

II-2.31 – POLICY ON FAMILY AND MEDICAL LEAVE FOR FACULTY

(Approved by the Board of Regents on October 6, 1995; Amended on April 20, 2018.)

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I. PURPOSE AND APPLICABILITY

The purpose of this Policy is to implement the Family and Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. § 2611 (2012) and subsequent amendments to applicable federal and state laws. This Policy applies to all eligible University System of Maryland (“USM”) faculty who are covered by the provisions of USM BOR policy II-1.00 University System Policy on Appointment, Rank, and Tenure of Faculty. Under certain circumstances, it is the policy of the USM to provide Eligible Faculty Members up to a maximum of twelve (12) weeks of job-protected leave (“FML”) during a Twelve- (12-) Month Period for certain family and certain Serious Health Condition reasons. Additionally, under certain circumstances, this Policy provides Eligible Faculty Members a maximum of twelve (12) weeks of FML during a Twelve- (12-) Month Period to address a qualifying Exigency arising from a Military Member’s Covered Active Duty status or notification of an impending call or order to Covered Active Duty status, and a maximum of twenty-six (26) weeks of FML during a Twelve- (12-) Month Period to Care

for a Covered Servicemember with a Serious Injury or Illness. FML may be unpaid, paid through the concurrent use of leave accrued or acquired under an Institution's policies, or a combination of both as set forth in Section IV of this Policy. If applicable law is modified, abrogated, superseded, or added to, this Policy shall be interpreted in accordance with the new legal framework.

II. TERMS AND DEFINITIONS

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

- A. **Accrued or Acquired Paid Leave:** Annual and personal leave available for use under USM BOR policy II-2.40 – Policy on Annual Leave for Faculty, holiday leave for holidays observed during FML, sick leave available for use under USM BOR policy II-2.30 – Policy on Sick Leave for Faculty Members, and accident leave.
- B. **Alternative Position:** A position to which an Eligible Faculty Member may be reassigned temporarily during a period of intermittent or reduced schedule FML. The alternative position shall have equivalent benefits and pay to the position from which the Eligible Faculty Member 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. **Care for a Covered Servicemember:** Care by an Eligible Faculty Member, for a Covered Servicemember who becomes ill or injured as a result of service in the military, who is a:
 - 1. Spouse; and/or
 - 2. Parent; and/or
 - 3. Child (of any age); or
 - 4. If none of the above is available, the Next of Kin.
- E. **Child (except for military FML requests under Section VI):** A person who is the son or daughter of an Eligible Faculty Member 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 at the time FML commences. The son and/or daughter may be the biological, adopted, step or foster child of the Eligible Faculty Member. The term "child" shall also include someone who is the legal ward of the Eligible Faculty Member or someone for whom the Eligible Faculty Member has provided sufficient, notarized affidavit(s) and proof of financial dependence that he/she is standing *In Loco Parentis*.

F. Covered Active Duty: In the case of a member of a Regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and in the case of a member of a Reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country 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.

G. Covered Servicemember:

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 covered 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 a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the Eligible Faculty Member takes FML to Care for the covered veteran.

H. Eligible Faculty Member: An employee who is covered under the provisions of USM BOR policy II-1.00 – University System Policy on Appointment, Rank, and Tenure of Faculty; and

1. Has been employed for a total of at least twelve (12) months as a USM or State of Maryland employee; and
2. Whose employment during the twelve- (12-) month period immediately prior to the beginning date of the FML was at least 50 percent or greater of full-time under a nine- (9-) month or longer contract, or who has worked for at least 1,040 hours during the twelve- (12-) month period immediately prior to the beginning date of the FML as a USM or State of Maryland employee.

If a faculty member holds a concurrent administrative appointment under USM BOR policy II-1.03 – Policy on Concurrent Faculty and Administrative Appointments, FML shall be governed by USM BOR policy VII-7.50 – Policy on Family and Medical Leave for Nonexempt and Exempt Staff Employees. However, application of the Staff FMLA Policy shall not result in any loss of rights applicable to the concurrent faculty appointment, including the right to postpone mandatory tenure review under Section VIII.A of this Policy.

For convenience, within the text of this Policy the term “Faculty Member” instead of “Eligible Faculty Member” shall be used hereafter.

- I. **Equivalent Position:** A position at the Institution to which a Faculty Member may be Restored upon the completion of the FML. The equivalent position shall have the same benefits, pay, and other terms and conditions of employment as the position from which the Faculty Member took leave.
- J. **Exigency:**
1. Issues arising from a Military Member's short notice deployment (call to Covered Active Duty on seven (7) or fewer calendar days' notice prior to the date of deployment);
 2. Military events and related activities (official ceremonies, programs or events sponsored by the military), or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the Covered Active Duty or call to Covered Active Duty of a Military Member;
 3. Childcare and related activities arising from the Covered Active Duty or call to Covered Active Duty status of a Military Member (including but not limited to arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attendance at certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the Covered Active Duty or call to Covered Active Duty of a Military Member). For purposes of this Paragraph, the child must meet the definition of "Child" in Section II.E of this Policy;
 4. Financial and legal arrangements (to make or update legal and/or financial arrangements for the Military Member's absence or act as his/her representative before a government agency);
 5. Attending counseling provided by someone other than a Health Care Provider for oneself, for the Military Member, or for a child of the Military Member (who must meet the definition of "Child" in Section II.E of this Policy), the need for which arose from the Covered Active Duty or call to Covered Active Duty of the Military Member;
 6. Spending up to fifteen (15) calendar days with a Military Member who is on short-term, temporary, rest and recuperation leave (for each instance of such leave during a deployment);
 7. Attending post-deployment activities (including arrival ceremonies, reintegration briefings and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the Military Member's Covered Active Duty status, and issues arising from the death of a Military Member);

8. Providing Parental Care necessitated by the Covered Active Duty status of a Military Member whose Parent is incapable of self-care; or
9. Additional activities (provided that the Institution and Faculty Member agree that such activities shall qualify as an exigency and agree to both the timing and duration of leave).

K. Health Care Providers:

1. 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, nurse midwives, clinical social workers, and physician assistants, who are authorized to practice under the law of the state or country in which they are practicing and are performing within the scope of their practice;
2. Licensed clinical professional counselors;
3. Christian Science practitioners listed with the First Church of Christ Scientist in Boston; and
4. Any other health care provider from whom the Institution's group health plan's benefits manager will accept certification of the existence of a Serious Health Condition to substantiate a claim for benefits.

L. Immediate Family Member: The Faculty Member's Parent, Spouse, or Child.

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

N. Institution: The employing USM institution; the USM institution from which the Faculty Member is taking leave.

O. Military Member: A Faculty Member's Spouse, child (of any age), or Parent who is on Covered Active Duty.

P. Next of Kin: The nearest blood relative other than the Covered Servicemember's Spouse, Parent or child (of any age) in the following order of priority:

1. A blood relative whom the Covered Servicemember has specifically designated in writing as his or her nearest blood relative for purposes of military caregiver leave under the FMLA;

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2. Blood relatives who have been granted legal custody of the Covered Servicemember by court decree or statutory provision;
 3. Brothers and sisters;
 4. Grandparents;
 5. Aunts and uncles;
 6. First cousins.
- Q. Parent:** The Faculty Member's biological, adoptive, step or foster mother or father, or someone who stood *In Loco Parentis* to the Faculty Member when the Faculty Member was a child. This term does not include parents "in law."
- R. Parental Care:** Care provided to the Military Member's Parent, who must be incapable of self-care and must be the Military Member's biological, adoptive, step or foster father or mother, or any other individual who stood *In Loco Parentis* to the Military Member when the member was under eighteen (18) years of age.
- S. Restore(d) or Restoration:** A return to the position held by the Faculty Member when FML commenced or to an Equivalent Position.
- T. Serious Health Condition:** An illness, injury, impairment, or physical or mental condition of the Faculty Member or an Immediate Family Member that involves:
1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
 2. A period of incapacity requiring absence of more than three (3) consecutive calendar days from work or other regular daily activities that also involves continuing treatment by (or under the supervision of) a Health Care Provider;
 3. Any period of incapacity due to pregnancy, or for prenatal care;
 4. Any period of incapacity (or treatment therefore) due to a chronic serious health condition (i.e., conditions that require periodic visits for treatment, continue over an extended period of time, and may cause episodic incapacity, such as asthma, diabetes, epilepsy, etc.);
 5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective and for which the faculty member or Immediate Family Member is under the continuing supervision of a Health Care Provider (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
 6. Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a Health Care Provider for a condition that likely

would result in incapacity of more than three consecutive calendar days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.) or for a restorative surgery after an accident or other injury.

Incapacity means inability to work, attend school, or perform other regular daily activities due to the Serious Health Condition, treatment therefor, or recovery therefrom. A Serious Health Condition is a qualifying reason for a Faculty Member's leave where the Faculty Member is unable to perform any one of the essential functions of his/her position due to the Serious Health Condition.

U. Serious Injury or Illness:

1. In the case of a current member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in the 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 the 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; and
2. In the case of a covered veteran, an injury or illness that was incurred by the member in the 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 the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

V. Spouse: A husband or wife as defined or recognized under state law for purposes of marriage in the state where the Faculty Member resides, including common law marriage and same sex marriage.

W. Twelve- (12-) Month Period:

1. A rolling 12-month period measured backward from the date a Faculty Member uses any FML. Each time a Faculty Member takes FML, the remaining FML amount is the balance of the twelve (12) weeks that has not been used during the immediately preceding twelve (12) months.
2. With regard to Care for a Covered Servicemember, for which a Faculty Member who is the Spouse, child (of any age), Parent, or Next of Kin of a Covered Servicemember may use up to twenty-six (26) weeks of FML in a single Twelve- (12-) Month Period to Care for a Covered Servicemember with a Serious Injury or Illness, the Twelve- (12-) Month Period shall be measured forward, beginning on the first day the Faculty Member takes FML and ending twelve (12) months after that date.

3. Each Institution shall indicate in its implementation procedures that its Twelve- (12-) Month Period is based on a twelve- (12-) month period measured backward from the date a Faculty Member uses any FML, subject to Paragraph 2 of this Section. This Twelve- (12-) Month Period shall be consistently and uniformly applied to all eligible employees, including faculty and staff, at that Institution.

III. REASONS FOR LEAVE

A Faculty Member is entitled to take FML for the following reasons:

- A. The birth of the Faculty Member's Child;
- B. The placement of a Child with the Faculty Member for adoption or foster care;
- C. The need to take care of the Faculty Member's Child within a Twelve- (12-) Month Period from birth or placement;
- D. The need to take Care of the Faculty Member's Immediate Family Member who has a Serious Health Condition;
- E. The Serious Health Condition of the Faculty Member that makes the Faculty Member unable to perform any one of the essential functions of the Faculty Member's job;
- F. The need to take Care of a Covered Servicemember's Serious Injury or Illness; and
- G. Qualifying Exigencies arising out of the Covered Active Duty and call-up to Covered Active Duty of a Military Member (the Faculty Member's Spouse, child (of any age), or Parent).

IV. COMPENSATION DURING LEAVE

The FMLA provides Faculty Members with job-protected leave for the qualifying reasons listed under Section III of this Policy. The FMLA allows for the leave to be unpaid, paid through the concurrent use of leave accrued or acquired under the Institution's policies, or a combination of both. Each Institution shall require Faculty Members to use concurrently with FML paid leave accrued or acquired under USM's and the Institution's policies and procedures in the following order:

- A. Accrued or Acquired Paid Leave as defined in Section II.A; and
- B. Paid parental leave under USM BOR policy II-2.25 – Policy on Parental Leave.

Any remaining FML will be unpaid.

V. FAMILY AND MEDICAL LEAVE ENTITLEMENT

- A. A Faculty Member is entitled to a maximum of twelve (12) weeks of FML, based on the Faculty Member's normal workweek, within a Twelve- (12-) Month Period. FML

can be taken continuously or, per Section VII of this Policy, intermittently or under a reduced work schedule, over the course of a Twelve- (12-) Month Period. FML entitlement shall not be carried over from a Twelve- (12-) Month Period to the subsequent Twelve- (12-) Month Period.

B. For example:

1. If a Faculty Member normally works forty (40) hours per week and takes three (3) weeks of FML continuously, then the Faculty Member's three (3) weeks of leave will constitute three (3) weeks of FML.
2. If a Faculty Member normally works thirty-two (32) hours per week and takes twenty-four (24) hours of FML, then the Faculty Member's twenty-four (24) hours of leave will constitute three-fourths (3/4) of a week of FML.
3. If a Faculty Member normally works forty (40) hours per week and works twenty (20) hours under a reduced schedule, then the Faculty Member's twenty (20) hours of leave will constitute one-half (1/2) of a week of FML for each week the Faculty Member works under the reduced schedule.
4. If a Faculty Member normally works thirty (30) hours per week and works twenty (20) hours per week under a reduced schedule, then the Faculty Member's ten (10) hours of leave will constitute one-third (1/3) of a week of FML for each week the Faculty Member works under the reduced schedule.

C. Whether a period of FML is paid or unpaid will be determined by Section IV of this Policy.

VI. MILITARY FML ENTITLEMENT

A. Military Caregiver Leave

A Faculty Member who is the Spouse, child (of any age), Parent, or Next of Kin of a Covered Servicemember may use up to twenty-six (26) workweeks of leave in a single Twelve- (12-) Month Period to Care for a Covered Servicemember with a Serious Injury or Illness. The Twelve- (12-) Month Period described in this Paragraph shall be measured forward, beginning on the first day the Faculty Member takes FML to Care for a Covered Servicemember and ending twelve (12) months after that date.

B. Exigency Leave

A Faculty Member with a Spouse, child (of any age), or Parent who is a Military Member on Covered Active Duty or notified of an impending call or order to Covered Active Duty status may use up to twelve (12) workweeks of leave to address a qualifying Exigency arising out of the fact that the Faculty Member's Spouse, child,

or Parent is on Covered Active Duty or notified of an impending call or order to Covered Active Duty status.

VII. INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE

- A. Intermittent leave is FML taken in separate blocks of time for a single qualifying reason. Reduced schedule leave is FML that reduces a Faculty Member's usual number of working hours per workweek or workday for a period of time.
- B. A Faculty Member may take intermittent or reduced schedule leave for purposes of the Faculty Member's or the Immediate Family Member's Serious Health Condition, the Serious Injury or Illness of a Covered Servicemember, or for a qualifying Exigency. There must be a medical need for leave and it must be that such medical need can be best accommodated through intermittent or reduced schedule leave.
- C. The Faculty Member shall make a reasonable effort to schedule intermittent or reduced schedule leave for planned medical treatment so as not to unduly disrupt the operations of the Institution's applicable unit. If the Faculty Member neglects to consult with the Institution to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the Institution's operations, the Institution may initiate discussions with the Faculty Member and require the Faculty Member to make a reasonable effort to make such arrangements, subject to the approval of the Health Care Provider.
- D. It is within the discretion of the President or designee to grant intermittent or reduced schedule leave for reasons of childbirth, placement with the Faculty Member of a Child for adoption or foster care, or care for a newborn Child.
- E. The President or designee may temporarily reassign a Faculty Member on intermittent or reduced schedule leave to an Alternative Position for which the Faculty Member is qualified, and which better accommodates intermittent or reduced schedule leave than does the Faculty Member's regular position. Such reassignment may occur only where the Faculty Member foreseeably needs intermittent or reduced schedule leave or where the President or designee agrees to permit such leave under Paragraph D of this Section VII. The Alternative Position must have equivalent pay and benefits but need not have equivalent duties and may not constitute a hardship on the Faculty Member or discourage the Faculty Member from taking leave. When the Faculty Member no longer needs leave, they must be placed in the position they held when FML commenced or in an Equivalent Position.

VIII. JOB RIGHTS AND PROTECTIONS

- A. A tenure-track Faculty Member whose leave under this Policy is six (6) continuous months or totals at least one semester may request through his or her department chair or appropriate appointing authority that the mandatory tenure review be postponed for

one (1) year. The request shall be forwarded through the Faculty Member's dean, for recommendation, to the chief academic officer of the Institution for decision.

- B. Except as provided in Sections VIII. C., D., E., and F., a Faculty Member returning to work at the conclusion of FML shall be Restored to the position they held when FML commenced or to an Equivalent Position with the pay, benefits, and other terms and conditions of employment that they enjoyed immediately prior to the FML.
- C. A Faculty Member is not entitled to Restoration if the President or designee determines that the Faculty Member 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 Faculty Member.
- D. If at any point prior to or during the FML the President or designee determines that the Faculty Member's position held when FML commenced cannot be held available for the duration of the leave, the President or designee, at the conclusion of the leave, shall Restore the Faculty Member to an Equivalent Position.

If it is determined that the position cannot be held available, the President or designee shall immediately notify the Faculty Member in writing of details associated with the decision and the details of the Equivalent Position to which the Faculty Member will be Restored. The Faculty Member shall have the right to return to work within fifteen (15) working days from receipt of such notice to keep the position held by the Faculty Member when FML commenced.

- E. If there are reductions in the work force while the Faculty Member is on FML and the Faculty Member would have lost his/her position under the Institution's retrenchment policy(ies) had he/she not been on FML, then the Institution has no obligation to Restore the Faculty Member to the position held by the Faculty Member when FML commenced or to an Equivalent Position.
- F. Faculty Members on FML are subject to generally applicable changes in compensation, benefits, or other terms or conditions of employment.
- G. A disruption in a Faculty Member's service due to FML taken in accordance with this Policy shall not count against years of service for purposes of eligibility for sabbatical leave under USM BOR policy II-2.00 – Policy on Sabbatical Leave for Faculty.

IX. STATUS OF BENEFITS WHILE ON FML

- A. A Faculty Member on FML under this Policy shall continue to be eligible for all employment benefits that he/she enjoyed immediately prior to the FML, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, unless otherwise elected by the Faculty Member

and subject to any generally applicable changes in benefits eligibility or terms that may have taken place during the period of FML.

- B. A Faculty Member on FML may continue employer-subsidized health care benefits during the period of leave. The President or designee shall, in accordance with Section XI.B of this Policy, provide advance written notice to the Faculty Member of the terms and conditions under which premium payments are to be made by the Faculty Member, which shall include the following:
1. If Accrued or Acquired Paid Leave or paid parental leave is being used concurrently during the FML period, the Faculty Member's share of premiums shall be paid by the method normally used during any paid leave; and
 2. If the FML period is unpaid, the Institution shall require the Faculty Member to pay his or her share of premium payments in the manner required by the State of Maryland Department of Budget and Management.

If a Faculty Member gives notice that he/she will not return to work, the Faculty Member will not be eligible to continue participating in employer health benefit plans, except to the extent eligible as a retiree or under COBRA.

- C. The Institution shall recover its share of health premiums during a period of unpaid FML if the Faculty Member fails to return to work (does not work for at least thirty (30) calendar days) after the FML has been exhausted or the Faculty Member's eligibility expires, unless the reason for not returning is due to the continuation, recurrence, or onset of a Serious Health Condition of the Faculty Member or Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, or other circumstances beyond the faculty member's control.

When a Faculty Member fails to return to work because of the continuation, recurrence, or onset of either a Serious Health Condition of the Faculty Member or Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, thereby precluding the Institution from recovering its (share of) health benefit premium payments made on the Faculty Member's behalf during a period of unpaid FML, the Institution shall require medical certification of the Faculty Member's or the Immediate Family Member's Serious Health Condition or the Covered Servicemember's Serious Injury or Illness. If the Institution requires such certification, the Faculty Member must provide the certification within thirty (30) days of the Institution's request. If the Faculty Member does not provide requested certification within thirty (30) days, or the reason for not returning to work does not involve circumstances beyond the Faculty Member's control, the Institution may recover one hundred percent (100%) of the health benefit premiums it paid during the unpaid FML.

- D. Except as noted in Section VIII, Job Rights and Protections, upon return from FML a Faculty Member shall be Restored all the rights, benefits, and privileges enjoyed prior to the leave.
- E. The status and maintenance of a Faculty Member's benefits other than employer-subsidized health care benefits during a period of paid or unpaid FML shall be determined by the Institution's established policies for providing those benefits when the Faculty Member is on other forms of leave (paid or unpaid, as appropriate). While on any unpaid portion of an FML, a Faculty Member shall not earn or accrue any additional leave or be entitled to salary or other compensation-based benefits.
- F. A Faculty Member may elect to purchase service credit at the time of retirement for prior leave without pay that is qualified by the Maryland State Retirement and Pension Systems. Upon approval of a leave without pay, a Faculty Member shall follow the Institution procedure to assure that this option may be exercised. Service credits are not applicable to the Optional Retirement Program.

X. FACULTY NOTICE REQUIREMENTS

A. Timing

A Faculty Member shall give at least thirty (30) calendar days' notice (or if not practicable, as soon as practicable, generally within two (2) workdays) before FML is to begin for leave based on an expected birth, placement for adoption or foster care, planned medical treatment for a Serious Health Condition of the Faculty Member or of an Immediate Family Member, or planned medical treatment for a Serious Injury or Illness of a Covered Servicemember. For leave due to a qualifying Exigency, notice must be provided as soon as practicable. The Faculty Member shall advise the Institution as soon as practicable if dates of scheduled leave change or are extended, regardless of whether FML is to be continuous or is to be taken intermittently or on a reduced schedule basis.

B. Content

The notice provided by the Faculty Member shall be written and provided to the Faculty Member's immediate supervisor and Provost (or his or her designee), sufficient to make the Institution aware that the Faculty Member needs FML and shall include the anticipated timing and duration of the leave, if foreseeable.

C. Notice by Spokesperson

Notice may be given by the Faculty Member's spokesperson (e.g., Spouse, adult family member, or other responsible party) if the Faculty Member is unable to do so personally.

XI. EMPLOYER NOTICE REQUIREMENTS

A. Eligibility Notice

When a faculty member requests FML, or when the Institution acquires knowledge that a faculty member's leave may be for an FML-qualifying reason, the Institution shall notify the faculty member of the faculty member's eligibility to take FML within five (5) business days, absent extenuating circumstances. The Institution shall provide this eligibility notice in writing using the prototype form issued by the Department of Labor, Wage and Hour Division.

B. Rights and Responsibilities Notice

Institutions shall provide written notice detailing the specific expectations and obligations of the Faculty Member and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the Faculty Member each time the eligibility notice is provided and may be contained within the same form. An Institution shall use the prototype form issued by the Department of Labor, Wage and Hour Division, which shall include:

1. A statement that the leave may be designated and counted against the Faculty Member's annual FML entitlement if qualifying and the Twelve- (12-) Month Period defined in Section II.W of this Policy;
2. Any requirement for the Faculty Member to furnish certification of a Serious Health Condition, Serious Injury or Illness, or qualifying Exigency arising out of Covered Active Duty or call to Covered Active Duty status, and the consequences of failure to do so;
3. A statement that the Institution will require the substitution of paid leave per Section IV of this Policy, the conditions related to any substitution, and the Faculty Member's entitlement to take unpaid FML if the Faculty Member does not meet the conditions for paid leave;
4. Any requirement for the Faculty Member to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis per Section IX of this Policy;
5. A statement of the Faculty Member's status as a Key Employee under USM BOR policy VII-7.50 – Policy on Family and Medical Leave for Nonexempt and Exempt Staff Employees, if he or she holds a concurrent administrative appointment under USM BOR policy II-1.03 – Policy on Concurrent Faculty and Administrative Appointments, and the potential consequence that Restoration may be denied following FML, explaining the conditions required for such denial;

6. A statement of the Faculty Member's rights to maintenance of benefits during FML and Restoration to the position held when FML commenced or an Equivalent Position upon return from FML; and
7. A statement of the Faculty Member's potential liability for payment of health insurance premiums paid by the Institution during the Faculty Member's unpaid FML if the Faculty Member fails to return to work after taking FML.

C. Designation Notice

1. When the Institution has enough information to determine whether the leave is being taken for an FML-qualifying reason (e.g., after receiving a certification, if requested), the Institution shall notify the Faculty Member in writing whether the leave will be designated and will be counted as FML, within five (5) business days absent extenuating circumstances. If the Institution has sufficient information to designate the leave as FML immediately after receiving notice of the Faculty Member's need for leave, the Institution shall provide the Faculty Member with the designation notice at that time. This notice shall be provided using the prototype form issued by the Department of Labor, Wage and Hour Division, which shall meet the requirements below in Section XI.C.2-4.
2. The Institution shall inform the Faculty Member in this written notice that the Institution is requiring the Faculty Member to use paid leave concurrently in the order set forth in Section IV of this Policy.
3. If the Institution will require the Faculty Member to present a fitness-for-duty certification to be Restored to employment, the Institution shall provide notice of such requirement with the designation notice. If the Institution will require that the fitness-for-duty certification address the Faculty Member's ability to perform the essential functions of the Faculty Member's position, the Institution shall so indicate in the designation notice, and shall include a list of the essential functions of the Faculty Member's position.
4. If the information provided by the Institution to the Faculty Member in the designation notice changes, the Institution shall provide written notice of the change within five (5) business days of receipt of the Faculty Member's first notice of need for leave subsequent to any change.
5. If an Institution does not designate leave as indicated in Section XI.C.1-4, the Institution may retroactively designate leave as FML with appropriate notice to the Faculty Member provided that the Institution's failure to timely designate leave does not cause harm or injury to the Faculty Member.

XII. CERTIFICATION

A. Medical Certification for Serious Health Condition of Faculty Member or Immediate Family Member.

1. For leave related to a Serious Health Condition, the Faculty Member shall provide medical certification(s) from the Faculty Member's or Immediate Family Member's Health Care Provider. The Institution shall use the Department of Labor's prototype forms for certification of the Serious Health Condition of an employee or the Serious Health Condition of a family member. The Faculty Member shall have fifteen (15) calendar days to obtain the medical certification unless not practicable to do so despite the Faculty Member's diligent good faith efforts. An Institution shall require only the following information in the certification:
 - a) The name, addresses, telephone number, and fax number of the Health Care Provider and type of medical practice/specialization;
 - b) A diagnosis of the nature and extent of the condition giving rise to the use of FML;
 - c) The approximate date the condition commenced and its probable duration;
 - d) A statement or description of appropriate medical facts regarding the patient's health condition for which FML is requested, including a regimen of continuing treatment to be prescribed;
 - e) In the case of a Faculty Member's Serious Health Condition, certification that the Faculty Member is unable to perform the essential functions of his/her position and prognosis of the Faculty Member's ability to return to his/her position;
 - f) In the case of an Immediate Family Member's Serious Health Condition, information sufficient to establish that the family member is in need of Care and an estimate of the frequency and duration of the leave required to Care for the family member; and
 - g) In cases of a request for intermittent or reduced schedule leave, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave, and:
 - i. An estimate of the frequency and duration of treatments and periods of recovery if the leave is for foreseeable planned medical treatment; or

- ii. An estimate of the frequency and duration of episodes of incapacity if the Serious Health Condition may result in unforeseeable episodes of incapacity.
2. If a Faculty Member submits a complete and sufficient certification signed by the Health Care Provider, the Institution may not request additional information from the Health Care Provider. However, the Institution may contact the Health Care Provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the Institution has given the Faculty Member an opportunity to cure any deficiencies as set forth in Paragraph D of this Section XII. To make such contact, the Institution must use a Health Care Provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the Faculty Member's direct supervisor contact the Health Care Provider.
3. The President or designee may require a second medical opinion at the Institution's expense if the Institution has reason to doubt the validity of a medical certification. The Institution may designate the Health Care Provider who is to furnish the second opinion. In the case of conflicting opinions, the opinion of a third Health Care Provider, agreed upon by both Faculty Member and the President or designee and obtained at the Institution's expense, shall be final and binding. The second and third opinions shall not be provided by individuals who are employed on a regular basis by the Institution.
4. The President or designee may require reasonable recertification as the FML continues. Recertification shall not be requested more often than every thirty (30) calendar days unless the Faculty Member requests an extension of FML, circumstances described by the previous certification have changed significantly, or the Institution receives information that casts doubt upon the continuing validity of the most recent certification. The Institution shall allow at least fifteen (15) calendar days for the Faculty Member to provide the requested recertification.

The Institution may ask for the same information on recertification as that set forth in Section XII.A.1 of this Policy. As part of the information allowed to be obtained on recertification for leave taken because of a Serious Health Condition, the Institution may provide the Health Care Provider with a record of the Faculty Member's absence pattern and ask the Health Care Provider if the Serious Health Condition and need for leave is consistent with such a pattern.

B. Medical Certification for a Covered Servicemember

When leave is taken to Care for a Covered Servicemember with a Serious Injury or Illness, an Institution may require the Faculty Member to obtain a certification completed by an authorized health care provider of the Covered Servicemember. For

this purpose, the Department of Defense (“DOD”) health care providers, a health care provider from the U.S. Department of Veterans Affairs (“VA”), DOD TRICARE Network and DOD non-network TRICARE authorized health care providers, and any Health Care Provider listed in Section II.K of this Policy are considered “authorized health care providers.” A Faculty Member may use the appropriate prototype form issued by the Department of Labor’s Wage and Hour Division or a comparable form requiring the same information (including invitational travel orders (“ITOs”) or invitational travel authorizations (“ITAs”) issued to any family member to join an injured or ill servicemember at his or her bedside). An Institution may require additional information per 29 C.F.R. § 825.310 or other applicable law.

Second or third opinions are not permitted if the health care provider is from DOD, the VA, or DOD-authorized private health care providers, but are permitted if the health care provider otherwise meets the definition of Section II.K of this Policy. Recertifications are never permitted for leave to Care for a Covered Servicemember. Should an extension of leave be required, additional certification may be requested.

C. Certification for Leave Taken Because of a Military Exigency

The first time a Faculty Member requests leave because of a qualifying Exigency arising out of the Covered Active Duty or call to Covered Active Duty status (or notification of an impending call or order to Covered Active Duty) of a Military Member, the Institution may require the Faculty Member to provide a copy of the Military Member's active duty orders or other documentation issued by the military which indicates that the Military Member is on Covered Active Duty or call to Covered Active Duty status, and the dates of the Military Member's Covered Active Duty service.

An Institution may additionally require that leave under this Paragraph be supported by a certification setting forth the information listed in 29 C.F.R. § 825.309 or other applicable law. An Institution shall use the appropriate prototype form issued by the Department of Labor’s Wage and Hour Division. An Institution may not require information additional to what is required by this Paragraph.

D. Sufficiency of Certification

The Faculty Member must provide a complete and sufficient certification to the Institution if required by the Institution under Paragraphs A, B, or C of this Section XII. The Institution shall advise the Faculty Member if the Institution finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the Institution receives a certification but one or more of the applicable entries have not been completed. A certification is considered insufficient if the Institution receives a complete certification, but the information provided is vague, ambiguous, or nonresponsive. The Institution must

provide the Faculty Member seven (7) calendar days (unless not practicable) to cure any such deficiency.

E. Confidentiality

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

XIII. DOCUMENTATION OF CERTAIN RELATIONSHIPS

If a Faculty Member takes FML under this Policy, including, but not limited to, for the birth of the Faculty Member's Child, the placement of a Child with the Faculty Member for adoption or foster care, or the need to take care of the Faculty Member's Child within a Twelve- (12-) Month Period after birth or placement, the Institution may require the Faculty Member giving notice of the need for leave to provide reasonable documentation or a statement of family relationship for purposes of confirming the family relationship. This documentation may take the form of, but is not limited to, a simple statement from the Faculty Member, a Child's birth certificate, an adoption certification, or a court document. The Institution is entitled to examine documentation, but the Faculty Member is entitled to the return of an official document submitted for this purpose.

XIV. SCHEDULING OF TREATMENT

- A. When planning medical treatment, the Faculty Member must consult with the Institution and make a reasonable effort to schedule the treatment so as not to disrupt unduly the academic program or unit of which the Faculty Member is a part, subject to the approval of the Health Care Provider. Faculty Members are ordinarily expected to consult with their Institution prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the Institution and the Faculty Member.
- B. If a Faculty Member fails to consult with the Institution to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the Institution's operations, the President or designee may initiate discussions with the Faculty Member, require the Faculty Member to make a reasonable effort to make such arrangements, and request the Faculty Member 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 academic program or unit of which the Faculty Member is a part.

XV. PROVIDING INFORMATION ABOUT FML

Regardless of the reason for the FML, a Faculty Member shall provide complete, accurate and timely information related to a request for, continuation of, modification(s) to, and return from FML. An Institution may require Faculty Members on FML to report

periodically on their status and intent to return to work if the Institution's procedures regarding such reports are nondiscriminatory and take into account all of the relevant facts and circumstances related to each Faculty Member's leave situation.

XVI. ABUSE OF FML

The President or designee shall review, investigate and resolve suspected cases of bad faith, fraud or abuse of the FML program. Cases of bad faith, falsification of documents, or fraudulent information related to FML provided to the Institution, or other abuses of the FML program, may result in actions by the Institution, including, but 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.

XVII. EARLY RETURN FROM LEAVE

A Faculty Member may discover after beginning FML that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. A Faculty Member may not be required to take more FML than necessary to resolve the circumstance that precipitated the need for leave. An Institution may require the Faculty Member to provide the Institution reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable.

XVIII. EXTENSION OF LEAVE

A Faculty Member may extend the date of return from FML to the extent they have remaining FML available. Notice need only be given one time regardless of whether the FML is to be continuous or is to be taken intermittently or on a reduced schedule basis, but the Faculty Member shall advise the Institution as soon as practicable if dates of scheduled FML are extended and provide recertification if requested.

XIX. FAILURE TO RETURN FROM LEAVE

- A. A Faculty Member who will not be returning to the Institution at the conclusion of FML shall so notify the President or designee in writing as soon as practicable. In the absence of written notification or other extenuating circumstances, failure to return from leave shall be generally interpreted as a resignation.
- B. If applicable, any benefit entitlement based upon length of service shall be calculated as of the Faculty Member's last paid day.

XX. SPOUSES EMPLOYED BY THE SAME USM INSTITUTION OR UNIT

- A. Regardless of whether Spouses work at the same Institution or in the same institutional unit, each Spouse shall be entitled to a separate, individual, maximum FML eligibility amount for the reasons listed in Section III of this Policy.

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- 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 FML eligibility amount.

XXI. MISCELLANEOUS

- A. The President or designee is under no obligation to immediately Restore a Faculty Member whose return from FML does not coincide with the normal operating schedule of the Institution or the normal work schedule of the Faculty Member's academic program and/or unit or Restore a Faculty Member whose return date is inconsistent with the terms and conditions of the Faculty Member's appointment.
- B. Entitlement to begin FML for reasons of childbirth, placement with the Faculty Member 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 FML must be concluded within this one-year period.
- C. Either the Faculty Member or the Institution may initiate a period of FML.

IMPLEMENTATION PROCEDURES:

Each President shall identify his/her designee(s) as appropriate for this Policy; develop procedures as necessary to implement this Policy; communicate this Policy and applicable procedures to faculty members at his/her Institution and the general campus community; and post this Policy on the institutional website. Each President shall forward a copy of such designations and implementation procedures to the Chancellor.

REFERENCE:

The Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2611 (2012); National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), Pub. L. No. 111-84 (2009); 29 C.F.R. pt. 825 (2016).