

TRS Policy

Family and Medical Leave Act

Purpose

Pursuant to provisions of the Family and Medical Leave Act (FMLA), the Teacher Retirement System of Texas (TRS) provides three benefits to eligible employees:

- unpaid leave from work for a qualified reason;
- continuation of health care benefits while on leave; and
- restoration to the same or an equivalent position upon return from leave.

Organizational Excellence administers FMLA in accordance with federal law and regulations.

Core Values

This policy ties to TRS' commitment to its core values, including, collaboration, diversity, and respect.

Reference

- 29 U.S.C. §2601 et seq.
- Texas Government Code §661.912.

Applies To

All eligible TRS employees.

Definitions

A **serious health condition** is an illness, injury, impairment, or physical or mental condition that involves:

- inpatient care in a hospital, hospice, or residential medical care facility; or
- continuing treatment by a health care provider.

General Statement

The Family and Medical Leave Act of 1993 entitles eligible employees to take up to 12 weeks of accrued paid or unpaid, job-protected leave during a 12-month period for qualifying events or reasons required by the FMLA. The 12-month period for family medical leave (FML) is measured backward from the date on which an employee uses any FML. This is referred to as a rolling 12-month period. For details, see the [Calculation of Available Leave](#) section of this policy.

FMLA entitles eligible employees to take up to 26 weeks of unpaid or accrued paid, job-protected leave during a 12-month period to care for an honorably discharged veteran or member of the Armed

Forces if the employee is the veteran's or service member's spouse, son, daughter, parent, or nearest blood relative.

Employee Eligibility Requirements

Full-time, part-time and temporary workers may be eligible for FML as long as they have met both of these requirements:

- The employee must have worked for the state of Texas for at least 12 months at the time the leave is to begin. The 12 months of employment do not need to be consecutive or continuous.
- The employee must have worked for the state of Texas for at least 1,250 hours during the 12 months immediately preceding the start date of FML.

Note: Parental leave for the birth or placement of a child may be available to employees who do not qualify for time off under this policy. See the *Parental Leave* policy.

Reasons for Leave

Eligible employees are entitled to up to 12 weeks of unpaid, job-protected leave during any rolling 12-month period for one of the following reasons:

- the birth of a child and in order to care for a newborn child;
- the placement of a child with the employee for adoption or foster care and to care for that child;
- to care for a spouse, child, or parent of the employee due to a serious health condition;
- a serious health condition that prevents the employee from performing their job duties; or
- due to a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to covered active duty in the National Guard, Reserves, the Regular Armed Forces and certain retired military. Leave may be used for any "qualifying exigency" arising out of the service member's current tour of active duty or because the service member is notified of an impending call to duty in support of a contingency operation.

Listed below are the reasons for which an eligible employee can take leave because of a **qualifying exigency**:

- short notice deployment
- military events and related activities
- child care and school activities
- financial and legal arrangements
- counseling
- rest and recuperation
- post-deployment activities
- parental care
- additional activities

Military Caregiver Leave

An eligible employee who is a son or daughter or the spouse, parent, or nearest blood relative caring for a recovering service member is entitled to up to 26 weeks of unpaid, job-protected leave during any rolling 12-month period for that purpose. A recovering service member is defined as a member of the Armed Forces, including National Guard and Reserve members and veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was sustained while on active duty and that renders the member unable to perform the duties of their office, grade, rank or rating.

Special Rules for Spouses Both Employed by the Same Employer

When both spouses work for the state of Texas, the amount of leave is limited to 12 weeks total for the birth, adoption, or foster care placement of a child. In this instance, the employees would not each be entitled to 12 weeks of FML and would instead be entitled to 12 weeks of FML total, to be shared between the two spouses. .

Special Rules for Birth or Placement of a Child

In accordance with the FMLA, leave for the birth of a child must be completed within 12 months of the date of birth, and medical certification is not required. However, TRS policy requires that in order to use sick leave for an extended period of time, the employee must provide a written statement from a health care provider or other written statement documenting the nature of the sick leave. The employee must have their manager's approval to take leave for the birth of a child intermittently or on a reduced leave schedule if neither the mother nor the newborn has a serious health condition requiring the employee's care or assistance.

After the birth of a child, an employee is allowed to use sick leave only for the period of time the mother is recovering from childbirth, as determined by the mother's health care provider. For the remainder of the 12 weeks, the employee must use other accrued leave or leave without pay unless the mother or newborn is suffering from a serious health condition.

There are also special requirements related to adoption or foster placement. Please contact the workplace accommodations coordinator for more details.

Statutory Parental Leave Pay

If an employee is eligible for FML due to the birth of a child, the employee is eligible for statutory parental leave pay during their FML period. If the employee gives birth to a child, the employee is eligible for 40 days of parental leave pay. If the employee's spouse gives birth to a child, the employee is eligible for 20 days of parental leave pay. Employees are not required to exhaust their paid leave prior to receiving statutory parental leave pay. Statutory parental leave pay does not extend the length of FML.

If an employee is eligible for FML due to the adoption of a child or the birth of a child from a gestational surrogate, the employee is eligible for 20 days of statutory parental leave pay during

their FML period. Employees are not required to exhaust their paid leave prior to receiving statutory parental leave pay. Statutory parental leave pay does not extend the length of FML.

Please contact the workplace accommodations coordinator for more details.

Calculation of Available Leave

TRS uses a rolling 12-month period to determine the amount of FML to which an employee is entitled. The 12-month period used to calculate an employee's leave balance begins 12 months prior to the date that the employee begins to use the FML. Any FML that the employee has used in that 12-month period is subtracted from the 12-week total to which the employee is entitled. The employee is eligible to use the leave that remains. Twelve months after the employee uses the leave, the employee begins to earn back the leave used.

Suppose, for example, an employee uses four weeks of leave beginning February 1, 2023; another four weeks beginning June 1, 2023; and another four weeks beginning December 1, 2023. The employee has used up all 12 weeks of leave and so is not entitled to any FML until February 2, 2024. Beginning February 2, 2024, the employee regains eligibility.

What Is a Serious Health Condition?

A **serious health condition** is an illness, injury, impairment, or physical or mental condition that involves:

- inpatient care in a hospital, hospice, or residential medical care facility; or
- continuing treatment by a health care provider.

Continuing treatment includes treatment under any of the following conditions:

- a period of incapacity of more than three consecutive calendar days (full or partial days) that also involves: (1) treatment two or more times by a health care provider (or someone under their direction) or (2) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the provider's supervision;
- a period of incapacity because of pregnancy or prenatal care;
- a period of incapacity for a chronic serious health condition (i.e., asthma, diabetes or epilepsy);
- a permanent or long-term incapacity for treatment that may not be effective (i.e., in the terminal stages of a disease); or
- a period of absence to receive multiple treatments — either for restorative surgery after accident or injury or for treatment of conditions such as cancer (chemotherapy) or kidney disease (dialysis).

Employee Notice

Employees must alert their supervisor or the workplace accommodations coordinator in Organizational Excellence of their intent to take FML when the need is foreseeable. Employees must

make a reasonable effort to schedule treatments or appointments so that any disruption to business operations is minimized.

When the need for leave is not foreseeable, employees must provide notice of the need for FML as soon as possible.

When an employee is on intermittent FML and is unable to report to work, the employee must follow the department's established procedure for providing notification of unscheduled leave. The employee must specifically reference that the leave is related to their FMLA-qualifying leave.

Increases or Decreases to Requested Leave

If circumstances change and there is a need to extend the FML or the employee is medically released to return to work early, the employee should contact the workplace accommodations coordinator as soon as the employee becomes aware of the change or as soon as practicable. If additional leave is needed, the employee must make the request before the expected return-to-work date.

Medical Certification and Recertification

If management is aware that an employee has been absent for a reason that may be FMLA-qualifying, management must contact the workplace accommodations coordinator. The coordinator will predesignate the leave as FML and request medical certification from the employee.

Employees are required to provide medical certification from a health care provider that substantiates the need for FML. The duration and type of FML granted (regular, reduced schedule or intermittent) will be determined based on the medical information provided. Once FML is granted, an employee may be required to provide updated medical information on a periodic basis. Employees are responsible for paying for the cost of the medical certification and recertification.

TRS may suspend an Employee's Outside Business Activity authorization while on FML, consistent with the FMLA certification.

If TRS has reason to doubt the validity of a medical certification, TRS may require (at its own expense) a second medical opinion before an eligibility determination is made. If the second health care provider disagrees with the first, a third opinion might also be required, again at TRS's own expense.

Medical Information Is Confidential

All medical information submitted in connection with a request for FML is stored in a confidential medical file in Organizational Excellence, separate from the employee's personnel file or other files related to their employment.

Unpaid Leave

If an employee is receiving disability or workers' compensation benefits in lieu of salary, TRS puts the employee on unpaid-leave status. An employee will also be on unpaid leave if the employee has

exhausted all available leave and remains out on FML. While on FML, an employee is required to use all available paid leave before they can go on unpaid leave, except when receiving disability or workers' compensation benefits. Sick leave must be used **first** if the reason for the leave qualifies for the use of sick leave. The employee will then be required to exhaust all other forms of leave.

Substitution of paid leave for unpaid leave does not extend the 12 or 26 weeks permitted under the FMLA.

Health Insurance Benefits While on Family Medical Leave

An employee's health insurance benefits continue during FML; however, the employee may be required to pay their portion of the premium as an out-of-pocket expense rather than a payroll deduction. After all paid leave is exhausted, TRS will continue to pay the state-paid portion of the employee's coverage under their group health plan. The employee remains responsible for their share of the cost and must arrange payment for such costs through the TRS employee benefits coordinator, or coverage will lapse.

Workers' Compensation Benefits

Workers' compensation benefits run concurrently with FML for qualifying work-related injuries and illnesses.

Timekeeping While on Family Medical Leave

If an employee's leave is covered by the FMLA, the workplace accommodations coordinator will notify the division or department manager, supervisor, employee, and Payroll. Questions regarding entering leave should be directed to the workplace accommodations coordinator.

Return to Work

TRS may periodically request reports on an employee's status and intent to return to work.

An employee returning from FML will return to the same position they held when the leave began, or to an equivalent position, if the employee can perform all the essential functions of the position, with or without restrictions. If the employee is unable to perform all of the essential functions, they may be entitled to a reasonable accommodation. Requests for accommodations will be evaluated in accordance with the Workplace Accommodations policy.

When an employee's own serious health condition is the reason for the FML, the employee must present a medical release to return to work to the workplace accommodations coordinator before the employee may resume their duties.

Reasons to Deny Return to Work

An employee on FML has the same job privileges and benefits that the employee had before taking the leave. However, protection from being laid off or being subject to corrective action, including termination for misconduct, is no greater for an employee on FML than for any other employee.

TRS will not allow an employee to return to work if they have not provided a medical release when one is required.

An employee who fraudulently obtains leave may be subject to corrective action, up to and including termination.

Inability to Return from Leave

An employee who exhausts their family-medical-leave entitlement may request an additional unpaid leave of absence. This unpaid leave is discretionary and is granted or denied by TRS based on the circumstances of each case.

TRS may terminate an employee who is not granted additional approved leave and who does not return from FML when the employee's health care provider has released the employee to return to work or when the FML has expired.

An employee may be considered to have abandoned the job if they fail to return to work at the end of the approved leave or the expiration of the FML. A determination that the employee has abandoned the job constitutes a voluntary resignation on the employee's part.

Prohibited Acts

Under the FMLA, it is unlawful for TRS to:

- interfere with the exercise of any right under the Act;
- terminate or in any other way discriminate against any person for opposing any practice that is unlawful under the Act; or
- retaliate against a person who, under the FMLA, has filed a complaint, provided information, or testified in relation to a complaint.

If you believe you have been subjected to conduct that may violate the FMLA, please contact the chief organizational excellence officer or the workplace accommodations coordinator.

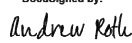
Violations

A violation of this policy may result in corrective action.

Cross Reference/Related Documents

- Leave Policy
- Sick Leave Pool and Extended Sick Leave

- Family Leave Pool
- Parental Leave

Policy Type: Enterprise-Level	First Issued: October 29, 1997
Contact: Michelle Gray	Last Review: August 2023
Department Sponsor(s): Chief Organizational Excellence Officer Shunne Powell	Next Review Due Date: February 27, 2029
Reviewing Department(s): OE, L&C	Version Number: Version 7, (February 2024)
Review Cycle: Every 5 years	Version Approved Date: 3/4/2024
Intranet Location: TRS Documents folder on the TRS public internet site	DocuSigned by:  704C82DC3C749B...

This policy does not constitute a contract nor a guarantee of employment and may be modified, superseded, or eliminated by TRS without notice to the employee.