

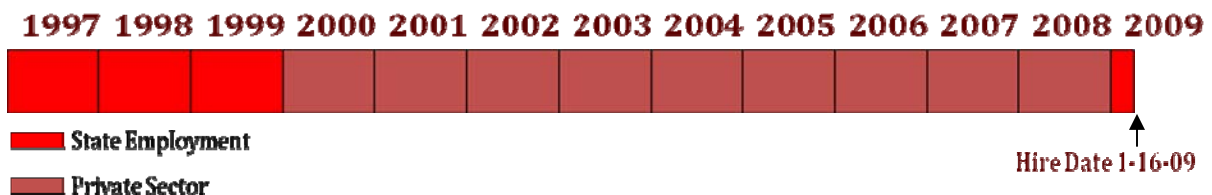
Family and Medical Leave Act Revisions Effective January 16, 2009

Department of Labor revisions to The Family and Medical Leave Act (FMLA) have an impact on some of our FMLA administrative procedures as we continue to ensure that our employees receive the full benefits of the Act. Some notable changes in FMLA administration at TAMU are as follows:

1. Employee FMLA eligibility and 12-month Requirement

For purposes of calculating an employee’s eligibility for FMLA leave, the minimum of 12 months for which an employee must have been employed by the state needed not to be consecutive. However, the January 16 revision states that state employment prior to a break in service of seven years or more need not be counted. Exception: National Guard or Reserve military service will not be considered a break in service for purposes of the 12-month requirement.

Please see illustration below for example: An employee leaves TAMU employment in December 1999 after three years of service to pursue job opportunities in the private sector. Your department hires the former TAMU employee today, 1/16/09. Your employee will be hired with three years of state employment, but s/he will not be eligible for FMLA leave at this time due to having a gap in state employment for a period which is greater than seven years. Your employee will now have to establish another year of state service to qualify for FMLA leave.



2. Serious Health Condition and Periodic Treatment Clarified

The new rule does not change the basic definitions of a “serious health condition”, but clarifies them in three ways:

- (1) *If an employee’s serious health condition is based on more than three consecutive calendar days of incapacity plus two visits to a health care provider
 - o the first visit to the provider must occur within seven (7) days of the initial date of incapacity, and
 - o the second visit to the practitioner must occur within 30 days of the initial day of incapacity.
- (2) *If an employee’s serious health condition is based on more than three consecutive days of incapacity plus a “regimen of continuing treatment”, the employee must visit a healthcare provider within seven (7) days of the onset of the incapacity.
- (3) If an employee’s serious health condition is based on “periodic visits to a health care provider” for a chronic serious health condition, the employee must make at least two visits to a health care provider per year.

**Note regarding (1) and (2): Please be flexible when interpreting these two items; an employee who has doctors’ visits on dates slightly outside the parameters given (a visit seven days within*

the onset of the incapacity, two visits within 30 days) should be given reasonable flexibility regarding FMLA leave designation. Please contact Human Resources if you have questions about this recent clarification.

3. Awards

Employees may be disqualified from receiving a perfect attendance award due to FMLA leave. Total Compensation should be contacted prior to consideration of disqualifying an employee for such an award.

4. Retroactive Designation

We may designate FML retroactively if we did not designate the leave as required; however, the retroactive designation must be made with proper notice to the employee.

- Retroactive designation can only occur if:
 - it does not cause harm or injury to the employee; or
 - TAMU and the employee agree on the retroactive designation of FML.
- Update is based on previous U.S. Supreme Court decision
- Human Resources should be contacted prior to any retroactive designation of FMLA leave

5. Overtime and 12-week Entitlement

Overtime worked may be counted against an employee's 12-week entitlement of FMLA leave if the employee would have been required to work specific overtime schedules.

- Remember: FMLA available hours are *proportional* to percent effort; example:
 - 100% effort: 40hr/week x 12 = 480 hours FML
 - 75% effort: 30/hr week x 12 = 360 hours FML
- Review your employees' work schedules where necessary
 - Hourly employees who are routinely scheduled to work in excess of 40 hours per week may qualify for more FMLA hours if out on intermittent leave; example:
 - 45/hr week x 12 = 540 hours FML
 - 50/hr week x 12 = 600 hours FML
 - Human Resources should be contacted if your employee works extended hours and requests/needs FMLA leave

This change is expected to have a minimal impact on TAMU procedures, as policies and good business practices discourage the scheduling of overtime on a routine basis.

6. First-Time Leave and Subsequent intermittent Leave

Employees who are on episodic or intermittent leave previously designated as FML are now responsible for advising their respective departments of absences relating to that leave.

- First-time leave: The employee does not need to expressly assert FMLA rights; departments must follow procedures and notify employee with packet, etc.
- Subsequent leave: Employee must specifically reference the qualifying reason for the FMLA leave and provide appropriate certification

7. Department Contact with Health Care Providers

Departments may now contact an employee's health care provider directly to authenticate or clarify information given in the certification form. However, the contact may be made only by the department's leave administrator or other designated Human Resources representative; the employee's direct supervisor may not contact the employee's practitioner. The requested information may not be beyond what is requested on the certification form.

8. Timing and Deadline Requirements

Employers have five business days (formerly two) after the employee provides notice of leave (or unforeseen leave, after leave begins) to request certification from the employee

- "Lifetime" conditions may be re-certified a *minimum* of every six months, or earlier if circumstances have changed (questionable continuous Monday or Friday absences, increase in time missed, etc.)
- "Unknown" duration conditions may be recertified a *minimum* of every 30 days, or earlier if circumstances have changed.

Contact Human Resources prior to requesting a recertification form outside of the timeframe referenced above.

9. Military Family Leave

A January 28, 2008 revision to the FMLA created two new categories of FMLA leave for families of military service members: (1) *Exigency Leave*, stemming from the call to active duty of an employee's family member who is in the Armed Forces, and (2) *Caregiver Leave*, which allows up to 26 weeks of leave for those employees who are a spouse, son, daughter, parent, or "next of kin" to care for family members who are military service members with a serious illness or injury.

- Exigency Leave clarifications
 - Only available to employees with family members in the National Guard, Reserves, or retired service members called to active duty
 - Not available to employees in the Regular Armed Forces
 - Eight defined uses for *Exigency Leave*
 - (1) Short-notice deployment: Up to seven calendar days of leave to address any issue that arises when a covered service member is called to active duty seven days or fewer before deployment.
 - (2) Military events: To attend any ceremony, event, program, or activity sponsored by the military, a military organization, or the American Red Cross.
 - (3) Childcare and school activities: To attend to various childcare and school activities affected by a covered military member's call to active duty, such as to arrange for alternative childcare, provide emergency childcare, or deal with school or daycare enrollment necessitated by the active duty call, or to attend school meetings necessary due to circumstances arising from the active duty call.
 - (4) Financial and legal arrangements: To address the covered military member's absence.

- (5) Counseling: For the employee, a covered military member, or child, other than by a health care provider necessitated by a call to active duty.
 - (6) Rest and recuperation: With a covered military member who is on temporary, short-term rest and relaxation during a period of deployment.
 - (7) Post-deployment activities: To attend military-sponsored events within 90 days after deployment.
 - (8) Additional activities: Arising from a call to active duty that is agreed upon between the employer and the employee.
- Caregiver Leave clarifications
 - Is available for all military service members, including members of the Regular Armed Forces
 - Allows up to 26 weeks of military caregiver and regular FMLA leave to be taken with a fiscal year
 - Next of kin is defined as the “nearest blood relative” (other than a spouse, parent, son, or daughter), with the governing order of priority being that specified in the rule, unless the employee has designated another blood relative as next of kin for the purpose of caregiver leave.

10. FMLA Packet Changes

- Cover letter and practitioner form have minor revisions
- New FMLA posters (English and Spanish)
- Military Leave certification forms now available
 - Exigency Leave
 - Caregiver Leave
- Employee’s position description now included with packet (when condition involves employee)

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