

TITLE: FAMILY AND MEDICAL LEAVE OF ABSENCE

PURPOSE: To define leave of absence benefits available to employees of Harris Health System under the Family and Medical Leave Act.

POLICY STATEMENT:

In compliance with the Family and Medical Leave Act (FMLA), Harris Health System (Harris Health) provides Eligible Employees up to twelve (12) unpaid workweeks of Family Medical Leave (FML) within a Rolling Twelve (12)-Month Period for specified family and medical reasons, and up to twenty-six (26) unpaid workweeks of FML within a single twelve (12)-month period to care for a covered servicemember with serious injury or illness.

An employee taking FML will be placed in the same or equivalent position upon returning from leave, provided he/she meets eligibility requirements and complies with all notice and certification requirements. This does not apply if the employee would not have been employed at the time reinstatement is requested. For example, if the employee's position was eliminated due to a reduction-in-force or restructuring during his/her FML.

Although FML is an unpaid leave, Harris Health requires the use of accrued Paid Time Off (PTO) while on a protected leave of absence (See Section X Integration with Other Time Off). An employee may continue some or all of his/her healthcare benefits while on an approved leave of absence. Applicable employee contributions are due each payday. (See Section XI Continuation of Benefits During Leave).

POLICY ELABORATIONS:

I. DEFINITIONS:

- A. **ELIGIBLE EMPLOYEES:** An employee is eligible for FML if he/she has been employed for at least twelve (12) months by Harris Health and has worked for at least one thousand two hundred fifty (1,250) hours for Harris Health during the twelve (12)-month period preceding the leave.
- B. **ROLLING TWELVE (12) MONTH PERIOD:** Twelve (12) months measured backward from the date leave is requested

II. QUALIFYING REASONS FOR FML:

A. Family and Medical Reasons:

1. Eligible Employees may take up to twelve (12) workweeks of unpaid leave in a Rolling Twelve (12)-Month Period for one or more of the following reasons:
 - a. To bond with a newborn child within one (1) year of birth;
 - b. The placement of a child with the employee for adoption or foster care and to bond with the newly placed child;
 - c. In order to care for a spouse, child or parent of the employee, including step-parents or step-children (“covered relative”) due to a serious health condition;
 - d. The employee’s own serious health condition that renders him/her unable to perform an essential function of his/her job; or
 - e. Due to a qualifying exigency, when the employee’s spouse, parent or child (“covered military member”) is on (or has been notified of an impending call to) covered active duty in the Armed Forces (“qualifying exigency leave”).
2. A Serious Health Condition includes generally an illness, injury, impairment, or physical or mental condition that:
 - a. Requires inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with the inpatient care;
 - b. Creates incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. In-person treatment by a healthcare provider (including a nurse or physician's assistant under direct supervision of a healthcare provider, or by a provider of health care services

- (e.g., physical therapist) under orders of, or on referral by, a healthcare provider) two (2) or more times within thirty (30) days of the first (1st) day of incapacity, with the first (1st) visit occurring within the first (1st) seven (7) days of incapacity, unless extenuating circumstances exist, or
- ii. One (1) in-person treatment by healthcare provider within the first (1st) seven (7) days of incapacity, resulting in a continuing regimen of treatment under the supervision of the health care provider;
- c. Involves a period of incapacity due to pregnancy or for prenatal care;
 - d. Involves a period of incapacity or treatment for such incapacity due to a chronic serious health condition. A “chronic serious health condition” is one (1) which:
 - i. Requires periodic visits (at least twice a year) for treatment by a healthcare provider, or by a nurse under direct supervision of a health care provider;
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
 - e. Involves a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider. (Examples include: Alzheimer's Disease, a severe stroke or terminal stages of a disease); or
 - f. Involves a period of absence to receive multiple treatments (including any period of recovery) by a healthcare provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result

in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

3. Qualifying Exigency includes generally:
 - a. Short-notice deployment: Notification of an impending call or order to active duty seven (7) or fewer calendar days prior to the date of deployment; limited to seven (7) calendar days of leave or less;
 - b. Military events and related activities: Official ceremonies, programs, events, or family support and assistance programs and briefings;
 - c. Childcare and school activities: Changes to regular childcare arrangements, urgent-need childcare, school enrollment, transfer, or parent-teacher conferences;
 - d. Financial and legal arrangements: Preparing and executing powers of attorney, transferring bank account signature authority, representing covered military member regarding military benefits, preparing and updating wills and living trusts;
 - e. Counseling for the employee, covered military member or the children of the covered military member;
 - f. Short-term rest and recuperation: Up to five (5) days of leave for each instance of a covered military member's leave for rest and recuperation with the covered military member;
 - g. Post-deployment activities: Arrival ceremonies and programs for ninety (90) days after active duty status, death-related issues; and
 - h. Additional activities: Other events which arise out of the covered military member's active duty or call to active duty, to be agreed upon by Harris Health and employee.

4. Covered Active Duty includes generally:
 - a. For a member of a regular component of the Armed Forces: Duty during deployment of the member with the Armed Forces to a foreign country.

- b. For a member of the reserve component of the Armed Forces (i.e. U.S. National Guard or Reserves): Duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined by section 101(a)(13)(B) of title 10, United States Code.

B. Military Caregiver Leave:

Eligible Employees may also take up to twenty-six (26) workweeks of unpaid leave in a single twelve (12)-month period (beginning on the first (1st) day such leave is taken) to care for a covered servicemember (“military caregiver leave”).

1. “Covered Servicemember” is defined as the employee’s spouse, parent child or next of kin who is:
 - a. A current member of the Armed Forces (including the Reserves or National Guard) who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, and who incurred a serious injury or illness; or
 - b. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including the Reserves or National Guard) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
2. “Serious injury or illness” for current servicemembers is defined as an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

For veterans, a qualifying “serious injury or illness” means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by the member in line of duty on active duty in the Armed Forces

(or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran.

III. AMOUNT AND TIMING OF LEAVE:

- A. Approved FML begins on the date of the first (1st) absence and continues until the earlier of:
1. The twelve (12) or twenty-six (26) workweek leave allotment for the employee is exhausted;
 2. The date on which the FMLA-qualifying reason ends, not to exceed twelve (12) or twenty-six (26) workweeks, or
 3. The date the employee fails to provide any certification or recertification of the need for the FML as required by Harris Health or the designated Third (3rd)-Party Administrator (TPA).
- B. For all types of FML, besides military caregiver leave, the balance of the twelve (12) weeks' leave available will be determined using a Rolling Twelve (12)-Month Period," measured backward from the starting date of each requested leave.
- C. For military caregiver leave, which makes twenty-six (26) weeks available to Eligible Employees, the "single twelve (12)-month period" begins on the first (1st) day an employee takes such leave and will normally be calculated separately from the Rolling Twelve (12)-Month Period used for other types of FML. However, the two (2) will be tracked concurrently. No employee may use more than twenty-six (26) weeks of FML for any reason during the twelve (12)-month period that begins on the date military caregiver leave begins.
- D. Military caregiver leave may be taken intermittently throughout the single twelve (12)-month period, and is applied on a per-covered-service member, per-injury basis. An Eligible Employee is limited to a combined total of twenty-six (26) workweeks of leave for any FMLA-qualifying reasons during the single twelve (12)-month period.

However, an Eligible Employee may take an additional twenty-six (26) weeks of leave in a different twelve (12)-month period to care for the same servicemember if he/she has another serious injury or illness.

- E. Entitlement to a leave of absence for a birth or placement of a child expires at the end of the twelve (12)-month period beginning on the date of the birth or placement. Any FML requested for the birth or placement of a child must be concluded within this one (1)-year period. However, this rule does not apply if leave is requested for a serious health condition in connection with the birth of the child or if the newborn or newly placed child has a serious health condition.

IV. LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE:

- A. An Eligible Employee can take a leave of absence intermittently or on a reduced leave schedule for the birth or placement of a child to attend court proceedings and appointments concerning the adoption. However, the time taken to bond with a child may only be taken in intermittent blocks of time.
- B. Leave may be taken intermittently (in separate blocks of time) or on a reduced work schedule (reducing the usual number of hours the employee works per workweek or workday) because of a serious health condition and military caregiver leave if medically necessary. When necessary, qualifying exigency leave may also be taken intermittently or on a reduced work schedule.
- C. If a reduced work schedule is implemented, Harris Health will pay hourly employees only for the hours actually worked. For salaried employees, Harris Health will reduce employees' salary accordingly. If an employee needs intermittent leave or a reduced work schedule that is foreseeable based on planned medical treatment for the employee, a covered relative, or a covered servicemember, Harris Health reserves the right to temporarily reassign the employee to another position within Harris Health with equivalent pay and benefits to minimize disruption.

V. EMPLOYEE "NOTICE" OBLIGATIONS:

- A. If FML is foreseeable, an employee must provide Harris Health with at least thirty (30) days' advance notice of the leave. When the need for FML is not foreseeable, or if thirty (30) days' notice cannot be given, notice as soon as foreseeable is required. (As soon as foreseeable means giving at least verbal notice to Harris Health the same or next business day after learning of the need to take FML, i.e., early birth of a child, emergency medical treatment, or a qualifying exigency.) Notice should be given according to Harris Health normal absence call-in policy. Failure to provide timely notice may result in a delay of FMLA benefits and protections from taking effect.
- B. For planned medical treatment, employees must consult with their department and make a reasonable effort to schedule the treatment so as not to disrupt the operations of the department, subject to the approval of the healthcare provider.

VI. WHEN BOTH SPOUSES ARE EMPLOYED BY HARRIS HEALTH:

If spouses are both entitled to leave and are employed by Harris Health, the combined number of workweeks of leave to which both may be entitled shall be limited to twelve (12) workweeks during any twelve (12)-month period, if such leave is taken for the birth or placement of a healthy child or to care for a parent with a serious health condition. However, each spouse will be entitled to take the full twelve (12) weeks of leave because of a child's, spouse's or their own serious health condition. Spouses employed by Harris Health are jointly entitled to a combined total of twenty-six (26) weeks of military caregiver leave during the single twelve (12)-month period.

VII. CERTIFICATION FOR LEAVE:

- A. If an employee is requesting leave because of his/her own or a covered relative's serious health condition, the attending healthcare provider must supply appropriate medical certification before and throughout the leave, as requested by Harris Health or a designated TPA. Appropriate certifications may also be required, as requested by Harris Health or the designated TPA, for qualifying exigency leave and military caregiver leave.

- B. An employee must contact the designated TPA to request leave. The designated TPA will advise the employee of any certification requirements and provide the appropriate forms to use. The employee shall provide the completed certification form to the designated TPA within fifteen (15) calendar days after it is requested. If the employee fails to provide timely certification (unless it is not practicable to do so despite the employee's diligent, good faith efforts), the leave will not be considered FML. The employee's absence may be considered unexcused and the employee may be subject to disciplinary action, up to and including termination, in accordance with Harris Health's Attendance policy.
- C. For the initial certification of an employee's or a covered relative's serious health condition, Harris Health may seek clarification or authentication from the employee's healthcare provider of the information provided on the certification form. Harris Health, at its sole expense, may also require an examination by a second healthcare provider, designated by Harris Health, if it reasonably doubts the medical certification an employee's healthcare provider initially provides. If the second (2nd) healthcare provider's opinion conflicts with the original medical certification, Harris Health, at its sole expense, may require a third (3rd), mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion. To facilitate the second (2nd)/third (3rd) opinion process, an employee or covered relative must authorize the release of his/her medical information pertaining to the condition for which leave is being sought to the second (2nd)/third (3rd) healthcare provider.
- D. From time to time, Harris Health may also request recertification of the employee's or a covered relative's serious health condition during the leave. Recertification may be required every six (6) months, but it may be required more often if:
1. A leave extension is requested,
 2. Circumstances regarding the leave or need for leave significantly change,
 3. Harris Health receives information casting doubt on the employee's stated reason for his/her absence or the continuing validity of the employee's certification, or
 4. Every thirty (30) days for indefinite leaves.

Failure to provide the information needed for recertification within the allotted time may result in a denial of continuation of FMLA benefits and protections.

- E. An employee taking FML must promptly respond to all of Harris Health's phone calls and written correspondence. An employee on leave must also keep Harris Health informed at all times of his/her intention to return to work upon completion of the leave. The employee is responsible for notifying Harris Health of any changes accelerating or delaying his/her anticipated return date.

VIII. NO WORK WHILE ON LEAVE:

The taking of another job or working another job while on FML or any other authorized leave of absence is strictly prohibited and is grounds for immediate termination.

IX. RETURN FROM LEAVE:

- A. An employee who uses FML because of his/her own serious health condition must provide a medical certification pertaining to the condition(s) for which the employee used FML, stating he or she is fit for duty and able to return to work. For an employee on intermittent or reduced schedule leave, Harris Health may require a medical certification stating he/she is fit to resume work as often as once every thirty (30) days if reasonable safety concerns exist regarding the employee's ability to perform his/her duties. Employees may obtain return-to-work medical certification forms from their physician. Harris Health will not permit the employee to return to work without the return-to-work medical certification form properly completed by the employee's health care provider prior to returning to active duty.
- B. Absences caused by an employee's failure to provide a return-to-work certification will not be entitled to FMLA protection and will be considered unexcused. Employees with unexcused absences will be subject to disciplinary action, up to and including termination, in accordance with Harris Health's Attendance policy.

X. INTEGRATION WITH OTHER TIME OFF:

- A. The use of PTO will be combined with FML. This allows the employee to receive pay for the length of his/her FMA coinciding with the accrued PTO, but does not extend the employee's available FML time beyond the allotted twelve (12) or twenty-six (26) workweeks.
- B. Any time off from work which qualifies for FML will be counted against the employee's FML allotment. If it was not immediately apparent an employee's time off qualified as FMLA, but Harris Health subsequently learns it qualified, Harris Health may retroactively designate such time off as FML.
- C. Absences due to FML are not considered absences pursuant to Harris Health's general attendance policies and will not be counted toward Harris Health's maximum leave policy.
- D. Employment benefits such as PTO, retirement and other benefits will not accumulate during an unpaid FML. An employee on FML is not eligible for Bereavement Leave or Jury Duty benefits.

XI. CONTINUATION OF BENEFITS DURING LEAVE:

- A. An employee may continue some or all of his/her benefits while on an approved leave of absence. Benefits remain subject to the terms of applicable plans and policies. Those benefits may include:
 - 1. Medical, Dental and/or Vision Coverage;
 - 2. Optional Life Insurance;
 - 3. Dependent Optional Life Insurance;
 - 4. Optional Accidental Death and Dismemberment (AD&D) Insurance; and
 - 5. Buy-Up Long-Term Disability.
- B. The employee may not change the level of coverage or benefit elections due solely to a leave of absence. However, the employee may choose to terminate coverage during the leave. If the employee chooses not to continue coverage while on leave, medical evidence of insurability (EOI) will be required to resume Voluntary Life/AD&D, Voluntary Spouse Life and Buy-Up Long Term Disability.

HARRIS HEALTH SYSTEM

POLICY AND REGULATIONS MANUAL

Policy No:	6.29
Page Number:	12 of 14
Effective Date:	01/25/2007
Board Motion No:	07.1-70
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- C. Before the leave begins, the employee must contact the Benefits Department to request information regarding benefit premium invoices.
- D. Applicable employee contributions are due each payday. The employee must pay the employee contribution rates (the amount deducted from his or her paycheck) while on a leave of absence to continue receiving the same elected benefits as when he/she was actively working.
- E. Failure to make timely payments may result in loss of benefits coverage after a thirty (30)-day grace period. Termination of benefits will be effective the day after your last premium payment.
- F. All employee contributions must be paid by money order or personal check made payable to Harris Health System. Checks must include name and employee Identification (ID) number written in the “memo” section. Payments must be sent to:

Harris Health System
Attn: Employee Benefits – LOA Payment
2525 Holly Hall, Suite 100
Houston, TX 77054

- G. If the employee participates in a Health Care Flexible Spending Account (Health Care Flexible Spending Account (FSA)), the Health Care FSA will remain available during FML for the remainder of the plan year and the missed contributions will be collected via payroll deductions upon the employee’s return from leave. This will increase the per pay period contribution upon his/her return from leave.
- H. If enrolled, the employee’s Dependent Care Flexible Spending Account will terminate at the time of leave.
- I. The total cost of employer-paid benefits will continue to be paid by Harris Health during an approved leave of absence. Employer-paid benefits include:
 - 1. Group Term Life Insurance,
 - 2. Short Term Disability and

3. Long-Term Disability.

J. No retirement contributions will be made by either the employee or Harris Health during an approved leave of absence.

XII. RETALIATION PROHIBITED:

Retaliation against an employee for taking or requesting FML is prohibited. Any employee experiencing or witnessing such retaliation must report it to Harris Health's Compliance Officer.

XIII. ADDITIONAL MEDICAL LEAVE:

If an employee has exhausted his/her FML and requires additional protected medical leave, the employee must promptly submit a written request along with supporting medical documentation for additional leave to the designated TPA.

XIV. QUESTIONS ABOUT EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FMLA:

Employees who have questions relating to their rights and responsibilities under the FMLA are advised to consult the Department of Labor's "Employees of Rights and Responsibilities Under the FMLA" Notice and/or to request additional information from the FMLA/ADA Coordinator.



POLICY AND REGULATIONS MANUAL

Policy No: 6.29
Page Number: 14 of 14
Effective Date: 01/25/2007
Board Motion No: 07.1-70
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REFERENCES/BIBLIOGRAPHY:

Family and Medical Leave Act

Americans with Disabilities Act

Employee Rights and Responsibilities Under The Family and Medical Leave Act found at: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>.

Harris Health System Policy and Procedures 6.03 Paid Time Off

OFFICE OF PRIMARY RESPONSIBILITY:

Harris Health System Senior Vice President of Human Resources

REVIEW/REVISION HISTORY:

Effective Date	Version# (If Applicable)	Review or Revision Date (Indicate Reviewed or Revised)	Reviewed or Approved by: (If Board of Managers Approved, include Board Motion#)
		Reviewed 01/09/2007	HCHD Policy Review Committee
01/25/2007	1.0		Board of Managers (No. 07.1-70)
	2.0	Revised 07/03/2007	Vice President of Human Resources
	3.0	Revised 04/18/2008	Vice President of Human Resources
	4.0	Approved 05/06/2008	HCHD Policy Review Committee
	5.0	Revised and Approved 06/14/2011	HCHD Operations Policy Committee
	6.0	Revised/Approved 11/14/2017	Structure and Organizational Standards Committee