

## **ARTICLE 27 LEAVES OF ABSENCE**

### **A. General Provisions**

Subject to the provisions of this Article and any applicable law, leaves of absence may be with or without pay, may be for medical purposes and/or non-medical reasons, and are subject to the approval of the University. Nothing shall preclude the University, on a campus-by-campus basis, from establishing, implementing, or continuing a Catastrophic Illness or Injury Leave policy covering bargaining unit employees.

#### **1. Definitions**

- a. Non-medical leaves of absence, with or without pay, include: Family and Medical Leave (“FML”) taken for certain purposes (to care for a family member with a serious health condition, Parental Leave, Military Caregiver Leave, and Qualifying Exigency Leave), as well as leave for jury duty, voting, blood donations, administrative or legal proceedings, emergencies, and University functions.
- b. Medical Leaves with or without pay, include: FML taken because of the employee’s own serious health condition or the employee’s pregnancy disability, Pregnancy Disability Leave (whether or not it qualifies as FML), and Disability Leave.
- c. FMLA is the federal Family and Medical Leave Act of 1993.
- d. CFRA is the California Family Rights Act of 1995.
- e. PDLL is the California Pregnancy Disability Leave Law, which is part of the California Fair Employment & Housing Act.

#### **2. Use Of Family And Medical Leave (FML) Entitlement**

- a. If an employee eligible for FML takes a leave for an FML-qualifying reason (as defined in §B. below), the absence from work shall be deducted from the employee's FML entitlement.
- b. If an employee is ineligible for FML or has exhausted her/his calendar year entitlement and requests leave for a serious health condition that would qualify as a disability, an approved disability leave of absence may be provided for the period(s) an eligible employee is absent from work for verifiable medical reasons as provided in §C. and §D. of this Article.

#### **3. Benefit Eligibility While On Leave Without Pay**

- a. Special Benefit Eligibility For FML Leaves – A benefits-eligible employee shall have University-provided health benefits continued for the period of the FML Leave in accordance with §B.1.h. of this Article.
- b. An approved leave without pay shall not be considered a break in service.
- c. The provisions of Article 24 - Sick Leave, Article 22 - Vacation, and Article 20 - University Benefits shall apply when employees are on an approved leave without pay.
- d. A benefits-eligible employee on an approved leave without pay other than an FML Leave may elect to continue University-sponsored insurance coverages (as determined by plan documents and/or regulations) for the period of the leave by remitting the entire premium amount due for the period of the approved leave, in accordance with the provisions of the applicable plan(s). Regulations of the retirement systems determine the effects of leave without pay on retirement benefits. See §B.1.h., below for benefit eligibility when an employee is on an unpaid FML Leave.

4. **Requests For Leave**

Except as provided under §B.1.e. – Family and Medical Leave (FML)/Notification below, requests for leaves of absence and extensions, with or without pay, shall be submitted in writing to the University. Such requests shall be submitted sufficiently in advance of the requested leave date to provide the University time to assess the operational impact of granting the request. All requests for leaves of absence shall contain the requested beginning and end date of the leave, and any additional information as required.

5. **Duration**

- a. The start date of the leave, the terms of the leave and the date of return from the leave are determined when the leave is granted, and shall be communicated to the employee, in accordance with the provisions of this Article. For leaves other than FML, written confirmation shall be provided when the University determines such confirmation is appropriate. For leaves that are FML, see §B.1.c., below.
- b. Except as provided for under §C. – Pregnancy Disability Leave, §D. – Disability Leaves Other than Pregnancy Disability Leave, or §F.2. – Personal Leaves of Absence Without Pay below, the aggregate maximum of leaves taken in any combination shall not exceed six (6) months in any one (1) year period.

- c. No employee with a predetermined appointment end date or predetermined date of separation shall be granted a leave of absence beyond her/his appointment end date or the predetermined date of separation.

**6. Return To Work**

- a. Except as provided in §B. – Family and Medical Leave (FML), §C. – Pregnancy Disability Leave, and Article 26 - Military Leaves, an employee who has been granted an approved leave with or without pay shall be reinstated to the same or a similar position in the same department upon expiration of the leave, in accordance with the provisions of this Article. If the position held has been abolished or affected by layoff during the leave, the employee shall be afforded the same considerations which would have been afforded had that employee been working when the position was abolished or affected by layoff.
- b. Failure to provide a medical release to return to work, as required in §B.1.i.(1)(b). and §D.3., below, may result in the delay of reinstatement until the employee submits the required medical release certification.
- c. An employee who has exhausted her/his original leave entitlement and who has been granted additional leave under another section of this Article shall be reinstated in accordance with the provisions of the section under which the additional leave was granted. The employee shall be advised in writing of his/her reinstatement rights, at the time the additional leave is granted.
- d. An employee who fails to return to work from a leave of absence on the approved anticipated date of return or any approved extension thereof shall be considered to have abandoned her/his job, in accordance with Article 32 – Resignation/Job Abandonment.

**B. Family And Medical Leave (FML)**

An employee who is eligible for Family and Medical Leave (FML) and has not exhausted her or his FML entitlement for the leave year, as discussed below, may take FML for any of the following six reasons, as described in greater detail in this Section below:

- Due to the employee’s own serious health condition (§B.2.)
- To care for a family member with a serious health condition (§B.3.)
- As Pregnancy Disability Leave (§B.4.)
- As Parental Leave (§B.5.)
- As Military Caregiver Leave (§B.6.)

- As Qualifying Exigency Leave (§B.7.)

FML is unpaid leave, except as otherwise provided in §B.1.g., below.

## 1. General Provisions for FML

### a. Definitions

- 1) **“Child”** means a biological child, adopted child, foster child, stepchild, legal ward, or child for whom the employee stands in *loco parentis*; provided that the child is either under 18 years of age or incapable of self-care because of a mental or physical disability.
- 2) **“Parent”** means a biological parent, foster parent, adoptive parent, stepparent, legal guardian or individual who stood in *loco parentis* to the employee when the employee was a child. "Parent" does not include the employee's grandparents or mother-in-law or father-in-law unless they stood in *loco parentis* to the employee when the employee was a child.
- 3) **“Spouse”** means a partner in marriage.
- 4) **“Serious health condition of an employee”** is an illness, injury, impairment, or physical or mental condition, that renders the employee unable to perform any one or all of the essential functions of the employee's position and involves one of the following:
  - a) inpatient care in a hospital, hospice, or residential medical care facility, or
  - b) continuing treatment by a health care provider for:
    - i. a period of incapacity of more than three (3) consecutive calendar days, or
    - ii. any period of incapacity or treatment due to a chronic serious health condition, or
    - iii. any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
  - c) An employee's disability or work-related injury or illness may constitute a serious health condition.
- 5) **“Serious health condition of a family member of an employee”** is an illness, injury, impairment, physical or mental condition of the employee's child, parent, spouse, or same- or opposite-sex domestic

partner that requires the participation of the employee to provide supervision or care (which includes psychological comfort) during the period of the family member's treatment or incapacity.

- 6) **“Health Care Provider”** is an individual who is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to the treatment of the spine to correct a subluxation as demonstrated by x-ray to exist), physician assistant, nurse practitioner or nurse mid-wife performing within the scope of her/his duties as defined under State Law; a Christian Science practitioner; or any health care provider that the employee's health plan carrier recognizes for purposes of payment.

b. **Eligibility Criteria for FML**

- 1) Employees who have at least twelve (12) cumulative months of University service, and have worked at least 1,250 hours of actual service (as defined below) during the twelve (12) month period immediately preceding the commencement of the leave are eligible for and shall be granted up to a total of twelve (12) workweeks of FML Leave in the calendar year, except as otherwise provided in this Article. If the employee is taking FML as Military Caregiver Leave, the employee shall be eligible for up to twenty-six (26) workweeks of leave in a single 12-month leave period. For the purposes of this Article and §B. only, all prior University service, including service with the Department of Energy Laboratories, shall be used to calculate the twelve (12) month service requirement.
- 2) **"1,250 Hours Of Actual Service"** is time actually spent at work and does not include any paid time off, such as vacation, compensatory time, sick leave, or holidays not worked. However, for employees granted military leave, all hours that would have been worked had the employee not been ordered to military duty shall be used to calculate the 1,250 actual hours of work requirement.

c. **Duration of Leave**

FML shall not exceed twelve (12) workweeks in any calendar year except when it is used for Pregnancy Disability Leave or Military Caregiver Leave. If the employee is taking FML as Pregnancy Disability Leave, the employee shall be eligible for leave for the period of actual disability up to four (4) months per pregnancy. If the employee is taking FML for

Military Caregiver Leave, the employee shall be eligible for up to twenty-six (26) workweeks of leave in a single 12-month leave period.

For the purposes of FML, twelve (12) workweeks is equivalent to four-hundred eighty (480) hours of scheduled work for full-time career and limited appointment employees who are normally scheduled for an eight (8) hours per day five (5) days per workweek (8/40) schedule. While the use of FML need not be consecutive, in no event shall an employee's aggregate use of FML exceed a total of twelve (12) workweeks within a calendar year (or 26 workweeks in the single 12-month leave period if the employee is taking FML as Military Caregiver Leave or four (4) months per pregnancy if the employee is taking FML as Pregnancy Disability Leave).

- 1) **Hourly Conversion for Part-time or Alternately Scheduled Employees:** For employees who work part-time or a schedule other than an 8/40, the number of FML hours for which the employee is eligible shall be adjusted in accordance with her/his normal weekly work schedule. An employee whose schedule varies from week to week is eligible for a pro-rated amount of FML based on her/his hours worked over the twelve (12) months immediately preceding the leave.
- 2) Any leave taken by an eligible employee that qualifies as FML (including leave for a Work-Incurred Injury or Illness under Article 25) will be designated as such by the University and will be counted against the employee's leave entitlement whether the leave is paid or unpaid. Such deductions will be made in increments that correspond to the amount of leave time actually taken by the employee (which could be weeks, days, hours, and/or partial hours).
- 3) If the employee has exhausted her/his entitlement to FML Leave, s/he may apply for additional leave pursuant to this Article.

d. **Forms in Which FML May Be Taken**

FML generally may be taken as a block leave or, in certain circumstances discussed below, on an intermittent or reduced schedule basis.

1) **Employee Requests for FML on an Intermittent or Reduced Schedule Basis**

When medically necessary and supported by medical certification, the University shall grant an eligible employee's request for FML for the employee's serious health condition, to care for a family member with a serious health condition, or as Military Caregiver

Leave on an intermittent or reduced schedule basis, including absences of less than one (1) day. When granted, the University will count only the time actually spent on the intermittent leave or reduced work schedule toward the employee's FML entitlement for the applicable year.

An employee may take FML for Qualifying Exigency Leave on an intermittent or reduced schedule basis.

For requests to take FML as Pregnancy Disability Leave on an intermittent or reduced schedule basis, see §C., below.

For requests to take FML as Parental Leave on an intermittent or reduced schedule basis, see §B.5.d., below.

2) **Temporary Transfer to Accommodate Intermittent Leave or Reduced Work Schedule**

When the employee requests FML on an intermittent or a reduced schedule basis due to the planned medical treatment for the employee's serious health condition or the serious health condition of a family member, the University may, at its sole, non-grievable discretion, require the employee to transfer temporarily to an available alternate position for which the employee is qualified and which better accommodates the employee's recurring need for leave. Such alternative position shall have equivalent pay and terms and conditions of employment, but does not need to have equivalent duties.

e. **Notification**

1) If the employee learns of the event giving rise to the need for FML more than thirty (30) calendar days in advance of the leave's anticipated initiation date, the employee shall give the University at least twenty eight (28) calendar days notice of the need for leave. An employee who fails to give twenty eight (28) days' notice for a foreseeable leave with no reasonable basis for the delay, may have the FML leave delayed until twenty eight (28) days after the date on which the employee provides notice.

a) If the need for leave is foreseeable due to the planned medical treatment of the employee (due to the employee's serious health condition or pregnancy disability) or the planned medical treatment of the employee's family member with a serious health condition, the employee shall make reasonable efforts to schedule the treatment so as to

not unduly disrupt the University's operations, subject to the approval of the health care provider.

- b) If the need for leave is unforeseeable or actually occurs prior to the anticipated date of foreseeable leave, the employee shall provide the University with as much notice as practicable and, at a minimum, notify the University within five (5) calendar days after learning of the need for leave.
- 2) The University shall determine whether the employee meets the eligibility requirements and qualifies for an FML Leave and shall, within five (5) days of that determination, notify the employee whether the leave is designated or provisionally designated as FML Leave. The start date of the leave, the terms of the leave and the date of return from the leave are determined when the leave is granted.
- 3) Extensions to an FML Leave may be granted, up to the aggregate maximum of twelve (12) workweeks in a calendar year (or 26 workweeks in a single 12-month leave period if FML is being taken as Military Caregiver Leave or four (4) months per pregnancy if FML is taken as Pregnancy Disability Leave). If an employee's need for leave continues after her or his FML entitlement has been exhausted, the employee may be eligible for a Disability Leave in accordance with §D. of this Article or may request a Personal Leave in accordance with §F. of this Article.

f. **Certification and Other Supporting Documentation**

1) **Certification When FML is Taken for the Employee's Own Serious Health Condition**

When FML is requested for the employee's own serious health condition, the University may, at its discretion, require that an employee's request for leave be supported by written certification issued by the employee's health care provider. When certification is required by the University, the employee shall be so advised in writing. Certification may be provided by the employee on a form given to the employee by the University and shall, regardless of the format in which it is provided, include:

- a) a certification that the employee has a serious health condition as defined in §B.1.a.(4)., above, and

- b) a statement as to whether the employee is unable to perform any one or more of the essential assigned functions of the position, and
- c) the date on which the employee's serious health condition began, if known, the probable duration of the condition and the employee's probable date of return, and
- d) whether it will be medically necessary for the employee to take leave intermittently or to work on a reduced work schedule, and if so, the probable duration of the need for such schedule, and,
- e) if the condition will result in periodic episodes of incapacity, an estimate of the duration and frequency of episodes of incapacity.

2) **Certification When FML Is Taken to Care for the Employee's Family Member with a Serious Health Condition**

When FML is requested so that the employee may care for a family member with a serious health condition, the University may, at its discretion, require that an employee's request for leave be supported by written certification issued by the family member's health care provider. When certification is required by the University, the employee shall be so advised in writing. Certification may be provided by the employee on a form given to the employee by the University and shall, regardless of the format in which it is provided, include:

- a) certification that the employee's family member has a serious health condition as defined in §B.1.a.(5)., above, and
- b) a statement that the family member's serious health condition warrants the participation of the employee to provide supervision or care (which includes psychological comfort) during the period of the family member's treatment or incapacity, and
- c) whether the employee's family member will need supervision or care over a continuous period of time, intermittently, or on a reduced schedule basis; the leave schedule the employee will need in order to provide that supervision or care; and the probable duration of that need for leave.

In addition, the employee will be required to certify either on the same form or separately what care s/he will provide the family member and the estimated duration of the period of care.

3) **Certification When FML Is Taken as Pregnancy Disability Leave**

When FML is taken as Pregnancy Disability Leave, the employee may be required to provide a certification in accordance with §C.4., below.

4) **Certification When FML Is Taken for Military Caregiver Leave**

When Military Caregiver Leave is requested, the employee may be required to provide a certification completed by an authorized health care provider of the covered servicemember, which includes health care providers affiliated with the Department of Defense, the Veterans Administration, and TRICARE, as well as any health care provider (as defined in §B.1.a.(6)., above) who is treating the covered servicemember. The certification should provide information sufficient to establish entitlement to Military Caregiver Leave, including information establishing that the servicemember is a covered servicemember for purposes of Military Caregiver Leave and that she or he has a covered relationship with the employee, as well as an estimate of the leave needed to provide the care. When the covered servicemember is a covered veteran, the employee may be required to provide information establishing her or his veteran status, the date of separation from the Armed Forces, and that separation was other than dishonorable.

5) **Certification When FML Is Taken for Qualifying Exigency Leave**

When Qualifying Exigency Leave is requested, an employee may be required to provide a copy of the military member's active duty orders. Employees may also be required to provide certification of: 1) the reasons for requesting Qualified Exigency Leave, 2) the beginning and end dates of the qualifying exigency, and 3) other relevant information.

6) **Confirmation of Family Relationship**

The University may, at its sole non-grievable discretion, require that an employee complete a Declaration of Relationship form to certify her/his relationship with the child when the employee is requesting FML as Parental Leave or to certify his/her relationship with the family member when the employee is requesting FML to care for a family member with a serious health condition. The employee's failure to provide a completed Declaration of Relationship form within fifteen (15) calendar days of the University's written request may result in discontinuance of the leave until the required documentation is provided. If the employee fails to provide the completed Declaration of Relationship form within a reasonable time as requested, FML leave will be denied.

7) **Questioned Medical Certifications**

Should the University question the validity of the employee's certification for her/his own serious health condition, the University may, at its sole non-grievable discretion, require that the employee obtain a second medical opinion from a second health care provider selected by the University. Should the second medical opinion differ from the opinion of the employee's own health care provider, the University may, at its sole non-grievable discretion, require a third medical opinion from a third health care provider, jointly selected by the employee and the University. The University shall bear the cost of the second and third opinions, and the third opinion shall be final.

8) **Additional Certification and/or Recertification**

If additional FML is requested beyond the period supported by the certification previously provided or the circumstances of the leave have changed, the University may, at its sole non-grievable discretion, require the employee to obtain recertification. Also, when the certification states that the serious health condition of the employee or the employee's family member will last indefinitely, the University may, at its sole non-grievable discretion, require the employee to provide a new certification, but not more frequently than every thirty (30) days. Such requests for subsequent certification and/or recertification shall be in writing. If certification and/or recertification is required, the employee shall return the certification within fifteen (15) calendar days of the University's request, where practicable.

9) **Failure to Provide the Requested Certification and/or Recertification**

For FML taken as Pregnancy Disability Leave, see §C.4.d., below.

An employee's failure to provide the certification and/or recertification for a foreseeable leave other than Pregnancy Disability Leaves within the requested time may result in delay of the leave until the required certification is received. An employee's failure to provide certification for an unforeseeable leave other than Pregnancy Disability Leave within the requested time period may result in discontinuance of the leave until the required certification is provided. If the employee fails to provide certification or recertification within a reasonable time as requested, FML Leave will be denied.

If the employee fails to provide a complete and sufficient certification and/or re-certification, the employee shall be given fifteen (15) calendar days to perfect the certification and/or recertification. Failure to perfect an incomplete or insufficient certification and/or recertification within the requested time period may result in delay of the leave or discontinuance of the leave until the required certification and/or recertification is provided. If the employee fails to provide a complete and sufficient certification and/or recertification, FML will be denied.

**g. Use of Accrued Paid Leave**

FML Leave is unpaid, except for the use of sick leave and/or the use of accrued vacation, as provided in this Article.

- 1) An employee on FML for her/his own serious health condition:
  - a) shall use accrued sick leave in accordance with the University's disability plan requirements; or
  - b) if not eligible for University disability benefits and not on leave as a result of a work-incurred injury or illness, shall use all accrued sick leave and all accrued vacation time prior to taking leave without pay; or
  - c) if on leave due to a work-incurred injury or illness, may use accrued sick leave as provided in Article 25 - Work Incurred Injury or Illness and shall use all accrued vacation time prior to taking leave without pay.
- 2) An employee on FML to care for a family member with a serious health condition or taking FML as Military Caregiver Leave may

use sick leave in accordance with Article 24 - Sick Leave, §B.3., and shall use accrued vacation time prior to taking leave without pay.

- 3) An employee on FML for Pregnancy Disability Leave shall use all accrued sick leave before taking leave without pay and shall have the option to use accrued vacation time instead of taking leave without pay.
- 4) An employee taking FML as Parental Leave may use up to thirty (30) calendar days of accrued sick leave, and shall use accrued vacation time prior to taking leave without pay.
- 5) An employee taking FML as Qualifying Exigency Leave shall use accrued vacation time prior to taking leave without pay.
- 6) An employee on FML for any reason may not use compensatory time prior to taking leave without pay.

**h. Continuation of Health Benefits**

An eligible employee who is on an approved FML shall be entitled to continue participation in health plan coverage (medical, dental, and vision) as follows:

- 1) When the employee is on FML that runs concurrently under the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA): Continued coverage for up to twelve (12) workweeks in a calendar year.
- 2) When the employee is on a Military Caregiver Leave under the FMLA: Continued coverage for up to twenty six (26) workweeks in a single twelve month period. For purposes of Military Caregiver Leave, the “single twelve month period” is the period beginning on the first day the employee takes the leave and ending twelve (12) months after that date.
- 3) When the employee is on a Qualifying Exigency Leave under the FMLA: Continued coverage for up to twelve (12) workweeks in a calendar year.
- 4) When the employee is on a Pregnancy Disability Leave under the California Pregnancy Leave Law, regardless of whether any of the leave runs concurrently with the FMLA: Continued coverage for

up to four (4) months in a twelve month period. If any of the Pregnancy Disability Leave runs concurrently under the FMLA, the continued coverage provided for that portion of the leave will count towards the employee's FMLA entitlement for up to twelve (12) workweeks of such coverage in a calendar year.

- 5) When the employee is on FML under the CFRA that does not run concurrently under the FMLA (e.g., Parental Leave): Continued coverage for up to twelve (12) workweeks in a calendar year.

i. **Return from FML**

1) **Required Notice and Documentation**

- a) The employee shall provide reasonable notice to her/his employing department of her/his anticipated return to work.
- b) An employee returning from FML for her/his own serious health condition must provide a written medical release to return to work prior to returning to work. For returns after Pregnancy Disability Leave, see §C.4.e., below.
- c) The employee who has been medically released to perform the essential assigned functions of her/his job, shall be reinstated in accordance with the provisions of §B.1.i.(2)., below.
- d) Failure to provide a medical release to return to work may result in the delay of reinstatement until the employee submits the required medical release certification.

2) **Reinstatement Rights**

When an employee has been granted an approved FML for any purpose other than Pregnancy Disability and returns within twelve (12) workweeks of the initiation of the leave (or within 26 workweeks if the FML was taken for Military Caregiver Leave), s/he shall be reinstated to the same or an equivalent position upon expiration of the leave. For an employee's return to work rights after Pregnancy Disability Leave, see §C.5., below. If the position has been abolished or otherwise affected by layoff and an equivalent position is not available, the employee shall be afforded the same considerations which would have been afforded had the employee been working when the position was abolished or affected by layoff. No employee with a predetermined appointment end date or

predetermined date of separation shall be granted a leave of absence beyond her/his appointment end date or the predetermined date of separation. An employee who has been granted an FML for her/his own serious health condition, may be required by the University to provide a written medical release to return to work prior to her/his return to work.

2. **FML for Employee’s Serious Health Condition**

FML for the employee’s own serious health condition is leave taken when the employee’s own “serious health condition,” as defined in §B.1.a.(4). above, renders the employee unable to perform any one or more of the essential functions of the employee’s position.

3. **FML to Care for Employee’s Family Member with a Serious Health Condition**

FML to care for a family member with a serious health condition is leave to care for the employee's child, parent, spouse or same or opposite sex domestic partner who has a “serious health condition,” as defined in §B.1.a.(5)., above.

4. **FML as Pregnancy Disability Leave**

When an employee who takes Pregnancy Disability Leave pursuant to §C., below is eligible for FML, her Pregnancy Disability Leave will be counted against her FML entitlement under the FMLA as well as her Pregnancy Disability Leave entitlement under PDLL.

5. **FML as Parental Leave**

FML taken as Parental Leave is leave taken to bond with the employee's newborn or a child placed with the employee for adoption or foster care or to attend to matters related to the birth, adoption, or placement of the child. The following special provisions apply to Parental Leave:

a. **Time Limit for Parental Leave**

Parental leave must be initiated and concluded within one (1) year of the birth or placement of the child with the employee.

b. **Eligibility for Parental Leave**

An employee taking Parental Leave must meet the eligibility requirements for FML set forth in §B.1.b., above, except when the employee is taking Parental Leave immediately following an FML taken as Pregnancy Disability Leave. In those circumstances, an employee who was eligible

for FML under the FMLA at the beginning of her Pregnancy Disability Leave shall be granted a Parental Leave under CFRA for up to twelve (12) workweeks after her Pregnancy Disability Leave, provided that she has not exhausted her FML entitlement under CFRA for that leave year.

c. **Advance Notice**

The employee shall request Parental Leave sufficiently in advance, if possible, of the expected birth date of the child or placement of a child for adoption or foster care, in order to allow the University to plan for the absence of the employee, but the employee shall not be required to provide more than thirty (30) days advance notice. The anticipated date of return from Parental Leave shall be set at the time such leave commences, or if requested in conjunction with an FML taken as Pregnancy Disability Leave, shall be set at the time such Pregnancy Disability Leave commences. Parental Leave, when taken because of the adoption or placement of the child with the employee could commence prior to the date of placement.

d. **Duration of Parental Leave**

Parental Leave, alone, shall not exceed twelve (12) workweeks within a calendar year as defined in §B.1.b.(1). and §B.1.c., above. However, when an FML for Parental Leave is combined with an FML for Pregnancy Disability Leave, the total FML Leave shall not exceed seven (7) months in a calendar year.

e. **Forms in which Parental Leave May Be Taken**

The University shall grant a Parental Leave of less than two (2) weeks duration on any two (2) occasions during a calendar year. The University, at its sole non-grievable discretion, may require that any additional Parental Leave requested during this same time period be for a minimum duration of two (2) weeks, unless otherwise required by law.

6. **FML as Military Caregiver Leave**

An eligible employee may take Military Caregiver Leave to care for a family member who is a “covered servicemember” undergoing medical treatment, recuperation or therapy for a “serious injury or illness,” consistent with the definitions of those terms in §B.6.b., below.

a. **Eligibility Criteria and Duration Specific to Military Caregiver Leave**

An eligible employee is entitled to up to twenty six (26) workweeks of Military Caregiver Leave during a single twelve-month (12-month) leave

period. The employee must be a spouse, domestic partner, parent, son, daughter or next of kin of the covered servicemember to be eligible for this type of leave and must meet the eligibility requirements for FML set forth in §B.1.b., above.

b. **Definitions Specific to Military Caregiver Leave**

- 1) **“Covered servicemember”** means:
  - a) a current member of the Armed Forces (including a member of the National Guard or Reserves) who, because of a “serious injury or illness,” is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list or
  - b) a covered veteran who is undergoing medical treatment, recuperation, or therapy for a “serious injury or illness.”
- 2) **“Covered veteran”** means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes Military Caregiver Leave to care for a covered veteran.
- 3) **“Outpatient status”** means the status of a servicemember assigned to (a) a military medical treatment facility as an outpatient; or (b) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- 4) **“Serious injury or illness”** means:
  - a) For a current member of the Armed Forces (including a member of the National Guard or Reserves): an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the covered servicemember’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the covered servicemember medically unfit to perform the duties of her or his office, grade, rank, or rating;

- b) For a covered veteran: an injury or illness that was incurred by the covered veteran 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 manifested itself before or after the member became a veteran and is (1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered her or him unable to perform the duties of her/his office, grade, rank, or rating; (2) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for Military Caregiver Leave; (3) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or (4) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Programs for Comprehensive Assistance for Family Caregivers.
- 5) **“Parent of a covered servicemember”** means a covered servicemember's biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the covered servicemember. The term does not include parents in law.
- 6) **“Son or daughter of a covered servicemember”** means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
- 7) **“Next of kin”** means (a) the nearest blood relative of the covered servicemember (other than the covered servicemember's spouse, domestic partner, parent, son or daughter) or (b) the blood relative who the covered servicemember has designated in writing as her or his nearest blood relative for purposes of Military Caregiver Leave.
- 8) **“Single 12-month leave period”** means the period beginning on the first day the employee takes Military Caregiver Leave and ends twelve (12) months after that date. (This leave period differs from the calendar year definition of the leave year used for determining eligibility for other types of FML at the University.)

c. **Leave Entitlement**

Military Caregiver Leave is applied on a per-covered servicemember, per-injury basis. Eligible employees may take more than one (1) period of twenty-six (26) workweeks of leave if the leave is to care for a different covered servicemember or to care for the same servicemember with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any “single twelve-month (12-month) period.”

If an eligible employee does not use all of her or his twenty-six (26) workweeks of leave entitlement to care for a covered servicemember during this single twelve-month (12-month) leave period, the remaining part of the twenty-six (26) workweek entitlement to care for the covered servicemember for that serious injury or illness is forfeited.

As with other types of FML, this leave may also be taken on an intermittent or reduced schedule basis. If the need for intermittent or reduced schedule leave is foreseeable based on the planned medical treatment of the covered servicemember, the employee may be required to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee’s regular position.

7. **FML as Qualifying Exigency Leave**

Qualifying Exigency Leave is an additional type of FML available to eligible employees. If the military member is the spouse, domestic partner, son, daughter or parent of the employee, the employee may take Qualifying Exigency Leave to attend to any “qualifying exigency” while the military member is on covered activity duty or call to covered active duty status.

a. **Definitions Specific to Qualifying Exigency Leave**

- 1) **“Son or daughter on covered active duty or call to covered active duty status”** means the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.
- 2) **“Covered active duty or call to covered active duty status”** means:

- a) For purposes of members of the Regular Armed Forces: duty during the deployment of the member with the Armed Forces to a foreign country.
  - b) For purposes of a member of the Reserve component of the Armed Forces: duty during the deployment of the military member of the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to 10 U.S.C. §§ 12302, 12304, 12305, or 12406; 10 U.S.C. chapter 15; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.
- 3). **“Reserve component of the Armed Forces”** include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to 10 U.S.C. §§12302, 12304, 12305, or 12406; 10 U.S.C. chapter 15; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.
- 4) **“Qualifying exigency”** is defined as any one of the following, provided that the activity relates to the military member’s covered active duty or call to covered active duty status:
- a) Short notice deployment to address issues that arise due to the covered military member being notified of an impending call to active duty seven (7) or fewer calendar days prior to the date of deployment;
  - b) Military events and activities, including official ceremonies;
  - c) Childcare and school activities for a child of the military member who is either under age eighteen (18) or incapable of self-care because of a mental or physical disability at the time that Qualifying Exigency Leave is to commence;
  - d) Financial and legal arrangements to address the military member’s absence or to act as the military member’s representative for purposes of obtaining, arranging, or appealing military service benefits while the military

member is on covered active duty or call to active duty status and for the ninety (90) days after the termination of the military member's covered active duty status;

- e) Counseling (provided by someone other than a health care provider) for the employee, for the military member, or for the child of the military member who is either under age eighteen (18) or incapable of self-care because of a mental or physical disability at the time the Qualifying Exigency Leave is to commence;
- f) Rest and Recuperation (up to fifteen (15) days of leave for each instance) to spend time with the military member who is on short-term, temporary Rest and Recuperation leave during the period of deployment;
- g) Post-deployment activities, including (a) attendance at ceremonies sponsored by the military for a period of ninety (90) days following termination of the military member's covered active duty status and (b) addressing issues that arise from the death of the military member while on covered active duty status;
- h) Arranging for care for the parent of the military member or providing care for the parent on an urgent, immediate need basis (but not on a routine, regular, or everyday basis), where the parent is incapable of self-care and is the biological, adoptive, step, or foster father or mother of the military member, or any other individual who stood in loco parentis to the military member when the military member was under 18 (eighteen) years of age; and
- i) Additional activities related to the military member's active duty or call to active duty status when the employer and employee agree that such activity qualifies as an exigency and agree to both the timing and duration of the leave.

### **C. Pregnancy Disability Leave**

During the period when an employee is disabled because of pregnancy, childbirth, or related medical condition, she is entitled to and the University shall grant her request for Pregnancy Disability Leave. Pregnancy Disability Leave may also be used for prenatal care.

For an employee disabled by pregnancy, childbirth or related medical condition, no eligibility requirements apply, such as minimum hours worked or length of service. If the employee is eligible for FML, pursuant to §B., above, such leave shall be deducted from

an employee's FML entitlement under the federal FMLA as well as her entitlement under the PDLL.

Pregnancy Disability Leave may be taken as a block leave or, when medically advisable, on an intermittent or reduced schedule basis. Only the amount of leave time actually taken may be counted against the employee's Pregnancy Disability Leave entitlement.

**1. Duration**

- a. An employee is entitled to Pregnancy Disability Leave for the period of actual disability up to four (4) months per pregnancy.
- b. If the employee continues to be disabled by pregnancy, childbirth, or related medical condition beyond four (4) months, a medical disability leave of absence may be granted in accordance with §D., below.
- c. Following Pregnancy Disability Leave, the employee may be eligible for Parental Leave, pursuant to §B.5., above, to care for her newborn child. The total FML taken for a combination of Pregnancy Disability Leave and Parental Leave shall not exceed seven (7) months in a calendar year.

**2. Use of Accrued Paid Leave**

Pregnancy Disability Leave may consist of leave with or without pay; however, an employee shall be required to use accrued sick leave in accordance with the University's Disability Plan. If sick leave is exhausted, the employee may elect to use accrued vacation time prior to taking leave without pay.

**3. Transfer and Other Reasonable Accommodations As Alternatives To Or In Addition To Pregnancy Disability Leave.**

- a. **Transfer at the Request of the Employee.** The University shall temporarily transfer a pregnant employee to a less strenuous or hazardous position upon the request of the employee when such transfer is medically advisable according to the employee's health care provider, if the transfer can be reasonably accommodated. For the purpose of this section, a temporary transfer includes a temporary modification of the employee's own position to make it less strenuous or hazardous. A temporary transfer under this section is considered time worked and shall not be counted toward an employee's entitlement of up to four (4) months of Pregnancy Disability Leave, unless the employee is also taking leave on an intermittent or reduced schedule basis. When the employee's health care provider certifies that the transfer is no longer medically advisable, the University shall return the employee to her same position or a comparable position in accordance with §C.5., below.

- b. **Transfer to Reasonably Accommodate Employee's Need for Intermittent or Reduced Schedule Leave.** When the employee's health care provider states in a medical certification that it is medically advisable for the employee to take Pregnancy Disability Leave on an intermittent or reduced schedule basis, the University may, at its sole non-grievable discretion, transfer the employee temporarily to an available alternative position that meets the needs of the employee, provided the employee meets the qualifications of the alternative position. When the employee's health care provider certifies that the intermittent or reduced schedule leave is no longer medically advisable, the University shall return the employee to her same position or a comparable position in accordance with §C.5., below.
- c. **Other Reasonable Accommodations.** If the employee's health care provider certifies that reasonable accommodation(s) other than transfer and/or leave on an intermittent or reduced schedule basis are medically advisable, the University shall engage in the interactive process with the employee to identify and implement the reasonable accommodation(s) that are appropriate under the circumstances.

#### 4. **Certification**

- a. When an employee requests a reasonable accommodation, transfer, or leave due to pregnancy, childbirth, or related medical condition, the University may, at its discretion, require that the employee's request be supported by written medical certification issued by the employee's health care provider.
- b. When a medical certification is requested in connection with the employees' request for reasonable accommodation or transfer, it shall contain the following: (a) a description of the requested accommodation or transfer, (b) a statement describing the medical advisability of the requested reasonable accommodation or transfer, and (c) the date on which the need for reasonable accommodation became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer.
- c. When a medical certification is requested in connection with an employee's request for leave, it shall contain the following: (a) a statement that the employee needs to take Pregnancy Disability Leave because she is disabled by pregnancy, childbirth, or a related medical condition, and (b) the date on which the employee became disabled because of pregnancy and the estimated duration of the leave.
- d. Failure to provide certification for reasonable accommodation, transfer, or leave within the requested time period or as soon as reasonably possible

under the circumstances may result in delay of the leave until the required certification is provided.

- e. The University may, at its discretion, require that an employee returning to work immediately following Pregnancy Disability Leave provide a written medical release prior to returning to work.

## 5. **Reinstatement after Pregnancy Disability Leave**

The date of reinstatement from the Pregnancy Disability Leave is typically determined by agreement between the University and the employee when the leave is granted. If the actual reinstatement date differs from the original agreement or no agreement was made and the employee is returning directly from PDL, the University shall reinstate the employee within two (2) business days or, when two (2) business days is not feasible, as soon as possible after the employee notifies the University of her readiness to return.

If the employee is returning to work directly following the end of the Pregnancy Disability Leave, she shall not be reinstated from her Pregnancy Disability Leave until a medical release certification is provided to the University within the time limits specified by the Department. A medical release certification shall include a statement by the employee's health care provider of the employee's ability to perform the essential functions of the position, with or without reasonable accommodation.

An employee who has taken Pregnancy Disability Leave shall be reinstated to the same position, provided that the employee returns to work immediately upon termination of the Pregnancy Disability Leave and provided that the aggregate duration of all leaves granted for a given pregnancy does not exceed four (4) months. If the same job has been abolished or affected by layoff, the employee shall be reinstated to a comparable position if the employee would have been entitled to the comparable position if she had been continuously working. If a comparable position is not available on the employee's scheduled date of reinstatement but a comparable position or positions become available within sixty (60) days thereafter, the University shall notify the employee of the position(s). If the employee is reinstated within that sixty-day (60-day) period, the period between the employee's originally scheduled date of reinstatement and her actual reinstatement shall not be counted for purposes of any employee pay or benefits.

## 6. **Continuation of Health Benefits**

A benefits-eligible employee on Pregnancy Disability Leave shall be entitled to continue participation in health plan coverage (medical, dental, and vision) as set forth in §B.1.h.(4)., above, whether or not the Pregnancy Disability Leave also qualifies as FML.

## **D. Disability Leaves Other Than Pregnancy Disability Leave**

A disability leave of absence is the period(s) for which an eligible career employee is granted leave from work for medical reasons in accordance with §D.1., below. This leave includes the combined use of accrued sick leave and the disability leave of absence without pay in accordance with the provisions of this Article and Article 24 - Sick Leave. Disability leaves of absence with or without pay are provided for leaves due to non-work related illnesses or injuries.

### **1. Eligibility**

An employee may be eligible for a disability leave of absence with or without pay when s/he has exhausted her/his twelve (12) workweek FML entitlement in a calendar year, or s/he is not otherwise eligible for FML Leave, or the employee has exhausted her four (4) month entitlement under the Pregnancy Disability Leave Laws, and s/he:

- a. is medically incapable of performing the essential assigned functions of her/his job due to a non-work related illness or injury, and
- b. has furnished evidence of disability satisfactory to the University.

### **2. Duration**

- a. When the use of accrued sick leave and a disability leave of absence without pay are combined, a disability leave may be granted by the University for a total period of verified disability consistent with the University's obligation to reasonably accommodate a disabled employee.
- b. An employee granted a disability leave who is also applying for University disability benefits for non-work related disability purposes shall use all accrued sick leave in accordance with the University's disability plan prior to taking leave without pay.
- c. An employee who is receiving long term disability payments from a retirement system to which the University contributes will be medically separated on the basis of medical condition in accordance with Article 31 – Medical Separation of this Agreement.

### **3. Return To Work**

The employee shall not be reinstated from a medically-related leave of absence until a medical release certification is provided to the University within the time limits specified by the department. A medical release certification shall include a statement by the employee's health care provider of the employee's ability to

perform the essential functions of the position, with or without reasonable accommodation.

## **E. Military Spouse/Domestic Partner Leave**

An employee who is a spouse or domestic partner of a member of the Armed Forces, National Guard, or Reserves may take this leave during a “qualified leave period” when the employee’s spouse or domestic partner is on leave from a period of military conflict. “Qualified leave period” means the period during which the “qualified member” is on leave from deployment during a period of military conflict. An eligible employee shall be entitled to up to a maximum of ten (10) days of unpaid leave during a qualified leave period.

### **1. Definitions Specific to Military Spouse/Domestic Partner Leave**

a. **“Qualified member”** means a person who is any of the following:

- 1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States, or
- 2) A member of the National Guard who has been deployed during a period of military conflict, or
- 3) A member of the Reserves who has been deployed during a period of military conflict.

b. **“Period of military conflict”** means either of the following:

- 1) A period of war declared by the United States Congress, or
- 2) A period of deployment for which a member of a reserve component is ordered to activity duty, as defined in Military & Veterans Code §395.10.

### **2. Eligibility**

To be eligible, an employee must satisfy all of the following criteria:

- a. Be a spouse or domestic partner of a “qualified member”;
- b. Perform services for the University for an average of twenty (20) or more hours per week;

- c. Provide the University with notice, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of the employee's intention to take the leave; and
- d. Submit written documentation certifying that the qualified member will be on leave from deployment during the time that leave is being requested by the employee.

### 3. **Substitution of Paid Leave**

This leave is unpaid leave, except that an employee shall use accrued vacation time prior to taking leave without pay.

## **F. Personal Leaves of Absence Without Pay**

1. A non-probationary career employee may be granted a Personal Leave of Absence without Pay at the sole non-grievable discretion of the University. Such leave shall not exceed six (6) calendar months. Personal Leave without Pay shall not be considered a break in service and shall not determine eligibility for benefits except that the regulations of the retirement systems must be specifically checked to determine the effects of such leave without pay on retirement benefits.
2. Notwithstanding the foregoing, the University at its sole non-grievable discretion may approve extension of a Personal Leave of Absence Without Pay for a total leave of not normally more than twelve (12) months.

## **G. Leaves of Absence With Pay**

### 1. **Jury Duty/Grand Jury Duty**

A full-time employee in a career position on any shift or work schedule who is summoned to required jury duty shall be granted leave with pay for actual time spent on jury service and in related travel, not to exceed the number of hours in the employee's normal work day and the employee's normal workweek. A part-time employee in a career position who is summoned to required jury duty shall be granted leave with pay for actual time spent on jury service and in related travel which occur during the employee's regularly scheduled hours of work. When an employee's scheduled jury duty hours do not generally coincide with the employee's scheduled shift, the University will, upon request of the employee and subject to operational needs, change the employee's shift assignment. In the event the employee's shift assignment is changed to a shift that has a shift differential, such differential shall not apply when the change in assignment is made to accommodate the employee's jury duty.

### 2. **Voting**

An employee shall be granted leave with pay, up to a maximum of two (2) hours, for voting in a statewide primary or general election if the employee is scheduled to work eight (8) hours or more on that day and does not have time to vote outside of working hours.

3. **Blood Donations**

An employee may be granted leave with pay, up to a maximum of two (2) hours, for donating blood during regularly scheduled hours of work.

4. **Administrative Or Legal Proceedings**

- a. When an employee is attending administrative or legal proceedings as directed by the University or is subpoenaed by the University to appear as a witness in an administrative or legal proceeding, leave without loss of compensation will be granted for actual time spent in the proceedings and in related travel, not to exceed the number of hours in the employee's normal work day and workweek.
- b. An employee subpoenaed by the State or a political subdivision thereof when the State or political subdivision is prosecuting a person for an offense that the employee, by virtue of being on University premises during scheduled work hours, witnessed, shall be granted leave without loss of compensation for actual time spent in the proceedings and in related travel, not to exceed the employee's normal work day and workweek.
- c. When an employee is subpoenaed due to any clinical issue occurring within the course and scope of the subpoenaed employee's University employment, leave without loss of compensation will be granted for actual time spent in the proceedings and in related travel, not to exceed the employee's normal work day and workweek.

5. **Emergencies**

In the event of natural or man-made emergencies, an employee may be granted leave without loss of compensation during regularly scheduled hours of work for the period of time authorized by the University. The granting of such leave and the period of time shall be at the sole, non-grievable discretion of the University.

6. **University Functions**

At the sole, non-grievable discretion of the University and on a campus by campus or within a campus basis, an employee may be granted leave during regularly scheduled hours of work to attend Commencement exercises, Charter

Day exercises and other University meetings or functions as designated by the University. Such leave, when granted, shall be without loss of compensation.

**H. Catastrophic Leave Programs**

Bargaining unit employees may participate, as donors and recipients, in Catastrophic Leave programs according to local campus procedures and Article 24 - Sick Leave, §K.