

Family and Medical Leave Act (FMLA):

The Family & Medical Leave Act of 1993 is a federal law and benefit that provides eligible employees up to 12 weeks of job-protected leave for certain medical reasons with continuation of group health insurance coverage. The 12 week period is per fiscal year according to TAMUS policy. It allows eligible employees to take job-protected leave for their own serious health condition, to care for their parent, spouse or child with a serious health condition or for the birth or adoption of a child. "FMLA" leave runs concurrently with paid sick or vacation leave, or other types of paid leave (or unpaid leave) that qualify for FMLA coverage. All available paid leave must be used before going on leave without pay. Sick leave may only be used for situations that are normally eligible for sick leave.

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Additional Information

- [System Regulation 31.03.05 – Family and Medical Leave](#)
- [The U.S. Department of Labor summary – “Need Time? The Employee’s Guide to the Family and Medical Leave Act.”](#)

For additional questions, please contact: AgriLife Human Resource Office at 979-845-2423

FMLA Employee Benefits:

FMLA is an “umbrella” of protection for an employee and their family if they qualify for FMLA leave. FMLA is a benefit; it does not cost anything; and it protects the employee’s job, health benefits, and pay rate for up to 12 weeks.

- An employee may return to the same position that they held when the leave commenced or to an equivalent position with equivalent benefits, pay and other terms and working conditions of employment, unless the employee would not otherwise have been employed at the time reinstatement is requested.

FMLA will impact an employee’s health insurance payments in the following manner:

- If an employee is covered by FMLA – The employee would pay only the premium (which is their portion of their health cost they are required to pay).
 - (1) If an employee is in a paid leave status, they will continue to receive the state contribution towards their insurance premium. Premiums will be deducted from their paycheck while they on paid leave.
 - (2) If an employee is in a leave without pay status for a full calendar month under FMLA, they will continue to receive the state contribution towards their insurance premiums. However, the employee will be billed for any premiums they normally have deducted from their pay. The employee must pay their portion of premiums within 15 days of the due date on the bill in order to keep that portion of coverage active.
- If an employee is not covered by FMLA – The employee would pay the premium plus the state contribution (which is the portion of their health care coverage that the state pays as a benefit to them).

FMLA Employee Eligibility

To be eligible for FMLA benefits, employees must meet the following two requirements:

- An employee must have worked a total of at least 12 months of state service (does not need to be 12 consecutive months of state employment). Generally, employment periods preceding a break in service of more than seven [7] years are not to be counted; and
- An employee must have physically worked a minimum of 1,250 hours with the state during the 12 months before you take FMLA 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.

FMLA Qualifying Conditions

FMLA allows eligible employees to take 12 weeks of leave during a fiscal year for one or more of the following qualifying events:

- the birth of a child (prenatal appointments and morning sickness during pregnancy and medical recovery after childbirth),
- placement in the employee's home of a child for adoption or for foster care,
- the care of the employee's child, spouse or parent with a serious health condition,
- the employee's own serious health condition that prevents the employee from performing the essential functions of his/her position, or
- the care of a covered military service member.

Employees who are not eligible for FMLA leave are entitled to parental leave for the birth of their natural children, or placement of a child younger than (3) years old for adoption or foster care. An employee who adopts a child younger than three years of age may use the amount of available leave following the adoption that would normally be granted for recovery from pregnancy and childbirth (up to six weeks). See the "Parental Leave Act (PLA)" section for more information.

FMLA Definitions

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:
 - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that **also** includes:
 - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
 - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
 - (2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
 - (3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**
 - (4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
 - (5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Parental Leave Act (for employees not eligible for FMLA – requesting leave for the birth/adoption/foster care placement of a child)

Employees (including a student or wage employee) who are not eligible for FMLA leave are entitled to a parental leave of absence, not to exceed 12 weeks, immediately following the birth of a natural child or the adoption or foster care placement of a child younger than three (3) years.

Employees must use their paid leave. Once all paid leave are exhausted, the employee will be placed on leave without pay until they return to work. While on leave without pay, their job protection will continue, but they will not receive the state employer contribution toward their insurance coverage.

Maternal/paternal leave under the Parental Leave Act includes the natural birth of a child and the placement of a child for adoption or state-certified foster care.

- applies to the natural birth of a child, adoption, or foster care placement of a child under three years of age
- begins the day of the the birth or first day the adoptive/foster child is placed in home
- will expire 12 weeks after the date of birth, or 12 weeks after the first day the adoptive or foster child is formally placed in the employee's home
- may take parental leave on an intermittent or reduced work schedule if the employee and system member agree

Military Family Medical Leave Act

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

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:

- (1) 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*; or
- (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of “serious injury or illness” for current service members and veterans are distinct from the FMLA definition of a “serious health condition”.**

Employee, Supervisor and Department Leave Administrator (DLA) Responsibilities under FMLA

Employee:

For leave to be granted or designated as FMLA leave, employees:

- must provide 30 days advance notice (if foreseeable) of the need to take FMLA leave. If a 30 day notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures
- must provide sufficient information (usually a medical certification form) within 15 calendar days, for the employer to review and determine if the leave qualifies for FMLA protection. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave
- must inform the employer if the requested leave is related to previously taken certified FMLA leave was previously taken or certified
- may be required to provide periodic recertification of their condition
- are required to contact their employer every 14 days and provide an update on their status

- may be required to present a fitness-for-duty release from their physician

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

Pregnancy

Before and After Childbirth

Mothers

- Should provide a Medical Certification Form approximately 4-6 weeks prior to due date.
- Appropriate paid leave (sick, vacation, comp time, etc.) will be used for doctor appointments, prenatal visits, and medical recovery after childbirth.
- Leave without pay will be applied where appropriate
- While you are on unpaid leave covered by FMLA, you will receive the state contribution for your benefits and you will be billed for your portion of the premium. Contact Benefits.
- While you are on unpaid leave covered by Parental Leave, you will not receive the state contribution for your benefits but you may continue coverage by paying the premiums billed each month. Contact Benefits.

Fathers

- Appropriate paid leave (sick, vacation, comp time, etc.) will be used for doctor's appointments and prenatal visits.
- Paid sick leave for absences in excess of three continuous working days must be supported by appropriate documentation.
- Leave without pay will be applied where appropriate.
- While you are on unpaid leave covered by FMLA, you will receive the state contribution for your benefits and you will be billed for your portion of the premium. Contact Benefits.
- While you are on unpaid leave covered by Parental Leave, you will not receive the state contribution for your benefits but you may continue coverage by paying the premiums billed each month. Contact Benefits.

Supervisor:

Supervisors need to notify the Department Leave Administrator (DLA) immediately when an employee:

- notifies the supervisor of the employee's pregnancy, adoption of a child, or placement of a child from foster care
- if the employee misses more than three (3) continuous days of work (for self, child, spouse, or parent)
- if the employee misses work due to a chronic health condition (i.e. diabetes, migraine headaches, etc.)
- if the employee is hospitalized or in a hospice or residential medical care facility for any length of time; or
- if the employee notifies them of their need to care for a covered member of the armed forces or if a covered member is called to active duty

Department Leave Administrator (DLA):

Department Leave Administrators are required to:

- inform employees requesting leave within five (5) business days whether they are eligible under FMLA. If the employee is eligible, the notice must specify any additional required information as well as the employees' rights and responsibilities. If the employee is not eligible, a reason for the ineligibility must be provided to the employee
- inform employees within five (5) business days if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the leave is not FMLA-protected, the employee must be notified
- ensure that the required FMLA notices are posted
- provide required information on FMLA to employees
- request medical documentation for potential and on-going FMLA leave; oversee employee leave balances
- Employers must allow employees at least 15 calendar days from the date of notification to provide sufficient documentation to support their leave

The [FMLA/SLP Checklist](#) may assist you in handling/tracking FMLA/SLP requests. It is not required to use this form.

Intermittent Leave or Reduced Hours

- 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 service member with a serious injury or illness. The medical necessity of intermittent or reduced leave must be certified. Such leave may be taken for birth or adoption/foster care purposes only if the employee and system member agree.
- For an employee who works part-time or variable hours, the FMLA leave duration is calculated on a pro rata or proportional basis.