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Finance & Operations Human Resources Policy HR-04(b),
Employee Leaves - Extended Leave Options

This is a subset of the HR04 Employee Leaves Policy describing extended leave options. For a full description of all leave available to Sam Houston State University (University), please review all HR04 subsections.

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1. Sick Leave Pool

The University Sick Leave Pool assists employees and the employee's immediate family in dealing with catastrophic illnesses or injuries that force exhaustion of all available leaves.

- a. Employees with at least twelve (12) continuous months benefit eligible employment with SHSU immediately preceding an eligible condition, may request pool leave for the employee's or employee's immediate family member's catastrophic illness or injury which causes an absence (paid or unpaid) of thirty (30) working days (sequential or otherwise) within the immediate preceding six (6) calendar months.
 - (1) A **catastrophic injury or illness** is a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and forces the employee to exhaust all accrued leave and lose compensation.
 - (2) A **severe condition** or combination of conditions is one that:
 - i. Is diagnosed as potentially resulting in death or severe debilitation preventing the employee from meeting the essential functions of the job if not treated promptly or at regularly scheduled intervals (e.g., chemotherapy treatments, radiation treatments, etc.); OR
 - ii. Is designated as terminal; OR
 - iii. Requires an absence from work for at least forty-five (45) continuous calendar days.
- b. Employees may use sick leave pool when the employee:

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- (1) or employee's immediate family member suffers a catastrophic illness or injury;
 - (2) exhausts all earned leave with pay entitlements;
 - (3) has not previously been awarded and taken more than ninety (90) working days (720) hours of sick leave pool leave during any period of employment with the University; and
 - (4) meets job performance requirements, based on the most recent performance appraisal or evaluation, and observes work rules.
- c. Employees who use pool leave are not required to pay back pool leave.
- d. Employees on sick leave pool for a full calendar month accrue paid leave for that month, provided the employees return to work following the leave.
- e. Contributions to the pool are strictly voluntary. To contribute time to the pool, an employee must complete a ["Sick or Family Leave Pool Donation Form."](#) Employees may contribute an unlimited number of their accrued days. Contributions should be in full day increments. Contributions are final and shall not be returned.
- f. Pregnancy. Pregnancy is not considered catastrophic unless severe illness and prolonged complications arise that affect either the mother or the child.
- g. Time off following the birth of a child is considered normal regardless of the method of delivery and will not be considered for Sick Leave Pool unless medical documentation shows complications to the mother or the child after the delivery.
- h. Requests for pool leave are submitted in writing with a completed ["Sick and Family Leave Pool Application & Approval Form"](#) and documentation from the treating physician and forwarded to the Pool Administrator through appropriate supervisory channels. The Director of Human Resources or designee serves as the University's Pool Administrator. Requests are considered by the Pool Administrator on a first-come, first-serve basis. The Pool Administrator has ten (10) working days from receipt to approve all or part of the request or deny the request. The amount of pool leave granted for a catastrophic illness or injury is determined by the Pool Administrator. The amount cannot exceed one-third of the balance of hours in the pool, or ninety (90) working days (720 hours), whichever is less. Any unused balance of pool leave granted to an employee returns to the pool. The estate of a deceased employee is not entitled to payment for unused pool leave.

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- i. An employee requesting sick leave pool time must provide a licensed practitioner's statement. The statement must include expected duration of the illness and expected return to work date. A licensed practitioner's statement must be submitted for **each 30-day period of sick leave pool time requested. No sick leave pool time will be granted for any days not covered by a licensed practitioner's statement.**

- j. **As with any medical documentation, the University reserves the right to clarify and verify the licensed practitioner's comments, and the employee agrees to facilitate such requests.** Further, the University reserves the right to require additional licensed practitioner's statements from providers of its choice. The expense of additional statements will be borne by the University.

- k. The requesting employee must notify Human Resources of receipt of subrogation benefits, i.e., by legal right collecting pay, reimbursement for loss of work time, or damages from a third party as a result of the catastrophic illness or injury. An employee receiving benefits from an on-the-job injury or illness is not eligible to use the Sick Leave Pool.

2. Family Leave Pool

- a. The purpose of the Family Leave Pool is to allow eligible employees to apply for leave time and provide more flexibility in:
 - (1) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and
 - (2) caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

- b. Employees are eligible to use time contributed to the family leave pool if the employee has exhausted time available in all other eligible leave because of:
 - (1) the birth of a child;
 - (2) the placement of a foster child or adoption of a child under 18 years of age;
 - (3) the placement of any person 18 years of age or older requiring guardianship;
 - (4) a serious illness to an immediate family member or the employee, including a pandemic-related illness;
 - (5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
 - (6) a previous donation of time to the pool.

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- c. Employees who use family leave pool are not required to pay back the leave.
- d. Employees on family leave pool for a full calendar month accrue paid leave for that month, upon returning to work following the leave.
- e. An employee using time withdrawn from the family leave pool shall be treated for all purposes the same as an employee absent on earned sick leave.
- f. Contributions to the family leave pool are voluntary. To contribute time to the pool, an employee must complete a "Sick or Family Leave Pool Donation Form." An employee may contribute to the family leave pool one or more days of the employee's accrued sick or vacation leave. Contributions are final and shall not be returned.
 - (1) The family leave pool will be credited with the amount of time contributed by an employee and the corresponding amount of time will be deducted from the contributing employee's earned sick or vacation leave.
 - (2) A retiring employee may elect to designate a portion or all of the retiring employee's accrued sick or vacation leave hours to be donated upon retirement to the family leave pool.
- g. An employee who applies to use time to care for another person must submit and be listed on the other person's birth certificate, birth facts, or adoption or foster paperwork for a child under 18 years of age, including being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent, or provide documentation that the employee is the guardian of a person who is 18 years of age or older and requiring guardianship.
- h. An employee requesting family leave pool time for a serious illness, including a pandemic-related illness of an immediate family member or the employee and does not qualify for or has exhausted time available in the sick leave pool, the employee must provide the pool administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member. The statement must include expected duration of the illness and expected return to work date. A licensed practitioner's statement must be submitted for **each 30-day period of family leave pool time requested. No family leave pool time will be granted for any days not covered by a licensed practitioner's statement. As with any medical documentation, the University reserves the right to clarify and verify the licensed practitioner's comments, and the employee agrees to**

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facilitate such requests. Further, the University reserves the right to require additional licensed practitioner's statements from providers of its choice. The expense of additional statements will be borne by the University.

- i. If an employee seeks withdrawal of family pool leave because of an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member, the employee must provide any applicable documentation, including an essential caregiver designation, proof of closure of a school or daycare, or other appropriate documentation.
- j. Requests for family leave pool are submitted in writing with a completed "Family Leave Pool Application & Approval Form" and forwarded to the Pool Administrator through appropriate supervisory channels. The Director of Human Resources or designee serves as the University's Pool Administrator. Requests are considered by the Pool Administrator on a first-come, first-serve basis. The Pool Administrator has ten (10) working days from receipt to approve or deny all or part of the request. The amount of family leave pool granted is determined by the Pool Administrator. The amount cannot exceed one-third of the balance of hours in the pool, or ninety (90) working days (720 hours for full-time employees), whichever is less. Any unused balance of family leave pool granted to an employee returns to the pool. The estate of a deceased employee is not entitled to payment for unused family leave pool.
- k. The requesting employee must notify Human Resources of receipt of subrogation benefits, i.e., by legal right collecting pay, reimbursement for loss of work time, or damages from a third party as a result of the illness. An employee receiving benefits from an on-the-job injury or illness is not eligible to use the Family Leave Pool.

3. Donation of Sick Leave to a Specific Employee

Employees with available sick leave accruals may donate a portion of the employee's accrued sick leave balance to another employee provided the receiving employee exhausted all sick leave and any eligible University sick leave pool leave. Sick leave donation to a specific employee is a taxable event to the donor unless the situation qualifies as a medical emergency pursuant to IRS guidelines. For taxation purposes, a medical emergency is defined as "a major illness or other medical condition that requires a prolonged absence from work (40 hours), including intermittent absences that are related to the same illness or condition." The cash value of donations not qualified as medical emergencies are included in the gross income of the donor and treated as wages for employment tax purposes.

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- a. Employees may not provide or receive remuneration or gift in exchange for a sick leave donation.
- b. Sick leave donations are non-returnable whether used or not by the receiving employee.
- c. Donor Information:
 - (1) An employee donor initiates a potential transfer by submitting a [Sick Leave Donation to an Individual – Donor Form](#) to the Human Resources Department for processing.
 - (2) A potential donor may make the donation contingent upon the tax-exempt status of the leave transfer.
 - (3) When the leave does not qualify for tax-exempt status, the dollar value of donated sick leave is taxable to the donor and such taxes are withheld from the donor's paycheck.
- d. Recipient Information:
 - (1) Once a Donor Form is received, Human Resources will notify the intended recipient of the potential donation.
 - (2) An intended recipient seeking to accept a denotation must provide requested documentation and participate in Human Resources assessment of the potential taxability of the donation and whether the recipient qualifies for Sick Leave Pool, FMLA, and/or other leave options.
 - (3) Upon confirmation of donation, a recipient employee must submit a [Sick Leave Donation to an Individual – Recipient Form](#) to effect a sick leave transfer.
 - (4) Use of donated sick leave must be consistent with provisions of sick leave use contained in this policy.
 - (5) Employees receiving donated sick leave may not receive service credit in the Employees Retirement System of Texas (ERS) or the Teacher Retirement System of Texas (TRS) for any donated sick leave that is unused on the last day of employment.

4. Federal Family & Medical Leave Act (FMLA) and Parental Leave

- a. State employees who have a total of at least twelve (12) months of state service credit and who have worked for the state for at least 1,250 hours during the 12-month period immediately preceding the commencement of leave, are entitled to up to twelve (12) weeks of leave for eligible conditions under the FMLA as described below. Provided however, that an employee of FMLA leave must utilize all available applicable paid vacation and sick leave while taking leave.

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- b. As an exception to the requirement to utilize all paid vacation and sick leave, employees on FMLA leave who are receiving temporary disability benefit payments or workers' compensation benefits are not required, but may, utilize paid vacation and sick leave while receiving such benefits.

- c. If an employee elects to use Fair Labor Standards Act (FLSA) (overtime) compensatory time while out on FMLA, that time is not counted toward the twelve (12) week entitlement. State compensatory (equivalent) time is counted toward the twelve (12) week entitlement.

- d. If FMLA leave is used in one continuous block, a business closing counts against the employee's leave entitlement. The exception to this is a closing of a week or more. Holidays, inclement weather days, and shutdowns do not count against employees who are on intermittent FMLA leave or a reduced work schedule.

- e. The State Auditor's Office has advised that the employee does not have the option of choosing whether or not to designate leave as FMLA leave for a qualifying event. In all circumstances, it is the employer that determines whether leave qualifies as FMLA leave. SHSU considers the employee on FMLA leave, for all FMLA qualifying events, regardless of designation by the employee and counts qualifying events toward the maximum total of twelve (12) workweeks of FMLA leave in a twelve (12) month period. This would include paid leave time using sick or vacation accruals and unpaid leave time. This policy statement shall serve as official notice to SHSU employees that qualifying events count toward the maximum twelve (12) workweeks of FMLA leave.

- f. Employees with less than twelve (12) months of state service or who have worked less than 1,250 hours in the twelve (12) month period immediately preceding the commencement of leave are eligible to take a Parental Leave of absence for the birth, adoption or foster care placement of a child under the age of three (3). Parental Leave shall not exceed twelve (12) weeks (480 hours) and an employee must utilize all available applicable paid vacation and sick leave while on parental leave.

- g. Eligible Reasons for Leave -- FMLA requires that employers provide up to twelve (12) weeks of unpaid leave for an eligible employee for one or more of these reasons:
 - (1) To care for the employee's child after birth, or placement of adoptive or foster care child under the age of three. A non-birthing parent of a newborn child may use sick leave in

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- conjunction with the child's birth to care for the recovery of the birthing parent when said parent is an immediate family member or for any other purpose allowed by federal law;
- (2) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
 - (3) For a serious health condition that makes the employee unable to perform their job. A serious health condition means one that involves either inpatient care in a hospital, hospice, or residential medical facility; or an incapacity requiring absence of more than three (3) calendar days and continuing treatment by a health care provider; or continuing treatment by a health care provider of a chronic or long-term condition that is incurable or will likely result in incapacity of more than three (3) days if not treated.
 - (4) For a qualifying exigency which is the result of the spouse, child or parent of the employee being on active duty or notified of an impending call to active duty in support of a contingency operation of the Armed Forces.
- h. Service Member Family Leave -- An eligible employee who is the spouse, child, parent, or nearest blood relative of a covered service member shall be entitled to a total of twenty-six (26) workweeks of leave during a single twelve (12) month period to care for the covered service member. During this single twelve (12) month period, an eligible employee shall be entitled to leave for a total of twenty-six (26) workweeks in combination with other types of leaves under paragraph C, 1-4. A "covered service member" is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in out-patient status, or is on the military's temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.
- i. Advance Notice and Medical Certification -- The employee, when possible, is required to provide advance leave notice and medical certification. The employee ordinarily will provide thirty (30) days advance notice when the leave is "foreseeable." Medical certification to support a request for leave because of a serious health condition is normally required within fifteen (15) calendar days when practicable, and a "fitness-for-duty" report should also be provided from the health care provider when the employee is able to return to work.
- j. Duration and Timing of Leave
- (1) Eligible employees may take up to twelve (12) weeks of unpaid leave during a twelve (12) month period inclusive of utilizing, within these twelve (12) weeks, all available and applicable paid leave. For part-time employees the leave is calculated on a pro-rated or proportional basis.

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- (2) The FMLA leave period runs concurrent with other forms of paid and unpaid leave for which an employee is eligible and required to use. FMLA cannot be stacked with other leaves to extend one's state paid insurance fringe benefit or approved leave period.
 - (3) Under FMLA, when both spouses are employed with the state and the purpose of the leave is either family leave, i.e., birth, adoption or foster care, or medical leave for the care of a parent, then the couple is entitled to a total of twelve (12) weeks of leave. However, the twelve (12) weeks are not aggregated between the spouses when the purpose of the medical leave is to care for a spouse, child or oneself. Spouses are limited to an aggregate of twenty-six (26) workweeks of leave when the leave is taken under the provision to care for a covered service member. See below for additional information for dually employed spouses.
 - (4) The twelve (12) month period is a rolling twelve (12) month period measured backward from the date an employee uses any portion of FMLA leave. Entitlement to family leave expires one (1) year after birth, adoption, or foster placement.
 - (5) Intermittent and Reduced Schedule Leave -- FMLA leave because of serious health conditions, qualifying exigencies and to care for a covered service member may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday) if medically necessary. In addition, while on an intermittent or reduced schedule leave, an employee may be temporarily transferred to an alternative position, if available, which better accommodates the employee's schedule and which has equivalent pay and benefits. Intermittent and reduced schedule leave is not required of the employer unless there is a serious health condition. As previously stated, holidays, inclement weather, and business closure days do not count against employees who are on intermittent FMLA leave or a reduced work schedule.
- f. Job Benefits and Protection
- (1) Upon return from FMLA leave, employees will be restored to their original or equivalent positions with equivalent pay and benefits.
 - (2) For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan." The employee must pay for optional coverages while on leave. The University may recover any premiums for maintaining coverage for the employee if the employee does not return from the leave; unless the failure to return is due to a continuance or recurrence of the cause of the medical leave or due to other circumstances beyond the control of the employee.

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- (3) Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. However, no other benefits are provided or accrue while on FMLA leave without pay for an entire month except the fringe benefit group health insurance contribution.

5. Dually Employed Spouses - Request to be Treated as Single for Family Care

- a. As stated in Family Medical Leave Act (FMLA) paragraph above, the FMLA requires married employees both working for the same employer to split the maximum eligible weeks of FMLA Leave for family leave when the eligible condition is birth, adoption or foster care, medical leave for the care of a parent with a serious health condition, or to care for a covered service member with a serious injury or illness when the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin. Spouses both employed by the University and experiencing these circumstances may apply to be treated as a single employee for approval of University-granted leave up to the maximum that would be authorized by FMLA for employees not married to a University employee.

- b. To apply for treatment as single for family care, the employee must submit the medical certification and forms required for FMLA leave, and must also include correspondence detailing the employment status of the employee and employee's spouse and requesting the specific period of leave.

- c. Approved treatment as single for family care leave will run concurrent with other forms of paid and unpaid leave for which an employee is eligible and required to use.

Reviewed by: Rhonda Beassie, Associate VP for People and Procurement Operations 10/20/2021