

UMCES Policy VII-7.50

UMCES Policies

VII-7.50-UMCES Policy on Family and Medical Leave for Exempt and Non-Exempt Staff Employees

I. Purpose and Applicability

The purpose of this policy is to implement the Family and Medical Leave Act of 1993 (FMLA), P.L. 103-3. This policy applies to all University of Maryland Center for Environmental Science (UMCES) Exempt and Nonexempt Staff employees on Regular Status. Under certain circumstances it is the policy of the UMCES to provide eligible employees up to a maximum of twelve (12) weeks of unpaid leave during a twelve (12) month period for certain family and certain serious health condition reasons.

II. Terms and Definitions

The following terms and definitions shall apply for purposes of this policy:

A. Accrued Leave - Earned and unused annual leave, holiday leave, sick leave, compensatory leave, and unused personal leave.

B. Alternative Position - A position to which an eligible employee may be temporarily reassigned during a period of intermittent Family and Medical (F&M) leave and/or reduced schedule. The alternative position shall have the same benefits and pay as the position from which the eligible employee was reassigned.

C. Care - "to take care of" or "to care for". The term care is intended to be read broadly to include both physical and psychological care. The language applies to the period of inpatient care and home care as well.

D. Child - A person who is the son or daughter of an eligible employee and who is under eighteen (18) years of age; or, eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability during the period of the serious illness. The son(s) and/or daughter(s) may be the biological, adopted, step or foster child (ren) of the eligible employee. The term "child" shall also include someone who is the legal ward of the eligible employee or someone for whom the eligible employee has provided sufficient, notarized affidavit(s) and proof of financial dependence that he/she is standing in loco parentis.

E. Eligible Employee - An employee who has been employed for a total of at least twelve (12) months as a USM or a State of Maryland employee; and who has worked for at least one thousand and forty (1,040) hours during the twelve (12) month period immediately prior to the beginning date of the leave as a USM or State of Maryland employee. For part-time employees on at least a 50% basis, the minimum number of hours required for eligibility shall be prorated. For convenience, within the text of this policy the term "employee" instead of "eligible employee" shall be used.

F. Equivalent Position - A position at the institution to which an eligible employee may be restored upon the completion of the F&M leave. The equivalent position shall have the same benefits, pay, and other terms and conditions of employment as the position from which the eligible employee took leave.

G. Health Care Providers - Are Doctors of Medicine or Osteopathy, Podiatrists, Dentists, Clinical Psychologists, Optometrists, Chiropractors (limited to treatment consisting of manual

manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioners and nurse midwives, as authorized to practice by the State of Maryland, Christian Science Practitioners listed with the First Church of Christ Scientist in Boston; and Licensed Clinical Professional Counselor.

H. Immediate Family Member - is the eligible employee's parent(s), spouse, or child (ren), or legal dependent(s).

I. In Loco Parentis - "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties and responsibilities." Any eligible employee claiming an in loco parentis relationship with a child, or any eligible employee claiming to be the child of an in loco parentis relationship may be requested to provide documentation of such relationship.

J. Institution is UMCES.

K. Key Employee - a salaried F&M eligible employee who is among the highest paid ten (10) percent of all the employees employed by UMCES.

L. Parent - is the eligible employee's biological, adoptive, or foster mother or father, or someone who stood in loco parentis to the eligible employee when the eligible employee was a child.

M. Restoration - as used within the FMLA and used within this policy, restoration is an institutional guarantee that at the conclusion of the F&M leave the eligible employee will be returned either to the same position from which he/she took leave, or to an equivalent position within the same job classification.

N. Serious Health Condition - is an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or home care, or continuing treatment by a health care provider. A serious health condition is also intended to cover conditions or illnesses that affect the eligible employee's health or the health of the eligible employee's immediate family to the extent that the family member is in the hospital or other health care facility or at home and unable to care for his/her own basic hygienic or nutritional needs or safety such that the eligible employee must be absent from work on a regular and recurring basis for more than a few days for treatment or recovery. F&M leave is not intended to cover minor illnesses that last less than four days and short term medical and/or surgical procedures that require only a brief recovery period of less than four days which are normally handled through sick leave. With respect to the eligible employee, a serious health condition means that the employee must be incapacitated from performing the essential functions of his/her position.

O. Examples of serious health conditions applicable to the employee or the employee's immediate family member include, but are not limited to: heart conditions requiring heart bypass or valve operations; most types of cancer; back conditions requiring extensive therapy or surgical procedures; severe respiratory conditions; appendicitis; emphysema; spinal injuries; pneumonia; severe arthritis; severe nervous disorders; injuries caused by serious accidents; ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth, and recovery from childbirth. Additional examples are an employee or immediate family member whose daily living activities are impaired by such conditions as Alzheimer's disease, stroke, or clinical depression, who is recovering from major surgery, or who is in the final stages of a terminal illness.

P. Spouse - the person to whom the eligible employee is legally married; a husband or a wife.

Q. Twelve (12) Month Period is a rolling twelve (12) month period

III. Reasons for Leave

A. Employees are entitled to take F&M leave for the following reasons:

1. the birth of the employee's child,
2. the placement of a child with the employee for adoption or foster care,
3. the need to take care of the employee's child within a twelve (12) month period from birth or placement,
4. the need to take care of the employee's immediate family member who has a serious health condition, and
5. the serious health condition of the employee.

B. Additionally, requests for leave to take care of the employee's school-age child under the age of fourteen (14) during school vacations may be granted to the extent that the leave does not create a hardship with respect to the operational needs and work schedules of the applicable institutional unit.

IV. Family and Medical Leave Entitlement

A. Employees are entitled to a maximum of twelve (12) workweeks (60 days) of F&M leave within a rolling twelve (12) month period. F&M leave can be taken continuously or, under certain circumstances, on a reduced F&M leave schedule, or intermittently over the course of a rolling twelve month period.

B. The actual F&M leave entitlement shall be based on the employee's percentage of full time work for the twelve month period immediately prior to the beginning date of the F&M leave; and, shall be integrated with the amount of other leave taken for F&M-related reasons during the twelve month period within which the F&M leave is to begin.

C. Employees who regularly worked full-time (40 hours per week) are entitled to a maximum of twelve (12) workweeks (60 days/480 hours) of F&M leave in a twelve month period. Employees who worked part-time (less than 40 hours per week), on at least a 50% basis, are entitled to a prorated share of the twelve (12) week/sixty (60) day/480 hour maximum.

V. Integration of Other leave Taken with Family and Medical Leave Entitlement

Actual F&M leave entitlement shall be based on the employee's use of other leave during the twelve month period within which the F&M leave begins. The employee's use of the following types of leave shall be deducted from the actual F&M leave entitlement:

- A. Any prior F&M leave taken within the preceding twelve (12) months
- B. Sick leave withdrawn from the USM Leave Reserve Fund within the preceding twelve (12) months
Extended sick leave used within the preceding twelve (12) months
Accident leave used within the preceding twelve (12) months
- C. Any type of unpaid leave for reasons related to family and medical circumstances taken within the preceding twelve (12) months

VI. Intermittent or Reduced Leave

A. In the case of a documented medical necessity, an employee shall be entitled to intermittent leave and/or a reduced schedule that reduces regular hours per workday or workweek for purposes of the employee's or the immediate family member's serious health condition. The employee shall attempt to schedule intermittent leave or leave on a reduced schedule so as not to disrupt the operations of the institution's applicable unit.

B. Employees may be granted leave that reduces regular hours per workday or workweek for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child to the extent that the intermittent or reduced leave does not represent an undue hardship to the operations and work schedules of the applicable institutional unit.

C. The President of UMCES or designee may temporarily reassign an employee on intermittent or reduced F&M leave to an alternative position that better accommodates reduced or intermittent periods of leave.

VII. Spouses Employed by UMCES

A. If both spouses work at UMCES each spouse shall be entitled to a separate, individual, maximum family and medical leave eligibility amount.

B. The amount of leave for which one spouse may be eligible, or the amount of leave used by one spouse shall not limit or enhance the leave amount or the leave usage of the other spouse.

C. Spouses shall be entitled to take leave simultaneously or in succession and in any portion of their respective individual maximum for reasons of a serious health condition of the employee and for the serious health condition of the employee's immediate family members. Requests for simultaneous F&M leave by spouses may be granted for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child; to the extent that simultaneous leaves do not create a hardship with respect to the operational needs and work schedules of the applicable institutional unit.

VIII. Compensation During Leave

F&M leave is an unpaid leave. However, based upon the election of the employee, accrued paid leave shall be substituted for all or any part of the F&M leave.

IX. Job Protection

A. Except as provided in IX. B., C., D., and F., employees returning to work at the conclusion of a F&M leave shall be restored to their former position with the pay, benefits and terms and conditions of employment that they enjoyed immediately prior to the F&M leave.

B. An employee is not entitled to restoration if the President of UMCES or designee determines that the employee had been hired for a specific term or only to perform work on a specific project defined in writing and the term or project is over and the institution would not otherwise have continued to employ the employee.

C. If at any point prior to or during the F&M leave the President of UMCES or designee determines that the employee's former position cannot be held available for the duration of the leave, the President of UMCES or designee, at the conclusion of the leave,

1. shall restore the employee to an equivalent position.

2. If the determination of an inability to hold the former position available occurs after the F&M leave begins, the President of UMCES or designee shall immediately notify the employee in writing of details associated with the decision and the details of the equivalent position to which the employee will be restored. The employee shall have the right to return within fifteen (15) working days from receipt of such notice to keep his/her former position.

D. If there are reductions in the work force while the employee is on F&M leave and he/she would have lost his/her position had he/she not been on leave, then except as provided under USM Policy on Layoff and USM Policy on Reinstatement, there is no obligation to restore the employee to his/her former or equivalent position.

E. If there are increases or decreases in pay, benefits, or other terms and conditions of employment while the employee is on F&M leave and he/she would have had his/her pay, benefits, or other terms and conditions of employment changed were he/she not on leave, then except as provided under applicable USM policy, the employee shall be restored consistent with current, applicable, appropriate pay, benefits and other terms and conditions of employment.

F. Restoration of Key Employees

1. If it is necessary to prevent substantial and grievous economic injury to UMCES the President of UMCES may deny restoration to a key employee, provided that the employee was notified of his/her status as a key employee at the time the F&M leave was requested or commenced, whichever was earlier.

2. If the President of UMCES or designee believes that restoration may be denied to a key employee, then at the time the F&M leave is requested (or when leave commences, if earlier) or as soon as practicable thereafter, the President of UMCES or designee shall provide the key employee with written notification of the potential terms, conditions and consequences of the leave. Notification shall include at least the following: a) notification of the fact that he/she qualifies as a key employee; and b) potential consequences with respect to restoration and maintenance of health benefits. Failure to provide such timely written notice shall result in the loss of the right to deny restoration to a key employee even if substantial and grievous economic injury will result from such restoration.

3. As soon as the President of UMCES or designee makes a good faith determination, based on the facts available, that substantial and grievous economic injury to the institution will result if the key employee who has requested or who is using F&M leave is restored, the employee shall be given written notice either in person or by certified mail of the following: a) that F&M leave cannot be denied; b) notification of the President's/designee's intention to deny restoration upon completion of the F&M leave; and c) an explanation of why restoration will result in substantial and grievous economic injury.

4. When practicable, the President of UMCES shall provide the notice described in IX. F., 3. at least one calendar week prior to the employee starting the leave. If such notice is provided after the leave commences, then the President of UMCES also shall provide the employee a period of at least fifteen (15) working days from receipt of the notice to return to his/her position.

5. If a key employee does not return to work in response to the notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits through the scheduled leave and the UMCES cannot recover its share of premiums unless and until the employee gives notice that he/she does not wish to return to work or the institution actually denies restoration at the conclusion of the leave.

6. After notice to a key employee has been given that substantial and grievous economic injury will result if the employee is restored to employment, an employee is still entitled to request restoration at the end of the leave period even if the employee did not return to work in response to the President's/designee's notice. Based on the facts at that time, the President or designee must then determine whether there will be substantial and grievous economic injury from restoration. If it is determined that substantial and grievous economic injury will result, the President or designee shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

X. Status of Benefits While on Family and Medical Leave

A. An employee who is granted an approved F&M leave under this policy shall continue to be eligible for all employment benefits that he/she enjoyed immediately prior to the F&M leave.

B. Employees on F&M leave for reasons noted in Section III. A. may elect to continue employer-subsidized health care benefits during the period of leave. The President or designee shall provide advance written notice to the employee of the terms and conditions under which premium payments are to be made by the employee. The subsidy shall cease if an employee gives notice that he/she no longer wishes to return to work. The institution shall recover its share of health premiums during unpaid F&M leave if the employee fails to return to work, or returns to work but fails to stay thirty (30) calendar days, unless the reason for not returning or staying is due to the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.

C. Employees on F&M leave for reasons noted in Section III. B. may elect to continue health care and other benefits, as permitted by law or regulation, by paying the full cost of the benefits, including the share ordinarily paid by the employer.

D. Except as noted in Section IX, Job Protection, upon return from leave an employee shall be restored with all the rights, benefits and privileges enjoyed prior to the leave.

E. While on any unpaid portion of F&M leave, an employee shall not earn or accrue any additional leave or seniority credits.

F. An employee may elect to purchase service credit at the time of retirement for prior leaves without pay that are qualified by the Maryland State Retirement and Pension Systems. Upon approval of a leave without pay, an employee shall follow the institution procedure to assure that this option may be exercised.

XI. Notice of Family and Medical Leave

Regardless of the reason for the F&M leave an employee shall give at least thirty (30) calendar days notice and provide the appropriate medical certification or legal certification of adoption (as soon as practicable) or foster child placement, before taking a F&M leave. When the need for leave is not foreseeable, an employee shall give notice as soon as practicable but no less than two (2) working days of learning of the need for leave. If this is not possible due to a medical emergency, then the employee or the employee's designee shall give written notice and provide the appropriate certification as soon as practicable.

XII. Medical Certification

A. For leaves related to serious health conditions and to child birth, the employee shall provide medical certification(s) from the employee's or family member's health care provider. The employee shall have fifteen (15) calendar days to obtain the medical certification unless not practicable to do so despite the employee's diligent good faith efforts. Such certification shall include but not be limited to:

1. Date condition commenced,
2. The duration of absence from work,
3. In the case of the employee's serious health condition,
4. certification that the employee is unable to perform the essential functions of his/her position and prognosis of the employee's ability to return to his/her position,
5. In the case of the employee's need to care for a seriously ill family member, certification of the necessity for and duration of the employee's presence; of the requirements of inpatient care; and of assistance for basic needs, safety and transportation,
6. Title and original signature of an accredited, licensed or certified medical provider.

B. The President or designee may require a second medical opinion at the institution's expense. In the case of conflicting opinions, the opinion of a third health care provider, agreed upon by both employee and the CEO or designee and obtained at the institution's expense, shall be final. The second and third opinions shall not be provided by individuals who are employed on a regular basis by the institution.

C. The CEO or designee may require reasonable recertification as the F&M leave continues and the employee's ability to return to work at the end of the leave. Recertification shall not be requested more often than every thirty (30) calendar days unless the employee requests an extension of F&M leave, changed circumstances occur during the illness or injury, or the institution receives information that casts doubt upon the continuing validity of the most recent certification.

D. Consistent with FMLA and other applicable laws, all medical- related documentation will be kept confidential and maintained in a file separate from the employee's official institutional personnel file.

XIII. Scheduling of Treatment in Instances of serious Health Conditions

A. In instances of the serious health condition of a family member or of the employee himself or herself, and in keeping with the requirements of the appropriate health care provider, the employee shall make reasonable efforts to schedule any medical treatments so as not to disrupt unduly the operations of the applicable institutional unit.

B. During the course of the treatment and as the CEO or designee deems appropriate, the employee may be requested to provide certification from the appropriate health care provider of the unavailability of treatment during non-work time, or at times that are less disruptive to the operations of the employee's unit.

XIV. Providing Information about F&M Leave

Regardless of the reason for the leave, an employee shall provide complete, accurate and timely information related to a request for, continuation of, modification(s) to, and return from F&M leave.

XV. Abuse of F&M Leave

The President or designee shall review, investigate and resolve suspected cases of bad faith, fraud or abuse of the F&M leave program. Cases of bad faith, falsification of documents, or fraudulent information related to the F&M leave provided to the institution, or other abuses of

the F&M leave program, may result in but are not limited to: revocation of the leave, refusal to restore, recovery of institutional costs for paid-time leave and insurance benefits premiums, and disciplinary action up to and including termination.

XVI. Early Return from Leave

An employee interested in returning to work from a F&M leave prior to the agreed upon end of the leave date shall provide the President or designee with a written request at least thirty (30) calendar days prior to the date on which the employee is interested in returning. The President or designee shall make a good faith effort to restore the employee to his/her former or an equivalent position as soon as possible at the employee's request but no later than the thirty (30) calendar day notice provided by the employee.

XVII. Extensions of Leave

Employees may extend the date of return from F&M leave to the extent that they have F&M leave entitlement available. A request for an extension of F&M leave shall be considered under this policy as if it was an initial request.

XVIII. Failure to Return from Leave

A. An employee who will not be returning to the institution at the conclusion of a leave shall notify the President or designee in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.

B. If applicable, any benefit entitlements based upon length of service shall be calculated as of the employee's last paid day.

C. Employer costs of any payments made to maintain the employee's benefit coverage when on unpaid F&M leave shall be recovered if an employee fails to return to work as described in Section X.B.

D. The President or designee may request certification of reasons for the employee's failure to return to work.

XIX. Miscellaneous

A. The President or designee is under no obligation to immediately restore an employee whose return from leave does not coincide with the normal operating schedule of the institution or the normal work schedule of the employee's unit, or restore an employee whose return date is inconsistent with the terms and conditions of the employee's appointment.

B. Entitlement to begin F&M leave for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child expires by no later than the 364th day after the date of birth or placement. Any such F&M leave must be concluded within this one-year period.

C. When F&M leave is taken by an employee on probation status, the probationary period shall be adjusted upon the return of the employee by the length of time used for F&M leave.

Approval Date: 12/18/06