

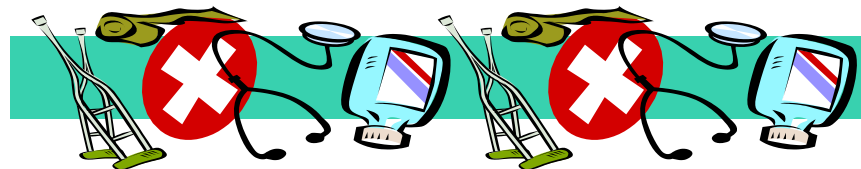


# The Family And Medical Leave Act (FMLA) 1993



# Outline

- Definition & Enforcement
- Eligible employees
- Lost time covered
- Serious Health Condition
- Intermittent Leave
- Continuation of Benefits
- Employee Rights to Reinstatement
- Consequence of Non-Compliance
- FMLA Approval
- What to do?



# The Family And Medical Leave Act

*“FMLA requires covered employers to provide up to 12 weeks of unpaid job protected leave to “eligible employees” for certain family and medical reasons.”*

- 12 work weeks **can be either** continuous or intermittent
- The Act under Public Law 103-3 is enforced by the Wage and Hour Division of the U.S. Department of Labor

# Eligible Employees

## Employees must:

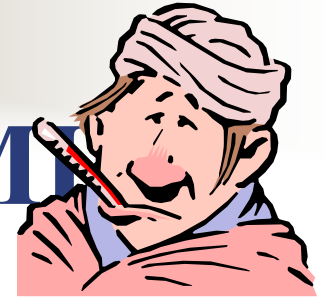
- Be employed at least 12 months (prior to request) and 1250 hours during previous 12 months

## Exception:

- 10% highest paid employees may be given leave without guaranteed reinstatement (cannot deny health insurance)

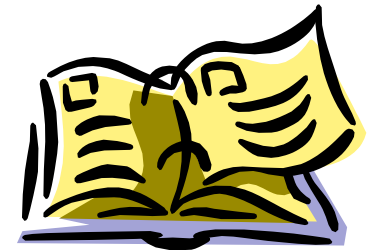


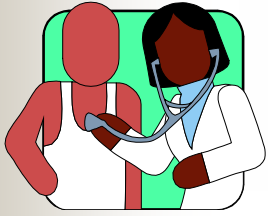
# Lost time covered under FMLA



- Personal illness (or “short term disability - STD”)
- Workers’ compensation injuries/illnesses
- Non-Personal absences (those taken for “*serious health*” conditions for family members)

At UTSA, FMLA runs concurrent with sick/vacation time, STD, and Worker’s Compensation. Therefore, employee will consume sick/vacation time while on FMLA.





# FMLA can be taken

- Employees own “*serious health condition*” (including workers’ compensation)
- To care for spouse, son/daughter, or parent with a serious health condition
- Birth of a child and to care for the newborn child (time can be taken within first 12 months after birth)
- Adoption or placement of a child by the employee (time can be taken within first 12 months after birth)



# *“Serious Health Condition”*

...an illness, injury, impairment, physical or mental condition that involves either:

1. **Inpatient Care** (overnight) in a hospital, hospice, or medical care facility and including any period of incapacity.

“**Incapacity**” is the inability to work, attend school, or perform regular daily activities



# *“Serious Health Condition”*

2. **Continuing Treatment** by a Health Care Provider (HCP) that involves any one of the following:
  - a. Incapacity of more than 3 consecutive calendar days (and subsequent treatment/period of incapacity relating to the same condition that also involves):
    - Treatment 2 or more times by HCP
    - Visit to HCP once with regimen of treatment (e.g. prescription medication)



# “Serious Health Condition”

3. Any period of incapacity due to pregnancy or prenatal care
4. Any period of incapacity/treatment due to a chronic serious health condition
5. A period of incapacity that is permanent or long-term and treatment may not be effective (Alzheimer’s, stroke, terminal illness)
6. Any period of absence to receive multiple treatments

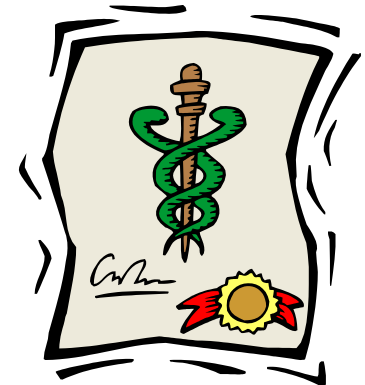


# Intermittent Leave

- There must be a medical need for the leave as described under a “serious health condition”
- May be intermittent or on a reduced leave schedule
- Employee must attempt to schedule leave so as not to disrupt the employer’s operations
- Employer may assign employee to an alternative position (equal pay and benefits)

# Continuation of Benefits

- During FMLA leave, employer must maintain the employee's group health plan benefits (employee may be required to continue to pay their portion)
- Employee is entitled to salary increases (that were unconditional) upon return to same position
- An employee may not be disqualified from bonuses for taking FMLA leave





# Employee Rights For Reinstatement

- Same or equivalent position with same benefits and pay
- If employee unable to perform essential job functions due to mental, physical condition, or serious health condition, there is no right to restoration to another position under FMLA. There may, however, be obligations under American's with Disabilities Act (ADA).



# Consequence for Non Compliance



Depends upon the magnitude of the problem and the agency discovering the violation.

However, the employee may receive one or more of the following:

- Wages, attorney/witness fees, court costs, employment benefits denied, monetary losses caused by the denial, reinstatement or promotion (depending upon the employment action that was denied as a result)



# FMLA APPROVAL

- For both faculty and staff, it is made by Human Resources (in coordination with supervisor)
- Appeals on denials for FMLA should be addressed with HR





# WHAT TO DO?

- When employee is off of work or expects to be off work due to illness or injury for 3 or more calendar days,
- If employee has an attendance problem (and prior to recommending termination or disciplinary action), OR
- Employee has developed a “pattern” of absences

**CALL**



**UTSA Leave Administration**

**210-458-4250**

