

II-2.31 - POLICY ON FAMILY AND MEDICAL LEAVE FOR FACULTY
(Approved by the Board of Regents, October 6, 1995)

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. This policy applies to all eligible faculty of the University of Maryland System (UMS) who are covered by the provisions of UMS BOR Policy II - 1.00 on Appointment, Rank, and Tenure of Faculty. Under certain circumstances it is the policy of the UMS to provide a faculty member with 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.

II. Terms and Definitions:

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

- A. Accrued Leave: Earned and unused annual, holiday, sick, and personal leave.
- B. Alternative Position: A position to which a faculty member may be temporarily reassigned during a period of intermittent F&M leave and/or reduced schedule. The alternative position shall have the same benefits and pay as the position from which the 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. Child: A person who is the son or daughter of a 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 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 faculty member. A child is also someone who is the legal ward of the faculty member or someone for whom the faculty member has provided sufficient, notarized affidavit(s) and proof of financial dependence that he/she is standing in loco parentis.
- E. Faculty Member: An employee who is covered under the provisions of UMS BOR Policy II - 1.00 on appointment, rank, and tenure of faculty and (1) whose date of hire is 12 months prior to the date of the requested leave, and (2) whose employment during the twelve months preceding the leave request was at least 50 percent or greater of full-time under a 9.5 month or longer contract, or who has been employed for at least twelve months (which need not be consecutive) and has worked at least 1,040 hours during the twelve months preceding the leave request.
- F. Equivalent Position: A position at the institution to which a faculty member shall be restored upon the completion of the F&M leave. 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.

- G. 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; and Christian Science Practitioners listed with the First Church of Christ Scientist in Boston.
- H. Immediate Family Member: Is the faculty member's parent(s), spouse, or child(ren), or legal wards.
- I. In Loco Parentis: "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties and responsibilities." Any eligible faculty member claiming an in loco parentis relationship with a child, or any eligible faculty member claiming to be the child of an in loco parentis relationship may be requested to provide documentation of such relationship.
- J. Institution: Is the employing UMS institution -- the UMS institution from which the faculty member is taking leave.
- K. Parent: Is 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.
- L. 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 faculty member will be returned either to the same position from which he/she took leave, or to an equivalent faculty position.
- M. Serious Health Condition: Is an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or home care, or continuing treatment by a health care provider. A serious health condition is also intended to cover conditions or illnesses that affect the faculty member's health or the health of the faculty member'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 faculty member must be absent from work on a regular and recurring basis for more than a few days for treatment or recovery. With respect to the faculty member, a serious health condition means that the faculty member must be incapacitated from performing the essential functions of his/her position.

Examples of serious health conditions applicable to the faculty member or the faculty member'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 a faculty member 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.

- N. Spouse: The person to whom the faculty member is legally married -- a husband or a wife.

III. Reasons for Leave:

- A. A faculty member is entitled to take F&M leave for the following reasons:
- . the birth of the faculty member's child,
 - . the placement of a child with the faculty member for adoption or foster care,
 - . the need to take care of the faculty member's child within a twelve (12) month period from birth or placement,
 - . the need to take care of the faculty member's immediate family member who has a serious health condition, and
 - . the serious health condition of the faculty member.
- B. F&M leave is not intended to cover minor illnesses that last only a few days and short term medical and/or surgical procedures that typically do not involve hospitalization and require only a brief recovery period such as these that are normally handled through non-creditable and earned sick leave (see UMS BOR II - 2.30).
- C. 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. F&M Leave Entitlement:

- A. A faculty member is entitled to a maximum of twelve (12) workweeks (60 days) of F&M leave within a calendar year. F&M leave can be taken continuously or, under certain circumstances, on a reduced F&M leave schedule, or intermittently over the course of a calendar year. F&M leave entitlement shall not be carried over from calendar year to calendar year.
- B. The actual F&M leave entitlement shall be integrated with the amount of other leave taken for F&M-related reasons during the calendar year within which the F&M leave is to begin.
- C. A faculty member who regularly works full time is entitled to a maximum of twelve (12) workweeks (60 days) of F&M leave per calendar year. A faculty member who works less than full time is entitled to a pro rata share of the twelve (12) week/sixty (60) day maximum.
- D. The spouse of a faculty member employed by the UMS shall be entitled to a separate, individual, maximum family and medical leave eligibility amount. 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. 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 faculty member and for the serious health condition of the faculty member's immediate family members. Requests for simultaneous F&M leave by spouses employed by the same institutional unit may be granted for reasons of childbirth, placement with the faculty member of a child for adoption or foster care, or care for a newborn child, to the extent that simultaneous leaves do not substantially disrupt the academic program or unit of which the faculty members are a part.

V. Integration of Other Leave Taken with F&M Leave Entitlement:

Actual F&M leave entitlement shall be based on the faculty member's use of other leave during the calendar year within which the F&M leave begins. The faculty member'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, including accrued paid leave and noncreditable leave substituted for F&M leave
- . Accident leave used within the applicable year
- . Any type of unpaid leave for reasons related to family and medical circumstances taken within the applicable year.

VI. Compensation During Leave:

F&M leave is an unpaid leave. However, based upon either the election of the faculty member or the requirement of the Chief Executive Officer or designee and in accordance with UMS's and the institution's existing leave procedures, accrued paid leave and noncreditable leave used for purposes that qualify under FMLA shall be substituted for all or any part of the F&M leave.

VII. Status of Benefits While on Family and Medical Leave:

- A. A faculty member 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 faculty member 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 Chief Executive Officer or designee shall 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. The subsidy shall cease if a faculty member 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 faculty member 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 faculty member's control.
- C. Except as noted in Section X, Job Protection, upon return

from leave a faculty member shall be restored with all the rights, benefits and privileges enjoyed prior to the leave.

- D. While on any unpaid portion of a F&M leave, a faculty member shall not earn or accrue any additional leave.
- E. A faculty member 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, a faculty member shall follow the institution procedure to assure that this option may be exercised.

VIII. Notice of F&M Leave:

Regardless of the reason for the F&M leave a faculty member shall give at least thirty (30) calendar days notice and provide the appropriate medical certification or legal certification of adoption or foster child placement, before taking a F&M leave. When the need for leave is not foreseeable, a faculty member 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 faculty member or the faculty member's designee shall give written notice and provide the appropriate certification as soon as practicable

IX. Job Protection:

- A. A tenure-track faculty member whose leave under the sick leave or FMLA leave policies totals at least one semester or six continuous months may request through his or her department chair or appropriate appointing authority that the mandatory tenure review be postponed. 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 IX. C., D., and E., and F., a faculty member returning to work at the conclusion of a F&M leave shall be restored to his/her former position with the pay, benefits and terms and conditions of employment that he/she enjoyed immediately prior to the F&M leave.
- C. A faculty member is not entitled to restoration if the Chief Executive Officer 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 F&M leave the Chief Executive Officer or designee determines that the faculty member's former position cannot be held available for the duration of the leave, the Chief Executive Officer or designee, at the conclusion of the leave, shall restore the faculty member to an equivalent position.

If the determination of an inability to hold the former position occurs after the F&M leave begins, the Chief Executive Officer 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 employee will be restored. The faculty member shall have the right to return within fifteen (15) working days from receipt of such notice to keep his/her former position.

- E. If there are reductions in the work force while the faculty member is on F&M leave and he/she would have lost his/her position under the institution's retrenchment policy(ies) had he/she not been on leave, there is no obligation to restore the faculty member to his/her former or equivalent position.
- F. A faculty member shall be restored consistent with current, applicable, appropriate pay, benefits and other terms and conditions of employment.

X. Medical Certification:

- A. For leaves related to serious health conditions and to childbirth, the faculty member shall provide medical certification(s) from the faculty member's or family member's health care provider. 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. Such certification shall include but not be limited to:
 - . A statement of medical facts meeting the criteria for "serious health condition,"
 - . Date condition commenced,
 - . Regimen of treatment to be prescribed,
 - . The duration of absence from work,
 - . In the case of the 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,
 - . In the case of the faculty member's need to care for a seriously ill family member, certification of the necessity for and duration of the faculty member'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 Chief Executive Officer 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 faculty member and the Chief Executive Officer 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 Chief Executive Officer or designee may require reasonable recertification as the F&M leave continues, and may require a faculty member to provide periodic progress reports as to the serious health condition for which he/she is taking leave and the faculty member'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 faculty member 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.

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

XI. Intermittent or Reduced Leave:

- A. In the case of a documented medical necessity, a faculty member shall be entitled to intermittent leave and/or a reduced schedule that reduces regular hours per workday or workweek for purposes of the faculty member's or the immediate family member's serious health condition. The faculty member shall attempt to schedule intermittent leave or leave on a reduced schedule so as not to substantially disrupt the academic program or unit of which the faculty member is a part.
- B. A faculty member may be granted leave that reduces regular hours per workday or workweek for reasons of childbirth, placement with the faculty member 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 on the academic program or unit of which the faculty member is a part.
- C. The Chief Executive Officer or designee may temporarily reassign a faculty member on intermittent or reduced F&M leave to an alternative position that better accommodates reduced or intermittent periods of leave.

XII. Scheduling of Treatment In Instances of Serious Health Conditions:

- A. In instances of the serious health condition of a family member or of the faculty member himself or herself, and in keeping with the requirements of the appropriate health care provider, the faculty member shall make reasonable efforts to schedule any medical treatments so as not to substantially disrupt the academic program or unit of which the faculty member is a part.
- B. During the course of the treatment and as the Chief Executive Officer or designee deem appropriate, the faculty member 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 academic program or unit of which the faculty member is a part.

XIII. Providing Information About F&M Leave:

Regardless of the reason for the leave, a faculty member shall provide complete, accurate and timely information related to a request for, continuation of, modification(s) to, and return from a F&M leave.

XIV. Early Return from Leave:

A faculty member interested in returning to work from a F&M leave prior to the agreed upon end of the leave date shall provide the Chief Executive Officer or designee with a written request at least seven (7) calendar days prior to the date on which the faculty member is interested in returning. The

Chief Executive Officer or designee shall make a good faith effort to restore the faculty member to his/her former or an equivalent position as soon as possible but no later than thirty (30) calendar days after receipt of the request.

XV. Extensions of Leave:

A faculty member may extend the date of return from a 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.

XVI. Failure to Return from Leave:

- A. A faculty member who will not be returning to the institution at the conclusion of a leave shall so notify the Chief Executive Officer or designee in writing as soon as practicable. The Chief Executive Officer or designee may request certification of reasons for the faculty member's failure to return to work. In the absence of written notification, failure to return from leave shall be 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.
- C. Employer costs of any payments made to maintain the faculty member's benefit coverage when on unpaid F&M leave shall be recovered if a faculty member fails to return to work as described in Section VII.B.

XVII. Abuse of F&M Leave:

The Chief Executive Officer 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.

XVIII. 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; shall communicate this policy and applicable procedures to faculty members of his/her UMS institution; and shall forward a copy of such designations and implementation procedures to the Chancellor.