Family and Medical Leave Act 1994-1997

Bowling Green State University. Administrative Staff Council

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**Notes**

1. Colored Paper
2. Colored Ink
3. Pencil
4. Poor Photocopies
5. Highlighter
6. Post-It Notes
February 28, 1994

MEMORANDUM

TO: Robert L. Martin
Vice President for Operations

FROM: Walt Montenegro
Personnel Services

SUBJECT: Family and Medical Leave Policy (FMLA)

Attached is a draft copy of a Family and Medical Leave Policy for use at Bowling Green State University for administrative and classified staff. If approved, it will be included in the 1994-1995 edition of the employee handbooks.

The draft policy follows the College and University Personnel Association model and conforms to the provisions of the Federal law as well as the Department of Labor implementing instructions.

Included with the policy are two draft letters - one for requesting FMLA leave and the other for employees whose spouse is also working for the University, two draft medical certification forms - a Department of Labor recommended form and one proposed by CUPA - for consideration. The CUPA form is more detailed and directly addresses the situations regarding FMLA leave. The Department of Labor form is very general in nature but easier to complete by physicians. Lastly a handout on employee rights is included with the policy. Including this with the policy is the best way of insuring employees have a copy of it as it will be placed in the handbook.

Attachments

cc: John C. Moore
2. Definitions

1. General

a. Covered Leave. The University will grant an eligible employee unpaid leave for up to 12 work weeks during a 12-month period, if the procedures in this policy are followed and leave is requested for the following reasons:

(1) The birth or adoption of a child, or the foster care placement of a child.

(2) To care for a "family member" of the employee if that individual has a serious health condition.

(3) A serious health condition of the employee renders the individual unable to perform his or her job functions.

Employees are limited to a maximum of 12 weeks unpaid leave for any of these purposes. An employee cannot take 12 weeks parental leave and 12 weeks sick leave during the same 12-month period. If the leave is for birth, adoption, or foster care placement, the leave must be completed within 12 months of the date of birth or placement.

b. The 12-Month Period. Available leave will be calculated by determining the amount of leave used by an employee for the 12 months prior to each day for which leave is requested under this policy and subtracting that number from the total number of days equal to 12 workweeks. Employees will be advised when requesting leave of the amount of FMLA time they have available.

c. Spousal Exception. If a husband and wife both work for the University, and are eligible for leave, they are only entitled to a combined 12 work weeks of leave taken for birth, adoption, foster care, and to care for a parent. The 12 weeks will be calculated in the same manner as leave for an individual employee.

d. State Law. All of the same procedures will apply to leave under state law that are longer than 12 weeks (medical, disability, maternity). Leave under state law will run concurrently with leave under federal law. The University will comply with both Federal and state law regarding these leaves.

e. Intermittent Leave. An employee taking leave for personal illness or to take care of a sick family member need not take such leave continuously and may take it on an intermittent basis, or by reducing the employee's scheduled work hours, if the employee provides certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner. If leave is not taken continuously, it will be deducted from the employee's entitlement to leave, i.e., 12 weeks during a 12-month period, in increments of one hour.

f. Part-Time After Birth, Adoption, or Foster Care Placement. Requests for intermittent or reduced (part-time) leave after the birth, adoption, or foster care placement of a child will be considered on a case-by-case basis. The request should be made through the immediate supervisor to the office of Personnel Services. As a general rule, part-time arrangements or intermittent leave will be granted:

(1) For a maximum of twelve months after birth, adoption, or foster care;

(2) For leaves in increments of four hours or one day (such as five four-hour days or three eight-hour days);

(3) Subject to the ability of the employee's immediate supervisor to ensure that work is completed through scheduling changes or job-sharing;

(4) Subject to the immediate supervisor's consent to alter schedule or work longer hours on an emergency basis, such as when other employees are out sick.

The University reserves the right to refuse leave, or to cancel any such arrangement on 30 days notice, if the University concludes that the need of the business requires the employee's presence on a full-time basis.

2. Definitions

a. "Family Member". A family member is defined in FMLA and the policy to include the employee's spouse, son, daughter or parent (but not a parent "in-law"). A "son" or "daughter" is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day to day basis and for whom the employee is financially responsible. A "son" or "daughter" is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day to day and financial responsibility for the employee when the employee was a child.
3. Eligibility

a. Minimum Eligibility Requirements.
   (1) An employee is eligible if he or she has been employed for at least 12 months (or 52 weeks) by the University, and has worked at least 1,250 hours during the 12-month period prior to the time leave would begin under this policy. Personnel Services will make the determination at the time of the leave request.
   (2) Hours are calculated based upon actual hours that the employee worked, including overtime.
   (3) Personnel Services will use its record of hours worked for all classified staff. In the case of administrative staff, it will be assumed that any employee employed full-time for seven and one-half months meets the 1,250-hour requirement. Administrative staff who have 12 months prior service, but less than seven and one-half months full-time continuous service at the time leave is requested, must include documentation of hours worked with their request.

b. Work Site Rules. The University will attempt to accommodate all leave requests, regardless of the number of employees at a particular work site. Employees must realize that they are not protected under FMLA if there are fewer than 50 employees within 75 miles of the University's work site. (Note: Given the number of employees at both the main campus and the Firelands College campus, this rule does not presently apply to the University.)

c. Leave For Serious Health Conditions. Employees should recognize that this policy and FMLA are only intended to cover serious health conditions — generally those which involve more than three days' incapacity from work or school, or chronic long-term, incurable condition. Employees who wish to take leave to care for family members with non-serious health conditions are not covered by this policy. Employees can use their sick leave, vacation, or personal leave for non-serious health conditions, subject to the requirements of those policies, including scheduling and increments of leave. The granting of unpaid leave for non-serious health conditions is within the discretion of the immediate supervisor and is covered in the employee handbook.

4. Procedures For Requesting Leave.

a. Requests For Leave.
   (1) Procedure. All requests for family or medical leave will be initiated by the employee contacting the immediate supervisor. This will affect the supervisor in working out appropriate schedules. If for any reason the employee does not wish to inform the immediate supervisor of the reason for the leave, or if there are any questions about the supervisor's response, the employee may contact the Office of Personnel Services. In all cases, employees will be asked to complete a "Request For Family or Medical Leave" form, copies of which are included with this policy.
   (2) Forseeable Leaves. If the need for family or medical leave is foreseeable, the employee must provide notice to the immediate supervisor of not less than 30 days. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may designate leave to start after 30 days notice is given.
   Failure to report to work when FMLA leave has been denied will be treated as an unexcused absence under the University's attendance policy. Employees will not be paid for any missed days or permitted to substitute paid leave, and may be subject to disciplinary actions.
   (3) Scheduling. If the leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced schedule leave, employees may be required by their immediate supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.
(4) **Unforeseeable Leaves.** If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. Employees are expected to promptly notify their immediate supervisor or the Office of Personnel Services as soon as they learn of the need for leave. If the employee's immediate supervisor is unavailable, the next level of supervision may be contacted. In emergencies, the employee or a family member should contact the immediate supervisor and provide information by phone, fax, or by leaving a message and a phone number so they can be reached. In the event of serious or medical emergencies, written requests for leave should be submitted within three workdays after the oral request has been made. Except for medical emergencies, failure to call or notify a supervisor prior to a scheduled workday may be treated as an unexcused absence.

(5) **Additional Information.** After receiving a request for leave, Personnel Services will provide additional information regarding the procedures for obtaining leave, including any additional documents that may be required.

b. **Proof**

(1) **Medical Certification.** The University will require proof of necessity for family or medical leave by a health care provider on a form provided by Personnel Services, a copy of which is included with this policy. Certifications must be submitted within 15 days of the date requested by Personnel Services.

(2) **Second Opinions.** The University has the option of requiring the employee to get a second opinion from an independent medical provider. The University will select and pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by the University and the employee which shall be considered final and binding. The University will pay for this opinion.

c. **Leave is Contingent On Eligibility.** All employee requests for FMLA leave are contingent upon a determination by the University that the employee is eligible for FMLA leave. This includes a determination of eligibility and provision of medical certification. Leave is also contingent on any second or third opinions that may be required. Because these procedures may take time, it is possible that a final determination may not be made until after the employee is on leave or has returned to work.

d. **Transfer to Alternative Position.** In all cases of intermittent and reduced schedule leave, including part-time work after birth or adoption, the University reserves the right to require the employee to transfer to another position that better accommodates the employee's need for leave and/or the University's operations. This decision is in the sole direction of the University as employer. The University also reserves the right to transfer an employee to another position whenever in an employee's use of leave for one or more qualifying reasons is so frequent and intermittent that it is impossible to predict and schedule for coverage.

e. **Confidentiality.** The University will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to Personnel Services and should not retain any copies in their files. The University will follow the confidentiality rules of the American With Disabilities Act (ADA) for all FMLA-related information.

5. **Substitution Of Sick Leave, Personal Leave, Compensatory Time and Vacation Time**

a. **Substitution Options.** Employees may elect to substitute accrued but unused sick leave, personal leave, compensatory time or vacation time under this policy, but are not required to do so. In the case of an employee's illness or serious health condition (including childbirth), the employee is required to exhaust sick and/or personal leave before using compensatory time or vacation leave. In determining whether leave has been accrued or earned, the University will apply the present provisions of the respective policies, including any restrictions.

b. **Unpaid Leave.** Unless an employee substitutes leave, the FMLA leave will be unpaid.

6. **Benefits**

a. **Health Benefits.** During the leave, the University will maintain the employee's coverage for health benefits as it existed prior to the start of the leave. If the employee is under the University's health plan, the employee will be responsible for paying the employee's share of the health plan premiums, and will pay such amount at the time designated by the Benefits Section within the Office of Personnel Services. If the employee fails to make the required payments for health insurance within 30 days of the date that such payments are due, health coverage may be discontinued, or at the sole discretion of the University it may be continued. If this is done, the University will inform the employee of the decision and the employee's share of the premium. The employee will be notified whether coverage will be continued or not. All amounts due the University because of unreimbursed health benefits provided during leave will be deducted from the employee's pay.

b. Other Benefits. Other benefits normally provided to University employees will continue in force as indicated in the employee handbook. The University has the right, upon the employee’s return, to refuse to reinstate any benefit or condition of employment that has been discontinued for University employees.

7. Reinstatement

a. General. An employee taking leave under this policy will be returned to the employee’s same position or to an equivalent position, at the election of the University unless the employee would have been terminated in the absence of any leave (e.g., layoff, downsizing, or termination of a temporary job). The taking of leave will not result in any loss of benefit or condition of employment accrued prior to the beginning of the leave period.

b. Fitness-For-Duty Examinations. The University will require a fitness-for-duty certification prior to reinstatement for all employees taking leave for a serious health condition or where there is any question regarding the employee’s ability to safely perform the job.

The University reserves the right to make additional medical inquiries and/or require followup examinations, at its expense, to ensure that employees can safely perform the substantial functions of the job and will conduct these inquiries in accordance with the procedures contained in the American With Disabilities Act.

c. Periodic Reporting. Employees on leave are required to report weekly on their status and intent to return. During the leave, the University may require that an employee recertify the medical condition that caused the employee to take leave when the University obtains information that casts doubt on the continuing validity of the employee’s original certification, when the employee requests an extension of leave, or when circumstances have changed.

d. COBRA. When an employee notifies the University that he or she is not returning from leave, the University will terminate the employee’s health benefits at the end of the month following notification, and he or she will no longer have a right to restoration to the same equivalent position. The employee will be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA). The Benefits Section within Personnel Services will notify employees of their option under this Act.

e. Repayment of Premiums. Employees who return to work will meet with Benefits Section personnel to work out an appropriate repayment schedule for any employee premiums or co-payments made the the University during the leave.

f. Failure To Return To Work. Employee who fail to return to work after the FMLA leave will be treated as having voluntarily terminated their employment. Any balances of pay due (vacation, compensatory time, etc.) will be paid on the next pay date after termination.


a. Administrator. Bowling Green State University is the sole administrator of this policy and, as such, is the exclusive interpreter of its terms. All provisions of this policy will be interpreted consistent with the Family and Medical Leave Act of 1993.

b. Changes. The University reserves the right to modify or amend this policy at any time.

c. No Employment Rights. This policy does not create any employment rights to any individual other than specifically stated in the policy.

d. Limitations. Except as otherwise stated this policy is not intended to create any rights greater than that conferred on employees by the Family and Medical Leave Act of 1993.

e. State Laws. Where Ohio law and rules provide for more generous terms than that contained in the Family and Medical Leave Act of 1993, employees may avail themselves of these provisions instead.

f. Rights and Obligations. Employees and employers have various rights and obligations under the FMLA. For employees a summary of these rights is included as part of this policy. For further information employees and supervisor may contact the Office of Personnel Services (372-8421).
Date: ______________

REQUEST FOR FAMILY AND MEDICAL LEAVE OF ABSENCE

Employees who have worked for at least 1,250 hours during the 12-month period immediately prior to the request for leave are eligible for leave.

Name (Printed): ___________________ Employee ID Number: ______________
Department: ___________________ Date of Hire: ______________

TYPE OF LEAVE REQUESTED (Check one box)

☐ Employee Medical Leave of Absence
☐ Extension of Employee Medical Leave of Absence
  Dates of prior approved Medical Leave are from ___ to ___

☐ Family Medical Leave of Absence
☐ Extension of Family Medical Leave of Absence
  Dates of prior approved Family Medical Leave are from ___ to ___

☐ Leave to care for newborn or adopted child or a child placed (via state procedure) for foster care.

The Leave (extension) requested will begin on ___ and end on ___. If the request is for multiple days off for recurring medical treatments of a child, parent, or spouse, or for your own medical treatments, specify dates requested:

__________________________________________________________________________

REASON FOR LEAVE (Check one box)

☐ My personal serious health condition
☐ Birth of my child
☐ Adoption of a child by me
☐ Placement (by the state) of a child by me with foster care
☐ Serious health condition of my child
☐ Serious health condition of my parent
☐ Serious health condition of my spouse

_________________________________________ Employee Signature

An Equal Employment — Affirmative Action Employer
Date: __________________________

REQUEST FOR FAMILY AND MEDICAL LEAVE OF ABSENCE BY EMPLOYEE WHOSE SPOUSE
IS ALSO AN EMPLOYEE OF BOWLING GREEN STATE UNIVERSITY

Check the leave requested:

_______ Family Leave to care for newly arrived child

_______ Family Medical Leave to care for a parent with a serious health condition

Check Yes or No

□ YES  □ NO  I have a spouse employed at Bowling Green State University.

Spouse's Name: __________________________  Employee ID Number: ______________

Department: __________________________  Date of Hire: __________________________

I certify by my signature that I have read the policy regarding the Family and Medical
Leave Act of 1993 and agree to abide by it:

In any case in which a husband and wife are:

(a) Both employed by Bowling Green State University,

(b) Both entitled to leave,

(c) If the leave is taken for the birth or adoption of a child or to care
   for the serious health condition of a parent,

Then the aggregate number of workweeks of leave to which both may be entitled may
be limited to 12 workweeks during any 12-month period.

If there is a change in circumstances with respect to the above, I will notify
my immediate supervisor or the Office of Personnel Services immediately.

Name (Printed): __________________________  Employee ID Number: ______________

Department: __________________________  Date of Hire: __________________________

______________________________  Employee Signature

An Equal Employment — Affirmative Action Employer
FORM FOR CERTIFICATION OF PHYSICIAN OR PRACTITIONER  
(FAMILY AND MEDICAL LEAVE ACT OF 1993)  

To: Physician or other Health Care Provider.  

The following information is sought in connection with an employee's request for leave under the Family and Medical Leave Act of 1993. A copy of the definitions adopted by the U.S. Department of Labor are attached. Questions about these issues should be directed to the Office of Personnel Services, Bowling Green State University, Bowling Green, Ohio 43403 (Tel: (419) 372-8421).  

1. Employee's Name: ____________________________  

2. Patient's Name (if other than employee): ____________________________  
   a. What is the relationship of the patient to the employee?  
   b. If the patient is over age 18 and is the son or daughter of the employee, does the patient have a physical or mental disability that limits the patient's ability to perform any of the activities of daily life? □ YES □ NO  

If yes, please specify the disability: ____________________________  

3. Diagnosis: ____________________________  

4. Is this condition a chronic condition or disability that is incurable? □ YES □ NO  
   If the answer is yes, skip to Question 9.  

5. Date the patient became incapacitated from work, school, or daily activities: ________  

6. Date the patient was no longer incapacitated (if applicable): ________  

7. If the condition has not resulted in incapacity for more than three calendar days, would the condition result in incapacity for more than three calendar days if left untreated? □ YES □ NO  

8. Did this condition result in in-patient hospitalization (i.e., an overnight stay)? □ YES □ NO  

9. Regime of treatment prescribed. (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it was or is medically necessary for the patient to be off work on an intermittent basis or to work less than the patient's normal work schedule of hours per day or days per week.  
   a. By physician or practitioner: ____________________________  
   b. By another provider of health services, if referred by physician or practitioner: ____________________________  

Instruction: If the certification relates to care for the employee, answer Questions 10, 11 and 12. If the certification relates to care for the employee's seriously ill family member, skip Questions 11 and 12 and proceed to items 13 through 16.  

10. If the condition is one which makes it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule, and there is no specific prescribed regime of treatment, state the aspects of the condition that make intermittent or reduced schedule leave "medically necessary." Indicate the reduction of hours per day or per week that is medically necessary, if applicable, and whether a particular schedule (e.g., off Tuesday) is medically necessary. If leave was or is intermittent, indicate the medical necessity for intermittent leave.  

11. Is the employee unable to perform work of any kind because of a serious health condition? □ YES □ NO □ DON'T KNOW
12. Is the employee unable to perform the essential functions of the employee's position because of the serious health condition? (To determine the essential functions of the employee's position, a copy of the employee's job description is attached.)

☐ YES ☐ NO ☐ DON'T KNOW

a. What essential function(s) cannot be performed because of the serious health condition?

b. Are there any accommodations that would enable the employee to perform these functions without posing a significant risk of injury to the employee or others?

Instruction: For certification relating to care for the employee's seriously ill family member, complete Questions 13 through 16 as they apply to the family member.

13. Does or will the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? ☐ YES ☐ NO ☐ DON'T KNOW

14. After review of the employee's signed statement (Question 17), is the employee's presence necessary, or would it be beneficial for the care of the patient? (This may include psychological comfort.)

☐ YES ☐ NO ☐ DON'T KNOW

a. If unknown, what additional information would you need?

15. Estimate the period of time care is needed or the employee's presence would be beneficial:

16. Is it medically necessary for the employee to take leave on an intermittent or reduced schedule?

☐ YES ☐ NO ☐ DON'T KNOW

Instruction: Item 17 is to be completed by the employee requesting family leave.

17. When family leave is needed to care for a seriously ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule of care if leave is to be taken intermittently or on a reduced leave schedule. The employee shall also state to what extent, if any, the employee will be engaged in other employment during the period of FMLA leave, and the schedule of any such employment.

Employee's Signature ______________________ Date ____________

18. Signature of Physician or Practitioner ______________________ Date ____________

19. Type of practice (include field of specialization, if any): ___________________________________________________________
CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(Family and Medical Leave Act of 1993)

1. Employee's Name:

2. Patient's Name (If other than employee):

3. Diagnosis:

4. Date condition commenced:

5. Probable duration of condition:

6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week):

   a. By Physician or Practitioner:

   b. By another provider of health services, if referred by Physician or Practitioner:

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THRU 14 ON REVERSE SIDE. OTHERWISE, CONTINUE BELOW.

Check Yes or No in the boxes below, as appropriate:

7. ☐ ☐ Is inpatient hospitalization of the employee required?

8. ☐ ☐ Is employee able to perform work of any kind? (If "No", skip Item 9.)

9. ☐ ☐ Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

15. Signature of Physician or Practitioner:

16. Date:

17. Type of Practice (Field of Specialization, if any):

OPTIONAL Form WH-380
June 1993
FORM FOR CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(FAMILY AND MEDICAL LEAVE ACT OF 1993)

To: Physician or other Health Care Provider.

The following information is sought in connection with an employee's request for leave under the Family and Medical Leave Act of 1993. A copy of the definitions adopted by the U.S. Department of Labor are attached. Questions about these issues should be directed to the Office of Personnel Services, Bowling Green State University, Bowling Green, Ohio 43403 (Tel: (419) 372-8421).

1. Employee's Name: ____________________________________________

2. Patient's Name (if other than employee): ___________________________
   a. What is the relationship of the patient to the employee? ______
   b. If the patient is over age 18 and is the son or daughter of the employee, does the patient have a physical or mental disability that limits the patient's ability to perform any of the activities of daily life? □ YES □ NO

   If yes, please specify the disability: ________________________________

3. Diagnosis: ____________________________________________________

4. Is this condition a chronic condition or disability that is incurable? □ YES □ NO

   If the answer is yes, skip to Question 9.

5. Date the patient became incapacitated from work, school, or daily activities: ______

6. Date the patient was no longer incapacitated (if applicable): ______

7. If the condition has not resulted in incapacity for more than three calendar days, would the condition result in incapacity for more than three calendar days if left untreated? □ YES □ NO

8. Did this condition result in in-patient hospitalization (i.e., an overnight stay)? □ YES □ NO

9. Regime of treatment prescribed. Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it was or is medically necessary for the patient to be off work on an intermittent basis or to work less than the patient's normal work schedule of hours per day or days per week.
   a. By physician or practitioner: ________________________________
   b. By another provider of health services, if referred by physician or practitioner: ________________________________

Instruction: If the certification relates to care for the employee, answer Questions 10, 11, and 12. If the certification relates to care for the employee's seriously ill family member, skip Questions 11 and 12 and proceed to items 13 through 16.

10. If the condition is one which makes it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule, and there is no specific prescribed regime of treatment, state the aspects of the condition that make intermittent or reduced schedule leave "medically necessary." Indicate the reduction of hours per day or per week that is medically necessary, if applicable, and whether a particular schedule (e.g., off Tuesday) is medically necessary. If leave was or is intermittent, indicate the medical necessity for intermittent leave.

11. Is the employee unable to perform work of any kind because of a serious health condition? □ YES □ NO □ DON'T KNOW
YOUR RIGHTS under the FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supercede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.
APPENDIX C. Part 325—Rights of Employees Under FMLA

YOUR RIGHTS
UNDER THE
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible for leave if they have worked for a covered employer for at least one year, and have worked for the employer for at least 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE
Unpaid leave may be granted for any of the following reasons:

- To care for the employee’s child after birth or placement for adoption or foster care;
- To care for the employee’s spouse, son or daughter, or parent, who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the employee’s job.

At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION
The employee may be required to provide advance leave notices and medical certification. Filing of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days’ advance notice when the leave is foreseeable.
- The employer may require medical certification to support the request, for leave because of a serious health condition, and may require second or third opinions if the employer disagrees or has other reasons to return to work.

JOB BENEFITS AND PROTECTION

- For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan.”
- Upon return from FMLA leave, most employees must be restored to their original or equivalent employment benefits, including equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of the employee’s leave.

UNLAWFUL ACTS BY EMPLOYERS
FMLA makes it unlawful for the employer to

- interfere with, restrain, or deny the exercise of any right granted under FMLA;
- discharge or discriminating against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT

- The U.S. Department of Labor is authorized to investigate and receive complaints or violations.
- An eligible employee may bring a civil action against an employer. To recover

FMLA does not affect any Federal or State law preventing discrimination or segregating any basis, equally to a collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the U.S. Department of Labor, or the Wage and Hour Division, Washington, D.C. 20210.

[FR Doc. 93-12028 Filed 7-3-93; 8:45 am]
MEMORANDUM

May 28, 1996

TO: Bob Martin, Vice President of Operations
    Nancy Footer, General Counsel

FROM: Duane Whitmire, Chair-Elect of Administrative Staff Council and
       Chair of Personnel Welfare Committee

RE: Status of the ASC Proposals on Natal (Birth/Adoption) and Family and Medical Leave Act (FMLA) Policies

Once again, we are asking for clarity on the status of two ASC Proposals that were originally submitted nearly a year and a half ago. If you recall, we also sought clarification of the status of these same two proposals in memorandums dated May 16, 1995 and December 22, 1995 (see attachments).

Specifically, could you please advise us as to the whether or not the ASC submissions on the Natal (Birth/Adoption) and Family and Medical Leave Act (FMLA) Policies were ever approved? I have included copies of the two proposals for your reference.

There seemed to be some confusion about the interpretation of the FMLA when two spouses are employed at the University. It appears that at least one other state university, Ohio State, has made FML available to each employee. The following is the Ohio State University policy which was downloaded from the world wide web.

"In the case where spouses, partners or siblings are employed by the University, each spouse, partner and sibling is eligible for up to 12 work weeks of FML, following all leave procedures".

In the interests of collaboration and community, timely reaction to this request would be greatly appreciated so changes to our handbook could be considered at the June meeting of the Board of Trustees. Thank you.

cc: B. Benner, Interim Director of Human Resources
    R. Holmes, Chair-Elect of Faculty Senate
    P. Kitchen, Chair-Elect of Classified Staff Council
    N. Lee, Chair of Classified Staff Council
    H. Lunde, Chair of Faculty Senate
    J. Morgan, Chair of Administrative Staff Council
    S. Ribeau, President
MEMORANDUM

December 22, 1995

TO: Bryan Benner, Chair
Administrative Staff Council

FROM: Duane Whitmire, Chair
Personnel Welfare Committee
Administrative Staff Council

RE: Follow-Up on Two Proposed Handbook Changes from Last Year

The purpose of this correspondence is to seek follow-up on two proposed handbook changes that Administrative Staff Council submitted to Bob Martin last year. Specifically, the status of the Natal (Birth/Adoption) Leave Policy and the Family and Medical Leave Act (FMLA) Policy (see the two attachments) needs to be determined and forwarded to the Board of Trustees.

As you may recall, a number of the Handbook Changes sent by ASC to Ad Council last year were put on hold waiting the outcome of the Mercer Study. However, the above two policies are not covered by the Mercer Study. Yet, to the best of my knowledge, they were never presented to the Board of Trustees. I have also enclosed a copy of a memorandum from Pat Green (Chair of ASC last year) to Bob Martin dated May 16, 1995 seeking clarification of the status of the same two proposed handbook changes back in that time frame.

Anything you could do to expedite the processing of these two proposed handbook changes would be greatly appreciated. Thank you, in advance for your cooperation in this matter.

pc: Bob Martin
John Moore
Sidney Ribeau
ASC Executive Committee
May 16, 1995

Memorandum

To: Bob Martin
Vice President, Operations

From: Pat Green, Chair

Re: Proposed Handboook Changes

Attached are copies of two handbook changes that ASC is waiting for Ad Council to discuss. One concerns a revision to the current maternity leave policy, and the other involves the Family Leave Act. Our proposed natal leave policy changes the length of leave from 4 months to 6 months and would include all staff members. The proposed change to the FMLA would allow spouses employed at BGSU to each be entitled up to 12 weeks leave.

There are two separate proposed changes that I hope did not get lost in the shuffle. The ASC Executive Committee would like to request that these changes be considered in time for the June 20 Board meeting. Thank you for your consideration.

PG:asaf

Enclosures

cc: John Moore
Duane Whitmire
ASC Executive Committee
NATAL (BIRTH/ADOPTION) LEAVE

1. Each staff member is eligible for natal leave up to six months.

2. The six month leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

3. Accrued sick leave, accrued vacation credit and a leave of absence without pay can be used during this six month period. A staff member may use any or all of the accrued vacation credit and/or accrued sick leave or personal leave before going on a leave of absence without pay.

4. A staff member will notify, in writing, the supervisor and the Office of Personnel Services, prior to the start of the leave, as to the number of days to be taken as sick leave, the number of days to be taken as vacation and number of days to be taken as a leave of absence without pay.

5. Should a staff member decide not to return to the University following leave, the staff member must notify the supervisor, in writing, no less than 30 calendar days preceding the scheduled return to work.

6. Staff members taking leave are guaranteed their positions and job title upon return.

If these proposed changes are adopted, then the section on Paternity/Adoption Leave would be deleted from page 42 of the current handbook.

Adopted ASC 1/19/95
Family and Medical Leave Act (FMLA) Policy

Bowling Green State University understands the importance of family issues in today's work force. The University also recognizes that more than ever its employees face conflicting demands of family obligations and work. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions, and in order to comply with the Family and Medical Leave Act (FMLA) of 1993, the University has established a parental leave and family and medical leave policy. The University will grant each eligible employee, University employed spouses included, up to 12 weeks within a 12 month period for the following reasons:

1. The birth or adoption of a child, or the foster care placement of a child. *

2. To care for a "family member" of the employee if that individual has a serious health condition.

3. A serious health condition of the employee renders the individual unable to perform his or her job functions.

Accrued sick leave, accrued vacation credit and leave of absence without pay can be used during this period. A staff member may use any or all of the accrued vacation and/or sick leave and personal leave during the family medical leave before going on a leave of absence without pay.

In the event that an extended leave beyond 12 weeks is needed, employees should request a long term leave.

Procedures for FMLA leave will apply also to leave under state law and University policy that are no longer than 12 weeks (medical, disability, maternity, etc.) Leave under state law and University policy will run concurrently with leave under this policy. The University will comply with both federal and state law, as well as University policy regarding these leaves.
A packet of information covering the University's policy, request forms, and required documentation is available in the Office of Personnel Services. A copy of employee rights under the Family and Medical Leave Act of 1993 is contained at the end of this handbook.

Questions or concerns regarding family or medical leave under this act can be addressed by calling Personnel Services (372-8421).

* Also, refer to the Maternity/Paternity/Adoption Leave section on page 42.
Minutes of Task Force
on
Family Medical Leave
for
February 21, 1997

Present: Benner, Buckenmyer, Footer, Holmes (Chair and Secretary du Jour), Kitchen, Stickler and Whitmire

Absent: Applebaum and Morgan

The Chair distributed minutes for February 14 and the minutes of February 7 were approved. The draft of the FMLP from Norma was discussed, all final revision to it were to be sent to Stickler by noon on Tuesday.

The catastrophic leave policy was discussed at length. Footer informed the committee that the Attorney General's position is that such policies are not legal until enabling legislation is passed, but that several state universities have them. Holmes was concerned about the cost of policies. Benner suggested few people will take this leave, using it as a bridge to disability under STRS or PERS. All agreed that this leave is desirable, but much ground work is needed before it is recommended to the Board and implemented.

The Chair told a few lawyer jokes, scheduled the meeting for the next Friday at 9:00 am at which time the committee will a) finalize the FMLP and b) make recommendations for changing other related leave policies.
March 13, 1997

MEMORANDUM

TO: Charles Middleton, Provost and VPAA
    Harold Lunde, Chair of Faculty Senate

FROM: Bob Holmes
    Chair of the Task Force on FMLP

RE: Report and Recommendations of the Task Force on FMLP

I am enclosing the recommended FMLP for all constituent groups, which passed unanimously at the task force meeting of February 28.

Additionally, the task force has these recommendations to the central administration and for discussion by the three welfare committees of the constituent groups:

a) Catastrophic Leave is needed, but more ground work is necessary to determine the cost, before this task force can recommend it;

b) Domestic partner coverage is needed but more ground work is necessary to determine the cost of health insurance policies before this can be recommended;

c) The administrative staff maternity leave should be increased from 4 to 6 months in order to harmonize it with the classified staff leave;

d) The definition of immediate family member must be consistent in all leave policies for all constituent groups;

e) All maternity or pregnancy leave policies should use language that permits males to use such benefits, i.e. change it to a paternity leave policy;

f) Fee waivers for part-time administrative and classified staff members and their dependents should be developed that are similar to part-time faculty benefits;
g) The fee waivers for administrative and classified staff who have worked full-time at BGSU for ten years and their dependents should be made available indefinitely after retirement;

h) The tenure clock should stop running when a long-term leave is taken;

i) In order to make the sick leave policy for staff more equivalent to the faculty policy, flexible time programs for classified and administrative staffs should be created where feasible.

Two members feel strongly that recommendations f and g dealing with fee-waivers are outside of the scope of this task force's charge.

The Chair now thanks the task force members for developing these recommendations and FMLP in a very short time period and commends their efforts, insights and cooperative spirit which made this complicated task relatively easy and somewhat fun! A special thank you is given to Norma Stickler for her extra effort and contributions to the task force. She was awarded a task force high of two or three stars plus a valentine for her efforts!

xc: FML Task Force Members

RAH
enclosure
FAMILY AND MEDICAL LEAVE ACT POLICY
Bowling Green State University

Bowling Green State University (BGSU) historically has provided its employees a superior range of fringe benefits in recognition of the efforts of its loyal and dedicated work force. The University recognizes the conflicting demands placed on family-life and the work-life of employees where single working parent families exist or where both parents are working. The University desires to provide a working environment that offers solutions to the complex issues confronting employees in their efforts to balance their family and employment commitments. Accordingly, this Family and Medical Leave Policy (FMLP) although mandated by the U.S. Family and Medical Leave Act of 1993 (FMLA) provides BGSU’s employees with benefits exceeding the federal law.

Any terms used from the FMLA will be defined in the Act or the U.S. Department of Labor regulations. Where Ohio law and/or BGSU policies provide for more generous terms than that contained in the Family and Medical Leave Act of 1993, employees may avail themselves of these provisions instead. This policy summarizes the various employee and employer rights and obligations under the FMLA.

I. The FMLA Policy

The Family and Medical Leave Act provides eligible faculty and staff members up to 12 weeks (480 hours) of leave during any 12 month period for one or more of the following reasons:

A. for the birth of an employee’s child or the placement for adoption or foster care of an employee’s child or the care of an employee’s child, but such leave shall expire one year after the birth or placement of the child;

B. for the care of the employee’s family member who has a serious health condition; or

C. for a serious health condition that makes an employee unable to perform the employee’s job.
II. Definitions

A. A “family member” is defined to include the employee’s spouse, child, parent, grandparent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, or legal guardian.

B. A “spouse” is defined as a husband or wife as recognized under the laws of the State of Ohio.

C. A “child” is defined as a biological, adopted or foster child, a stepchild, a legal ward, or child of the person who has or had during the employee’s childhood daily responsibility to care for and financially support the employee, who is either under the age of 18 or is incapable of self-care because of a physical or mental disability.

D. A “parent” is defined as a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who has or had during the employee’s childhood daily responsibility to care for and financially support the employee.

E. A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves any of the following circumstances:

1. a period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility,

2. any period of incapacity requiring absence of more than three days from work involving continuing treatment by or under the supervision of a health care provider,

3. continuing treatment by a health care provider for a chronic, long-term or incurable health condition that is so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days,

4. conditions relating to pregnancy and childbirth, including prenatal care.

F. A “health care provider” is a person authorized to practice as a health care provider by a state, province, or nation and is performing within the scope of that practice as one of the following:
doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray), nurse practitioner, nurse midwife, Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts

G. "Intermittent leave" is leave taken in non-consecutive blocks of time rather than for one continuous period of time, and may include leave periods from an hour or more to several weeks.

H. "Reduced schedule" is a reduction in the usual number of working hours per day or week for a period of time for reasons relating to FML.

III. Eligibility

A BGSU employee is eligible for FML if he or she has been employed by the University at least 12 months prior to the date of leave (the 12 months need not be consecutive) and for at least 1,250 hours in the 12 months preceding the leave. Full-time administrative and classified staff and faculty are presumed to have worked 1,250 hours.

If both spouses are employed by the University, they are each entitled, to the extent each is eligible, to 12 weeks of FML.

Leave for birth or placement of a child is available equally to both sexes.

IV. Notice to Employer

In the event of a planned absence, notification must be submitted to the employee's immediate supervisor, chair, or director at least 30 days in advance of the leave and followed by written documentation in accordance with existing University procedures with regard to leave usage.

If the need for family or medical leave is not foreseeable, verbal notice must be given by the employee to the immediate supervisor, chair, or director as soon as possible, followed by written documentation in accordance with existing University procedures.
V. Certification

A. Obtaining Leave
A request for FML must be substantiated with satisfactory certification from an appropriate health care provider in accordance with existing University leave policies.

The University reserves the right to request a second opinion, at its expense.

If the first and second opinions differ significantly, the University reserves the right to request a third and binding opinion from a jointly-selected health care provider whose fee will be paid by the University.

B. Returning to Work
When there is any question regarding the employee's ability to perform the job after an FML for a health condition, the University may require certification from the health care provider.

VI. Other Provisions

A. Commencement of Leave
An eligible employee is entitled to a total of 12 weeks of approved unpaid FML in a year. The year is measured forward from the first day of any family medical leave.

Leave for the birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption.

B. Intermittent or Reduced Leave
An intermittent or reduced leave schedule is available under the FMLA for the serious health condition of the employee or the employee's immediate family.

C. Concurrency with Other Leaves
Any leave taken for one of the reasons stated in this policy shall be designated as FML and counted toward both the 12 weeks of FML and the appropriate paid or unpaid leave balances available under University policies.
D. Health Benefits
For the duration of the FML, the employee may continue health insurance benefits on the same terms as if the employee were working. The employee is responsible for submitting to the Benefits Office by check or money order that portion of the premium that would ordinarily be deducted from the paycheck. If payments are not made, the University may discontinue health care coverage.

If the employee elects not to return to work upon completion of an approved FML, the employee agrees to reimburse the University for the amount of the University's contribution to health insurance, unless the failure to return to work is beyond the employee's control.

E. Retirement Benefits
Employees on unpaid FML will not accrue STRS or PERS service credit nor vacation or sick leave accumulations for the period of the unpaid leave.

F. Confidentiality
To the extent allowed by law, the University will keep confidential the information relating to the reasons for requests for FML.

G. Restoration of Position
When the FML is completed, the employee will return to the same or an equivalent position with commensurate terms and conditions of employment. The University reserves the right to place the employee in an interim assignment with equivalent pay and benefits that better accommodate the employee's need for leave, or the needs of the students, or the University's operations.

H. Aid to Interpretation
To the extent that this document is incomplete or ambiguous, the language of the Family and Medical Leave Act or the Department of Labor regulations will prevail.
MATERNITY/PATERNITY/ADOPTION LEAVE

Leave

1. Staff members who give birth, father and/or adopt a child are eligible for leave. The customary and usual leave will be six months per pregnancy, fathering, and/or adoption.

2. The six month leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

3. Accrued sick leave, accrued vacation credit and a leave of absence without pay can be used during this six month period. A staff member may use any or all of the accrued vacation credit and/or accrued sick leave or personal leave before going on a leave of absence without pay.

4. A staff member will notify, in writing, the supervisor and the Office of Personnel Services, prior to the start of the leave, as to the number of days to be taken as sick leave, the number of days to be taken as vacation and number of days to be taken as a leave of absence without pay.

5. Should a staff member decide not to return to the University following leave, the staff member must notify the supervisor, in writing, no less than 30 calendar days preceding the scheduled return to work.

6. Staff members taking leave are guaranteed their positions and job title upon return.

1-9-95
MATERNITY/PATERNITY/ADOPTION LEAVE

Maternity Leave

1. Staff members who give birth and/or adopt a child are eligible for maternity leave. The customary and usual maternity leave will be six months per pregnancy.

2. The six month maternity leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

3. Accrued sick leave, accrued vacation credit and a leave of absence without pay can be used during this six month period. A staff member may use any or all of the accrued vacation credit and/or accrued sick leave or personal leave before going on a leave of absence without pay.

4. A staff member will notify, in writing, the supervisor and the Office of Personnel Services, prior to the start of the maternity leave, as to the number of days to be taken as sick leave, the number of days to be taken as vacation and number of days to be taken as a leave of absence without pay.

5. Should a staff member decide not to return to the University following maternity leave, the staff member must notify the supervisor, in writing, no less than 30 calendar days preceding the scheduled return to work.

6. Staff members taking maternity leave are guaranteed their positions and job title upon return.
MATERNITY/PATERNITY/ADOPTION LEAVE

Leave

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6. Staff members taking leave are guaranteed their positions and job title upon return.

Revised by PW 1/9/95
Family and Medical Leave Act (FMLA) Policy

Bowling Green State University understands the importance of family issues in today's work force. The University also recognizes that more than ever its employees face conflicting demands of family obligations and work. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions, and in order to comply with the Family and Medical Leave Act (FMLA) of 1993, the University has established a parental leave and family and medical leave policy. The University will grant each eligible employee, University employed spouses included, up to 12 weeks within a 12 month period for the following reasons:

1. The birth or adoption of a child, or the foster care placement of a child.

2. To care for a "family member" of the employee if that individual has a serious health condition.

3. A serious health condition of the employee renders the individual unable to perform his or her job functions.

Accrued sick leave, accrued vacation credit and leave of absence without pay can be used during this period. A staff member may use any or all of the accrued vacation and/or sick leave and personal leave during the family medical leave before going on a leave of absence without pay.

In the event that an extended leave beyond 12 weeks is needed, employees should request a long term leave.

Procedures for FMLA leave will apply also to leave under state law and University policy that are longer than 12 weeks (medical, disability, maternity, etc.) Leave under state law and University policy will run concurrently with leave under this policy. The University will comply with both federal and state law, as well as University policy regarding these leaves.
A packet of information covering the University’s policy, request forms, and required documentation is available in the Office of Personnel Services. A copy of employee rights under the Family and Medical Leave Act of 1993 is contained at the end of this handbook.

Questions or concerns regarding family or medical leave under this act can be addressed by calling Personnel Services (372-8421)
MATERNITY/PATERNITY/ADOPTION LEAVE

Maternity Leave

1. Staff members who give birth and/or adopt a child are eligible for maternity leave. The customary and usual maternity leave will be six months per pregnancy.

2. The six month maternity leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

3. Accrued sick leave, accrued vacation credit and a leave of absence without pay can be used during this six month period. A staff member may use any or all of the accrued vacation credit and/or accrued sick leave or personal leave before going on a leave of absence without pay.

4. A staff member will notify, in writing, the supervisor and the Office of Personnel Services, prior to the start of the maternity leave, as to the number of days to be taken as sick leave, the number of days to be taken as vacation and number of days to be taken as a leave of absence without pay.

5. Should a staff member decide not to return to the University following maternity leave, the staff member must notify the supervisor, in writing, no less than 30 calendar days preceding the scheduled return to work.

6. Staff members taking maternity leave are guaranteed their positions and job title upon return.
This is a very sensitive topic which also needs careful examination by a separate task force. The first topic to be addressed would be establishing the definition of domestic partners. To our knowledge Ohio State has a policy involving domestic partners. It allows employees to use sick leave to take care of a domestic partner provided there is demonstrated evidence of financial commitment.

Recommendation. A joint task force of all three constituent groups research this issue and make a recommendation to the administration and Board of Trustees next year. It is once again recommended that Donna Wittwer be an ex officio member of this task force in the same capacity.

Administrative Staff Maternity Leave
Administrative staff maternity leave should be increased from 4 to 6 months for consistency with classified staff. In addition, the Natal Birth/Adoption Policy adopted by council in January, 1995 should be amended to reflect language for both male and female parents with the following changes: wherever natal is used birth/adoption leave should be used and natal dropped.

NATAL (BIRTH/ADOPTION) LEAVE

1. Each staff member is eligible for natal leave up to six months.

2. The six month leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

3. Accrued sick leave, accrued vacation credit and a leave of absence without pay can be used during this six month period. A staff member may use any or all of the accrued vacation credit and/or accrued sick leave or personal leave before going on a leave of absence without pay.

4. A staff member will notify, in writing, the supervisor and the Office of Personnel Services, prior to the start of the leave, as to the number of days to be taken as sick leave, the number of days to be taken as vacation and number of days to be taken as a leave of absence without pay.

5. Should a staff member decide not to return to the University following leave, the staff member must notify the supervisor, in writing, no less than 30 calendar days preceding the scheduled return to work.

6. Staff members taking leave are guaranteed their positions and job titles upon return. If these proposed changes are adopted, then the section on Paternity/Adoption Leave would be deleted from page 45 of the current handbook.

Adopted ASC 1/19/95

Recommendation: Similar leave policies should be developed for classified and faculty to include both parents.

Definition of Family Members
The definitions of immediate family should be consistent for all groups. Currently, classified staff has grandchild as a family member, while the other groups do not.

Recommendation: Grandchild be included in all groups.

Fee Waivers for Part-time Staff
Part-time faculty have only recently received fee waivers for themselves. (September 1996) They are pro-rated as they are for part-time administrative and classified staff. There are no dependent fee waivers for any group.

Concern: Part-time administrative staff have expressed concern over part-time benefits for a number of years.

Recommendation: Part-time employees from all constituent groups form a task force to examine all part-time benefits with equity for all groups.

Dependent Fee Waivers for Retired Administrative and Classified Staff
Currently when faculty retire, if they are awarded emeritus status (most are), they have the same benefits as if they were still full-time including an indefinite time frame for fee waivers for qualified dependents. If they are not emeritus, and go on SRF, they are entitled to fee waivers for the three years they are on SRF. Currently administrative and classified staff have dependent fee waivers for five years after retirement. In the event of the death of the employee, however, the widow/w and dependents have fee waivers for an unlimited number of years. (All groups)

Recommendation: All groups have indefinite fee waivers for dependents if they have been employed for at least 10 years.

Concern: These fee waivers would be available only to eligible dependents. Eligible must be clearly defined.

Sick Leave for Staff Compared to Faculty

If a faculty member is sick and has a colleague substitute, he/she does not use sick time. If payment is made to a substitute, then sick leave is deducted. This committee thought it unlikely that a classified or administrative staff could find a qualified substitute to perform their jobs when sick. This is clearly a policy that can apply to faculty but not to staff.

Concern: One of the overlapping issues is flex time. While policies exist for all groups regarding flex time, interpretation and use of flex time is not standard. Some offices will not allow any, while others are very accommodating.

Recommendation: The Benefits Office review all flex time policies and make sure the policies are equitable across campus.

Fee Waivers at MCO
Currently only faculty have fee waivers available at MCO.

Recommendation: All staff have fee waivers at MCO.
MATERNITY/PATERNITY/ADOPTION LEAVE

Leave

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2. The six month leave need not be taken as consecutive days if mutually agreeable to the administrative staff member and the immediate supervisor.

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Family and Medical Leave Act (FMLA) Policy

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Questions or concerns regarding family or medical leave under this act can be addressed by calling Personnel Services (372-8421).

* Also, refer to the Maternity/Paternity/Adoption Leave section on page xx.
Employment Standards Administration
Wage and Hour Division

Fact Sheet No. 028

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:
- public agencies, including state, local and federal employers, local education agencies (schools), and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

☑ (1) work for a covered employer;

☑ (2) have worked for the employer for a total of 12 months;

☑ (3) have worked at least 1,250 hours over the previous 12 months; and

☑ (4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT
A covered employer must grant an eligible employee up to a total of 12 work-weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 work-weeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee’s use of paid leave counts as FMLA leave based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two or more times by or under the supervision of a health care provider; or
- one treatment by a health care provider with a continuing regimen of treatment; or

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or
(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the worksite.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take
FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions (at the employer's expense) and periodic recertification; and
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and if for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to $100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supercede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.
The Family and Medical Leave Act ("FMLA") provides certain employees with up to 12 workweeks of unpaid, job-protected leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. This Compliance Guide summarizes the FMLA provisions and regulations, and provides answers to the most frequently asked questions. More detail on the FMLA may be found in the regulations (29 CFR Part 25).

Summary

The FMLA became effective August 5, 1993, for most employers and employees. (For those covered by a collective bargaining agreement (CBA) in effect on that date, the FMLA became effective on the expiration of the CBA or February 5, 1994, whichever was earlier.)

This law covers only certain employers; affects only those employees eligible for the protections of the law; involves entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; sets requirements for notice and certification of the need for FMLA leave; and protects employees who request or take FMLA leave. The law also includes certain employer recordkeeping requirements.

Purposes of the FMLA

The FMLA allows employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

Employer Coverage

FMLA applies to all:

- public agencies, including State, local and Federal employers, and local education agencies (schools); and,
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year (including joint employers and successors of covered employers).

For FMLA purposes, most Federal and Congressional employees are under the jurisdiction of the U.S. Office of Personnel Management (OPM) or the Congress.

Employee Eligibility

To be eligible for FMLA leave, an employee must work for a covered employer and:

1. have worked for that employer for at least 12 months; and
2. have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and,
3. Work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

**Leave Entitlement**

A covered employer must grant an eligible employee up to a total of **12 workweeks of unpaid leave** in a 12 month period for one or more of the following reasons:

- for the birth of a son or daughter, and to care for the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- to care for an immediate family member (spouse, child, or parent -- but not a parent "in-law") with a serious health condition; and
- when the employee is unable to work because of a serious health condition.

Leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement. (See CFR Section 825.201)

Spouses employed by the same employer may be limited to a combined total of 12 workweeks of family leave for the following reasons:

- birth and care of a child;
- for the placement of a child for adoption or foster care, and to care for the newly placed child; and,
- to care for an employee's parent who has a serious health condition.

**Intermittent/Reduced Schedule Leave** - The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. (CFR Section 203)

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less. (See CFR Section 825.205)

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

**Substitution of Paid Leave** - Employees may choose to use, or employers may require the employee to use, accrued paid leave to cover some or all of the FMLA leave taken. Employees may choose, or employers may require, the substitution of accrued paid vacation or personal leave for any of the situations covered by FMLA. The substitution of accrued sick or family leave is limited by the employer's policies governing the use of such leave.

**Serious Health Condition** - "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by or under the supervision
of a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

**Medical Certification** - An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least **15 calendar days** to obtain the medical certification.

An employer may, at its own expense, require the employee to obtain a second medical certification from a health care provider. The employer may choose the health care provider for the second opinion, except that in most cases the employer may not regularly contract with or otherwise regularly use the services of the health care provider. If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be approved jointly by the employer and the employee. The "Certification of Health Care Provider" (optional form **WH-380**) may be used to obtain the certifications.

**Health Care Provider** - Health care providers who may provide certification of a serious health condition include:
- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefits manager; and,
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

**Maintenance of Health Benefits**
A covered employer is required to maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work.

Where appropriate, arrangements will need to be made for employees taking unpaid FMLA leave to pay their share of health insurance premiums. For example, if the group health plan involves co-payments by the employer and the employee, an employee on unpaid FMLA leave must make arrangements to pay his or her normal portion of the insurance premiums to maintain insurance coverage, as must the employer. Such payments may be made under any arrangement voluntarily agreed to by the employer and employee.

An employer's obligation to maintain health benefits under FMLA stops if and when an employee informs the employer of an intent not to return to work at the end of the leave period, or if the employee
fails to return to work when the FMLA leave entitlement is exhausted. The employer's obligation also stops if the employee's premium payment is more than 30 days late and the employer has given the employee written notice at least 15 days in advance advising that coverage will cease if payment is not received.

In some circumstances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

**Other Benefits** - Other benefits, including each payments chosen by the employee instead of group health insurance coverage, need not be maintained during periods of unpaid FMLA leave.

Certain types of earned benefits, such as seniority or paid leave, need not continue to accrue during periods of unpaid FMLA leave provided that such benefits do not accrue for employees on other types of unpaid leave. For other benefits, such as elected life insurance coverage, the employer and the employee may make arrangements to continue benefits during periods of unpaid FMLA leave. An employer may elect to continue such benefits to ensure that the employee will be eligible to be restored to the same benefits upon returning to work. At the conclusion of the leave, the employer may recover only the employee's share of premiums it paid to maintain other "non-health" benefits during unpaid FMLA leave.

**Job Restoration**

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an "equivalent" job, which means virtually identical in the original job in terms of pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA leave.

"Key" Employee Exception - Under limited circumstances where restoration to employment will cause "substantial and grievous economic injury" to its operations, an employer may refuse to reinstate certain highly-paid, salaried "key" employees. In order to do so, the employer must notify the employee in writing of his/her status as a "key" employee (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work; after notifying the employee.

**Notice**

**Employee Notice** - Eligible employees seeking to use FMLA leave may be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- notice "as soon as practicable" when the need to take FMLA leave is not foreseeable ("as soon as practicable" generally means at least verbal notice to the employer within one or two business days of learning of the need to take FMLA leave);
- sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and,
- where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within two business days of returning to work) that leave was taken for an FMLA-qualifying reason.

**Employer Notices** - Covered employers must take the following steps to provide information to employees about FMLA:

- post a notice approved by the Secretary of Labor (WH Publication 1420) explaining rights and responsibilities under FMLA;
• include information about employee rights and obligations under FMLA in employee handbooks or other written material, including Collective Bargaining Agreements (CBAs); or
• if handbooks or other written material do not exist, provide general written guidance about employee rights and obligations under FMLA whenever an employee requests leave (a copy of Fact Sheet No. 20 will fulfill this requirement); and
• provide a written notice designating the leave as FMLA leave and detailing specific expectations and obligations of an employee who is exercising his/her FMLA entitlements. The employer may use the "Employer Response to Employee Request for Family or Medical Leave" (optional form ... WH-38) to meet this requirement. This employer notice should be provided to the employee within one or two business days after receiving the employee's notice of need for leave and include the following:
• that the leave will be counted against the employee's annual FMLA leave entitlement;
• any requirements for the employee to furnish medical certification and the consequences of failing to do so;
• the employee's right to elect to use accrued paid leave for unpaid FMLA leave and whether the employer will require the use of paid leave, and the conditions related to using paid leave;
• any requirement for the employee to make co-premium payments for maintaining group health insurance and the arrangement for making such payments;
• any requirement to present a fitness-for-duty certification before being restored to his/her job;
• rights to job restoration upon return from leave;
• employee's potential liability for reimbursement of health insurance premiums paid by the employer during the leave if the employee fails to return to work after taking FMLA leave; and
• whether the employee qualifies as a "key" employee and the circumstances under which the employee may not be restored to his or her job following leave.

Unlawful Acts

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

Enforcement

FMLA is enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration. This agency investigates complaints of violations. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations. An employee is not required to file a complaint with the Wage and Hour Division prior to bringing such action.

Other Provisions

Some special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when the leave is needed intermittently or when leave is required near the end of a school term (semester).

Several States and other jurisdictions also have family or medical leave laws. If both the Federal law and a State law apply to an employer's operations, an employee is entitled to the most generous benefit provided under either law.

Employers may also provide family and medical leave that is more generous than the FMLA leave requirements.
The FMLA does not modify or affect any Federal or State law which prohibits discrimination.

Questions and Answers

Q: How much leave am I entitled to under FMLA?

If you are an "eligible" employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options for determining the 12-month period:

- the calendar year;
- any fixed 12-month "leave year" such as a fiscal year, a year required by State law, or a year starting on the employee's "anniversary" date;
- the 12-month period measured forward from the date any employee's first FMLA leave begins; or
- a "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

Q: Does the law guarantee paid time off?

No. The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins.

Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?

It can. FMLA leave and workers' compensation leave can run together, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

Q: Can the employer count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?

Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement.

Q: Can the employer count time on maternity leave or pregnancy disability leave as FMLA leave?

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave so long as the employer properly notifies the employee in writing of the designation.

Q: If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA leave?

In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. If the employer was not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.
Q: Who is considered an immediate "family member" for purposes of taking FMLA leave?

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law." The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA).

Q: May I take FMLA leave for visits to a therapist, if my doctor prescribes the therapy?

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay, or for treatment of severe arthritis.

Q: Which employees are eligible to take FMLA leave?

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Q: Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

Q: Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Q: How do I determine if I have worked 1,250 hours in a 12-month period?

Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave. As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met:

- 24 hours worked in each of the 52 weeks of the year; or
- over 104 hours worked in each of the 12 months of the year; or
- 40 hours worked per week for more than 31 weeks (over seven months) of the year.

Q: Do I have to give my employer my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. The employer may, however, request that, for any leave taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

Q: Can my employer require me to return to work before I exhaust my leave?

Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

Q: Are there any restrictions on how I spend my time while on leave?

Employers with established policies regarding outside employment while on paid or unpaid leave may...
uniformly apply those policies to employees on FMLA leave. Otherwise, the employer may not restrict your activities. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

Q: Can my employer make inquiries about my leave during my absence?

Yes, but only to you. Your employer may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work after leave. Also, if the employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the employer's expense, or recertification during a period of FMLA leave. The employer may have a health care provider representing the employer contact your health care provider, with your permission, to clarify information in the medical certification or to confirm that it was provided by the health care provider. The inquiry may not seek additional information regarding your health condition or that of a family member.

Q: Can my employer refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted your FMLA leave entitlement for the year), you may not be denied FMLA leave.

Q: Will I lose my job if I take FMLA leave?

Generally, no. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this law. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. Under limited circumstances, an employer may deny reinstatement to work - but not the use of FMLA leave - to certain highly-paid, salaried ("key") employees.

Q: Are there other circumstances in which my employer can deny me FMLA leave or reinstatement to my job?

In addition to denying reinstatement in certain circumstances to "key" employees, employers are not required to continue FMLA benefits or reinstate employees who would have been laid off or otherwise had their employment terminated had they continued to work during the FMLA leave period as, for example, due to a general layoff.

Employees who give unequivocal notice that they do not intend to return to work: lose their entitlement to FMLA leave.

Employees who are unable to return to work: have exhausted their 12 weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

Under certain circumstances, employers who advise employees experiencing a serious health condition that they will require a medical certificate of fitness for duty to return to work: may deny reinstatement to an employee who fails to provide the certification, or may delay reinstatement until the certification is submitted.

Q: Can my employer fire me for complaining about a violation of FMLA?

No. Nor can the employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.

Q: Does an employer have to pay bonuses to employees who have been on FMLA leave?

The FMLA requires that employees be restored to the same or an equivalent position. If an employee
was eligible for a bonus before taking FMLA leave, the employee would be eligible for the bonus upon returning to work. The FMLA leave may not be counted against the employee. For example, if an employer offers a perfect attendance bonus and the employee has not missed any time prior to taking FMLA leave, the employee would still be eligible for the bonus upon returning from FMLA leave.

On the other hand, FMLA does not require that employees on FMLA leave be allowed to accrue benefits or seniority. For example, an employee on FMLA leave might not have sufficient sales to qualify for a bonus. The employer is not required to make any special accommodation for this employee because of FMLA. The employer must, of course, treat an employee who has used FMLA leave at least as well as other employees on paid and unpaid leave (as appropriate) are treated.

For more information, please contact the nearest office of the Wage and Hour Division; or access the FMLA page here on the internet.

Family and Medical Leave Act
Employee/Employer Advisor
Wage and Hour Division
Employment Standards Administration

The Family and Medical Leave Act (FMLA) Advisor provides information about employee eligibility under FMLA; including valid reasons for leave; employee/employer notification responsibilities; and employee rights and benefits. This Advisor was developed by the Wage and Hour Division of the Employment Standards Administration.

The Department of Labor (DOL) developed the elaws Advisors to help employees and employers understand their rights and responsibilities under numerous Federal employment laws. Each Advisor includes links to more detailed information that may be useful to the user, such as links to regulatory text, publications and organizations.

Please click the Continue button to begin.
Family and Medical Leave Act
Employee/Employer Advisor
Wage and Hour Division
Employment Standards Administration

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that group health benefits be maintained during the leave.

The FMLA is designed to help employees balance their work and family responsibilities by taking reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers, and promotes equal employment opportunity for men and women.

The Family & Medical Leave Act:

- covers only certain employers;
- affects only those employees eligible for the protections of the law;
- involves entitlement to leave;
- maintains health benefits during leave;
- restores an employee’s job after leave;
- sets requirements for notice and certification of the need for leave;
- protects employees who request or take leave; and
- includes certain employer record keeping requirements.

Related Laws:

A number of states have also enacted family and medical leave laws, some of which provide greater amounts of leave and benefits than those provided by FMLA, and/or provide benefits to employees who are not eligible for FMLA leave. In those situations where an employee is covered by both Federal and State FMLA laws, the employee is entitled to the greater benefit or more generous rights provided under the different parts of each law. Some employees may also be entitled to protections provided by the Americans with Disabilities Act (ADA) which is administered by the Equal Employment Opportunity Commission (EEOC).
The Family and Medical Leave Act of 1993

Public Law 103-3
Enacted February 5, 1993

An Act
To grant family and temporary medical leave under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.--This Act may be cited as the "Family and Medical Leave Act of 1993".
(b) TABLE OF CONTENTS.--The table of contents is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I--GENERAL REQUIREMENTS FOR LEAVE
Sec. 101. Definitions.
Sec. 102. Leave requirement.
Sec. 103. Certification.
Sec. 104. Employment and benefits protection.
Sec. 105. Prohibited acts.
Sec. 106. Investigative authority.
Sec. 107. Enforcement.
Sec. 108. Special rules concerning employees of local educational agencies.
Sec. 109. Notice.

TITLE II--LEAVE FOR CIVIL SERVICE EMPLOYEES
Sec. 201. Leave requirement.

TITLE III--COMMISSION ON LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

TITLE V--COVERAGE OF CONGRESSIONAL EMPLOYEES

Sec. 501. Leave for certain Senate employees.
Sec. 502. Leave for certain House employees.

TITLE VI--SENSE OF CONGRESS

Sec. 601. Sense of Congress.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.--Congress finds that--

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than
it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

"(b) PURPOSES.--It is the purpose of this Act--

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

TITLE I--GENERAL REQUIREMENTS FOR LEAVE

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMERCE.--The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (2) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(2) ELIGIBLE EMPLOYEE.--

(A) IN GENERAL.--The term "eligible employee" means an employee who has been employed--

(i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) EXCLUSIONS.--The term "eligible employee" does not include--

(i) any Federal officer or employee covered under subchapter V of chapter 62 of title 5, United States Code (as added by title II of this Act); or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) DETERMINATION.--For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph
(A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) EMPLOYER; EMPLOYEE; STATE.--The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(c), (e), and (g)).

(4) EMPLOYER.--

(A) IN GENERAL.--The term "employer"--

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes--

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) PUBLIC AGENCY.--For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(5) EMPLOYMENT BENEFITS.--The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) HEALTH CARE PROVIDER.--The term "health care provider" means--

(A) 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

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) PARENT.--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 son or daughter.

(8) PERSON.--The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(9) REDUCED LEAVE SCHEDULE.--The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) SECRETARY.--The term "Secretary" means the Secretary of Labor.

(11) SERIOUS HEALTH CONDITION.--The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves--

(A) inpatient care in a hospital, hospice, or residential medical care facility; or
(B) continuing treatment by a health care provider.

(12) SON OR DAUGHTER.--The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is--
(A) under 18 years of age; or
(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(12) SPOUSE.--The term "spouse" means a husband or wife, as the case may be.

SEC. 102. LEAVE REQUIREMENT.

(a) IN GENERAL.--

(1) ENTITLEMENT TO LEAVE.--Subject to section 103, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
(B) Because of the placement of a son or daughter with the employee for adoption or foster care.
(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) EXPIRATION OF ENTITLEMENT.--The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b) LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE.--

(1) IN GENERAL.--Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 103(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) ALTERNATIVE POSITION.--If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that--
(A) has equivalent pay and benefits; and
(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) UNPAID LEAVE PERMITTED.--Except as provided in subsection (d), leave granted under subsection (a)(1) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.
213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) RELATIONSHIP TO PAID LEAVE.--

(1) UNPAID LEAVE.—If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) SUBSTITUTION OF PAID LEAVE.—

(A) IN GENERAL.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) SERIOUS HEALTH CONDITION.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) FORESEEABLE LEAVE.—

(1) REQUIREMENT OF NOTICE.—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) DUTIES OF EMPLOYEE.—In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employer with not less than 20 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(f) SPOUSES EMPLOYED BY THE SAME EMPLOYER.—In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

SEC. 103. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall
provide, in a timely manner, a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.--Certification provided under subsection (a) shall be sufficient if it states--

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent;

and

(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) SECOND OPINION.--

(1) IN GENERAL.--In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) LIMITATION.--A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) RESOLUTION OF CONFLICTING OPINIONS.--

(1) IN GENERAL.--In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) FINALITY.--The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.
(e) SUBSEQUENT RECERTIFICATION.--The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.--

(1) IN GENERAL.--Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave--

(A) to be restored by the employer 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.

(2) LOSS OF BENEFITS.--The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) LIMITATIONS.--Nothing in this section shall be construed to entitle any restored employee to--

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) CERTIFICATION.--As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) CONSTRUCTION.--Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.--

(1) DENIAL OF RESTORATION.--An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if--

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) AFFECTED EMPLOYEES.--An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.--
(1) COVERAGE --Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) FAILURE TO RETURN FROM LEAVE.--The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if--

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than--

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

(3) CERTIFICATION.--

(A) ISSUANCE.--An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by--

(i) a certification issued by the health care provider of the son, daughter, 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 102(a)(1)(C); or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

(B) COPY.--The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) SUFFICIENCY OF CERTIFICATION.--

(i) LEAVE DUE TO SERIOUS HEALTH CONDITION OF EMPLOYEE.--The certification described in subparagraph (A)(i) shall be 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.

(ii) LEAVE DUE TO SERIOUS HEALTH CONDITION OF FAMILY MEMBER.--The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

SEC. 105. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.--

(1) EXERCISE OF RIGHTS.--It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) DISCRIMINATION.--It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.
(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.--It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual--

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this title.

SEC. 106. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.--To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.--Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.--The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).

(d) SUBPOENA POWERS.--For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

SEC. 107. ENFORCEMENT.

(a) CIVIL ACTION BY EMPLOYEES.--

(1) LIABILITY.--Any employer who violates section 105 shall be liable to any eligible employee affected--

(A) for damages equal to--

(i) the amount of--

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and
(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) RIGHT OF ACTION.--An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of--

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) FEES AND COSTS.--The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) LIMITATIONS.--The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate--

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) ACTION BY THE SECRETARY.--

(1) ADMINISTRATIVE ACTION.--The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) CIVIL ACTION.--The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (c)(1)(A).

(3) SUMS RECOVERED.--Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) LIMITATION.--

(1) IN GENERAL.--Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) WILLFUL VIOLATION.--In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation.
for which such action is brought.

(3) COMMENCEMENT.--In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) ACTION FOR INJUNCTION BY SECRETARY.--The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary--

(1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) SOLICITOR OF LABOR.--The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

SEC. 103. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) APPLICATION.--

(1) IN GENERAL.--Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to--

(A) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) DEFINITIONS.--For purposes of the application described in paragraph (1):

(A) ELIGIBLE EMPLOYEE.--The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) EMPLOYER.--The term "employer" means an agency or school described in paragraph (1).

(b) LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.--A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this title.

(c) INTERMITTENT LEAVE OR LEAVE ON A REDUCED SCHEDULE FOR INSTRUCTIONAL EMPLOYEES.--

(1) IN GENERAL.--Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either--

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical
treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that--

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) APPLICATION.--The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(e)(2).

(d) RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.--The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) LEAVE MORE THAN 5 WEEKS PRIOR TO END OF TERM.--If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if--

(A) the leave is of at least 2 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) LEAVE LESS THAN 5 WEEKS PRIOR TO END OF TERM.--If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if--

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) LEAVE LESS THAN 3 WEEKS PRIOR TO END OF TERM.--If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.--For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) REDUCTION OF THE AMOUNT OF LIABILITY.--If a local educational agency or a private elementary or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

SEC. 109. NOTICE.

(a) IN GENERAL.--Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a
notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.--Any employer that willfully violates this section may be assessed a civil money penalty not to exceed $100 for each separate offense.

TITLE II--LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. LEAVE REQUIREMENT.

(a) CIVIL SERVICE EMPLOYEES.--

(1) IN GENERAL.--Chapter 63 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V--FAMILY AND MEDICAL LEAVE

"6381. Definitions

"For the purpose of this subchapter--

"(1) the term 'employee' means any individual who--

"(A) is an 'employee', as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6201(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

"(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

"(2) the term 'health care provider' means--

"(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

"(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

"(3) 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 son or daughter;

"(4) the term 'reduced leave schedule' means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

"(5) the term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves--

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment by a health care provider; and

"(6) the term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is--

"(A) under 18 years of age; or
"(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"6382. Leave requirement

"(a)(1) Subject to section 6333, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

"(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

"(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

"(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

"(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

"(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

"(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6323(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

"(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1); that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that--

"(A) has equivalent pay and benefits; and

"(B) better accommodates recurring periods of leave than the regular employment position of the employee.

"(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

"(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

"(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee--
"(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

"(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"6383. Certification

"(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

"(b) A certification provided under subsection (a) shall be sufficient if it states--

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

"(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and

"(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

"(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.
"6384. Employment and benefits protection

"(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave--

"(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

"(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

"(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to--

"(1) the accrual of any employment benefits during any period of leave; or

"(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

"(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

"(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

"6385. Prohibition of coercion

"(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

"(b) For the purpose of this section--

"(1) the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

"(2) the term 'employee' means any 'employee', as defined by section 2105.

"6386. Health insurance

"An employee enrolled in a health benefit plan under chapter 39 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

"6387. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be
consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993."

(2) TABLE OF CONTENTS.--The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER V--FAMILY AND MEDICAL LEAVE

"6381. Definitions.

"6382. Leave requirement.

"6383. Certification.

"6384. Employment and benefits protection.

"6385. Prohibition of coercion.

"6386. Health insurance.

"6387. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.--Section 2105(c)(1) of title 5, United States Code, is amended--

(1) by striking "or" at the end of subparagraph (C); and

(2) by adding at the end the following new subparagraph:

"(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or".

TITLE III--COMMISSION ON LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Leave (referred to in this title as the "Commission").

SEC. 302. DUTIES.

The Commission shall--

(1) conduct a comprehensive study of--

(A) existing and proposed, mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;
(E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.--

(1) APPOINTMENTS.--The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.--One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) MEMBERS OF HOUSE OF REPRESENTATIVES.--One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.--

(i) APPOINTMENT.--Two members each shall be appointed by-(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

(ii) EXPERTISE.--Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) EX OFFICIO MEMBERS.--The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

(b) VACANCIES.--Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) CHAIRPERSON AND VICE CHAIRPERSON.--The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.
(d) QUORUM.--Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.--Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.--Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.--The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.--The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.--The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) USE OF FACILITIES AND SERVICES.--Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(e) PERSONNEL FROM OTHER AGENCIES.--On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) VOLUNTARY SERVICE.--Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.--Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) STATE AND LOCAL LAWS.--Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.
(a) MORE PROTECTIVE.--Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE.--The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

SEC. 404. REGULATIONS.

The Secretary of Labor shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the date of the enactment of this Act.

SEC. 405. EFFECTIVE DATES.

(a) TITLE III.--Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.--

(1) IN GENERAL.--Except as provided in paragraph (2), titles I, II, and V and this title shall take effect 6 months after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.--In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of--

(A) the date of the termination of such agreement; or

(B) the date that occurs 12 months after the date of the enactment of this Act.

TITLE V--COVERAGE OF CONGRESSIONAL EMPLOYEES

SEC. 501. LEAVE FOR CERTAIN SENATE EMPLOYEES.

(a) COVERAGE.--The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing office. For purposes of such application, the term "eligible employee" means a Senate employee and the term "employer" means an employing office.

(b) CONSIDERATION OF ALLEGATIONS.--

(1) APPLICABLE PROVISIONS.--The provisions of sections 304 through 313 of the Government Employee Rights Act of 1991 (2 U.S.C. 1204-1213) shall, except as provided in subsections (d) and (e)--

(A) apply with respect to an allegation of a violation of a provision of sections 101 through 105, with respect to Senate employment of a Senate employee; and

(B) apply to such an allegation in the same manner and to the same extent as such sections of the Government Employee Rights Act of 1991 apply with respect to an allegation of a violation under such Act.
(2) ENTITY.--Such an allegation shall be addressed by the Office of Senate Fair Employment Practices or such other entity as the Senate may designate.

(c) RIGHTS OF EMPLOYEES.--The Office of Senate Fair Employment Practices shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) LIMITATIONS.--A request for counseling under section 305 of such Act by a Senate employee alleging a violation of a provision of sections 101 through 105 shall be made not later than 2 years after the date of the last event constituting the alleged violation for which the counseling is requested, or not later than 3 years after such date in the case of a willful violation of section 105.

(e) APPLICABLE REMEDIES.--The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1) or (3) of section 107(a).

(f) EXERCISE OF RULEMAKING POWER.--The provisions of subsections (b), (c), (d), and (e), except as such subsections apply with respect to section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. No Senate employee may commence a judicial proceeding with respect to an allegation described in subsection (b)(1), except as provided in this section.

(g) SEVERABILITY.--Notwithstanding any other provision of law, if any provision of section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), or of subsection (b)(1) insofar as it applies such section 309 to an allegation described in subsection (b)(1)(A), is invalidated, both such section 309, and subsection (b)(1) insofar as it applies such section 309 to such an allegation, shall have no force and effect, and shall be considered to be invalidated for purposes of section 322 of such Act (2 U.S.C. 1221).

(h) DEFINITIONS.--As used in this section:

(1) EMPLOYING OFFICE.--The term "employing office" means the office with the final authority described in section 301(2) of such Act (2 U.S.C. 1201(2)).

(2) SENATE EMPLOYEE.--The term "Senate employee" means an employee described in subparagraph (A) or (B) of section 301(c)(1) of such Act (2 U.S.C. 1201(c)(1)) who has been employed for at least 12 months other than a temporary or intermittent basis by any employing office.

SEC. 502. LEAVE FOR CERTAIN HOUSE EMPLOYEES.

(a) IN GENERAL.--The rights and protections under sections 102 through 105 (other than section 104(b)) shall apply to any employee in an employment position and any employing authority of the House of Representatives.

(b) ADMINISTRATION.--In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

(c) DEFINITION.--As used in this section, the term "Fair Employment Practices Resolution" means rule LI of the Rules of the House of Representatives.

TITLE VI--SENSE OF CONGRESS

SEC. 601. SENSE OF CONGRESS.

It is the sense of the Congress that:
(a) The Secretary of Defense shall conduct a comprehensive review of current departmental policy with respect to the service of homosexuals in the Armed Forces;

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

(d) The Senate Committee on Armed Services shall conduct (i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and (ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

Approved February 5, 1993.

LEGISLATIVE HISTORY--H.R. 1(S. 5):

HOUSE REPORTS: No. 103-2, Pt. 1 (Comm. on Education and Labor) and Pt. 2 (Comm. on Post Office and Civil Service).

SENATE REPORTS: No. 103-3 accompanying S. 5 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 139 (1993):

Feb. 2, S. 5 considered in Senate.

Feb. 3, considered in Senate; H.R. 1 considered and passed House.

Feb. 4, H.R. 1 considered and passed Senate, amended, in lieu of S. 5. House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):

Feb. 5, Presidential remarks and statement.
SPECIAL LEAVE POLICY FOR ADMINISTRATIVE STAFF
May 26, 1992

SPECIAL LEAVE

The Special Leave Policy allows full and part-time administrative staff members the opportunity to voluntarily request leaves of absences anytime during the calendar year subject to the following stipulations:

1. Leave may occur over a period of weeks, months, monthly or a reduced work schedule of less than 40 hours per week (leave and/or reduced work schedule may not exceed a total of three (3) months in a 12 month period).

2. All leaves must be approved by the immediate supervisor and the dean, director, or area head. To request a leave of absence, the staff member must complete a Special Leave Request Form and send completed form to Personnel Services.

3. No approval will be given to the hiring of temporary/part-time help to fill in for the temporary vacancies created by these leaves. The staff member's absence must not interfere or impede other University operations. Employees on special leave should be available to return to their assignment in the event of unforeseen emergencies.

4. Employees will continue to receive paid regular medical, dental, vision, and life insurance benefits. Employees are responsible for paying applicable insurance premiums.

5. Vacation and sick leave will accrue for hours actually worked.

6. In the case of PERS retirement credit accrual, employees will receive a full month of credit if earnings are a minimum of $250.00 per month. Partial credit if employees earn less, and no credit if there are no earnings.

7. The status of full-time and part-time staff members remains the same.

8. No longer than 2 years.
DEFINITION: UNCLASSIFIED ADMINISTRATIVE POSITION

A position funded wholly or in part (more than half) by grant/external funds and whose appointment is for a specified period of time and subject to the availability of funds.

CONTRACT: CONTRACT FOR UNCLASSIFIED ADMINISTRATIVE STAFF EMPLOYMENT

2. Type of Employment
   c. ( ) Position funded wholly or in part (more than half) by grant/external funds and whose appointment is for a specified period of time and subject to the availability of funds.

4. Compensation
   b. Fringe and Related Benefits. In addition to the annual salary paid to Appointee hereunder, the University shall continue to provide Appointee all fringe benefits currently offered by the University according to the Appointee's type of employment and shall provide adequate notice of any changes in their benefits. Administrative staff are participants in the Public Employees Retirement System (PERS) of the State of Ohio by virtue of their contract status.

BGSU STATEMENT OF UNDERSTANDING

I understand that the position I hold is funded wholly or in part (more than half) by grant or other external funds and that continuation of employment and fringe benefits is contingent upon the availability of said grant/external funds. Continuation of employment is not guaranteed beyond the termination of grant/external funds. Fringe benefits which are provided contingent upon the availability of grant/external funds include, but are not limited to the following:

1. Vacation benefits (including payment of unused balance of no more than 44 days upon termination) for twelve-month full-time contract positions.
2. Sick leave benefits (including payment for a maximum number of days prescribed by policy upon retirement after 10 years of BGSU service).
3. Consulting release time.
4. PERS - University contribution.
5. Employee and dependent fee waiver.
6. Insurance benefits.
7. Supplemental Retirement Program.
8. Holidays

Signature of Employee ___________________________ Date ___________________________
or its professional equivalent. Either academic units or colleges may develop more precise statements of what is expected under each criterion, but may not add other criteria. All such statements shall be approved by the TENURED FACULTY OF AN appropriate academic unit and OR college tenured-faculties, shall be made available to the probationary faculty members affected, and shall be kept on file in the appropriate administrative offices.

b) Evaluation for Promotion [5th and 6th paragraphs]

The statements listed below are intended to serve as Universitywide criteria for assignment of academic rank. Given the diversity of disciplines within the University, it is expected that there will be exceptions to the application of such criteria based upon the nature of a particular discipline (e.g., units with nonteaching faculty). Units with justifiable discipline-based exceptions may develop PROMOTION POLICIES WITH alternate criteria, which SUCH ALTERNATE CRITERIA shall be approved by the faculty of the unit, by the appropriate Dean, and by the VPAA. Individual exceptions leading to appointment to a specific rank also require the approval of the Dean and the VPAA.

AN Academic units may develop A PROMOTION POLICY WITH more specific or more rigorous criteria in teaching, service, or scholarly activity, provided that such criteria are equitable and appropriate and provided that they do not conflict with the criteria below and in a department/school, with the criteria of the college. More specific or more rigorous criteria shall be ratified by the majority of the faculty members of the academic unit. Copies of all statements of procedures for evaluation, criteria, and equivalencies shall be maintained in the appropriate administrative offices.

b) Evaluation for Tenure or Renewal [2nd paragraph]

Tenure on the faculty of BGSU may be attained by a faculty member on probationary appointment. B-1.C.2.b). The probationary period is provided as a period of trial employment to permit members of an academic unit to determine whether an appointment leading to tenure should continue. Thus, careful evaluation of the performance of each probationary faculty member is of fundamental importance in order both to protect the rights of the probationer and to maintain or enhance the quality of the University and its programs.

The candidate for tenure who has adhered to professional standards of ethics, as noted in the Academic Charter, B-II.F, the Ohio Code of Ethics Law, and appropriate professional codes of ethics, shall be granted or denied tenure solely on the basis of the following criteria: teaching effectiveness, scholarly or creative work, service to the University COMMUNITY OR PROFESSION, and attainment of the terminal degree or its professional equivalent. Either AN academic units-or colleges may develop A TENURE POLICY WITH more precise OR MORE RIGOROUS statements of what is expected under each criterion; TEACHING EFFECTIVENESS, SCHOLARLY OR CREATIVE ACTIVITY, OR SERVICE, but may not add other criteria. All such statements shall be approved by the TENURED FACULTY OF THE appropriate academic unit and–college–tenured faculties, shall be made available to the probationary faculty members affected, and shall be kept on file in the appropriate administrative offices.

Proposed Family and Medical Leave Act Policy

No. 55-97  Mr. Latta moved and Mr. Marsh seconded that approval be given to the following Family Medical Leave Act Policy and to inclusion of the policy into the Academic Charter and respective staff handbooks. The motion was approved with no negative votes.
FAMILY AND MEDICAL LEAVE ACT POLICY

Bowling Green State University (BGSU) historically has provided its employees a range of fringe benefits in recognition of the efforts of its loyal and dedicated work force. The University recognizes the conflicting demands placed on family-life and the work-life of employees where single working parent families exist or where both parents are working. The University desires to provide a working environment that offers solutions to the complex issues confronting employees in their efforts to balance their family and employment commitments. Accordingly, this Family and Medical Leave Policy (FMLP) although mandated by the U.S. Family and Medical Leave Act of 1993 (FMLA) provides BGSU's employees with benefits exceeding those required by federal law.

Any terms used from the FMLA will be defined in the Act or the U.S. Department of Labor regulations. Where Ohio law and/or BGSU policies provide for more generous terms than those contained in the Family and Medical Leave Act of 1993, employees may avail themselves of these provisions instead. This policy summarizes the various employee and employer rights and obligations under the FMLA.

I. The FMLA Policy

The Family and Medical Leave Act provides eligible faculty and staff members up to 12 weeks (480 hours) of unpaid leave during any 12 month period for one or more of the following reasons:

A. for the birth of an employee's child or the placement for adoption or foster care of an employee's child, but such leave shall expire one year after the birth or placement of the child;

B. for the care of an employee's family member who has a serious health condition; or

C. for a serious health condition that makes an employee unable to perform the employee's job.

II. Definitions

A. A "family member" is defined to include the employee's spouse, child, parent, grandparent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, or legal guardian.

B. A "spouse" is defined as a husband or wife as recognized under the laws of the State of Ohio.

C. A "child" is defined as a biological, adopted or foster child, a stepchild, a legal ward, or child of an employee who has or had during the child's childhood daily responsibility to care for and financially support the child, who is either under the age of 18 or is incapable of self-care because of a physical or mental disability.

D. A "parent" is defined as a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who has or had during the employee's childhood daily responsibility to care for and financially support the employee.

E. A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves any of the following circumstances:

1. a period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility,

2. any period of incapacity requiring absence of more than three days from work involving continuing treatment by or under the supervision of a health care provider,
3. continuing treatment by a health care provider for a chronic, long-term or incurable health condition that is so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days.

4. conditions relating to pregnancy and childbirth, including prenatal care.

F. A "health care provider" is a person authorized to practice as a health care provider by a state, province, or nation and is performing within the scope of that practice as one of the following:

doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray), nurse practitioner, nurse midwife, Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

G. "Intermittent leave" is leave taken in non-consecutive blocks of time rather than for one continuous period of time, and may include leave periods from an hour or more to several weeks.

H. "Reduced schedule" is a reduction in the usual number of working hours per day or week for a period of time for reasons relating to FML.

III. Eligibility

A BGSU employee is eligible for FML if he or she has been employed by the University at least 12 months prior to the date of leave (the 12 months need not be consecutive) and for at least 1,250 hours in the 12 months preceding the leave. Full-time administrative and classified staff and faculty are presumed to have worked 1,250 hours.

If both spouses are employed by the University, they are each entitled, to the extent each is eligible, to 12 weeks of FML.

Leave for birth or placement of a child is available equally to both sexes.

IV. Notice to Employer

In the event of a planned immediate supervisor, followed by written procedures with regard to

If the need for family or given by the employee to possible, followed by written procedures.

V. Certification

A. Obtaining Leave

A request for FML is an appropriate health policies.

The University reserves the right to request a second opinion, at its expense.

If the first and second opinions differ significantly, the University reserves the right to request a third and binding opinion from a jointly-selected health care provider whose fee will be paid by the University.
3. continuing treatment by a health care provider for a chronic, long-term or incurable health condition that is so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days.

4. conditions relating to pregnancy and childbirth, including prenatal care.

F. A "health care provider" is a person authorized to practice as a health care provider by a state, province, or nation and is performing within the scope of that practice as one of the following:

- doctor of medicine
- doctor of osteopathy
- podiatrist
- dentist
- clinical psychologist
- optometrist
- chiropractor
  (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray)
- nurse practitioner
- nurse midwife
- Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

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If both spouses are employed by the University, they are each entitled, to the extent each is eligible, to 12 weeks of FML.

Leave for birth or placement of a child is available equally to both sexes.

IV. Notice to Employer

In the event of a planned absence, notification must be submitted to the employee's immediate supervisor, chair, or director at least 30 days in advance of the leave and followed by written documentation in accordance with existing University procedures with regard to leave usage.

If the need for family or medical leave is not foreseeable, verbal notice must be given by the employee to the immediate supervisor, chair, or director as soon as possible, followed by written documentation in accordance with existing University procedures.

V. Certification

A. Obtaining Leave

A request for FML must be substantiated with satisfactory certification from an appropriate health care provider in accordance with existing University leave policies.

The University reserves the right to request a second opinion, at its expense.

If the first and second opinions differ significantly, the University reserves the right to request a third and binding opinion from a jointly-selected health care provider whose fee will be paid by the University.
B. Returning to Work

When there is any question regarding the employee's ability to perform the job after an FML for a health condition, the University may require certification from the health care provider.

VI. Other Provisions

A. Commencement of Leave

An eligible employee is entitled to a total of 12 weeks of approved unpaid FML in a year. The year is measured forward from the first day of any family medical leave.

Leave for the birth, adoption or foster care of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption.

B. Intermittent or Reduced Leave

An intermittent or reduced leave schedule is available under the FMLA for the serious health condition of the employee or the employee's family.

C. Concurrency with Other Leaves

Any leave taken for one of the reasons stated in this policy shall be designated as FML and counted toward both the 12 weeks of FML and the appropriate paid or unpaid leave balances available under University policies.

D. Health Benefits

For the duration of the FML, the employee may continue health insurance benefits on the same terms as if the employee were working. The employee is responsible for submitting to the Benefits Office by check or money order that portion of the premium that would ordinarily be deducted from the paycheck. If payments are not made, the University may discontinue health care coverage.

If the employee elects not to return to work upon completion of an approved FML, the employee agrees to reimburse the University for the amount of the University's contribution to health insurance, unless the failure to return to work is beyond the employee's control.

E. Retirement Benefit

Employees on unpaid FML will not accrue STRS or PERS service credit nor vacation or sick leave accumulations for the period of the unpaid leave.

F. Confidentiality

To the extent allowed by law, the University will keep confidential the information relating to the reasons for requests for FML.

G. Restoration of Position

When the FML is completed, the employee will return to the same or an equivalent position with commensurate terms and conditions of employment. The University reserves the right to place the employee in an interim assignment with equivalent pay and benefits that better accommodate the employee's need for leave, or the needs of the students, or the University's operations.
H. Aid to Interpretation

To the extent that this document is incomplete or ambiguous, the language of the Family and Medical Leave Act or the Department of Labor regulations will prevail.

Principles and Policies/Procedures of the Performance-Based Merit System for Faculty

No. 56-97 Mr. Latta moved and Mr. Marsh seconded that approval be given to the following Principles and Policies/Procedures of the Performance-Based Merit System for Faculty. The motion was approved with no negative votes.

PRINCIPLES AND POLICIES/PROCEDURES OF THE PERFORMANCE-BASED MERIT SYSTEM FOR FACULTY AT BOWLING GREEN STATE UNIVERSITY

The faculty and administration of Bowling Green State University believe that the following principles must form the foundation for periodic process of faculty review and the equitable distribution of faculty salary increments. The concept of a performance-based merit system for awarding faculty salary increments is endorsed, provided that such a system is fair, equitable, and firmly grounded on these principles. In this policy, "merit" is defined as a salary increment that is allotted for the performance of duties that meets or exceeds department or academic unit expectations. The rationale for this definition is provided by the following principles:

1. An effective merit system should promote faculty recruitment and retention; adequately reward conscientious performance of normal duties and responsibilities; and provide incentives that encourage distinguished, innovative and creative achievements to meet unusual challenges and opportunities when they arise.

2. A salary system should be designed to promote internal equity (based upon salary comparisons within the University, college or department) as well as external equity (based upon salary comparisons among individuals from similar universities, colleges or departments). Internal salary equity promotes performance, whereas external salary equity promotes retention.

3. A performance-based merit system should be based on a collegial peer review process that places primary responsibility on the collegiate department or academic unit and that requires careful evaluation of performance utilizing the collective best judgment of faculty.

4. The merit system should engender the type, quantity, and quality of performance that contributes to the achievement of university, college and department missions and goals. The merit system also needs to recognize that there are often multiple paths that may be taken in support of missions and goals.

5. The department or academic unit approved allocations of effort and evaluative criteria should be reflected in its merit review process. That process must ensure that faculty who have unit-approved individual variations of effort are reviewed and rewarded proportionately to their own approved percentage of effort distributions.

6. The merit system needs to establish a clear connection between faculty performance and reward. A department or academic unit must clearly identify the normal expectations and performance standards for teaching, research/creative activity, and service that are expected of all faculty in the department or unit. Through this process, the department/unit must identify indicators of performances that fall below standard expectations for merit as well for those types of achievements that surpass the standard expectations of the department/unit.
FAMILY AND MEDICAL LEAVE ACT POLICY
Bowling Green State University

Bowling Green State University (BGSU) historically has provided its employees a superior range of fringe benefits in recognition of the efforts of its loyal and dedicated workforce. The University recognizes the conflicting demands placed on family-life and the work-life of employees where single working parent families exist or where both parents are working. The University desires to provide a working environment that offers solutions to the complex issues confronting employees in their efforts to balance their family and employment commitments. Accordingly, this Family and Medical Leave Policy (FMLP) although mandated by the U.S. Family and Medical Leave Act of 1993 (FMLA) provides BGSU’s employees with benefits exceeding the federal law.

Any terms used from the FMLA will be defined in the Act or the U.S. Department of Labor regulations. Where Ohio law and/or BGSU policies provide for more generous terms than that contained in the Family and Medical Leave Act of 1993, employees may avail themselves of these provisions instead. This policy summarizes the various employee and employer rights and obligations under the FMLA.

I. The FMLA Policy

The Family and Medical Leave Act provides eligible faculty and staff members up to 12 weeks (480 hours) of leave during any 12 month period for one or more of the following reasons:

A. for the birth of an employee’s child or the placement for adoption or foster care of an employee’s child or the care of an employee’s child, but such leave shall expire one year after the birth or placement of the child;

B. for the care of the employee’s family member who has a serious health condition; or

C. for a serious health condition that makes an employee unable to perform the employee’s job.
II. Definitions

A. A "family member" is defined to include the employee's spouse, child, parent, grandparent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, or legal guardian.

B. A "spouse" is defined as a husband or wife as recognized under the laws of the State of Ohio.

C. A "child" is defined as a biological, adopted or foster child, a stepchild, a legal ward, or child of the person who has or had during the employee's childhood daily responsibility to care for and financially support the employee, who is either under the age of 18 or is incapable of self-care because of a physical or mental disability.

D. A "parent" is defined as a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who has or had during the employee's childhood daily responsibility to care for and financially support the employee.

E. A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves any of the following circumstances:

1. a period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility,

2. any period of incapacity requiring absence of more than three days from work involving continuing treatment by or under the supervision of a health care provider,

3. continuing treatment by a health care provider for a chronic, long-term or incurable health condition that is so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days,

4. conditions relating to pregnancy and childbirth, including prenatal care.

F. A "health care provider" is a person authorized to practice as a health care provider by a state, province, or nation and is performing within the scope of that practice as one of the following:
doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray), nurse practitioner, nurse midwife, Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts

G. "Intermittent leave" is leave taken in non-consecutive blocks of time rather than for one continuous period of time, and may include leave periods from an hour or more to several weeks.

H. "Reduced schedule" is a reduction in the usual number of working hours per day or week for a period of time for reasons relating to FML.

III. Eligibility

A BGSU employee is eligible for FML if he or she has been employed by the University at least 12 months prior to the date of leave (the 12 months need not be consecutive) and for at least 1,250 hours in the 12 months preceding the leave. Full-time administrative and classified staff and faculty are presumed to have worked 1,250 hours.

If both spouses are employed by the University, they are each entitled, to the extent each is eligible, to 12 weeks of FML.

Leave for birth or placement of a child is available equally to both sexes.

IV. Notice to Employer

In the event of a planned absence, notification must be submitted to the employee's immediate supervisor, chair, or director at least 30 days in advance of the leave and followed by written documentation in accordance with existing University procedures with regard to leave usage.

If the need for family or medical leave is not foreseeable, verbal notice must be given by the employee to the immediate supervisor, chair, or director as soon as possible, followed by written documentation in accordance with existing University procedures.
V. Certification

A. Obtaining Leave
A request for FML must be substantiated with satisfactory certification from an appropriate health care provider in accordance with existing University leave policies.

The University reserves the right to request a second opinion, at its expense.

If the first and second opinions differ significantly, the University reserves the right to request a third and binding opinion from a jointly-selected health care provider whose fee will be paid by the University.

B. Returning to Work
When there is any question regarding the employee’s ability to perform the job after an FML for a health condition, the University may require certification from the health care provider.

VI. Other Provisions

A. Commencement of Leave
An eligible employee is entitled to a total of 12 weeks of approved unpaid FML in a year. The year is measured forward from the first day of any family medical leave.

Leave for the birth or placement of a child must take place within 12 months after the event. Leave may begin prior to the birth or adoption.

B. Intermittent or Reduced Leave
An intermittent or reduced leave schedule is available under the FMLA for the serious health condition of the employee or the employee’s immediate family.

C. Concurrency with Other Leaves
Any leave taken for one of the reasons stated in this policy shall be designated as FML and counted toward both the 12 weeks of FML and the appropriate paid or unpaid leave balances available under University policies.
D. Health Benefits
For the duration of the FML, the employee may continue health insurance benefits on the same terms as if the employee were working. The employee is responsible for submitting to the Benefits Office by check or money order that portion of the premium that would ordinarily be deducted from the paycheck. If payments are not made, the University may discontinue health care coverage.

If the employee elects not to return to work upon completion of an approved FML, the employee agrees to reimburse the University for the amount of the University's contribution to health insurance, unless the failure to return to work is beyond the employee's control.

E. Retirement Benefits
Employees on unpaid FML will not accrue STRS or PERS service credit nor vacation or sick leave accumulations for the period of the unpaid leave.

F. Confidentiality
To the extent allowed by law, the University will keep confidential the information relating to the reasons for requests for FML.

G. Restoration of Position
When the FML is completed, the employee will return to the same or an equivalent position with commensurate terms and conditions of employment. The University reserves the right to place the employee in an interim assignment with equivalent pay and benefits that better accommodate the employee's need for leave, or the needs of the students, or the University's operations.

H. Aid to Interpretation
To the extent that this document is incomplete or ambiguous, the language of the Family and Medical Leave Act or the Department of Labor regulations will prevail.
March 13, 1997

MEMORANDUM

TO: Charles Middleton, Provost and VPAA
   Harold Lunde, Chair of Faculty Senate

FROM: Bob Holmes
       Chair of the Task Force on FMLP

RE: Report and Recommendations of the Task Force on FMLP

I am enclosing the recommended FMLP for all constituent groups, which passed unanimously at the task force meeting of February 28.

Additionally, the task force has these recommendations to the central administration and for discussion by the three welfare committees of the constituent groups:

a) Catastrophic Leave is needed, but more ground work is necessary to determine the cost, before this task force can recommend it;

b) Domestic partner coverage is needed but more ground work is necessary to determine the cost of health insurance policies before this can be recommended;

c) The administrative staff maternity leave should be increased from 4 to 6 months in order to harmonize it with the classified staff leave;

d) The definition of immediate family member must be consistent in all leave policies for all constituent groups;

e) All maternity or pregnancy leave policies should use language that permits males to use such benefits, i.e. change it to a paternity leave policy;

f) Fee waivers for part-time administrative and classified staff members and their dependents should be developed that are similar to part-time faculty benefits;
g) The fee waivers for administrative and classified staff who have worked full-time at BGSU for ten years and their dependents should be made available indefinitely after retirement;

h) The tenure clock should stop running when a long-term leave is taken;

i) In order to make the sick leave policy for staff more equivalent to the faculty policy, flexible time programs for classified and administrative staffs should be created where feasible.

Two members feel strongly that recommendations f and g dealing with fee-waivers are outside of the scope of this task force's charge.

The Chair now thanks the task force members for developing these recommendations and FMLP in a very short time period and commends their efforts, insights and cooperative spirit which made this complicated task relatively easy and somewhat fun! A special thank you is given to Norma Stickler for her extra effort and contributions to the task force. She was awarded a task force high of two or three stars plus a valentine for her efforts!

xc: FML Task Force Members

RAH

enclosure
MEMORANDUM

TO: Board of Trustees
FROM: Paul J. Olscamp
President

RE: Proposed Family and Medical Leave Act Policy for Administrative and Classified Staff

March 25, 1994

Attached is a memo from Vice President Martin along with a proposed Family and Medical Leave Act Policy for Administrative and Classified Staff. This policy complies with requirements of the Family and Medical Leave Act of 1993 and has been reviewed by both Administrative Staff and Classified Staff Councils. I forward it to you for your consideration at the April Board of Trustees meeting.

dmm

attachments

[Approval stamp: Apr 8, 1994]
BOWLING GREEN STATE UNIVERSITY
FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

Bowling Green State University understands the importance of family issues in today's work force. The University also recognizes that more of its employees than ever face conflicting demands of family obligations and work. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions, and in order to comply with the Family and Medical Leave Act of 1993 (FMLA), the University hereby establishes its parental leave and family and medical leave policy (hereafter referred to as FMLA leave).

1. General

a. **Covered Leave.** The University will grant an eligible employee unpaid FMLA leave for up to 12 work weeks during a 12-month period, if the procedures in this policy are followed and leave is requested for the following reasons:

   (1) The birth or adoption of a child, or the foster care placement of a child.

   (2) To care for a "family member" of the employee if that individual has a serious health condition.

   (3) A serious health condition of the employee renders the individual unable to perform his or her job functions.

   Employees are limited to a maximum of 12 weeks unpaid FMLA leave for any of these purposes. An employee cannot take 12 weeks parental leave and 12 weeks sick leave during the same 12-month period. If the FMLA leave is for birth, adoption, or foster care placement, the leave must be completed within 12 months of the date of birth or placement.

b. **The 12-Month Period.** Available leave will be calculated by determining the amount of FMLA leave used by an employee for the 12 months prior to each day for which FMLA leave is requested under this policy and subtracting that number from the total number of days equal to 12 work weeks. Employees will be advised when requesting leave of the amount of FMLA time they have available.

c. **Spousal Exception.** If a husband and wife both work for the University, and are eligible for FMLA leave, they are entitled to a combined 12 work weeks of leave taken for birth, adoption, foster care, and to care for a parent. The 12 weeks will be calculated in the same manner as leave for an individual employee.

d. **State Law and University Policy.** All of the same procedures will apply to leaves under state law and University policy that are longer than 12 weeks (medical, disability, maternity). Leave under state law will run concurrently with leave under this policy. The University will comply with both federal and state law, as well as University policy regarding these leaves.

e. **Intermittent Leave.** An employee taking leave for personal illness or to take care of a sick family member need not take such leave continuously and may take it on an intermittent basis, or by reducing the employee's scheduled work hours, if the employee
3. Eligibility

a. Minimum Eligibility Requirements.

(1) An employee is eligible if he or she has been employed for at least 12 months (or 52 weeks) by the University, and has worked at least 1,250 hours during the 12-month period prior to the time leave would begin under this policy. Personnel Services will make the determination at the time of the leave request.

(2) Hours are calculated based upon actual hours that the employee worked, including overtime.

(3) Personnel Services will use its records of hours worked for all classified staff. In the case of administrative staff, it will be assumed that any employee employed full-time for seven and one-half months meets the 1,250-hour requirement. Administrative staff who have 12 months prior service, but less than seven and one-half months full-time continuous service at the time leave is requested, must include documentation of hours worked with their request.

b. Work Site Rules. The University will attempt to accommodate all FMLA leave requests, regardless of the number of employees at a particular work site. Employees must realize that they are not protected under FMLA if there are fewer than 50 employees within 75 miles of the University's work site. (Note: Given the number of employees at both the main campus and at the Firelands College campus, this rule does not presently apply to the University.)

c. Leave For Serious Health Conditions. Employees should recognize that this policy and FMLA are only intended to cover serious health conditions -- generally those which involve more than three days incapacity from work or school, or chronic long-term, incurable conditions. Employees who wish to take leave to care for family members with non-serious health conditions are not covered by this policy. Employees can use their sick leave, vacation or personal leave for non-serious health conditions, subject to the requirements of those policies, including scheduling and increments of leave. The granting of unpaid leave for non-serious health conditions is within the discretion of the immediate supervisor and the Executive Director of Personnel Services and is covered in the employee handbooks.

4. Procedures For Requesting Leave.

a. Requests For Leave.

(1) Procedure. All requests for family or medical leave will be initiated by the employee contacting the immediate supervisor. This will assist the supervisor in working out appropriate schedules. If for any reason the employee does not wish to inform the immediate supervisor of the reason for the leave, or if there are any questions about the supervisor's response, the employee may contact the Office of Personnel Services. In all cases, employees will be asked to complete a "Request For Family or Medical Leave" form, copies of which are included with this policy.

(2) Foreseeable Leaves. If the need for family or medical leave is foreseeable, the employee must provide notice to the immediate supervisor of not less than 30 days. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may designate leave to start after 30 days notice is given.
d. **Confidentially** The University will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to Personnel Services and should not retain any copies in their files. The University will follow the confidentiality rules of the Americans With Disabilities Act (ADA) for all FMLA-related information.

5. **Substitution Of Sick Leave, Personal Leave, Compensatory Time and Vacation Time.**

a. **Substitution Options.** Employees may elect to substitute accrued but unused sick leave, personal leave, compensatory time or vacation time under this policy, but are not required to do so. In the case of an employee’s illness or serious health condition (including childbirth), the employee is required to exhaust sick and/or personal leave before using compensatory time or vacation leave. In determining whether leave has been accrued or earned, the University will apply the present provisions of the respective policies, including any restrictions.

b. **Unpaid Leave.** Unless an employee substitutes leave, the FMLA leave will be unpaid.

6. **Benefits.**

a. **Health Benefits.** During the leave the University will maintain the employee’s coverage for health benefits as it existed prior to the start of the leave. If the employee is under the University’s health plan he/she will be required to continue to pay their portion of the premium normally deducted from the individual’s pay check and will pay such costs to the Benefits/Insurance Office.

If the employee fails to make the required payments for health insurance within thirty (30) days of the date that such payments are due, health coverage may be discontinued; or at the sole discretion of the University it may be continued. If this is done, the University has the right to recover health premium amounts. The employee will be notified whether coverage will be continued or not. All amounts due the University because of unreimbursed health benefits provided during leave will be deducted from the employee’s pay.

b. **Other Benefits.** Other benefits normally provided to University employees will continue in force as indicated in the employee handbook.

7. **Reinstatement**

**General.** An employee taking FMLA leave under this policy will be returned to the employee’s same position or to an equivalent position, at the election of the University unless the employee would have been terminated in the absence of any leave (e.g., layoff, down-sizing or termination of a temporary job). The taking of FMLA leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

b. **Fitness-For-Duty Examinations.** The University will require a fitness-for-duty certification prior to reinstatement for all employees taking FMLA leave for a serious health condition or where there is any question regarding the employee’s ability to safely perform the job.
REQUEST FOR FAMILY AND MEDICAL LEAVE OF ABSENCE

Employees who have worked for at least 1,250 hours during the 12-month period immediately prior to the request for FMLA leave are eligible for leave.

Name (Printed): ____________________ Employee ID Number: ____________________
Department: ______________________ Date of Hire: ______________________

TYPE OF LEAVE REQUESTED

☐ Employee Medical Leave of Absence
☐ Extension of Employee Medical Leave of Absence
   Dates of prior approved Medical Leave are from _______ to _______

☐ Family Medical Leave of Absence
   ☐ Serious health condition of my child
   ☐ Serious health condition of my spouse
   ☐ Serious health condition of my parent

☐ Extension of Family Medical Leave of Absence
   Dates of prior approved Family Medical Leave are from _______ to _______

☐ Leave to care for newborn or adopted child or a child placed (via state procedure) for foster care.

The leave (extension) requested will begin on _______ and end on _______. If the request is for multiple days off for recurring medical treatments of a child, spouse, parent, or for your own medical treatments, specify dates requested:

________________________________________

Employee Signature
FORM FOR CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(FAMILY AND MEDICAL LEAVE ACT OF 1993)

To: Physician or other Health Care Provider.

The following information is sought in connection with an employee's request for leave under the Family and Medical Leave Act of 1993. A copy of the definitions adopted by the U. S. Department of Labor are attached. Questions about these issues should be directed to the Office of Personnel Services, Bowling Green State University, Bowling Green, Ohio 43403 (Tel: (419) 372-8421).

1. Employee's Name: ____________________________________________________________

2. Patient's Name (if other than employee): _________________________________________
   a. What is the relationship of the patient to the employee? _______________________
   b. If the patient is over age 18 and is the son or daughter of the employee, does the patient have a physical or mental disability that limits the patient's ability to perform any of the activities of daily life? [ ] YES [ ] NO
   If yes, please specify the disability: ____________________________________________

3. Diagnosis: __________________________________________________________________

4. Is this condition a chronic condition or disability that is incurable? [ ] YES [ ] NO
   If the answer is yes, skip to Question 9.

5. Date the patient became incapacitated from work, school, or daily activities: ______

6. Date the patient was no longer incapacitated (if applicable): ______________________

7. If the condition has not resulted in incapacity for more than three calendar days, would the condition result in incapacity for more than three calendar days if left untreated? [ ] YES [ ] NO

8. Did this condition result in in-patient hospitalization (i.e., an overnight stay)? [ ] YES [ ] NO

9. Regime of treatment prescribed. (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it was or is medically necessary for the patient to be off work on an intermittent basis or to work less than the patient's normal work schedule of hours per day or days per week.
   a. By physician or practitioner: _______________________________________________
   b. By another provider of health services, if referred by physician or practitioner: ________________________________________________________________

Instruction: If the certification relates to care for the employee, answer Questions 10, 11 and 12. If the certification relates to care for the employee's seriously ill family member, skip Questions 11 and 12 and proceed to items 13 through 16.

10. If the condition is one which makes it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule, and there is no specific prescribed regime of treatment, state the aspects of the condition that make intermittent or reduced schedule leave "medically necessary." Indicate the reduction of hours: per day or per week that is medically necessary, if applicable, and whether a particular schedule (e.g., off Tuesday) is medically necessary. If leave was or is intermittent, indicate the medical necessity for intermittent leave.

11. Is the employee unable to perform work of any kind because of a serious health condition? [ ] YES [ ] NO [ ] DON'T KNOW
YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group-health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor, Employment Standards Administration
Wage and Hour Division, Washington, D.C. 20210

[PR Doc: 93-13028 Filed 6-3-93; 8:45 am]
FAMILY AND MEDICAL LEAVE ACT SIGNED BY PRESIDENT CLINTON LATE LAST WEEK

Here are the provisions of the law signed by President Clinton requiring larger employers to give workers unpaid leave for a family or medical emergency.

- Employers that have 50 or more employees within a 75-mile radius will be covered by the law, which applies to non-profit and governmental agencies as well as business.

- Employers will be required to offer workers as much as 12 weeks of unpaid leave after childbirth or adoption, to care for a seriously ill child, spouse or parent, or in case of an employee's own serious illness.

- Employers will have to continue health care coverage during the leave.

- Employers will have to guarantee employees will return to either the same job or a comparable position.

- Employers can exempt "key" employees - defined as their highest paid 10% of the work force and whose leave would cause economic harm to the employer.

- Employers can exempt employees who haven't worked at least one year and who haven't worked at least 1,250 hours, or 25 hours a week, in the previous 12 months.

- A doctor's certification must be obtained to verify a serious illness. Employer may require a second medical opinion.

- A qualifying condition is defined as the need for continuing care and the inability to perform one's job, or the need to care for an ill family member.

- Employers can substitute an employee's accrued paid leave for any part of the 12-week period of family leave.

- Employees will be required to provide 30 days' notice for foreseeable leaves for birth, adoption or planned medical treatment.

- Employers will be permitted to require an employee taking intermittent leave for planned medical treatments to transfer temporarily to an equivalent alternative position. Medical certification for such leave must include the expected dates for medical treatment and the planned duration of the treatments.

(Wall Street Journal, 2/8/93, p. B1)

Continue to watch future issues of the EA Bulletin for more updates on this topic.