The University of Montana understands the importance of family issues to its employees and recognizes the fact that many employees face conflicting demands of family obligations and work. The intent of the Family Medical Leave Act (FMLA) of 1993 is to allow employees to balance their work and family life by taking up to 12 weeks of job-protected leave. The purpose of this policy is to inform eligible employees of FMLA provisions and their rights under the act, and to provide guidance to both employees and their supervisors for standardized application of the provisions of the act.

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 any of the following reasons:

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

2. To care for the spouse, child, or parent of the employee if that individual has a serious health condition; or

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

Employees are limited to a maximum of 12 weeks of FMLA leave for any of the 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.

An employee’s FMLA balance will be reduced when an absence is due to an FMLA qualifying condition and related absences exceed three consecutive calendar weeks in a pay status or result in an approved full day’s leave without pay. This does not preclude an employee from using accrued paid leave during an absence due to a FMLA qualifying condition, provided that such leave is approved and used in accordance with applicable University leave policies.
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 and subtracting that number from the total of days equal to 12 workweeks. The 12 weeks of eligible leave each year will start the day an employee first requests to use FMLA leave.

C. **Spousal Exception**

In accordance with state law, there are no spousal exceptions. If both employees work at the University and are eligible for leave, they are each entitled to 12 work weeks of FMLA leave.

D. **State Law**

FMLA does not supersede any state law or collective bargaining agreement which provides greater family or medical leave rights. Such leave will run concurrently with leave under this policy.

E. **Intermittent Leave**

An employee taking leave for his or her personal health condition or to care for an ill family member need not take such leave continuously and may take it on an intermittent basis, or by reducing their 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-half (1/2) hour.

F. **Part-Time After Birth, Adoption, or Foster Care Placement**

Requests for intermittent or reduced schedule leave after the birth, adoption, or foster care placement of a child will be considered on a case-by-care basis. The request must be made in writing to the employee's supervisor. A copy of the written agreement, outlining the employee's intermittent or reduced work schedule and start/ending date, should be retained by the employee and the employee's supervisor. A copy of the agreement must be sent to Human Resource Services. As a general rule, part-time arrangements or intermittent leave will be granted:

- for a maximum of twelve months after birth, adoption, or foster care;
- for leaves in increments of not less than one-half (1/2) hour;
- subject to the ability of the employee's supervisor to ensure that work is completed through scheduling changes or job-sharing; and
- subject to the employee's consent to alter schedules or work longer hours on an emergency basis, such as when other employees are out sick.

The University reserves the right to refuse leave, to cancel any such arrangement, or to alter the agreement if the supervisor concludes that the needs of the work unit require the employee's presence.

II. **Definitions**
A. "Family member"

"Family member" is defined in FMLA and this 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.

B. "Serious Health Condition"

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three days’ absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated, would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider for a chronic or long-term condition or disability that is incurable; or pre-natal care.

C. "Health Care Provider"

A "health care provider" is any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, or nurse midwife performing within the scope of their practice as defined under state law. Christian Science practitioners listed with the First Church of Christ Scientist may also be considered health care providers as defined under FMLA.

III. Eligibility

A. Minimum Eligibility Requirements

1. An eligible employee is an employee who has accrued at least 12 months or 52 weeks of state service and who has worked at least 1,040 hours in a pay status during the 12 months preceding the start of the leave. The 12 months of state service need not be continuous. If an employee has worked for a state agency or university system unit other than The University of Montana and is using that employment to fulfill the 12 months of state service requirement, the employee must provide documentation from that agency or unit verifying employment dates and pay status.

2. Hours are calculated based upon actual hours that the employee was in a pay status.

B. Leave for Serious Health Conditions

FMLA and this policy are only intended to cover serious health 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 take accrued sick leave for their non-serious illnesses under the provisions of Sick Leave Policy 240.0 and collective bargaining agreements. Requests for leaves of absence are addressed in Personnel Policy 110.0 and in collective bargaining agreements.

IV. Procedures for Requesting Leave

A. Requests For Leave

1. Procedure
An employee requesting FMLA must complete a "Request for Family and Medical Leave" form and submit the form to his or her immediate supervisor. This form can be obtained at Human Resource Services.

2. Foreseeable Leaves
If the need for FMLA leave is foreseeable (e.g. birth or placement of a child for adoption or foster care, or for planned medical treatment), the employee must provide 30 days’ advance notice to the employee’s supervisor. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may request leave to start 30 days after notice is given.

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 supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.

4. Unforeseeable Leaves
Employees are expected to promptly notify their supervisor as soon as they learn of the need for FMLA leave. If the need for FMLA leave is not foreseeable, an employee must give notice as soon as possible and practicable, given the circumstances of the particular case. Such notice must be given within two working days, except in extraordinary circumstances such as a medical emergency.

In emergencies, the employee or a family member should contact the employee’s supervisor or, if the employee’s supervisor is not available, leave a message and a number where they can be reached. Requests for leave should then be submitted in writing as soon as practicable. Absent good cause or medical emergencies, written requests for leave should be submitted within two business days after oral request is made.

5. Additional Information
After receiving a request for leave, the employee’s supervisor will provide additional information regarding the procedures for obtaining leave, including any additional documents that may be required.

Any questions employees or supervisors may have concerning this policy, including procedural questions and use of forms, may be directed to Human Resource Services.
B. **Proof**

1. **Medical Certification**
   Medical certification from a health care provider may be required to support FMLA leave requests either to care for an employee's seriously-ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job.

   If the leave request is due to the employee's family member receiving continuing treatment by a health care provider, certification must be obtained from the provider stating that such leave is medically necessary, the employee is needed by the family member, and the expected duration of the leave.

   If the leave request is due to the employee's serious health condition, certification that the employee is unable to perform the functions of the employee's job is required.

   The "Medical Certification" form can be obtained at Human Resource Services. Employees must submit certification to Human Resource Services within 15 days of the date requested by a supervisor.

2. **Second Opinions**
   The University has the right to request, at the expense of the University, a second or third opinion. The University has the option of requiring the employee to get a second opinion from an independent medical provider selected by the University. 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.
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 opinion that may be required.

D. **Transfer to Alternative Position**

In all cases of intermittent and reduced scheduled leaves, the University reserves the right to transfer an employee to another position that better accommodates the employee’s need for leave and/or the employer’s operations. This decision is at the discretion of the employee’s supervisor.

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 the Human Resources Department and should not retain any copies in their files. The University will follow the confidentiality procedures of its ADA policy for all FMLA-related information.

V. Substitution of Sick Leave, Direct Sick Leave Grants, Compensatory Time And Vacation Time

A. **Substitution Options**

If use of sick leave is applicable (reference Personnel Policy 240.0), employees are normally required to use any accrued sick leave for any part of leave taken under this policy.

Employees may elect to substitute paid accrued annual leave or comp time for any leave under this policy, but are not required to do so. However, if an employee elects to receive a direct sick leave grant (reference Personnel Policy 214.0), the employee must comply with the eligibility criteria necessary to receive the donation.

The period of paid leave will be deducted from the amount of unpaid leave time available under this policy.

B. **Unpaid Leave**

Unless an employee substitutes leave, leave will be unpaid, except as provided under sub-section A.
VI. Benefits

A. **Insurance Benefits**

During the leave, the University will maintain the employee's coverage for health benefits as follows. The employee is required to continue to pay the employee's portion of any health insurance premiums normally deducted from employee's paycheck and shall pay such amounts at the time contributions are normally deducted (i.e., by the eighth day of the month) by tendering a check payable to The University of Montana - Missoula to Human Resource Services.

If an employee fails to make the required payments, the University may decide in its sole discretion to continue coverage. If this is done, under most circumstances the University will have a right to recover these amounts. The employee will be notified whether coverage will be continued.

All amounts due the University because of unreimbursed health benefits provided during leave will be recovered from the employee upon the employee's return to work.

B. **Other Benefits**

Other benefits normally provided to an employee shall be provided to the employee only if permitted by the plan document governing the provision of benefits, in accordance with the provisions of the written document, and if the employee makes any required co-payments. In accordance with existing University policies on unpaid leave, employees will not earn any annual or sick leave while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will earn vacation or other leave on a pro-rated basis according to number of hours worked.

C. **Seniority**

The employee shall not accrue any seniority during unpaid leave provided under this policy.

D. **Reinstatement**

The University has the right, upon the employee's return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for University employees.

VII. 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). Taking of 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 restoration on a case-by-case basis at the discretion of the employee's supervisor.

The University reserves the right to make additional medical inquiries to ensure that employees can safely perform all the functions of the job. These medical inquiries will be conducted in accordance with the University's policy with regard to the Americans With Disabilities Act.

C. **Periodic Reporting**

Employees on leave are required to report to their supervisor, on a regular basis determined by the supervisor, on their status and intent to return to work. During leave, the University also may require that an employee recertify the medical condition that caused the employee to take leave (e.g., when the employee requests an extension of leave or when circumstances have changed).

D. **COBRA**

When an employee notifies the employee's supervisor that s/he is not returning from leave, the University shall terminate the employee's health benefits and the employee shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and the provisions of the health plan, provided, however, that any period of continued health benefits shall commence from the day FMLA leave ends.

E. **Repayment of Premiums**

Employees who return to work will meet with a representative from Human Resource Services to work out an appropriate repayment schedule for any employee premiums made by the University during FMLA leave.

The University may recover the cost of any benefits provided during leave, including both the employer and any employee premiums for health benefits, if the employee fails to return to work for at least 30 calendar days after the employee's FMLA leave entitlement has been exhausted. No such amount shall be owed if there is a recurrence or onset of a serious health condition, or, in the opinion of the supervisor and Human Resource Services, there is a change of circumstances beyond the employee's control.

If an employee does not return to work under circumstances where repayment can be required, the employee must contact Human Resource Services to make arrangements to repay all premiums after receiving notice from the University of the amount owed. After 60 days, the matter may be turned over to collections as a debt, which could result in legal action.

F. **Failure to Return to Work**

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment.
VIII. General Provisions

A. Administrator

The Montana University System and The University of Montana - Missoula are the sole administrator of this policy and, as such, is the exclusive interpreter of its terms. All provisions of this policy shall be interpreted consistent with the Family and Medical Leave Act of 1993.

B. Changes

The University of Montana - Missoula reserves the right to modify or terminate 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

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

If a Montana state law is more generous than FMLA or this policy, the University will comply with that law. As a result, employees may be entitled to greater leave than is normally available under this FMLA.

F. Rights And Obligations

Employees and employers have various rights and obligations under FMLA. For further information, contact Human Resource Services.