

UNIVERSITY OF KENTUCKY ADMINISTRATIVE REGULATIONS	IDENTIFICATION AR II-1.1-12	PAGE 1
	DATE EFFECTIVE 8/5/93	SUPERSEDES REGULATION DATED

FAMILY AND MEDICAL LEAVE

I. Policy and Definitions

A. Employees subject to the provisions of Staff Personnel Policy and Procedures should refer to Policy #88.0, which is the applicable policy for family and medical leave for such employees.

B. Recognizing the occurrence(s) of family emergencies which involve either the University employee or a family member, the University provides unpaid family or medical leave of up to twelve (12) weeks in a twelve (12) month period.

C. Any employee who has been a University employee for twelve (12) months and has worked at least one thousand two hundred fifty (1250) hours during the previous twelve (12) month period may take up to twelve (12) weeks of unpaid leave for an emergency involving the employee or a family member during any twelve (12) month period for any or all of the following reasons:

1. Because of the birth of a child of the employee and in order to care for such son or daughter;
2. Because of the placement of a child with the employee for adoption or foster care;
3. In order to care for the spouse, or child, or parent, of the employee, if such spouse, child, or parent has a serious health condition; or
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

D. For purposes of this policy, the following definitions shall apply:

1. The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child (minor).
2. The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves the following:
 - a. Inpatient care in a hospital, hospice, or residential medical care facility; or

- b Continuing treatment by a health care provider.
3. The term "child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, or a child of a person standing in loco parentis, who is:
 - a. Under eighteen (18) years of age, or
 - b. Eighteen (18) years of age or older and incapable of selfcare because of a mental or physical disability.
 4. The term "spouse" means a husband or wife, as the case may be.
 5. The term "health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices or other persons determined by the United States Secretary of Labor to be capable of providing health care services.

NOTE: A higher standard for Family and Medical leave is held for an employee to be absent for the employee's serious medical condition than for an employee to be absent to care for a child, spouse, or parent. An employee shall be granted Family and Medical leave because the employee has a serious medical condition and because the employee cannot perform the functions of the position; an employee shall be granted Family and Medical leave because a spouse, child, or parent has a serious medical condition and because the employee is needed to care for the family member.

E. Leave taken for child birth or placement (adoption or foster care) may not be taken intermittently or on a reduced schedule. This leave may be taken only within twelve (12) months of the date of the birth or placement of the child.

NOTE: Under Kentucky law, an employee may take up to six (6) weeks of unpaid leave for the adoption of a child under the age of seven (7). This Policy expands the six (6) weeks leave to twelve (12) weeks in one Family and Medical leave twelve (12) month period; however, there is no limit to the number of six (6) weeks periods which an employee may be granted for the adoption of additional children under the age of seven (7).

F. Leave taken to care for a spouse, child, or parent or for the serious health condition of the employee may be taken intermittently or on a reduced schedule when medically necessary. Taking leave on an intermittent or reduced schedule under this paragraph shall not result in a reduction in the total amount of leave to which an employee is entitled under this regulation.

1. For example, one who takes intermittent leave under this Policy, who normally works a five-day week and who takes one day of leave under this policy will use one-fifth of one week of leave available under this Policy. With this intermittent schedule, the employee could take one day (one fifth of a week) for up to sixty (60) weeks to get the full twelve (12) weeks of Family and Medical leave.

2. Under a reduced schedule for Family and Medical leave, if a full-time employee who regularly works five days a week, must take off one half of the workweek, one half week (or two and one half days) of leave under this Policy is used each week. Thus it could take the employee up to twenty four (24) weeks to use the entire entitlement of Family and Medical leave.

3. For employees who work less than full-time, leave entitlement under this Policy is calculated on a pro rata (or proportional basis). If an employee's work schedule varies from week to week, the average weekly hours worked during the twelve (12) weeks prior to the start of the leave under this Policy will be used to calculate the employee's normal work schedule.

4. A less than full-time employee is entitled to twelve (12) weeks of the less than full-time employee's regular work week. For example, one who works thirty (30) hours per week is entitled to twelve (12) thirty (30) hour weeks of Family and Medical leave.

5. A less than full-time employee who takes intermittent leave is entitled to the equivalence of twelve (12) weeks of that employee's less than full-time schedule. For example, if an employee who normally works a schedule of thirty (30) hours per week changes to a twenty (20) hour week on a reduced work schedule, the ten (10) hours of leave would equal one third (.33) of a week of leave under this Policy. This employee could take up to thirty six (36) weeks to use the entire entitlement.

NOTE: Granting a faculty member Family and Medical leave by the hour is not a violation of the employee's exempt status under the Fair Labor Standards Act.

G. An eligible employee is entitled to take a total of twelve (12) weeks of leave under this policy during a twelve (12) month period; the twelve (12) month period begins on the first day of the first approved Family and Medical leave which the employee requests.

For example, an employee who becomes eligible for Family and Medical leave on September 1, 1994, [The employee has worked at least one thousand two hundred fifty (1250) hours during the previous twelve (12) months.] does not have an established Family and Medical leave twelve (12) month period until the employee requests this leave for a particular purpose.

H. Pursuant to an appropriate first request, the above employee goes on

a Family and Medical leave on January 15, 1995. This employee's Family and Medical leave twelve (12) month period runs from January 15, 1995 to January 14, 1996. On January 15, 1996, or any date thereafter, the employee is eligible for a second twelve (12) weeks of Family and Medical leave, provided that the employee has worked one thousand two hundred fifty (1250) hours during the previous twelve (12) months.

I. A faculty member taking leave under Section 4 of this policy shall first take any sick leave available under the Sick Leave Policy [GR X.C.5.b.(1)] and any vacation leave available under the Vacation Leave Policy (GR X.C.2.). After exhaustion of these leaves, the faculty member would be in a leave without pay status for the balance of the approved Family and Medical leave.

J. In the case of childbirth or placement (adoption or foster care), the employee shall, whenever foreseeable based on birth or placement, give the department chair or dean thirty (30) days notice, before the leave is to begin, of the employee's intention to take such leave. If the birth or placement requires leave to begin in less than thirty (30) days, the employee shall provide the supervisor with such notice as is practicable.

K. When leave under Section I C 3 or 4 of this Policy is taken for planned medical treatment, the employee shall act in accordance with the following:

1. Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the teaching/research activities of the University department in which the employee works, subject to the approval of the health care provider of the child, spouse, or parent of the employee, as appropriate; and

2. Shall provide the department chair or dean with no less than thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take leave under Sections I C 1 or 2 except that if the date of the treatment requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

L. In any case in which husband and wife are both employees of the University, the combined (total) number of workweeks of leave entitlement under this policy is twelve (12) weeks during any twelve (12) month period if such leave is taken under Sections 1 or 2 or for the care of a sick parent under Section 3.

II. Delegation

The responsibility for approving leave taken under the Policy is delegated to the appropriate chancellor or vice president acting on the recommendation of the dean or department head. The department head shall be responsible for reporting complete and accurate records of leave taken under this Policy.

III. Procedure

A. An employee seeking leave under this Policy shall submit a written request for leave with the department head or dean. If approved by the department head or dean, the request shall be sent to the appropriate chancellor or vice president for final approval.

B. An employee shall give the department thirty (30) days advanced notice of the need to take leave under Family and Medical leave when it is foreseeable for the birth or placement of a child for adoption or foster care, or for planned medical treatment.

C. When advanced notice is not practicable (e.g., premature birth), notice shall be given as soon as practicable, ordinarily within one (1) or two (2) work days of the emergency need for the leave.

D. An employee shall follow standard departmental notice for an absence in the case of an emergency need for this leave.

E. The request shall be supported by a written medical certification issued by the health care provider of the employee or of the child, spouse, or parent of the employee, as appropriate. Such a certificate shall be provided in a timely manner, e.g., usually fifteen (15) calendar days. Such a certificate from the health care provider shall state the following:

1. The date on which the serious health condition commenced;
2. The probable duration of the condition;

3.1. For purposes of leave under Section I C 3, a statement that the eligible employee is needed to care for the child, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the child, spouse, or parent; and

3.2. For purposes of leave under Section I C 4, a statement that the employee is unable to perform the essential functions of the position at the University;

4. In the case of certification for intermittent leave, for leave on a reduced leave schedule, or for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

5. In the case of certification for intermittent leave, or for leave on a reduced leave schedule, under Section 4, a statement of the medical necessity for the intermittent leave or for leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave schedule; and 6. In the case of certification for intermittent leave or for leave on a reduced leave schedule, under Section 3, a statement that the employee's intermittent leave or leave on a reduced schedule (a) is necessary for the care of the child, parent, or spouse who has a serious health condition or (b) will assist in their recovery, and a statement as to the expected duration and schedule of the intermittent leave or reduced leave schedule.

F. In any case where the department/college official determines that a more specific medical

explanation is necessary, the department/college official shall consult with the chancellor's office. The chancellor's office may request from the health care provider a further certification which, at least, provides the appropriate medical facts within the knowledge of the health care provider regarding the condition.

G. In all cases, it is the appropriate departmental official's responsibility, with the concurrence of the appropriate chancellor or vice president, to designate leave as Family and Medical leave, paid or unpaid, under this Policy, based on the information furnished by the employee and the health care provider.

NOTE: An employee shall satisfy the requirements of a written request for Family and Medical leave and of an accompanying doctor's statement by submitting a completed FORM AR II-1-12 (Appendix 1).

H. In any case the department head has reason to doubt the validity of the certification provided in accordance with the above Section for leave under Section I C 3 or 4, the department head may require, at the expense of the department, that the employee obtain the opinion of a second health care provider, designated or approved by the department head. (The department head may consult with the Director of the Wellness Program in designating a physician. This second health care provider may not be an employee of the University.)

In any case where a second opinion is obtained and the second opinion differs from the first opinion, then the department may require, at the department's expense, an opinion of a third medical care provider, designated and approved jointly by the employee and the department head.

In any case where a third opinion is sought, the third opinion shall be considered to be final and binding on both the employee and the department.

I. An employee who takes leave under this Policy shall be entitled, upon return from such leave, (a) to be restored by the department to the position of employment held by the employee when the leave commenced or (b) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

With approval of dean or community college president, the position of an employee taking leave under this Policy may be filled by a temporary employee during the period of approved leave.

J. Upon recommendation of a dean or president of a community college, the President or the appropriate chancellor or vice president may deny restoration of employment to any employee who is in the highest paid ten percent (10%) of all salaried employees if the following circumstances exists:

1. This action is necessary to prevent substantial and grievous economic injury to the

University;

2. The President or the appropriate chancellor or vice president notifies the employee of the University's intent to deny restoration, and the reasons supporting the denial; and

3. In any case in which the leave under this Policy is commenced, the employee elects not to return to employment with the University after receiving such notice.

K. During any period that an employee takes leave under this Policy, the University shall continue the employee's health plan for the duration of the leave at the same level and conditions of coverage as if the employee had been in employment continuously for the duration of the leave.

During any period of leave approved under this Policy, the University shall continue to contribute the employer's credit portion toward the employee's health insurance plan.

During any period of leave approved under this Policy, the University shall continue to cover the cost of the employee's basic life insurance.

During any period of paid leave approved under this Policy or during a period of six (6) months or less of unpaid leave approved under this Policy, the University shall continue to cover the cost of the employee's enrollment in the long term disability plan.

During any period of leave approved under this Policy, the employee shall make arrangements with the Employee Benefits Office to pay the costs of other benefits for which the employee would ordinarily be responsible.

The Employee Benefits Office shall terminate any benefits for which the employee has not made appropriate payment after such payment is past due for thirty (30) days.

L. During any period of leave approved under this Policy, the employee's original date of employment (service date) shall be retained.

In accordance with GR X-3, B.2., chancellors and vice presidents shall determine Family and Medical Leave status for non-tenured faculty to insure reinstatement to an equivalent position, including any suspension of the probationary period.

Non-tenured faculty members may apply for an extension of the probationary period of 26 weeks beyond the date given on the original Notice of Primary Academic Appointment and Assignment if they take Family Medical Leave of 6 weeks or more. If the total of Family Medical Leave, during the probationary period, exceeds 26 weeks, the faculty member may apply for an extension of 1 year beyond the date given in the original Notice of Primary Academic Appointment and Assignment.

To apply for an extension of the probationary period, the faculty member must file a written

request for an extension of the probationary period with the dean/community college president [with an informational copy to the appropriate department or division chairperson] no later than the last day of the fifth year of the probationary period. Failure to make such a request in the time period stipulated in this policy may be excused by the chancellor/vice president on a showing by the faculty member of an exceptional reason for the failure to comply.

The faculty member whose application for extension is approved is not expected to present a record of accomplishment different from that expected for a probationary period of normal length.

If the department head has any reasonable doubt of the continued validity of an approved Family and Medical leave, and if the Family and Medical leave continues for over six (6) weeks, a department head may require reports from the employee on the employee's status and intent to return to work.

Such re-certification may be required at the end of six (6) weeks and again at the end of nine (9) weeks.

At the time an employee gives notice of intent not to return to work, the University's obligation to provide any benefits ceases.

The employee shall be obligated to repay to the University any health insurance premium which the University paid for the employee, if the employee fails to return to University employment after an approved period of leave under this Section, and if the employee fails to return to work for a reason other than the following:

The continuation, recurrence or onset of a serious health condition that entitled the employee to leave under Sections I C 3 or 4, or

Other circumstances beyond the control of the employee.

M. If the employee fails to return to work, at the end of an approved Family and Medical leave, because of the continuation, recurrence, or onset of the serious health condition (See above.) a department head may require supporting evidence as follows:

1. A certification issued by the health care provider of the child, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in Section I C 3, or
2. A certificate issued by the health care provider of the eligible employee, in the case of an employee unable to re- turn to work because of a condition specified in Section I C 4.
3. A certification for a leave due to a serious health condition of an employee is sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee

expired.

4. A certification for a leave due to serious health condition of a family member shall be sufficient if the certification states that the employee is needed to care for the child, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

N. When an employee is due to return to work from a Family and Medical leave, a department head may require presentation of a certificate that the employee is able to resume to work.

Certification from an employee's health care provider that an employee is able to resume work shall be in accordance with the department's customary and uniformly applied procedures.

A certification shall be required in departments where there are specific physical requirements in a job description.

IV. Form

AR II-1.1-12 (Appendix I), Request for Family and Medical Leave and Certification of Physician or Practitioner Form

V. Policy Interpretation of Family Medical Leave Act for Faculty (See Appendix II)

APPENDIX 1

REQUEST FOR FAMILY AND MEDICAL LEAVE
and
CERTIFICATION OF PHYSICIAN OR PRACTITIONER FORM

SECTION A. This section, consisting of () questions, is to be completed by the employee who is requesting Family and Medical Leave in accordance with Policy 88.0 (A.R.).

1. Employee's full name:
2. Employee's social security number: - -
3. Department in which employee is regularly employed:
4. Employee is seeking Family and Medical Leave (FML) for which of the following reasons:
 - Birth of a child and to care for that child
 - Placement of child with employee for adoption or foster care
 - Care of spouse, child or parent of employee
 - A serious health condition prevents employee from being able to perform functions of position.
5. Patient's name (if other than employee):
6. Patient's relationship to employee (if not employee):
7. Date on which requested FML is to commence:
8. Date on which FML would probably end:
9. Number of days FML will be taken with pay ; without pay
10. Number of days of temporary disability leave which will be used
11. Number of days of vacation leave which will be used
12. If FML is to be taken for care of a family member, state below the care which the employee will provide, an estimate of the time period which this care will be provided, and, if FML is requested on an intermittent basis or on a reduced leave schedule, a requested schedule:

Employee's signature:

Date:

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SECTION B This section is to be completed by physician or practitioner.

1. Employee's name:
2. Patient's name (if not employee):
3. Date on which condition commenced or was diagnosed:
4. Probable duration of condition:
5. Is inpatient hospitalization required? Yes No
6. Dates hospitalization will be required: From to
7. If patient is employee, is employee able to perform work of any kind: Yes No
8. (If answer to # 7 is NO, skip this question.) Is employee able to perform the functions of employee's position? (Please answer this question after reviewing statement from UK concerning the essential functions of the employee's position, or if no statement provided, after discussion with the employee.) Yes No
9. Indicate general regimen of treatment. [Indicate schedule of visits or treatment necessary; referral(s) to other provider of health services.]

The following questions (#10 through #13) are to be answered only if the certificate related to the care for an employee's seriously-ill family member:

10. Is inpatient hospitalization of the family member required?
Yes No
11. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?
Yes No
12. After review of the employee's signed statement (See Section A, opposite page.), is the employee's presence necessary or would it be beneficial for the care of the patient? (The answer to this question may include psychological comfort and will probably involve your expressing a professional opinion.) Yes No
13. Estimate the period of time needed or the period of time the employee's presence would be beneficial:

Name, physician or practitioner Signature Date (please print)
Type of practice (field of specialization, if any)

APPENDIX II

Policy Interpretation of Family and Medical Leave Act for Faculty

AR II-1.1-12 provides for a family and medical leave for UK employees. Further, the policy provides for up to twelve weeks of unpaid family or medical leave (FML) for any of the noted qualifying events.

As it specifically relates to faculty, Section I.I states, "A faculty member taking leave under Section 4 of this policy shall first take any sick leave available under the Sick Leave Policy [GR X-13 or GR X.C.5.b.(1)] and any vacation leave available under the Vacation Leave Policy (GR X-8 or GR X.C.2.). After exhaustion of these leaves, the faculty member would be in a leave without pay status for the balance of the approved Family and Medical leave."

It is expected that any faculty member will give the appropriate dean, director, or community college president notice (30 days notice is required, per Section I.J. of the policy) of any absence which may be the result of a Family and Medical Leave (FML) qualifying event. It should be noted that the University may only designate FML leave based upon information ascertained directly from the faculty member and the FML leave must be designated prior to the faculty member's returning from leave.

Upon the establishment of one of the qualifying events, the dean, director or president must designate the FML leave days as paid or unpaid. The number of paid days will depend on the available vacation leave and/or the applicable sick leave days. Per the policy, if the faculty member is eligible for vacation leave (ten, eleven, or twelve month faculty) or sick leave (also called temporary disability leave or TDL), either or both of these paid leaves must be used, if the qualifying event is an applicable use of that leave.

For a faculty member who is eligible for sick leave [GR X-13 or GR X.C.5.b.(1)] and who is placed on FML leave for selfcare (with a serious health condition and who is unable to perform the functions of her/his position), the FML leave will be with pay, not to exceed the 12 weeks of FML leave, with the approval of the chancellor or vice president, and the total paid leave (including the non-FML leave) may not exceed six months. [See GR X-13.C.5.b.(1).] For a period where one is unable to perform the functions of her/his position for longer than six months, one may apply for long term disability.

For other qualifying events (father's leave for birth of a child, adoption, foster care, and care of a child, spouse or parent), a faculty member may, for that qualifying event, request and be granted (or denied) sick leave with pay for up to five (5) days by the appropriate chancellor or vice president, and the remaining FML leave would be without pay, unless the faculty member is ten, eleven, or twelve month faculty and has available vacation leave. It should be noted that faculty

with vacation leave may take that leave "at appropriate times during the period in which they are eligible to take such leave." (GR X-8 or GR X.C.2).

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