

# Regulations Library

## The University of Utah

Policy: 5-200 Rev: 18

Date: January 28, 2008

### Policy 5-200: Leaves of Absence (Health-Related)

#### I. Purpose

To outline the University's policy on health-related leaves of absence with or without pay, including sick leave, long term medical leave and Family and Medical Leave Act leave. Faculty Parental Leaves of Absence are governed by **Policies 6-315** and **8-002**. Any questions regarding this policy should be referred to the Human Resources Division.

#### II. References

**Policy 5-001**: Personnel Definitions

**Policy 5-201**: Leaves of Absence (Non Health-Related)

**Policy 5-301**: Vacation Policy

**Policy 5-303**: University Insurance Programs

29 Code of Federal Regulations 825.100 et seq., Family and Medical Leave Act Regulations as amended pursuant to Section 585 of the National Defense Authorization Act for FY2008

#### III. Definitions

- A. "Benefits Eligible " is defined in **Policy 5-001** .
- B. "Child" means a biological, adopted or foster child, stepchild, legal ward or a child of a person standing in loco parentis, who is either under the age of eighteen or over the age of eighteen and incapable of self-care on a daily basis because of a mental or physical disability that substantially limits one or more major life activities.
- C. "Faculty" is defined in **Policy 6-300**.
- D. "Health Care Provider" means (1) a state-authorized doctor of medicine or osteopathy; (2) a state authorized podiatrist, dentist, clinical psychologist, optometrist, or chiropractor performing within the scope of his/her practice; (3) a state-authorized nurse practitioner, nurse-midwife or clinical social worker performing with the scope of his/her practice; (4) a Christian Science practitioner who is registered with the First Church of Christ Science in Boston, Massachusetts.
- E. "Incapacity" means the inability to work, attend school or perform other regular daily activities due to a Serious Health Condition, treatment therefor or recovery therefrom.
- F. "Non-Exempt" is defined in **Policy 5-001**.
- G. "Non-Faculty Academic Employees" is defined in **Policy 5-001**.
- H. "Parent" means a biological parent or an individual who performed all parental duties in lieu of a biological parent.
- I. "Per Diem" is defined in **Policy 5-001**.
- J. "Responsible Officer" means the cognizant department chairperson, principal investigator, director, dean or University officer with a direct supervisory reporting relationship to the

employee.

- K. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (i.e. an overnight stay); (2) a period of incapacity of more than three consecutive calendar days that requires continuing treatment by a health care provider; (3) any period of incapacity due to pregnancy or for prenatal care; (4) any period of incapacity or treatment for such incapacity due to a chronic Serious Health Condition (e.g., asthma, diabetes); (5) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective but which requires the continuing supervision of a health care provider (e.g., Alzheimer's, severe stroke); or (6) any period of absence to receive multiple treatments by a health care provider (e.g., chemotherapy, dialysis).
- L. "Spouse" means a husband or wife as defined or recognized under Utah law for purposes of marriage in Utah.
- M. "Staff" is defined in **Policy 5-001**.
- N. "Temporary" is defined in **Policy 5-001**.
- O. "Domestic Partner" means a person with whom the employee meets the following criteria: (a) they are both over the age of eighteen (18); (b) they reside together in a permanent residence and have done so for at least six months and will remain members of the same household for the period in question; (c) they have a serious and committed relationship which they intend to continue indefinitely; (d) they are emotionally committed to one another and jointly responsible for the common welfare and financial obligations of their household or one is chiefly dependent upon the other for financial assistance; (e) they are not related in any way that would prohibit legal marriage; and (f) neither is legally married to anyone else or the domestic partner of anyone else.
- P. "Servicemember" means a member of the Armed Forces, including a member of the National Guard or Reserves or 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.
- Q. "Active Duty" means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

#### IV. Sick Leave (Leave With Pay)

##### A. General

Sick leave is a benefit which provides payments in lieu of compensation to employees in Benefits Eligible positions, who are unable to perform the functions of their position because of an illness, injury, or Serious Health Condition or because they are needed to care for a Spouse, Domestic Partner or Child with an illness, injury, or Serious Health Condition. In general, employees should arrange routine health care appointments during nonworking hours; however, in cases where these appointments must take place during regular working hours, employees should try to schedule appointments at times that minimize disruption of work-place productivity. Employees in Non-Exempt positions may charge the time used for these appointments to sick leave. Whenever possible, supervisors should be notified of such appointments at least 48 hours in advance. In addition, eligible employees may use sick leave for Family and Medical Leave Act (FMLA) leave as provided under Section V below.

##### B. Eligibility and Accrual

1. Employees in Benefits Eligible positions at 1.0 FTE accumulate sick leave at the rate of eight hours (one day) for each month of continuous service to a maximum accrual of 1040 hours (130 days). Employees in Benefits Eligible positions at .75 FTE or more but less than 1.0 FTE accumulate sick leave on a prorated basis.
2. Employees in Benefits Eligible positions with an appointment for less than twelve months will be regarded as in the continuous service of the University only during the

period covered by that appointment, regardless of the fact that compensation is paid over a longer (e.g., twelve-month) period.

#### C. Use of Sick Leave

1. Sick leave accrual and usage for Staff will be recorded through the Payroll/Benefits System.
2. Sick leave accrual and usage for Faculty and Non-Faculty Academic Employees, post doctoral scholars, and academic staff will be monitored by academic departments.
3. To meet business needs, departments may create internal policies for Staff which restrict and govern the use of sick leave. Prior to implementation, departmental policies for Staff must be approved by the Human Resources Division.
4. Sick leave may not be used for vacation purposes, but after all sick leave has been exhausted, additional absences due to an illness, injury, or a Serious Health Condition of the employee or the employee's Spouse, Domestic Partner, or Child must be charged to earned vacation time in accordance with Section V.C herein.
5. The University may require certification of all absences charged to sick leave. If an employee is on sick leave for a period of more than three consecutive days, such leave may be designated as Family and Medical Leave Act leave in accordance with the Family and Medical Leave Act ("FMLA"). The Human Resources Division will notify the employee, in writing, that such leave is being designated as FMLA leave within five business days of becoming aware that such sick leave also qualifies as FMLA leave. All of the conditions of FMLA leave, including certification and notice of intent to return to work, may apply to such leave. Under certain circumstances, the University may retroactively designate sick leave as FMLA leave.

#### D. Extended Sick Leave (With Pay)

In exceptional cases after all accrued sick leave and earned vacation time has been exhausted, extended sick leave with pay may be authorized by the cognizant vice president upon recommendation of the Vice President for Human Resources subject to the following limitations:

1. Extended sick leave is not available for the care of a Child, Spouse or Domestic Partner with an illness, injury, or Serious Health Condition.
2. Extended sick leave may not exceed thirty (30) days unless authorized by the President, upon recommendation of the Vice President for Human Resources and cognizant vice president.
3. In no event shall extended sick leave be granted for a period extending beyond the earliest day on which benefits under either the University's disability insurance program or the Social Security Act are expected to become payable to the employee or, if the employee is not covered thereunder, would become payable if coverage existed.
4. If the employee returns to work before the expiration of authorized extended sick leave, the unused portion of the leave will be canceled. The employing department is responsible for notifying the Human Resources Division of the date of the employee's actual return to work.

#### E. Conversion of Sick Leave to Vacation

1. Employees in Benefits Eligible positions, except Faculty, may convert up to four days (32 hours) of accrued sick leave to vacation annually provided the following conditions are met:
  - a. The employee has accumulated 48 days (384 hours) of sick leave by January 1, and during the following calendar year the employee uses fewer than four days of sick leave (32 hours).

2. The conversion will be calculated based on the number of sick leave days used during the calendar year:
  - a. If 0 days of sick leave are used, 4 days will be converted to vacation with the remaining 8 days accrued as sick leave.
  - b. If 1 day of sick leave is used, 3 days will be converted to vacation with the remaining 8 days accrued as sick leave.
  - c. If 2 days of sick leave are used, 2 days will be converted to vacation with the remaining 8 days accrued as sick leave.
  - d. If 3 days of sick leave are used, 1 day will be converted to vacation with the remaining 8 days accrued as sick leave.
  - e. If 4 or more days of sick leave are used, the employee is not eligible for the sick leave conversion.
3. Employees who have reached the maximum sick leave accrual of 130 days (1,040 hours) at the beginning of the year will have up to 4 days of sick leave converted to vacation annually as long as they use 8 or fewer days of sick leave throughout the year.
4. Conversion of eligible sick leave to vacation will occur automatically but may be returned to sick leave if the Human Resources Division is directed to do so in writing by the employee within a reasonable time following the conversion.
5. Conversion of sick leave will not increase the maximum allowable limits on vacation accrual. (See **Policy 5-301**, Vacation Policy).

## V. Family and Medical Leave Act Leave (Leave Without Pay)

### A. Eligibility

1. An employee may request leave under the Family and Medical Leave Act ("FMLA") if he/she meets the eligibility requirements of the FMLA.
2. Subject to the requirements described in this policy, an eligible employee may request and will be granted up to twelve (12) workweeks of unpaid FMLA leave during any twelve (12) month period for one or more of the following:
  - a. the birth of a child, and to care for the newborn child;
  - b. the placement with the employee of a child for adoption or foster care, and to care for the new child;
  - c. to care for the employee's Spouse, Domestic Partner, Child, or Parent with a Serious Health Condition;
  - d. because the employee's own Serious Health makes the employee unable to perform the functions of the employee's job; or
  - e. because of a "Qualifying Exigency" tied to the Active Duty or notice of impending Active Duty of a Spouse, Domestic Partner, Child or Parent.
3. Subject to the requirements described in this policy, an eligible employee may request and will be granted up to twenty-six (26) workweeks of unpaid FMLA leave during a single twelve (12) month period for Servicemember Family Leave to care for a Spouse, Domestic Partner, Parent, Child or other relative for whom the employee is the Next of Kin (closest living relative), who is a Servicemember receiving treatment for or recovering from a serious injury or illness incurred in the line of Active Duty.
4. For purposes of subparagraphs 2.e. and 3 of this paragraph A, the term Child shall include a biological, adopted or foster child, stepchild, legal ward or a child of a person standing in loco parentis, who is age eighteen or older..
5. For purposes of calculating the amount of FMLA leave an eligible employee may

request, the term "during any twelve (12) month period" means a rolling twelve (12) month period measured backward from the date the requested leave will begin.

6. During the single 12-month period described in subparagraph 3 of this paragraph A, an eligible employee shall be entitled to a combined total of 26 workweeks of leave under subparagraphs 2 and 3 of this paragraph A.
7. If both Spouses are employed by the University, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period for purposes described in subparagraphs 2.a or 2.b of this paragraph A and a combined total of twenty-six (26) workweeks of leave under subparagraphs 2.a, 2.b, and 3 of this paragraph A during the single twelve (12) month period described in subparagraph 3 of this paragraph A. However, each employee may use up to twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is for purposes described in subparagraphs 2.c, 2.d, and 2.e of this paragraph A.
8. FMLA leave for the birth and care of a child or for the placement and care of a child for adoption or foster care must be taken within the twelve (12) month period after the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the twelve (12) month period. Unless specifically permitted by the Responsible Officer, FMLA leave for these purposes cannot be taken on an intermittent or reduced leave schedule.

#### B. Notification and Certification of Need for FMLA Leave

1. An eligible employee who foresees the need for FMLA leave must notify the Human Resources Division and the Responsible Officer in writing not less than thirty (30) calendar days in advance of the start date of the leave. If not foreseeable, the employee must provide written notice as soon as practicable, ordinarily within two (2) working days of learning of the need for leave.
2. An eligible employee who foresees the need for FMLA leave due to planned medical treatment for herself/himself or for her/his Spouse, Domestic Partner, Child, or Parent, must notify the Human Resources Division and the Responsible Officer in writing not less than thirty (30) calendar days in advance of the start date of the leave so the leave can be scheduled at a time least disruptive to the University's operations. If not foreseeable, the employee must provide written notice as soon as practicable, ordinarily within two (2) working days of learning of the need for leave.
3. If the requested leave is to care for a Spouse, Domestic Partner, Child or Parent who has a Serious Health Condition, the employee will be required to file with the Human Resources Division, in a timely manner, a health care provider's statement as allowed by FMLA including a statement that the employee is needed to care for the individual and the estimated duration of the leave. For purposes of confirmation of family relationship, the employee may be required to provide reasonable documentation or statement of family relationship.
4. If the requested leave is because of a Serious Health Condition of the employee which renders her/him unable to perform the functions of the employee's job, the employee may be required to file with the Human Resources Division a health care provider's statement as allowed by FMLA.
5. If the requested leave is because of a "Qualifying Exigency" tied to Active Duty or notice of impending Active Duty, the employee shall be required to submit a certification in the manner prescribed by federal regulations.
6. An employee on an approved FMLA leave must inform the Human Resources Division every thirty (30) days regarding her/his status and intent to return to work upon conclusion of the leave. An employee may also be required to submit a fitness-for-duty certification before returning to work.
7. In any case where there is reason to doubt the validity of the health care provider's statement or certification for leave taken under subparagraphs 2.c or 2.d of

paragraph A above, the University may, at its own expense, require second and third opinions, as allowed by FMLA.

8. Failure to comply with the above notification and certification requirements may result in a delay in the start of FMLA leave or a delay in the restoration of the employee to his/her position.

#### C. Substitution (Concurrent Use of Paid Leave and FMLA Leave)

An employee must substitute any accrued paid leave (i.e. sick leave and vacation) for any unpaid FMLA leave except that an employee may retain up to ten (10) days of vacation. Upon exhaustion of any accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for an FMLA purpose exceed twelve (12) workweeks during any twelve (12) month period for FMLA leave taken under subparagraph 2 of paragraph A above or twenty-six (26) workweeks during the single twelve (12) month described under subparagraph 3 of paragraph A above.

#### D. Intermittent FMLA Leave

1. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a Serious Health Condition by or under the supervision of a health care provider, or for recovery from such treatment or for recovery from a Serious Health Condition. The employee may be required to file with the Human Resources Division a certification from a health care provider of the reasons that the intermittent leave or reduced leave schedule is medically necessary and the expected schedule and duration of such leave. Subject to subparagraph B.5 above, leave may be taken intermittently or on a reduced leave schedule when necessary as a result of a "Qualifying Exigency" tied to Active Duty or notice of impending Active Duty.
2. The employee may be required to transfer temporarily to an available alternative position for which the employee is qualified. The alternative position must have equivalent pay and benefits and better accommodate recurring periods of leave than the employee's regular position.

#### E. Benefits and Return from Leave

1. At the election of the eligible employee, his/her insurance plans (including health, dental, life, and disability) will be maintained for the duration of an FMLA leave at the level and under the conditions coverage would have been provided if the employee had continued in employment for the duration of the leave. The employee will be responsible for paying his/her share of the premiums for such coverage.
2. The University may recover its share of the premiums for maintaining coverage for the employee under such insurance plans during the period of an unpaid FMLA leave if the employee fails to return to work (or returns but fails to stay thirty (30) calendar days) for reasons other than the continuation or onset of a Serious Health Condition entitling the employee to leave under subparagraphs 2.c or 2.d of paragraph A, or other circumstances beyond the employee's control. Certification of the employee's inability to return to work as specified by FMLA may be required.
3. Unless the employee is separated as a result of a reduction in force or end of a contract, an employee who takes an FMLA leave for the intended purpose of the leave shall be entitled, on timely return from the leave and completion of all required documentation, to be restored to the position of employment held when the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

## VI. Long-Term Medical Leave (Leave Without Pay)

Under certain circumstances, the University may permit an employee who has exhausted all accrued sick leave and FMLA leave or an employee who is not eligible for sick leave or FMLA

leave to take long-term medical leave without pay for the employee's own Serious Health Condition. In general, long-term medical leave is not available to employees holding Temporary positions or to employees who are employed on a Per Diem, intermittent, or as-needed basis.

#### A. Request for Long-Term Medical Leave

1. A request for long-term medical leave without pay shall, whenever possible, be submitted in writing to the employee's Responsible Officer prior to the date upon which the requested leave is to commence. If unusual circumstances make it impossible in the exercise of reasonable diligence for the employee to submit the request in advance of the date upon which the requested leave is to commence, approval may be given to a retroactive commencement of the leave.
2. The written request should state (1) the reason for the long-term medical leave request; (2) the proposed date on which the requested long-term medical leave is to commence; (3) the employee's intent to return to work upon conclusion of the leave; and (4) the estimated date on which the employee reasonably expects to return to work.
3. The employee shall provide a health care provider's statement supporting the need for a long-term medical leave.
4. The cognizant vice president, upon recommendation of the Responsible Officer and the Vice President for Human Resources, shall approve or deny the request for a long-term medical leave. If the cognizant vice president concludes that the requested leave should be approved, but has reasonable grounds to believe that in order to assure satisfactory discharge of the duties of the position, consistent with the present or anticipated physical or mental condition of the employee, the leave should commence at a different date than requested by the employee, the approval of the request may be subject to the condition that the leave will begin at a specified date other than the requested date.
5. Prior to the commencement of an approved long-term medical leave, the employee must arrange for a counseling interview with the Human Resources Division Benefits Office.

#### B. Length of Long-Term Medical Leave

1. It is recognized that the duration of a Serious Health Condition cannot be precisely known in advance. Accordingly, long-term medical leaves may be granted for an estimated or indefinite period of time, not to exceed one year.
2. Unless the President approves an extension of the long-term medical leave beyond one year, applicable Procedures for separation of employment at the end of a year-long medical leave shall be initiated by the Responsible Officer.
3. All long-term medical leaves are subject to the provisions of Section C, below, regarding the obligations of the University and related Procedures for reinstatement.

#### C. Reinstatement

1. Notice of Intent. An employee on long-term medical leave must give the Responsible Officer and Human Resources Division written notice not less than thirty (30) working days in advance of the date on which the employee wishes to terminate the long-term medical leave and return to work. An employee may be required to submit a fitness-for-duty certification by a health care provider before returning to work. If appropriate, the Human Resources Division, in consultation with the department, may require a second, independent certification from a health care provider at the department's expense.
2. Six-month rule. An employee who has been on leave because of his/her own Serious Health Condition, including any time credited to sick leave, FMLA leave or accrued vacation, for six months or less during any twelve month period prior to the date of return to work shall be restored to the position of employment held when the leave

commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

In order to facilitate discharge of the University's obligation of reinstatement under this "six-month" rule, unless otherwise authorized by the cognizant vice president, the Responsible Officer shall not fill the position with a permanent employee during the six-month period specified in the preceding paragraph.

3. One-year rule. If an employee has been on leave because of his/her own Serious Health Condition, including any time credited to sick leave, FMLA leave or accrued vacation, for more than six months but less than one year during any twelve month period prior to returning to work, the University will make a good faith effort, subject to availability of funds and vacant positions, to restore the employee to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment or to another position for which the employee is qualified. The Responsible Officer is responsible for arranging such reinstatement. The University cannot, however, assure that an employee returning to work after a leave of more than six months duration will be reinstated.
4. The University has no obligation to reinstate, or to make any effort to reinstate, an employee who has been on leave, including any sick leave, FMLA leave, or accrued vacation, because of his/her Serious Health Condition for more than one year. An application for reinstatement in such cases shall be treated as an application for initial employment.
5. If an employee on long-term medical leave accepts other employment during such leave or fails to return to work within three (3) business days after the expiration of the long-term medical leave, the University may treat such action as a voluntary resignation of employment and a waiver of any right to reinstatement.

#### D. Alternative to Long-Term Medical Leave (Without Reinstatement)

If reinstatement is not requested or is determined not to be feasible by the Responsible Officer, the eligible employee will be separated from his/her current position and placed on a medical leave of absence that will allow the employee to retain health care coverage and certain University benefits for a limited period of time.

## VII. Employee Benefits During Health-Related Leaves of Absence

### A. Time-Related Benefits

Longevity for purposes of accruing vacation time is not lost during the preceding leaves without pay. However, vacation and sick leave benefits do not accrue during unpaid leaves.

### B. Retirement and Insurance Benefits

#### 1. Sick Leave and Extended Sick Leave

During sick leave and extended sick leave, retirement and insurance benefits continue to be paid by the University.

#### 2. Family and Medical Leave Act Leave

To the extent FMLA leave is paid, retirement and insurance benefits continue to be paid by the University on the same basis as if the employee had continued in employment for the duration of the leave.

To the extent FMLA leave is unpaid, retirement benefits will not be paid by the University during the leave. Insurance benefits will continue on the same basis as if the employee had continued in employment for the duration of the leave provided the employee pays his/her share of the premium and returns to work at the end of the leave (see Section V.E, above).

#### 3. Long-Term Medical Leave

Retirement and insurance benefits are not paid by the University during a long-term medical leave. An employee on long-term medical leave, however, may elect to continue his/her health insurance coverage as provided by federal law.

#### C. Other Benefits

Other benefits, including tuition reduction, ticket discounts and parking privileges continue during health-related leaves of absence.

### VIII. Contacts

Policy Owner: Questions about this Policy and any related Rules, Procedures and Guidelines should be directed to the **Director of Benefits for Human Resources**.

Policy Officer: Only the **Vice President for Human Resources** or his/her designee has the authority to grant exceptions to this Policy.

### IX. History

Editorially revised: October 11, 2011

Editorial changes were made to this document to reflect the changes in employee definitions as set forth in **Policy 5-100**.

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