped except those fully paid by the employer contribution. The system member must mail a notice to the employee at least 15 days before the end of the grace period advising the employee that the premium has not been received and that coverage will end on a specific date unless payment is received by the end of the grace period. The employee must continue to contribute to his or her Health Care Spending Account during unpaid leave to continue participation. However, the employee may continue to receive reimbursements (until the balance is exhausted) from his or her Dependent Day Care Account whether or not he or she continues contributions during unpaid leave.
- 10.3 An employee will not accrue state service or employment benefits during unpaid leave, nor is an employee subject to any penalty or entitled to any right, benefit or position of employment other than any to which he or she would have been entitled had he or she not taken paid or unpaid FMLA leave. However, an employee on leave will retain the employment benefits accrued before the leave began, and the leave will not constitute a break in service.
- 10.4 If an employee does not return from leave, Consolidated Omnibus Budget Reconciliation Act (COBRA) procedures will be implemented on the day the employee's employment terminates.

11. PARENTAL LEAVE

- 11.1 An employee, including a student or wage employee, who is not eligible for FMLA leave is entitled to a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption or foster care placement of a child younger than three (3) years. This period begins with the date of birth or the date of the adoption or foster care placement. However, no parental leave may be taken more than 12 weeks after the birth or adoption or foster care placement.
- 11.2 An employee may take parental leave on an intermittent or reduced work schedule if the employee and system member agree.
- 11.3 An employee must use all available vacation or sick leave as part of the parental leave before using leave without pay. However, use of sick leave is limited to those situations within the definition of sick leave in System Regulation *31.03.02*.
- 11.4 The employee notice and certification requirements set out in Section 6.1.5 also apply to parental leave available under this section.

Related Statutes, Policies, or Requirements

[29 C.F.R. Pt. 825, The Family and Medical Leave Act of 1993](#)

[29 C.F.R. § 825.309, Certification for leave taken because of a qualifying exigency](#)

[29 C.F.R. § 825.310, Certification for leave taken to care for a covered servicemember \(military caregiver leave\)](#)

[The United States Department of Labor](#)

[Texas Government Code, Section 661.912, Family and Medical Leave](#)

[Texas Government Code, Section 661.913, Parental Leave for Certain Employees](#)

[System Policy 31.03, Leaves of Absence](#)

[System Regulation 31.03.01, Vacation](#)

[System Regulation 31.03.02, Sick Leave](#)

[System Regulation 31.03.04, Leave of Absence Without Pay](#)

Definitions

Covered military member – the employee’s spouse, son, daughter or parent on active duty or call to active duty status.

Covered servicemember – 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 incurred in the line of duty on active duty.

Employment benefits – all benefits provided or made available to employees, including group life insurance, health insurance, disability insurance, sick leave, vacation leave, educational benefits and pensions.

Health care provider – must be authorized by the state in which he or she is licensed to diagnose and treat physical or mental health conditions, and includes:

- (1) a doctor of medicine or osteopathy licensed by the state;
- (2) a podiatrist, dentist, clinical psychologist, optometrist, and chiropractor performing within the scope of his or her practice as defined by state law;
- (3) a nurse practitioner, nurse midwife, clinical social worker and physician’s assistant performing within the scope of his or her practice as defined by state law;
- (4) a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts;

- (5) any health care provider from whom a system health plan will accept certification of a serious health condition to pay a claim for benefits; or
- (6) a health care provider listed above who practices outside the United States, performing within the scope of his or her practice as defined under that country's laws.

Incapable of self-care – the individual requires active assistance or supervision to perform three (3) or more activities of daily living. Activities of daily living include but are not limited to grooming, maintaining hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office and similar activities.

Incapacity – the inability to work, attend school or perform other regular daily activities due to a serious health condition, treatment of the condition or recovery from the condition.

Next of kin of a covered servicemember – the nearest blood relative, other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

Outpatient status (in respect to a covered servicemember) – the status of a member of the Armed Forces assigned to 1) a military medical treatment facility as an outpatient; or 2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent – the employee's biological, adoptive, step or foster father or mother, or any other individual who served as a parent (with day-to-day care and financial responsibilities) to the employee when the employee was a "son or daughter" as defined in this regulation. This term does not include parents "in law."

Parent of a covered servicemember – a covered servicemember's biological, adoptive, step or foster father or mother or any other individual who served as a parent (with day-to-day care and financial responsibilities) to the covered servicemember. This term does not include parents "in law."

Serious health condition – any "illness, injury, impairment or physical or mental condition" that involves:

- (1) an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care; or
- (2) continuing treatment by a health care provider, including:
 - (a) incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that involves treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under the direct supervision of a health care provider or by another provider, such as a physical therapist, under orders of or referral by a health care

provider. Continuing treatment may also involve at least one treatment that results in a regimen of continuing treatment under the health care provider's supervision. The first (or only) treatment visit must take place within seven (7) days of the first incapacity.

- (b) any period of incapacity due to pregnancy or for prenatal care.
- (c) any period of incapacity or treatment due to a chronic serious health condition. A chronic serious health condition is one that requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse under the direct supervision of a health care provider; continues over an extended period, including recurring episodes of a single underlying condition; and may cause episodic rather than continuing periods of incapacity, such as asthma, diabetes or epilepsy.
- (d) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, if the employee or family member is under the continuing supervision of a health care provider. The employee or family member need not be receiving active treatment. Examples include Alzheimer's, a severe stroke or the terminal stages of a disease.
- (e) any period of absence to receive multiple treatments and recover from those treatments provided by a health care provider or by another health care services provider under the orders of or referral by a health care provider. This may be for restorative surgery after an accident or injury or for a condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment. Examples include chemotherapy or radiation for cancer, physical therapy for severe arthritis and dialysis for kidney disease.

Some situations under (b) and (c) are covered by FMLA even though the employee or family member may not visit a health care provider during the absence and the absence may be for less than three (3) consecutive, full calendar days. For example, an employee or family member may experience morning sickness or have an asthma attack or a health care provider has advised the employee to stay home when the pollen count exceeds a certain level.

Serious injury or illness (in respect to a covered servicemember) – an injury or illness incurred by the covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank or rating.

Son or daughter (for purposes of FMLA leave taken for birth or adoption or to care for a family member with a serious health condition) – a biological, adopted or foster child, a step child, a legal ward or a child for whom the person served as a parent (with day-to-day care and financial responsibilities), who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember – the covered servicemember's biological, adopted or foster child, stepchild, legal ward or a child for whom the covered servicemember served as a parent (with day-to-day care and financial responsibilities) and who is of any age.

Son or daughter on active duty or call to active duty status – the employee’s biological, adopted or foster child, stepchild, legal ward or a child for whom the employee served as a parent (with day-to-day care and financial responsibilities), who is on active duty or call to active duty status, and who is of any age.

Spouse – a husband or wife, as defined or recognized by state law. Leave will not be granted to care for an unmarried domestic partner.

Treatment – includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine examinations. A regimen of continuing treatment can include a course of prescription medicine or therapy requiring special equipment to resolve or alleviate the health condition. Taking over-the-counter medications or bed rest, drinking fluids, exercise and similar activities that do not require a visit to a health care provider are not, by themselves, regimens of continuing treatment for FMLA purposes.

Contact Office

System Offices Human Resources
(979) 458-6169