



TOPIC: Proposed Revision to USM Board Policy - VII-7.50 Family and Medical Leave

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: June 15, 2010

SUMMARY: The passage of the National Defense Authorization Act (NDAA) requires modification of Policy VII-7.50 Family and Medical Leave to include additional FMLA leave benefits for Staff employees with family members in the military. Also, as noted on the attached Executive Summary, certain provisions of the policy that are considered to be confusing or ambiguous are clarified and certain practices consistently applied at all institutions are codified.

As these changes are either in accordance with present USM practices or the result of complying with the NDAA, collective bargaining negotiations may not be necessary. However, each institution should review its agreements.

ALTERNATIVE(S): The Board could elect not to amend changes clarifications or codifications that are not required by law.

FISCAL IMPACT: The fiscal impact is estimated to be minimal.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the recommendations to policy VII-7.50 as presented.

COMMITTEE RECOMMENDATION: The committee did not act on this item. A revised policy is attached. DATE: 6/15/10

BOARD ACTION:

DATE:

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

**EXECUTIVE SUMMARY
CHANGES TO BOR POLICY VII-7.50
USM POLICY ON FAMILY AND MEDICAL LEAVE FOR
EXEMPT AND NONEXEMPT STAFF EMPLOYEES
6/15/10 FIN-BOR MEETING**

Background: The passage of the National Defense Authorization Act (NDAA) necessitated modification of the Family and Medical Leave Policy to incorporate the new reasons a staff member may take Family and Medical Leave associated with family members who are in the military. This required substantive changes to the policy. As major provisions needed to be added, we took this occasion to clarify provisions which were considered to be confusing or ambiguous and to reflect how the policy is applied at the member institutions.

Note: As these changes are all either in accordance with present USM practices and/or are the result of complying with the NDAA, negotiations over policy changes should not be required under collective bargaining terms. However, the terms of individual MOU's with regards to policies should be reviewed.

Substantive Changes:

Section II: Definitions

- The use of accrued leave was clarified
- Definitions of new terms associated with the Military Family and Medical Leave were added in accordance with the NDAA. These include:
 - Covered Family Members
 - Exigency Leave Circumstances
 - Short-Notice Deployment
 - Military Events
 - Childcare/school activities for child of covered servicemember
 - Financial and legal arrangements for military servicemember
 - Counseling
 - Rest and Recuperation following deployment to be with a servicemember
 - Post-deployment activities (including funeral arrangements)
 - Additional activities as mutually agreed by employer and employee
 - Next of Kin
- Additional examples of “serious health conditions”

Section III: Reasons for Family and Medical Leave

- Clarification of the definition of a “serious health condition”

- Addition of the two military-related reasons for leave, e.g., the need to care for a covered servicemember in the case of illness or injury and “qualifying exigencies arising out of military active duty and call-up

Section V: (New) Military Family Leave Entitlement

- Certain family members may use up to 26 workweeks in a 12-month period to care for a servicemember injured or who became ill anytime during the five (5) years preceding treatment
- Certain family members may use their 12-week entitlement to address any or all of the qualifying exigencies described above in Section II

Section IX: Compensation During Leave

- Clarified that staff may not have unpaid Family and Medical Leave if they have paid leave available for use for such absence

Section XIII: Medical Certification

- Clarified, upon request, an employee who has been off for a medical-related reason shall provide medical certification of fitness to return to work including medical limitations and their expected duration
- Reflects that no second-opinion or recertification can be requested when military health care providers are the “authorized healthcare providers” for leave to care for an injured/ill servicemember

Section XX: Miscellaneous

- Clarified that either an employee or the employer can invoke Family and Medical Leave
- Affirmative states that “reasonable documentation” related to any employee request for Family and Medical Leave may be requested

BOR June 18, 2010 Mtg – REVISIONS to comply with passage of National Defense Authorization Act (NDAA) and as clarified on attached Executive Summary

VII - 7.50 - USM POLICY ON FAMILY AND MEDICAL LEAVE FOR EXEMPT AND NONEXEMPT STAFF EMPLOYEES

(Approved by the Board of Regents, August 27, 1993; Amended April 16, 2004; Amended October 22, 2004, Amended -date-)

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 **and subsequent amendments to federal and state laws**. This policy applies to all **eligible** University System of Maryland (USM) Exempt and Nonexempt Staff employees on Regular Status. Under certain circumstances it is the policy of the USM 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. **Additionally, it applies to covered active duty (military) duty injury or illness and qualifying exigencies for covered active duty and call-up.**

II. TERMS AND DEFINITIONS

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

- A. **Accrued Leave** - Earned and unused annual leave, **certain** holiday leave, sick leave **available for use under the sick leave policy**, 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 **working a** reduced schedule. The alternative position shall have **equivalent** 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 (except for military F&M leave requests)** - 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. **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
- F. **Covered Family Members of Covered Servicemembers (Military Leave Only) - Care by an USM employee, for a Covered Servicemember who becomes ill or injured as a result of service in the military, who is a:**
- Spouse; and/or
 - Parent; and/or
 - Child (including adult children); or
 - if none of the above is available, the Next Of Kin
- G. **Covered servicemember -**
- 1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
 - 2) a veteran who 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) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- H. **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.
- I. **Equivalent Position** - A position at the institution to which an employee may be restored upon the completion of the F&M leave. The equivalent position shall have equivalent benefits, pay, and other terms and conditions of employment as the position from which the employee took leave.
- J. **Exigency Leave** - There are eight different circumstances that will qualify as an “exigency” for military F&M leave:

1. **Issues arising from a covered servicemember's short notice deployment [call to 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 active duty or call to active duty of a covered servicemember;**
 3. **Childcare and related activities arising from the active duty or call to active duty status of a covered servicemember (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 active duty or call to active duty) of a covered military member;**
 4. **Financial and legal arrangements (to make or update legal and/or financial arrangements for the covered servicemember'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 covered servicemember, or for a child of the covered servicemember, the need for which arose from the active duty or call to active duty of the covered servicemember;**
 6. **Rest and recuperation leave of up to five (5) days to spend with a covered servicemember (for each instance of short-term temporary leave rest and recuperation 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 90 days following the termination of the covered servicemember's active duty status, and issues arising from the death of a covered servicemember);**
 8. **Additional activities (provided that the employer and employee agree that such activities shall qualify as an exigency and agree to both the timing and duration of leave).**
- K. **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.

- L. **Immediate Family Member** – Is the employee's parent(s), spouse, or child(ren), or legal dependent(s).
- 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 employee claiming an *in loco parentis* relationship with a child, or any employee claiming to be the child of an *in loco parentis* relationship may be requested to provide documentation of such relationship.
- N. **Institution** – Is the employing USM institution; the USM institution from which the employee is taking leave.
- O. **Key Employee** - A salaried employee who is among the highest paid ten (10) percent of all the employees employed by the institution within 75 miles of the employee's workplace.
- P. **Next of Kin** – Is the nearest blood relative other than the covered servicemember's spouse, parent or child in the following order of priority, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA:
 - 1. **Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provision;**
 - 2. **Brothers and sisters;**
 - 3. **Grandparents;**
 - 4. **Aunts and uncles;**
 - 5. **First cousins.**
- Q. **Parent** – Is the employee's biological, adoptive, or foster mother or father, or someone who stood *in loco parentis* to the employee when the employee was a child.
- R. **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 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.
- S. **Serious Health Condition** - Is an illness, injury, impairment, or physical or mental condition that involves **either an overnight stay in a medical facility** or continuing treatment by a health care provider. A serious health condition is also intended to cover conditions or illnesses that affect the employee's health or the health of the 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 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 employee, a serious health condition means that the employee must be incapacitated from performing the essential functions of his/her position.

T. **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. **It also includes chronic medical conditions such as asthma, epilepsy which may cause episodic periods of incapacity.**

U. **Serious Injury or Illness -**

- 1) **in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means 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 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 veteran, as that term is defined in section 101 of title 38, United State Code, who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the five year period preceding the treatment, recuperation, or therapy, means 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** - The person to whom the eligible employee is legally married -- a husband or a wife.

W. **Twelve- (12-) Month Period** - Shall be defined in the institution's implementation procedures to indicate whether the twelve (**12**) months are based on a calendar year or a "rolling twelve month period" for uniform treatment of all employees at that institution.

III. REASONS FOR LEAVE

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

- the birth of the employee's child,
- the placement of a child with the employee for adoption or foster care,
- the need to take care of the employee's child within a twelve (12) month period from birth or placement,
- the need to take care of the employee's immediate family member who has a serious health condition,
- the serious health condition of the employee, **that makes the employee unable to perform any one of the essential functions of the employee's job,**
- **The need to take care of a covered servicemember's serious injury or illness, and**
- **Qualifying exigencies arising out of military active duty and call-up.**

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 twelve- (**12-**) month period. F&M leave can be taken continuously or, under certain circumstances, on a reduced F&M **work** schedule, or intermittently over the course of a twelve- (**12-**) month period. F&M leave entitlement shall not be carried over from a twelve- (**12-**) month period to the subsequent twelve- (**12-**) month period.

B. The actual F&M leave entitlement shall be based on the employee's percentage of full time work for the twelve- (**12-**) 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- (**12-**) 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- (12-) 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. **MILITARY F&M LEAVE ENTITLEMENT**

- A. **Military Caregiver Leave- An employee who is the spouse, child, parent or next of kin of a covered servicemember may use up to 26 workweeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.**
- B. **Exigency Leave-An employee with a spouse, child or parent who is a covered servicemember on Covered Active Duty or notified of an impending call or order to active duty status may use up to 12 workweeks of unpaid leave to address certain qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is on Covered Active Duty or notified of an impending call or order to active duty status. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.**

VI. **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- (12-) 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:
- Any prior F&M leave taken within the applicable year
- Sick leave withdrawn from the USM Leave Reserve Fund within the applicable year
- **Accrued, Advanced and/or** Extended sick leave used within the applicable year
- Accident leave used within the applicable year
- Any type of **paid or** unpaid leave for reasons related to family and medical circumstances taken within the applicable year.

VII. **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 **make a reasonable effort** 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 Chief Executive Officer (CEO) or designee may temporarily reassign an employee on intermittent or reduced F&M leave to an alternative position that better accommodates **planned reduced work schedules** or intermittent periods of leave.

VIII. SPOUSES EMPLOYED BY THE SAME USM INSTITUTION AND UNIT

- A. If spouses work at the same USM institution or in the same institutional unit, 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 employed by the same institutional unit 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.

IX. COMPENSATION DURING LEAVE

F&M leave is an unpaid leave. However, an employee shall not be granted unpaid F&M leave unless the employee has first exhausted all of the employee's paid leave available for use under USM leave policies and procedures (example, 15-day annual limit on the use of sick leave for immediate family members).

X. JOB PROTECTION

- A. Except as provided in X. 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 CEO 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.
 - 1. If at any point prior to or during the F&M leave the CEO or designee determines that the employee's former position cannot be held available for the duration of the leave, the CEO or designee, at the conclusion of the leave, 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 CEO 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 the employing USM institution, the CEO 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 CEO 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 CEO 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 CEO 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 CEO'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 CEO shall provide the notice described in X., 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 CEO 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 institution 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 CEO's/designee's notice. Based on the facts at that time, the CEO 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 CEO or designee shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

XI. 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. An employee 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 CEO 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. An employee 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 X., 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 an 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.

XII. 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.

XIII. 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:
 - A diagnosis of the nature and extent of the condition giving rise to the use of F&M leave,
 - Date condition commenced,
 - Regimen of treatment to be prescribed,
 - The duration of absence from work,

- In the case of the employee's serious health condition, 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,
 - 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,
 - Title and original signature of an accredited, licensed or certified medical provider.
- B. The CEO 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 may require an employee to provide periodic progress reports as to the serious health condition for which he/she is taking leave 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. **Medical certification of fitness to return to work that includes medical limitations and their expected duration shall be requested in writing by the CEO or designee prior to the employee's return to work.**
- D. **For military leave to care for a servicemember, the Department of Defense (DOD) healthcare providers, a healthcare provider from the U.S. Department of Veterans Affairs (VA), and DOD Tricare Network and non-network authorized healthcare providers are considered "authorized healthcare providers." The USM may not utilize the second opinion or recertification process for this leave entitlement. Should an extension of leave be required, additional certification may be requested.**
- E. 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.

XIV. 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.

XV. 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 an F&M leave.

XVI. ABUSE OF F&M LEAVE

The CEO 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.

XVII. 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 CEO 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 CEO 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.

XVIII. EXTENSIONS OF LEAVE

Employees may extend the date of return from an 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.

XIX. 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 CEO 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.

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

XX. MISCELLANEOUS

- A. The CEO 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.
- D. Either the employee or the institution may initiate a period of F&M leave.
- E. **REASONABLE DOCUMENTATION RELATING TO AN EMPLOYEE'S REQUEST FOR F&M LEAVE MAY BE REQUESTED.**

IMPLEMENTATION PROCEDURES

Each Chief Executive Officer shall identify his/her designee(s), if appropriate, for this policy; shall develop procedures as necessary for the posting, record-keeping and implementation of this policy **consistent with the detailed regulatory requirements of the family and medical leave act**; and shall communicate this policy and applicable procedures to members of his/her USM institution.

REFERENCE:

U.S. Department of Labor – The Family and Medical Leave Act of 1993, as amended - National Defense Authorization Act (NDAA), October 28, 2009

(MW-3/24/09;MW-11/23/09;MW-12/07/09;MW-12/08/09; MW-12/14/09; SHRC-2/04/2010; AdminVPs-3/23/2010; RV-3/26/2010; OAG-TF-4/21/2010; ChCncl-5/3/2010; FIN-BOR-6/15/2010; BOR-6/18/2010)