



Division of Human Resources
& Organizational Effectiveness

Family and Medical Leave Administration Manual

An Administrator's Practical Guide
to
The Family and Medical Leave Act Process
at
Texas A&M University

Employee Relations Department (ER)
Phone: 979.862.4027
Email: Employee-Relations@tamu.edu
Fax: 979.862.3610

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1. Introduction

The Family and Medical Leave Act (FMLA) is a benefit that allows qualified employees to take up to twelve weeks of leave per fiscal year for his or her own personal illness, for the birth or adoption of a child, or to care for a family member. Employees may also take FMLA leave to take care of personal and family matters in the event a spouse or another eligible family member is called to active duty in the Armed Forces.

This manual is designed to provide administrators and supervisors with practical guidance on issues and procedures pertaining to FMLA benefits at Texas A&M University. Actual case studies are provided at the end of this manual to illustrate the penalties that can occur from non-compliance of this law. The guidance and information provided in this manual is not intended to serve as official Texas A&M University policy, but is intended to assist in the general application of FMLA leave where appropriate. All applicable laws and policies will apply to matters of FMLA administration and other topics discussed in this manual.

Due to the complexity of FMLA law, administrators who have difficult FMLA issues are encouraged to contact Human Resources, Employee Relations Department (ER) to ensure a thorough review of any concerns that may arise in their respective areas.

2. FMLA Administrator / Liaison Responsibilities

The duties of a department FMLA administrator will vary according to each department, but the main duties will most likely consist of, among others:

- ensuring the department's compliance with the FMLA;
- determining the FMLA eligibility of employees who need leave due to FMLA-qualifying absences;
- overseeing the employee FMLA leave balances and periodically reviewing for accuracy;
- training supervisors and managers on FMLA procedures where necessary;
- communicating with Human Resources if questions arise regarding FMLA leave; and
- distributing packets of information to employees who may need FMLA leave as outlined in section 5.

3. Supervisor / Manager Responsibilities

Supervisors and managers must establish themselves as a first step in the FMLA leave process. Supervisors are not required to be FMLA "experts"; however, supervisors must know which types of absences indicate an FMLA-related condition.

- 3.1 Supervisors must notify the department's FMLA administrator when an employee absence indicates a potential need for FMLA leave. This need could be evident when an employee:
- notifies a supervisor, manager, or administrator of their own pregnancy or a spouse's pregnancy, that his/her family will be adopting a child, or that the family will be receiving a child from foster care;
 - misses more than three continuous days of work;
 - is absent on an intermittent basis due to a chronic health condition (i.e. diabetes, migraine headaches, etc.);
 - is placed in a hospital or day care facility for any length of time;
 - is needed to care for a covered family member of the armed forces, or is needing leave due to a covered family member's being called to active duty; and/or
 - is needed to care for a family member (child, spouse, parent) who is suffering from a serious health condition.

- 3.2 Supervisors and managers must ensure, among other items, that employees who need FMLA leave:
- are returned to the same or equivalent position with equivalent benefits, pay, and other working conditions of employment;
 - are not subjected to adverse employment action for absences attributed to such leave; and
 - are otherwise not obstructed from exercising their right to take FML leave.

4. Employee Responsibilities

Employees have responsibilities to fulfill if the leave taken is to be granted or designated as FMLA leave. In general, employees must:

- provide 30 days' advance notice of the need to take unpaid FMLA leave when the need for such leave is foreseeable;
- provide sufficient information, usually a certification form, in a timely manner so that the department may review for FMLA eligibility;
- inform the department if the requested leave is for a reason for which FMLA leave was previously taken or certified;
- provide re-certification of a condition upon request by the employing department; and
- maintain appropriate contact with the employee department regarding return-to-work status.

An employee's failure to provide information in a timely manner may result in the delay or denial of FMLA benefits.

5. FMLA Packet

Administrators or designees are responsible for providing employees with a FMLA packet of information where necessary. This documentation, which includes an eligibility notice, must be provided to the employee within five (5) business days upon an employee's request for FMLA leave or when the department acquires knowledge that an employee's leave may be for an FMLA-qualifying reason as listed in 5.1.

5.1 The FMLA packet is available online on our FMLA homepage at <https://employees.tamu.edu/employee-relations/fmla/>, must be provided to employees who need leave for, *or are anticipating* the need to leave for:

- the birth and care of a child;
- the placement in the employee's home of a child for adoption or for foster care;
- the care for a spouse, child* or parent with a serious health condition;
- a serious health condition (as defined in section 3.1 above) of the employee that prevents the employee from performing the essential functions of his or her position;
- inpatient care in a hospital or residential care facility; or
- any qualifying exigency arising out of the fact that the employee's son, daughter, or spouse has been notified of an impending call or order to active duty in support of a military operation.

***Note:** An employee may care for his/her adult child (over age 18) if the child is incapable of self-care and has a physical or mental disability as defined by the ADA. Additional practitioner information may be requested from the employee to certify the need for such leave.

5.2 Packets must be provided to all employees needing leave for the circumstances described in 5.1, regardless of whether or not the employee qualifies for FMLA leave. A separate **Parental Leave Act** packet is available on the FMLA homepage at <https://employees.tamu.edu/employee-relations/fmla/> to provide to those employees who need leave for the birth of a child but are otherwise ineligible for FMLA leave.

5.2.1 The packet must be given directly to the employee, who is required to sign the cover letter in the designated space to confirm the document's receipt. The department will retain a copy of the signed cover letter for its records. An employee who is not able to personally receive the packet may choose to designate an individual (usually a family member or close friend) to receive and sign for the FMLA documents received from the employing department.

5.2.2 The employing department will mail the packet through certified mail to the employee's last known mailing address in the event the employee is absent from work and is otherwise unavailable to receive the FMLA notification. The department will keep the returned receipt of signature card from the Post Office to confirm the employee received the documents.

5.2.3 Administrators may choose to deliver FMLA information, including the FMLA packet, reminder notices, etc., to an employee's email address, provided the employee agrees beforehand to receive information electronically. Using this option will hasten the FMLA paperwork process and will save the expense of using certified mail, which may cost between \$3 -\$5 as well for a second notice or up to \$10 for an FMLA packet. Proper steps to take to send FMLA information electronically to your employees when they are unavailable for signature can be found here: <https://employees.tamu.edu/employee-relations/fmla/sending-fmla-information-through-email/>

6. Military Family Leave

The Family and Medical Leave Act was amended in 2008 to include special provisions for eligible family members of military personnel. The provisions include:

- **Exigency Leave**, which results from a call to active duty of an employee's family member, and
- **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 injury.

A packet must be issued if an employee needs leave for the circumstances in this section.

Additional information regarding FMLA Military Leave may be found here:

<https://employees.tamu.edu/employee-relations/fmla/military/>

7. Designation of FMLA Leave and the 15-Day Deadline

Proper designation of FMLA leave is an important step in the administrative process.

Administrators must present the FMLA packet to an employee in person, certified mail, or electronically (as mentioned in 5.2.3) with documentation of proof of receipt. Employees have at least 15 calendar days (absent extenuating circumstances) from the receipt of the packet to

return the required documentation in order to receive FMLA benefits. The 15-day deadline for employees who are presented with the packet through certified mail begins on the date of the first attempted delivery. This deadline may be extended if the employee has failed to provide the information despite his/her diligent, good-faith efforts (physician is slow in returning the forms to the employee, employee shows s/he does not have necessary transportation for timely submission, etc.). All FMLA leave will be designated in the department's leave program (Workday, KRONOS, etc.).

7.1 Provisional FMLA Leave

FMLA-related leave taken before the 15-day deadline will be *provisionally* designated as FMLA leave, as employees must be given sufficient time to produce the required documentation. Effectively, employees who take FMLA-related leave during this provisional period will be afforded the full benefits of FMLA leave.

7.2 FMLA Leave Taken After 15-day Deadline

FMLA-related leave taken after the 15-day deadline will be designated as FMLA leave, provided the employee has provided sufficient documentation to certify such leave as FML as per conditions/circumstances described in 5.1.

7.3 Retroactive FMLA Leave

In general, FML will not be designated before the date the employee was provided with the FML packet. However, there are instances where retroactive designation (FML designation *before* the employee received the packet) may be requested by the employee.

Retroactive FML should be designated if:

- the employee suffers no employment harm (termination, demotion, etc.) as a result of the designation;
- submitted medical information supports granting the retroactive leave; **and**
- the employing department and the employee mutually agree that the past absences were FML.

Employee Relations Department (ER) should be contacted at (979) 862-4027 if the department believes the requested retroactive FML is not FML-eligible.

8. FMLA Certification

Employees must return sufficient and timely information to certify their FMLA leave. Certification of FMLA medical leave is relatively easy to determine, as the certification forms each contain a box which the practitioner will check if an FMLA condition is present.

Administrators and Liaisons: Medical documentation provided by the employee may contain medical diagnosis, medical history, or a list of medications used in the treatment plan. This is confidential information and should not be forwarded or shared with other employees, except in the course of business for leave purposes or FMLA benefits. Employees should be encouraged to submit documentation directly to their HR Liaison or FMLA Administrator.

Example 1: Administrators will designate appropriate FMLA leave for an employee's FMLA-related absence if any item in box 7 is checked by the attending physician. The Employee's

Condition Certification Form may be viewed at
<http://employees.tamu.edu/media/316651/553aCertFormEmployee.pdf>

Example 2: Administrators will designate appropriate FMLA leave for absences due to a family member's condition if any item in box 9 is checked by the attending physician. The Family Member Condition Certification Form may be viewed at
<http://employees.tamu.edu/media/316654/553bCertFormFamilyMember.pdf>

8.1 Employees who fail to provide the required documentation to certify FMLA leave may have his/her provisional FML designation discussed in 7.1 removed from the leave records, and will therefore not receive benefits or job protection under the FMLA for those absences. Human Resources must be contacted prior to such removal of FMLA leave, as employees must be notified in writing in the event FMLA leave has been removed or denied.

8.2 **Clarification or Authentication of the Certification Form**

Employers who receive a complete and sufficient certification form signed by the health care provider may not request additional information from the provider. However, the employer may contact the health care provider for purposes of clarification or authentication of the document *after the employer has given the employee an opportunity to cure any of the deficiencies in the document.*

- Human Resources should be consulted prior to obtaining clarification or authentication of a document.
- An employee's direct supervisor may not make contact with the health care provider; employer contact to the provider may be made only by a human resources professional, leave administrator, or a management official not in the employee's chain of authority.
- "Clarification" means contacting the provider to understand the handwriting on the medical form, or to understand the meaning of a response to a question on the document.
- "Authentication" means providing the health care provider with a copy of the certification and requesting verification that the information contained on the form was completed and/or authorized by the health care provider who signed the document.
- Questions directed to the provider regarding clarification or authentication are strictly limited to the questions on the certification form.

8.3 **Complete and Sufficient Certification**

The employee must provide a complete and sufficient certification to the employer. The employer must advise the employee in writing whenever the employer finds a certification incomplete or insufficient.

- Human Resources should be consulted if information received is incomplete or otherwise insufficient.
- "Incomplete" means the submitted documentation is missing one or more of the applicable entries.
- "Insufficient" means the document is complete but the requested information is vague, ambiguous, or non-responsive.

- The employee must be given at least seven calendar days (unless not practicable under the circumstances despite the employee's diligent good faith efforts) to cure the deficiency.

8.4 Requesting an Updated Certification Form

In addition to requesting updated information for reasons as outlined in 8.2 and 8.3, administrators may request an updated certification form if:

- the employee is missing more work than the physician has indicated is needed; or
- the employee's current certification form for the condition on file is no longer applicable (i.e., the physician has indicated the employee may return to work without restrictions).

The employee must be notified of the need for an updated certification form in writing and must be given at least 15 calendar days to provide the information. Additionally, employers may not request updates within a 6-month period if the certification form indicates a lifetime condition and the employee's absences are consistent with the physician's recommendations and estimations of time off needed. Administrators should contact Human Resources for guidance in the event an employee is missing work in excess of the time the physician has estimated is needed.

8.5 Administering FMLA Leave Which Extends Into the Next Fiscal Year

Employees may continue to take FMLA leave from one fiscal year to the next. However, employees must re-qualify for FMLA leave during the new fiscal year. The following examples illustrate how FMLA leave should be administered from one fiscal year to the next.

Example 1: An employee has been using intermittent FML in early August. Her illness subsides for a period of time and she returns to work in late August, but the same condition flares up again on September 15 and she begins to miss work on that date.

Administration: The employee must re-qualify for FML because a new fiscal year begins on September 1. Administrators must conduct a new 1,250-hour test for this employee. The employee's length of service does not need to be considered, as the employee has already established that she has worked for the employer for at least 12 months. The new 1,250-hour test should be conducted for the period of September 15 (the new date she needs the FMLA leave) through September 15 of the previous year. The employee qualifies for a new 12-week period of FML if she has worked 1,250 during the 12-month period in question. If records show she has not worked the requisite amount of hours, she must be notified in writing that she does not qualify for FML.

Example 2: An employee has been using continuous FML since July 1 and, according to certification, is not able to return to work until October 10.

Administration: The employee must re-qualify for FML because a new fiscal year begins on September 1. Administrators must conduct a new 1,250-hour test for this employee. The employee's length of service does not need to be considered, as the employee has already established that she has worked for the employer for at least 12 months. The new 1,250-hour test should be conducted for the period of September 1 (the new fiscal year date she

needs the FMLA leave) through September 1 of the previous year. The employee qualifies for a new 12-week period of FML if she has worked 1,250 during the 12-month period in question. If records show she has not worked the requisite amount of hours, she must be notified in writing that she does not qualify for FML.

8.6 The Genetic Information Nondiscrimination Act (GINA)

The Genetic information Nondiscrimination Act requires that Texas A&M University take affirmative steps to avoid receiving genetic information about employees or any of their family members. Administrators and Liaisons must use current GINA-compliant certification forms directly from the Human Resources website, and must also limit the amount of information an employee's direct supervisor receives about his/her employee's health condition.

For example, a supervisor may know about the duration of an employee's condition, the need for FMLA leave, or may know of any return-to-work restrictions placed on the employee; however, the supervisor should not know about the employee's specific medical diagnosis.

9. Using FMLA Leave for Pregnancy and the Birth of a Child

FMLA leave has stipulations that administrators must consider when FML is taken for the condition of pregnancy and childbirth.

9.1 Family Medical Leave Before Childbirth

Mothers will use FML before childbirth for routine prenatal visits and medical reasons such as morning sickness or complications that may arise with mother or child. Fathers may use FML to attend prenatal visits with the mother or when his assistance is needed to care for the mother when medical issues arise.

9.2 Family Medical Leave After Childbirth

Mothers will use FML after childbirth for a medical recovery as period indicated in a physician statement. Fathers may use FML after childbirth if an accompanying physician's statement indicates he must care for the mother or child due to medical reasons.

9.3 Family Medical Leave and Bonding Time After Childbirth

Parents may use FML to bond with their newborn after childbirth. Bonding time is defined as the time off a parent may take after childbirth to be with the child for reasons that are not medically necessary

9.4 Intermittent Family Medical Leave For the Birth of a Child

Parents are entitled to take eligible remaining FMLA leave for up to a continuous 12 week period, or may elect to take some FML on an intermittent basis for the birth of a child. However, intermittent FMLA leave not taken for medical reasons are subject to the approval of the employee's supervisor. An employee's entitlement to intermittent leave for the birth of a child ends on the child's first birthday.

10. FMLA Flow Chart and Directions

The flow chart which follows illustrates the FMLA administrative process from beginning to end. Each decision-making process in the flow chart, along with the appropriate forms needed, is described in detail.

FMLA Flow Chart Directions

1. Employee is absent from work, or informs you that s/he will be missing work in the future.

The supervisor/administrator should consider the reason(s) for the absence as discussed in item 5.1 and proceed accordingly. FMLA paperwork may begin if the absence is foreseeable. Remember: an employee does not have to formally ask for leave under The Family and Medical Leave Act (FMLA) to receive FMLA benefits; employers are required to make that determination and designate the leave accordingly.

2. Does the employee's illness or circumstance appear to be eligible for FMLA leave?

The FMLA administrator (or appropriate designee) must assess whether or not the absence appears to be covered under the FMLA. Employees may qualify for FMLA leave for absences relating to:

- the birth and care of a child;
- the placement in the employee's home of a child for adoption or for foster care;
- the care for a spouse, son, daughter or parent with a serious health condition;
- a serious health condition of the employee that prevents the employee from performing the essential functions of his or her position;
- inpatient care in a hospital or residential care facility; or
- any qualifying exigency arising out of the fact that the employee's son, daughter, or spouse has been notified of an impending call or order to active duty in support of a military operation.

3. Employee's leave is documented appropriately.

This step is taken in the event FMLA leave does not apply to the employee's circumstances. Example: The employee uses leave to care for an uncle suffering from a medical condition, or uses leave to attend an appointment for a routine physical.

4. Does the employee have 12 months of total state service, and has s/he worked 1,250 hours within the last 12 months of the need for FMLA leave?

This step is taken if the FMLA administrator determines the absences appear to be for reasons eligible for FMLA leave (or is otherwise unsure if the leave appears to be FMLA-related). The administrator must review payroll records and determine if the employee has at least 12 months of state service (does not have to be exclusively with TAMU) and has worked at least 1,250 hours within the last 12 months of the need for leave. For example, an employee who needs family leave beginning on January 13, 2019 will have had to work 1,250 hours between January 13, 2019 and January 13, 2018 to qualify for FMLA leave. Remember: Total state service and hours worked may include faculty, student, or wage employment!

5. Submit FMLA packet to employee and inform him/her in writing that s/he does not qualify for FMLA benefits at this time.

This step is taken if the employee does not qualify for FMLA benefits due to not having the requisite hours and state service time referenced in item #4. This requirement will be met if the administrator provides the packet with the “does not qualify” boxes checked in item #1 of the cover memo.

6. Submit FMLA packet to employee; leave will be provisionally designated as FMLA leave.

Download at: <https://employees.tamu.edu/employee-relations/fmla/>

Important note: *The FMLA administrator must ensure s/he is using the current certification form for GINA purposes (see item 8.4, page 6: The Genetic Information Nondiscrimination Act). The administrator or designee will check the appropriate box in the cover memo to inform the employee whether or not s/he qualifies for FMLA leave. The leave will be considered to be FMLA leave for approximately 15 calendar days, at which time the certification form (or other necessary documentation) should be returned by the employee.*

7. Employee returns Certification of Physician or Practitioner Form or other necessary documentation.

Employees are given at least 15 calendar days from notification of FMLA leave to provide documentation to certify FMLA leave. Examples of acceptable documentation would be a completed Certification or Practitioner Form, adoption paperwork, military orders, etc.

8. Does the documentation confirm the employee is losing (or will lose) time due to an FMLA-related reason?

The administrator should review the documentation to ensure the employee is missing (or will miss time) due to FMLA-eligible leave:

- **Serious Health Condition:** *An illness, injury, impairment, or physical/mental condition that involves:*
 - *Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity, or*
 - *Continuing treatment by a health care provider for an incapacity*
 - *lasting longer than three days*
 - *due to pregnancy or prenatal care*
 - *due to treatment for a chronic health condition*
 - *to receive multiple treatments and recover from those treatments provided by a health care provider*
- **Adoption or Foster Care:** *An absence related to adoption or foster care placement as defined by FMLA regulations*
- **Military Family Leave**
 - **Caregiver Leave:** *An employee who is a child, spouse parent or next of kin of a covered service member may take up to 26 weeks of FMLA leave per fiscal year to care for the ill or injured service member*
 - **Exigency Leave:** *An employee may take up to 12 weeks of FMLA leave per fiscal year for “any qualifying exigency” arising out of the employee’s spouse, child, or parent being on active duty or having been notified of an impending call to active duty*

9. Employee's leave is documented as FMLA leave.

The administrator should ensure the employee's leave is documented as FMLA through the department's leave program (W, KRONOS, etc.) or other appropriate leave records.

10. Inform the employee in writing that his/her illness or circumstance is not eligible to be documented as FMLA leave.

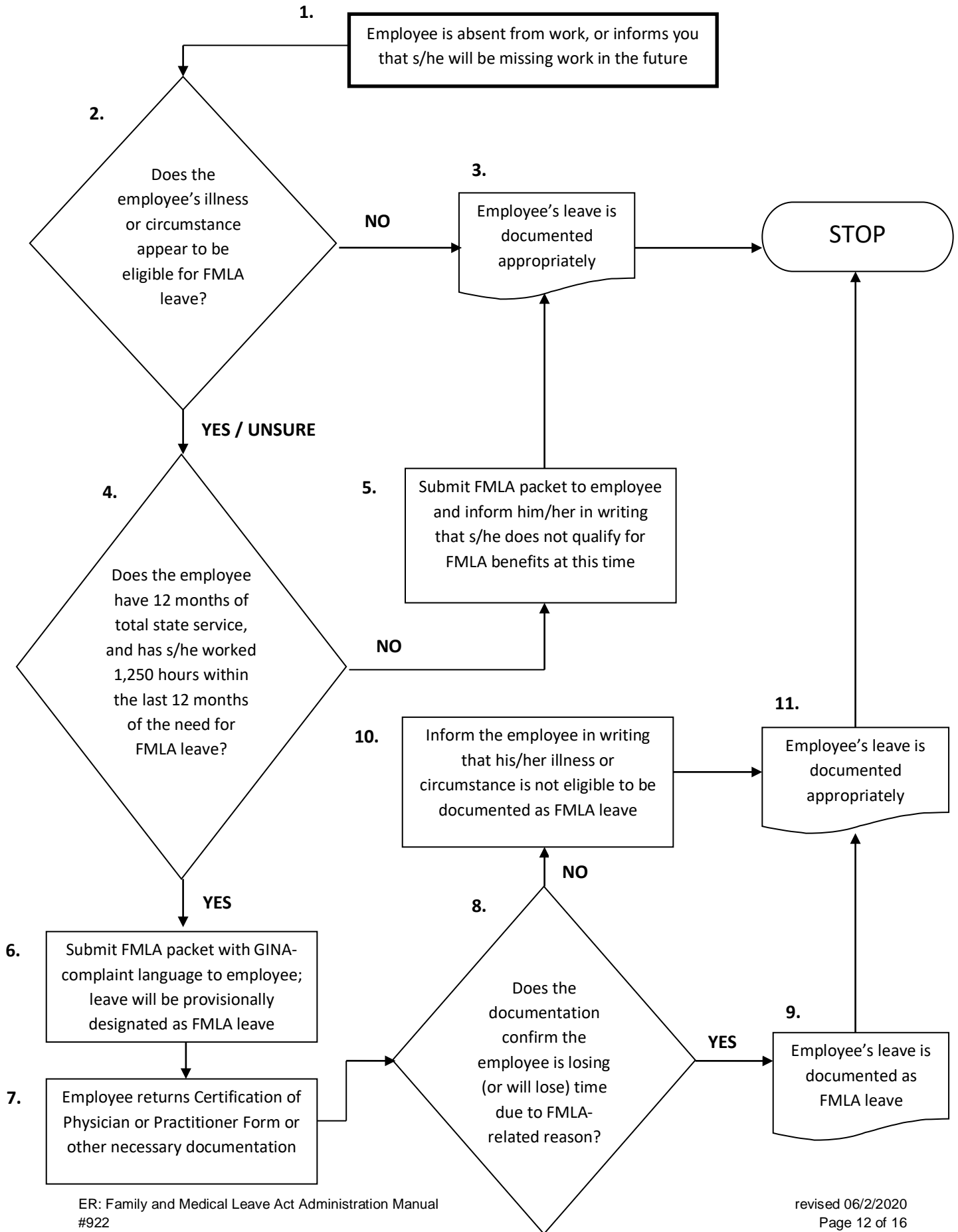
This step is taken when the documentation shown does not indicate the reason for the leave is needed as per the guidelines referenced in item #8. Important: The employee must be notified, in writing, if s/he does not qualify for FMLA leave. Contact Human Resources if you need assistance with this documentation.

11. Employee's leave is documented appropriately.

This step is taken after the leave is determined to be eligible or ineligible for FMLA leave.

- **If not eligible for FMLA leave:** *Ensure that records are accurately reflected to show that the leave in question is not coded as FMLA leave and the employee was notified as discussed in item #10 above. This will include any FMLA leave you may have provisionally designated as FMLA leave as directed in item #2*
- **If eligible for FMLA leave:** *Ensure that all applicable paid and unpaid leave is designated as FMLA leave in your department's records*

FMLA Certification Process



11. FMLA Case Studies

The following cases are documented decisions rendered by the courts when an employer is charged with violations of the FMLA. Effectively, these cases should illustrate why the procedures in this manual are in place.

a. **Knox v City of Monroe (2009)**

Facts: Ms. Knox began to have attendance issues while employed with the City of Monroe. The supervisor warned Knox that she could be disciplined if she continued to incur excessive absences. He also offered Knox FMLA leave, which she specifically declined. Ms. Knox was later terminated for excessive absenteeism. Knox sued after her discharge, charging that the City of Monroe interfered with her FMLA rights because her supervisor did not warn her that she could be fired for excessive absenteeism if she did not protect herself by taking FMLA leave.

Court's Finding: The court rejected the claim, stating the supervisor “ had no duty under the FMLA to threaten Knox with discharge.”

Human Resources Comments: Texas A&M satisfies its FMLA notice requirements by recognizing that a situation may involve the FMLA and alerting the employee to the availability of FMLA leave. This procedure is satisfied by issuing our FMLA packet as described in Section 5 of this manual. The responsibility of accounting for FMLA leave passes to the employee upon the packet's receipt, where s/he then has 15 calendar days (absent extenuating circumstances) to provide sufficient certification.

Lesson Learned from Case: Employees who decline FMLA leave, or otherwise fail to provide the required FMLA certification, expose themselves to discipline and/or termination.

b. **Branham v Gannett Satellite Network (2007)**

Facts: Ms. Deborah Branham worked for Gannett Satellite Information Network as a receptionist and began to miss work for personal health problems on November 9, 2006. She made a doctor's appointment on November 13 and provided a statement which indicated she could return to work the next day. Branham did not report to work the next day, but on November 15 advised her supervisor that she still was not feeling well and would need to miss work for other doctor's appointment in November and December.

Branham was then asked to fill out a form (which also served as an FMLA leave form) “to see if she qualified for anything” in the area of medical leave. She returned another medical certification form on November 17 which again indicated she could return to work the next day; furthermore, the form did not trigger eligibility for FMLA leave.

Despite the documentation to show she could have returned to her duties, Branham continued to miss work. She was verbally informed on November 20 that her job was in

jeopardy unless she could provide documentation to show she was not medically able to return to work. Branham did not provide the requested information, and was notified in a letter dated November 24 that she was terminated immediately and effective on that date. The letter was mailed the morning of the November 24; however, Branham's physician faxed an updated certification form later that afternoon. The updated statement indicated that she would not be able to return to work for several weeks. Gannett Satellite stood by its decision to terminate and Branham sued, claiming that her employer interfered with her FMLA rights.

Court's finding: The court sided with the company, saying it was entitled to terminate the employee because she did not return to work after her initial documentation showed she could return to work. The employee appealed the decision.

Appellate Court's finding: The decision was reversed; the employee's case will now go to trial or be settled out of court. In short, the appeals court judge ruled that the employer did not advise the employee of her FMLA rights and did not allow her the requisite 15 calendar days to return sufficient documentation.

Human Resources Comments: The employer should have recognized the definitions of a "serious health condition" under the FMLA as described in this manual and should have immediately issued a packet. As in *Knox v City of Monroe* above, the responsibility of accounting for potential FMLA leave would have passed to Branham upon the packet's receipt, where she then would have then had 15 calendar days to provide sufficient certification. As seen from the timeline of events, the employee was terminated on November 24, only 11 days after the first absence for her condition.

Lesson Learned From Case: Learn to recognize the "triggers" of FMLA as described in Section 5 and immediately issue a packet if the employee's circumstances show s/he may need FMLA benefits.

c. **Atkins v Wayne-Dalton (2010)**

Facts: De-Undre Atkins' pregnant wife called him at work and asked him to come to the emergency room because she was having complications. He told his supervisor about the situation and left.

When he returned to work five days later, he brought a doctor's note which covered the days in question and called Human Resources to explain his wife's condition. Later that day, she again had to return to the ER, and he told his supervisor he had to leave. Atkins was terminated the next day.

Atkins sued, alleging that the FMLA covered his time off. The employer argued that:

- it did not know that Atkins' absences were due to his wife's serious health condition;
- Atkins' wife did not have a serious health condition; and
- Atkins' termination was not related to his FMLA leave request.

Court's finding: The court disagreed with the employer's arguments and ordered a trial.

Human Resources Comments: The supervisor and the employer's HR area made crucial legal errors in this case. The supervisor was advised of Atkins' wife's condition on the first ER visit, but the supervisor did not immediately communicate this information to his HR area. The employee did notify his HR area on the second visit to the ER; however, HR did not act on this information and did not provide FMLA notification as is required.

Lesson Learned From Case: Supervisors and administrators should learn to recognize the "triggers" of FMLA as described in Sections 3 and 5. The HR Liaison should immediately issue a packet if the employee's circumstances show s/he may need FMLA benefits.

Administrators should never make an assumption that an employee or an employee's family member does not have a serious health condition. The physician's statement on the Certification Form should be the sole determiner of whether or not a serious health condition exists. The employee should always be given a minimum of 15 calendar days to provide the necessary FMLA documentation. Additionally, subjecting the employee to adverse employment action (termination, disciplinary counseling, etc.) during the 15-day period is not advised.

d. Baucom v Cabarrus Eye Center (2008)

Facts: Melody Baucom, an optical assistant at a North Carolina eye center, took 10 weeks of FMLA leave after giving birth. Shortly thereafter, she noticed a mysterious growth on her cervix that was unrelated to her previous childbirth and pregnancy. She requested FMLA leave to attend a doctor's appointment for medical tests regarding the growths. The benefits coordinator denied the leave request, stating that the growths had not yet resulted in an absence that would be considered FMLA-related. Baucom attended the appointment despite the denial of leave and was terminated. Baucom sued under the FMLA, alleging she was entitled to use FMLA time to attend a doctor's appointment for testing. The company argued that Baucom was not eligible for such leave because her condition did not rise to the serious level (absence in excess of three days, chronic absences, etc.).

Court's finding: The court sided with Baucom and found that a doctor's visit to obtain test results to determine if a serious health condition exists (and to discuss potential treatments) can be covered by the FMLA.

Human Resources Comments: An employee's request to attend a doctor's appointment should never be denied without good cause. If the employee does not provide sufficient documentation as required by policy after being allowed off to attend the appointment, that leave may not be coded as sick and/or FMLA leave.

Lesson Learned From Case: Supervisors and administrators should never assume whether or not a condition is a serious health condition under the FMLA. Employees who claim FMLA leave should be given an FMLA packet and be allowed to validate the leave through their physician's statement on the certification form.

12. References and Additional Information

Code of Federal Regulations – The Family and Medical Leave Act ([electronic version](#))

System Regulation 31.03.05 – Family and Medical Leave

<http://policies.tamus.edu/31-03-05.pdf>

Additional Information:

Texas A&M University Human Resources Family and Medical Leave Act Homepage

<https://employees.tamu.edu/employee-relations/fmla/>

Maternal/Paternal Leave for Texas A&M University Employees

<http://employees.tamu.edu/benefits/leave/parental>

Military Family Leave

<https://employees.tamu.edu/employee-relations/fmla/military/>