

VANDERBILT UNIVERSITY AND MEDICAL CENTER

HUMAN RESOURCES POLICIES AND PROCEDURES

SUBJECT: STATUTORY LEAVES OF ABSENCE (LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT, THE NATIONAL DEFENSE AUTHORIZATION ACT, AND THE TENNESSEE MATERNITY LEAVE ACT)

POLICY # HR-012A

EFFECTIVE DATE: March 1, 1999,

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(Highlighted areas were added on November 2, 2009)

POLICY

The function of this policy is to provide staff members with a general description of Vanderbilt's policy and processes as it relates to its obligations under the Family and Medical Leave Act (FMLA), the National Defense Authorization Act (NDAA), and the Tennessee Maternity Leave Act (TMLA).

DEFINITIONS

Family and Medical Leave Act (FMLA) – Federal law that entitles eligible staff members to take up to 12 weeks of unpaid, job protected leave in a 12 month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act expanded the FMLA to allow eligible staff members to take up to 12 weeks of job-protected leave in an applicable 12 month period for any “qualifying exigency” arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a “single 12 month period” to care for a covered service member with a serious injury or illness.

Tennessee Maternity Leave Act (TMLA) – State law that entitles eligible staff members to take up to four months of job protected leave for adoption, pregnancy, childbirth and nursing an infant.

A Twelve (12) Month Period- Vanderbilt has defined the “12 month period” as a rolling period measured from the date the staff member uses any FMLA leave. An eligible staff member is entitled to a total of 12 work weeks of leave during that 12 month time period.

An exception to the rolling 12 month period will occur when a staff member takes military caregiver leave to care for an injured service member. In this instance, the 12 month period will begin on the first day of military caregiver leave regardless of previous FMLA or other leave dates.

Serious Medical Condition - An illness, injury, impairment or physical or mental condition that involves either:

- Inpatient care in a hospital, hospice, or residential medical care facility; or
- Continuing treatment by a health care provider, as further defined.

Military Caregiver Leave – An eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness may take up to 26 weeks of leave during a single 12 month period to care for the service member.

For more information on FMLA definitions go to:

http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm#SEC_101_DEFINITIONS

General Provisions for Job Protected Leave of Absence (FMLA and TMLA)

Under this policy, Vanderbilt will grant to eligible staff members up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12 month rolling period. The leave may be paid, unpaid or a combination of paid and unpaid leave based on available accrued time. Staff members who do not qualify for FMLA may be able to take leave under Vanderbilt's Human Resources Leaves of Absence Policy #HR-012. Time provided for Job Protected Leave (FMLA or TMLA) must be used for a serious medical condition or other qualifying event before any non-Statutory leave may be utilized.

Additional rights may be available under the Tennessee Maternity Leave Act (TMLA) for staff members needing leave for the birth of a child or placement of child for adoption or foster care. See Section II of this policy for more information on TMLA.

I. Family and Medical Leave of Absence (FMLA)

A. Eligibility for FMLA

To qualify to take family or medical leave under this policy, the staff member must meet all of the following conditions:

- 1) The staff member must have worked for Vanderbilt for 12 months. The 12 months do not need to be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. These include when breaks in service are the result of National Guard or Reserve duty,

or under relevant provisions of a collective bargaining or other written agreement. For questions regarding eligibility when staff have a break in service, contact Employee Relations. For eligibility purposes, a staff member will be considered to have been employed for an entire week even if the staff member was on the payroll for any part of a week or if the staff member is on leave during the week.

- 2) The staff member must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. Hours worked does not include time spent on leave, whether that leave is paid or unpaid. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for a staff member under FMLA.

B. Events Covered under FMLA

To qualify as FMLA leave under this policy, the staff member must be taking leave for one of the reasons listed below:

- 1) *The birth of a child and/or in order to care for that child.*
- 2) *The placement of a child for adoption or foster care and to care for the newly placed child.*
- 3) *To care for a spouse, child¹ or parent with a serious health condition. If a staff member has a registered domestic partner under HR Policy #HR-016 <http://hr.vanderbilt.edu/policies/hr-016.pdf> or a child over the age of 18, contact Employee Relations for questions about leave².*
- 4) *The staff member's own serious health condition.*

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of more than three consecutive full calendar days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

¹ Child is defined under FMLA as less than 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability. This age restriction for a "child" applies to the use of FMLA time only.

² Domestic partner relationships and leave eligibility are referenced in the HR Domestic Partner Policy and the HR Leaves of Absence Policy.

Staff members with questions about what conditions are covered under this FMLA policy or under Vanderbilt's sick leave policy should consult with Employee Relations.

If a staff member takes sick leave for a condition that progresses into a serious health condition, and the staff member requests additional medical leave as provided under this policy, Vanderbilt may designate all or some portion of the leave taken as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

- 5) *Qualifying exigency leave for family members of all covered member's of the Armed Forces including the National Guard and Reserves when the military member is on covered active duty. Staff must provide supporting documentation (i.e. Military Orders) to Employee Relations.*

A staff member whose spouse³, son, daughter or parent either has been notified of an impending call or order to active military duty, or who is already on active duty, may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the department and the staff member agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for a child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the staff member's 12-week maximum of FMLA leave in a 12-month period.

- 6) *Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member, including a veteran who develops an injury or illness that occurred while on active duty five years prior to seeking treatment.*

This leave may extend to up to 26 weeks in a single 12-month period for a staff member to care for a service member with a serious illness or injury incurred in the line of duty, on active duty, when that service member is the spouse⁴, son,

³ If a staff member has a registered domestic partner under HR Policy #HR-016, contact Employee Relations for questions about leave. <http://hr.vanderbilt.edu/policies/hr-016.pdf>

⁴ If a staff member has a registered domestic partner under HR Policy #HR-016, contact Employee Relations for questions about leave. <http://hr.vanderbilt.edu/policies/hr-016.pdf>

daughter or parent of the staff member. This rule also applies when the staff member is the injured service member's next of kin. Next of kin is defined as the closest blood relative of the injured or recovering service member or person designated by the service member.

For more information on the National Defense Authorization Act go to:
<http://www.dol.gov/esa/whd/regs/compliance/whdfs28a.pdf>

C. Amount of Leave Time Covered Under FMLA

An eligible staff member can take up to 12 weeks of leave for the FMLA circumstances (1) through (5) above under this policy during any 12-month period. Vanderbilt utilizes a rolling 12 months for the purpose of determining the amount of FMLA leave available to the staff member.

An eligible staff member can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the "single 12 month period" begins on the first day the eligible staff member takes FMLA leave to care for a covered service member and ends 12 months after that date. FMLA time taken for other circumstances prior to the military caregiver leave does not count against the 26 weeks.

If a husband and wife both work for Vanderbilt and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for the staff member's own parent with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for Vanderbilt and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

Additional leave time may be available under Leaves of Absence HR Policy# - 012. Unless otherwise required by law, a staff member is allowed no more than 6 months of leave time in any rolling 12 month period.⁵ With the exception of the Military Caregiver Leave, all leaves under this policy run concurrently.

II. Tennessee Maternity Leave Act

Staff members who have been employed by Vanderbilt full-time for at least 12 months are eligible for up to 4 months of job protected leave for the birth of a child or the placement of a child for adoption or foster care. FMLA leave runs concurrently with leave taken under TMLA, and leave taken under FMLA and/or TMLA counts towards

⁵ Staff members should contact the Opportunity Development Center if additional time is being requested as a result of a disability.

the maximum of 6 months of leave allowed in any 12 months period under Human Resources Leaves of Absence Policy # - 012 unless otherwise required by law.

The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on availability of accrued time. Staff members who do not qualify for TMLA may be able to take leave under Vanderbilt Leaves of Absence Policy #HR - 012.

III. Request for Leave

A. Procedure for Requesting FMLA Leave

All staff members requesting FMLA leave must provide verbal or written notice of the need for the leave to their supervisor. If possible, the staff member should complete the Staff Member Leave of Absence Request Form, found on-line in the Forms and Documents section of the Human Resources website.

<http://hr.vanderbilt.edu/forms/index.htm> A hard copy can be obtained in the Employee Relations Office. If it is not possible for the staff member to complete this form, or if the staff member gives verbal notice or if the staff member's need for FMLA is not clear, the department should complete the Department Notification of FMLA Request, found on-line in the Forms and Documents section of the Human Resources website. <http://hr.vanderbilt.edu/forms/index.htm> In either case, the department should forward this initial FMLA form to Employee Relations immediately.

When the need for the leave is foreseeable, the staff member must provide the employer with at least 30 days' notice. When a staff member becomes aware of a need for FMLA leave less than 30 days in advance, the staff member must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the staff member must comply with normal call-out procedure requirements and procedures for requesting leave, absent unusual circumstances.

B. Procedure for Requesting TMLA Leave

All staff members requesting TMLA leave must provide 3 months advance written notice of the anticipated date of departure and intent to return to full-time employment after completion of the leave. The 3 months advance notice is waived in the case of a medical emergency that requires the leave to begin earlier than anticipated or the staff member receives less than 3 months notice of the adoption.

IV. Notification of Eligibility

Within five business days after the staff member has provided notice, or within five business days after the department becomes aware of the possible need for

FMLA leave, the Employee Relations department will complete and provide the staff member and the department with Notice of Eligibility and Rights.

<http://www.dol.gov/esa/whd/forms/WH-381.pdf>

If the staff member does not meet eligibility requirements, written notification of this information will be provided along with options of other leaves that may be available.

V. Certifications

A. Certification for the Staff Member's Serious Health Condition

The Occupational Health Clinic (OHC) will receive all medical provider certifications for staff members or family member medical conditions. The staff member must respond to the request for certification within 15 calendar days of the request. Failure to provide certification may result in a denial of continuation of leave or other FMLA protections. Medical certification will be provided using Vanderbilt's FMLA Leave Request for Employee's Medical Condition form.

<http://hr.vanderbilt.edu/forms/index.htm>

If, after the initial medical certification, the staff member needs to renew or change the leave request, an additional or amended medical certification must be submitted to the Occupational Health Clinic. The Occupational Health Clinic may only contact the staff member's health care provider for verification or clarification purposes with the staff member's written authorization. Alternatively, the staff member will have 7 calendar days to resolve any deficiencies in the medical certification. If, after 7 calendar days the identified deficiencies have not been resolved, the FMLA request will be denied. At that point, the staff member may reapply for FMLA leave. FMLA requests for leave for work injuries involving Workers' Compensation may follow a different process with respect to the verification or clarification of the medical certification.

B. Certification for the Family Member's Serious Health Condition

Vanderbilt will require certification for the family member's serious health condition. The staff member must respond to such a request within 15 days of the request. Failure to provide certification may result in a denial of continuation of leave or other FMLA protections. Medical certification will be provided using Vanderbilt's FMLA Leave Request for Family Member's Medical Condition form.

<http://hr.vanderbilt.edu/forms/index.htm>

If, after the initial medical certification, the staff member needs to renew or change the leave request, he/she is required to submit an additional or amended medical certification to the Occupational Health Clinic.

The Occupational Health Clinic may directly contact the staff member's family member's health care provider for verification or clarification purposes with the employee's family member's permission. Before the Occupational Health Clinic makes this direct contact with the health care provider, the staff member will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the Occupational Health Clinic will obtain the staff member's family member's permission for clarification of individually identifiable health information.

C. Certification of Qualifying Exigency for Military Family Leave (FMLA-National Defense Authorization Act)

Vanderbilt will require certification of the qualifying exigency for military family leave. The documentation (i.e. military orders) should be sent to Employee Relations. The staff member must respond to such a request within 15 days of the request. Failure to provide certification may result in a denial of continuation of leave or other FMLA protections. This certification will be provided using the Certification of Qualifying Exigency for Military Family Leave form and will be evaluated by Employee Relations. <http://www.dol.gov/esa/whd/forms/WH-384.pdf>

Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave (FMLA-National Defense Authorization Act)

Vanderbilt will require certification for the serious injury or illness of the covered service member. The certification must be submitted to the Occupational Health Clinic. The staff member must respond to such a request within 15 days of the request. Failure to provide certification may result in a denial of continuation of leave or other FMLA protections. This certification will be provided using Vanderbilt's FMLA Leave Request for Family Member's Medical Condition. <http://hr.vanderbilt.edu/forms/index.htm>

D. Recertification

The Occupational Health Clinic may request recertification for the serious health condition of the staff member or the staff member's family member in accordance with the regulations under the FMLA. Recertification will be necessary when the staff member seeks an extension of his or her leave. When the need for leave lasts beyond 12 months, the staff member must provide a new medical certification in each subsequent leave year. If Vanderbilt receives information casting doubt on the reason given for the absence, the department should consult with Employee Relations.

VI. Designation of FMLA Leave

Leave will be designated as FMLA in accordance with regulatory guidelines as well as those set forth in this policy. Staff will receive written notification to confirm the designation of leave under the FMLA.

VII. Consecutive, Intermittent Leave or a Reduced Work Schedule

An eligible staff member may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day or shorter period of time periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in reduced hours. For the birth, adoption or foster care of a child when there is no serious medical condition, the leave may not be taken intermittently or work a reduced schedule without the agreement of the staff member's department. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

In all cases, the cumulative leave taken may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period or 3 months in the event of a child birth, adoption or foster care).

A staff member seeking a reduced work schedule or late start time under FMLA must submit a medical provider certification form completed by their medical provider to the Occupational Health Clinic. It is the staff member's obligation to notify the supervisor/manager that an absence or incident of tardiness that may be covered by FMLA. If the absence or tardiness is protected under the FMLA, it will not count as an occurrence under HR Policy #HR-026 <http://hr.vanderbilt.edu/policies/hr-026.pdf>. If a department learns that an absence or tardy is due to a serious medical condition, they should complete the Department FMLA Notification Form.

Vanderbilt has the right under FMLA to temporarily transfer a staff member to an available alternative position with equivalent pay and benefits to better accommodate the intermittent or reduced schedule. Before transferring a staff member to an alternative position, the department should consult with Employee Relations. Once FMLA is exhausted or no longer needed the manager will return the staff member to the original position. Any requests for job modifications by staff member beyond FMLA must be referred to the Opportunity Development Center (ODC).

If the staff member is taking FMLA leave on an intermittent or reduced schedule, the staff member should make reasonable effort to work with the department to schedule the leave around the work schedule. However, prior to denying FMLA leave for treatment, or on an intermittent or reduced leave schedule, the department should consult with Employee Relations.

VIII. Staff Member Status and Benefits While on Leave

While a staff member is on leave, Vanderbilt will continue the staff member's health benefits during the leave period at the same level and under the same conditions as if the staff member had continued to work.

Under current Vanderbilt policy, the staff member pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the staff member's share of the premium. While on unpaid leave, the staff member must continue to make this payment, either in person or by mail. The payment must be received in the Direct Billing Department, VU Station B 357700, Nashville, TN 37235-7700 by the first day of every month. If the staff member chooses not to return to work for reasons other than a continued serious health condition of the staff member or the staff member's family member or a circumstance beyond the staff member's control, Vanderbilt may require the staff member to reimburse Vanderbilt the amount it paid for the staff member's health insurance premium during the leave period.

If the staff member contributes to a life insurance or disability plan, Vanderbilt will continue making payroll deductions while the staff member is on paid leave. While the staff member is on unpaid leave, the staff member may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the staff member's share of the premium payments. If the staff member does not continue these payments, Vanderbilt may discontinue coverage during the leave. If Vanderbilt maintains coverage, it may recover the costs incurred for paying the staff member's share of any premiums, whether or not the staff member returns to work.

Staff members are eligible to continue the dependent tuition benefit during a leave of absence. The staff member's own tuition benefit or spouse tuition benefit are available only if the staff member is in a paid status.

IX. Pay Status While on Leave

A staff member who is taking FMLA leave because of the staff member's own serious health condition or the serious health condition of a family/service member must use all available paid sick, vacation, personal or unused holiday leave prior to being eligible for unpaid leave. For leave to bond with a well child or other maternity leave where there is no serious medical condition, staff must use all available vacation, personal and unused holiday time but cannot use sick time.

A staff member who is using military FMLA leave for a qualifying exigency must use all vacation, personal and unused holiday time prior to being eligible for unpaid leave.

All leave accruals cease when a staff member moves to an unpaid status. Accruals restart upon the staff member's return to paid status.

If the staff member wants to continue receiving full salary and benefits while on leave after a Worker's Compensation injury or illness, he or she may choose to supplement any Workers' Compensation benefit that is available to them up to their full weekly wages. Supplemental time should be used in following order; sick⁶, vacation, personal and holiday.

If a staff member is receiving short term disability insurance benefits, he/she may not use sick, vacation, personal, or holiday time.

X. Communication with Staff Member While on Leave

A department with a staff member on an FMLA leave may periodically contact the staff member to inquire about his/her leave, including matters related to FMLA paperwork and intent to return to work.

XI. Staff Returning from Leave

Staff members are expected to be able to return to work by the end of his/her approved leave. Prior to returning from leave for a personal health condition, the staff member must secure a release from their health care provider confirming their release to return to work to perform his/her regular duties or set forth any restrictions. The Request to Return from Medical Leave of Absence Form <http://hr.vanderbilt.edu/forms/form/irequestreturnleave.pdf> should be completed and submitted to the staff member's supervisor prior to the first day the staff member is scheduled to return to work. After the supervisor has reviewed the form, it should be forwarded to Occupational Health where both the medical certification and the release to return from medical leave will be retained.

If the staff member is released to return to work with restrictions, the department in consultation with Employee Relations and the Opportunity Development Center⁷ will consider whether the restriction can be met in the workplace. Medical restrictions are those that prevent the staff member from performing his/her regular duties at the end of the approved leave due to a continuing medical condition.

If the staff member does not return to work at the end of his/her FMLA leave and the staff member has not been granted any additional leave, employment ends as a resignation effective the last day of the approved leave, unless a continuation of leave has been granted as an accommodation under the Americans with Disabilities Act, or for other reasons.

⁶ Refer to HR Sick Time Policy (HR Policy# 029) <http://hr.vanderbilt.edu/policies/hr-029.pdf>

⁷ The Opportunity Development Center (ODC) is Vanderbilt's Equal Employment Opportunity and Disability Services office.

A staff member who takes leave under the FMLA will normally return to the same position or a position with equivalent status, pay, benefits and other employment terms. However, the staff member has no greater right to reinstatement or to other terms and conditions of employment than if the staff member had been continuously at work. For example, if a staff member's position would have been eliminated, or if the staff member would have been terminated had he or she been actively at work, the staff member's position could still be eliminated or the employment relationship terminated.

Certain key staff members may not be returned to the same or similar condition. Before denying a return to the same position, the supervisor must contact Employee Relations.

For questions regarding leave requests, contact your immediate supervisor. If you have questions regarding interpretation of the policy or would like hard copies of any forms, please contact Employee Relations at 322-7259.

The follow links have been provide for additional information regarding FMLA:

<http://www.dol.gov/esa/whd/fmla/index.htm>

<http://www.dol.gov/esa/whd/regs/compliance/whdfs28a.pdf>

<http://www.dol.gov/esa/whd/fmla/finalrule/MilitaryFAQs.pdf>

Approved by Lenon Coleman, Interim Chief Human Resource Officer

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