Family/Medical Leave of Absence

All regular academic/administrative, managerial/professional and office/service employees of the University of Nebraska with an FTE of .50 or greater, are eligible for family/medical leaves of absence. Employees in the first six months of original probation are not eligible. Other employees (including graduate student and temporary employees) who have worked for at least 1,250 hours during the year preceding the start of the requested leave are also eligible according to the provisions contained herein.

A. Purposes

1. Family/medical leaves of absence may be used for the following reasons:
   1. To address a serious health condition of the employee's child, parent, or spouse. A serious health condition shall mean a disabling physical or mental illness, injury, or impairment which requires any of the following:
      ▪ In-patient care in a hospital, nursing home, or hospice; or
      ▪ Constant in-home care; or
      ▪ Continuing treatment by a health care provider.

   Child shall mean a biological, adopted or foster child, a stepchild, a legal ward, or other child for whom the employee has day-to-day responsibility to care for and financially support. Parent shall mean a biological parent or other individual who has day-to-day responsibility to care for and financially support the employee when the employee was a child, or a person bearing the same relationship to the employee's spouse.

   2. To address a serious health condition of the employee, which prevents the employee from performing the essential functions of the job.

   3. To address maternal/paternal concerns associated with the birth of a child or the placement of a child with the employee for adoption or foster care.

   4. In association with a death in the immediate family. "Immediate family" shall mean spouse, children, parents, grandchildren, grandparents, or persons bearing the same relationship to the spouse. The term shall also include brothers, sisters, brothers-in-law, and sisters-in-law.

2. Family/medical leave may be taken in conjunction with sick leave, vacation leave, or funeral leave (as may be appropriate based on the circumstances necessitating the employee's absence).

(Existing policy allows use of paid sick leave for medical incapacity related to pregnancy and childbirth, and up to five days of paid sick leave when illness or injury to, or death of, a member of the immediate family demands the employee's presence. Please see the sick leave and funeral leave policies.)
B. Financial

1. Family/medical leaves of absence shall be without pay.
2. The employee may request that a paid leave balance (i.e. sick leave, vacation leave, funeral leave) be charged for all or part of the family/medical leave, if such paid leave would otherwise be granted based on the reason for the absence. In such cases, the paid leave time will apply toward the family/medical leave period as defined in Section D.1.
3. Employees on family/medical leave who are enrolled in the University's insured benefits programs may continue to participate in such programs, and continue to receive employer contributions for the period of family/medical leave.
4. Employees on family/medical leave may retain accrued, unused vacation or sick leave, but shall not accrue such leave while on unpaid family/medical leave status.

C. Approvals

1. It is the intent of this policy that employees will have a right to family/medical leaves of absence for the purposes stated in Section A. The approval process will focus on timing or other considerations surrounding family/medical leaves.
2. Requests for family/medical leaves of absence must include the reason for the request and the anticipated time period, and must be approved through the appropriate campus process as provided in Section G. Appropriate certification or documentation may be required.
3. Requests for foreseeable family/medical leaves of absence shall be made as reasonably far in advance as possible (if possible, 30 days in advance). Unforeseeable family/medical leave may be requested as soon as practicable (within one or two working days of becoming aware of the need for family/medical leave).
4. If the timing of the family/medical leave as requested will cause undue hardship on the department or on UNL, and if the timing of the leave can reasonably be altered without conflicting with the employee's purpose for requesting the leave, the department may suggest alternatives that will accommodate the employee while still meeting the needs of UNL. Such alternatives may include modification of the proposed starting/ending time periods, alternate working schedules, or other reasonable approaches. If the employee and the department cannot agree upon the details of the leave, the request shall be referred to the appropriate administrator (as defined in Section G).

D. Time Provisions and Limitations

1. Total use of family/medical leave by an employee may not exceed twelve workweeks in any rolling twelve-month period, measured backward from the date an employee uses any family/medical leave (except that such measure may not extend back before August 5, 1993).
2. Under exceptional circumstances if leave for a longer period is needed, the employee may request an unpaid personal leave of absence for a total period of time which, when combined with the family/medical leave and other paid or unpaid leaves, does not exceed one year. Such leave may be granted when it is in the best interest of the institution and shall be governed by the appropriate policy for the applicable employment category. By
paying the full employer and employee contributions the employee may continue to participate in the University's insured benefits program while on an unpaid personal leave of absence.

3. Family/medical leave may be taken on an intermittent (rather than on an uninterrupted) basis or on a reduced schedule if medically necessary as a result of an employee's serious health condition or that of a spouse, child, or parent or when the reason for the leave is the birth of a child or the placement of a child for adoption or foster care.

E. Reinstatement

1. Employees who take a family/medical leave of absence from a UNL position will be able to return to the position vacated or an equivalent position. In the event of budgetary or organizational changes during the period of absence, the employee shall be treated as if the employee were occupying the position at the time of the change.

2. An employee who does not return to work following the permitted leave shall be considered to have resigned from UNL effective the last day worked, unless other arrangements have been made.

F. Family and Medical Leave Act of 1993

This policy complies with the Family and Medical Leave Act of 1993 (Act), and the regulations promulgated thereunder, the terms, conditions, and definitions of which are incorporated herein. To the extent that the Act or regulations shall be amended, such amendments shall become part of this policy. To the extent that this policy should conflict with the Act, the Act shall prevail, except where the policy grants a right greater in scope than the Act.

G. Procedure

The purpose of this procedure is to insure equitable treatment of UNL faculty and staff who apply for family/medical leaves of absence.

The expressed intent of the Board of Regents is that employees have a right to family/medical leaves of absence. Timing or other considerations surrounding a family/medical leave will be the issues addressed by the immediate supervisor or unit administrator, dean or director, Director of Human Resources, or appropriate vice chancellor.

In accordance with the Board of Regents Bylaws, this policy will be administered without regard to sex, age, disability, race, color, religion, marital status, veteran status, national or ethnic origin, or sexual orientation.

1. Any eligible employee (as described in this Family/Medical Leave of Absence Policy) completes the Family/Medical Leave Request and provides medical statement, supplying all requested information.

2. The employee gives the request to the immediate supervisor or unit administrator and sends a copy to Human Resources for record-keeping purposes. It is the supervisor's responsibility to follow normal procedures and communication channels in the
department before responding to the employee's request. If there are questions or issues that need clarification in connection with the leave request, it is the supervisor's responsibility to talk with Human Resources.

3. The supervisor either:
   1. Approves the leave request and sends the form to the dean or director (for record-keeping purposes) with a copy to Human Resources (also for record-keeping purposes); or
   2. Denies the request and returns the form to the employee.

4. If the request is denied, the employee may forward the leave request form to the dean or director for a decision. The dean or director either:
   1. Approves the request and sends a copy to Human Resources; or
   2. Denies the request and returns the form to the employee.

5. If the request is denied, the employee may appeal the decision. An employee who wishes to appeal the decision bears the responsibility for taking the request to the appropriate administrator.
   1. Persons with administrative, managerial/professional, and office/service appointments appeal through Human Resources.
   2. Persons holding academic appointments--including chairs, deans, and directors with partial academic appointments--appeal through the appropriate vice chancellor in consultation with the Director of Human Resources.

In considering requests for family/medical leaves of absence it is the responsibility of the appropriate vice chancellor to consult with the Director of Human Resources prior to making a final decision. Vice chancellors also have responsibility for routing their decisions to Human Resources for record keeping. This is to insure consistency across the campus and to adhere to UNL's strong commitment to equitable treatment of faculty and staff who request family/medical leaves of absence.

All decisions regarding a family/medical leave of absence for faculty or staff may be appealed under existing staff and faculty grievance systems. Questions regarding this policy should be addressed to Human Resources.

**Expanded Procedures and Explanation for Family/Medical Leave Policy**

**I. Introduction**

On November 7, 1992, the University of Nebraska Board of Regents approved a Family Leave Policy for faculty and staff.

On February 5, 1993, President Bill Clinton signed the Family and Medical Leave Act (FMLA) of 1993 to take effect August 5, 1993.

The University of Nebraska is required to comply with this federal act. Therefore, the Board's Family Leave Policy of November 7 has been modified as required to be in compliance with the provisions of the FMLA, or as necessitated by the regulations through which the new law will be administered.
To ensure that the University of Nebraska complies with the federal act, these Expanded Procedures and Explanations have been developed to supplement the University's Family/Medical Leave Policy (FMLP) with additional clarification of the administrative process for granting family/medical leaves of absence to faculty and staff at the University of Nebraska.

These procedures are not intended to cover every circumstance or situation necessitating a family/medical leave of absence, but to summarize and clarify the key points of the federal act and the University policy.

Questions regarding the FMLP or any of the operating procedures should be directed to Human Resources.

II. Requirements of FMLP

A. Basic Requirements

The FMLP entitles eligible employees up to twelve weeks of unpaid leave in any twelve-month period for:

1. The birth and first-year care of a child;
2. Adoption or foster placement of a child in the employee's home (use of a licensed adoption agency is not required, but foster placement requires state action rather than merely an informal arrangement to care for another person's child);
3. The care of a spouse, child, or parent with a serious health condition; or
4. The serious health condition of the employee.
5. A death in the immediate family. "Immediate family" shall mean spouse, children, parents, grandchildren, grandparents, or persons bearing the same relationship to the spouse. The term shall also include brothers, sisters, brothers-in-law, and sisters-in-law.

Employees on FMLP leave may, at their option, continue health coverage with University contributions. Employees who discontinue health coverage during FMLP leave must be given the same health coverage upon their return to work. In addition, once the FMLP leave has concluded, the employee is to be reinstated to the same or an equivalent position.

III. Eligible Employees

A. General Definition

To be eligible for FMLP leave, an employee must have:

1. An FTE of .50 or greater; or
2. Worked for at least 1,250 hours during the year preceding the start of the leave.

This includes all regular academic/administrative, managerial/professional, and office/service employees. It also includes other employees (including graduate student and temporary employees) who have met the eligibility requirements stated above.
IV. Family Members

A. Spouse

B. Parent
A parent is a biological parent or other individual who had day-to-day responsibility to care for and financially support the employee when the employee was a child, or a person bearing the same relationship to the employee's spouse.

C. Son or Daughter
A son or daughter is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or other child of a person standing in loco parentis, who is either under age 18, or 18 or older and incapable of self-care because of a mental or physical disability.

1. As in the definition of parent, a person may be considered a son or daughter of the employee if the employee has day-to-day responsibilities to care for and financially support the child.

2. In determining whether a child age 18 or older is "incapable of self-care because of a mental or physical disability", the employer may require medical certification before granting family/medical leave.

D. Equal Coverage
The right to take a family/medical leave under the FMLP applies equally to male and female employees. That is, a father as well as a mother may take leave for the birth or for placement for adoption or foster care of a child with the employee.

V. Employee Notice of FMLP Leave Request

A. Foreseeable Leave
Employees should request family/medical leaves as reasonably far in advance as possible (if possible, 30 days in advance), such as the foreseeable birth of a child, placement of a child for adoption, or for planned medical treatment. When planning medical treatments, an employee should consult with the manager/supervisor and make reasonable efforts to schedule the leave so as not to unduly disrupt the employer's operation, subject to the approval of the healthcare provider.

B. Unforeseeable Leave
When it is not feasible to provide advanced notice, for example in the case of a premature birth, such notice should be given as soon as practicable, ordinarily within one or two working days of becoming aware of the need for family/medical leave.

VI. Medical Justification for FMLP Leave

An eligible employee may take FMLP leave to care for a spouse, son, daughter, or parent with a serious health condition, or because of the employee's own serious health condition.
A. Serious Health Condition
The definition of "serious health condition" is the same for employees and family members for illness, injury, impairment, or physical or mental conditions meeting one of three criteria:

- it requires at least an overnight stay in a hospital, hospice, or other residential medical institution;
- it involves an absence from work or other daily activity for more than three days, and requires continuing treatment or supervision by a healthcare provider; or
- it is a chronic or long-term illness that is incurable or so serious that if untreated would probably lead to more than three days' incapacity, and it requires continuing medical treatment or supervision.

Examples of serious health conditions include: heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, severe morning sickness, the need for prenatal care, childbirth, and recovery from childbirth.

Not included in the definition of serious health condition are voluntary or cosmetic treatments (unless inpatient care is required), routine physical examinations, or minor illnesses or medical procedures. "Continuing treatment" is defined as two or more visits to a healthcare provider, two or more treatments by a healthcare practitioner on referral from a healthcare provider, or a treatment under the supervision of the healthcare provider such as a course of medication or therapy to resolve the serious health condition. Questions about what illnesses are covered under the FMLP should be directed to Human Resources. (See Section D.)

B. Employee's Illness
An employee is entitled to family/medical leave when the employee's own serious health condition makes it impossible to perform the essential functions of the position. UNL can require medical certification from a healthcare provider, by providing a statement of the essential functions of the position to the healthcare provider, so that the healthcare provider can render a decision based on the employee's inability to perform those functions.

C. Caring for a Family Member
An employee is entitled to FMLP leave for a family member when that family member requires assistance and the employee's presence would be beneficial or desirable.

D. Medical Certification
UNL may require medical certification before granting family/medical leave for the serious health condition of the employee's own illness, and when the employee is needed to care for a family member's serious health condition. When an employee notifies the supervisor of the need for FMLP leave, the supervisor must provide, orally or in writing, the requirements for the employee to furnish medical certification of a serious health condition. At least 15 calendar days must be allowed for the employee to obtain the medical certification. The Medical Certification forms can be obtained from Human Resources.
E. Healthcare Providers
Medical certification can be provided by doctors of medicine or osteopathy, nurse practitioners, nurse midwives, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and Christian Science practitioners.

Questions about what health practitioners are capable of providing healthcare services or about limitations on the treatment a health practitioner can provide should be directed to Human Resources.

F. Second Opinion
If the supervisor/manager or other designated administrator disagrees with the medical certification, UNL may request a second opinion from a healthcare provider of its own choosing. UNL will pay for the employee to get a medical certification from a second doctor.

G. Third Opinion
If the opinions of the healthcare providers furnishing the first and second opinions differ, UNL may request the employee to obtain a final and binding third opinion at UNL's expense. The selection of the healthcare provider furnishing the third opinion must be mutually agreed on by the employee and by UNL.

H. Recertification
UNL may request reasonable recertification of the serious health condition of the employee or the employee's family member, but no more than once every 30 days unless:

1. The employee requests an extension of FMLP leave;
2. Changed circumstances occur during the illness or injury; or
3. UNL receives information that casts doubt upon the continuing validity of the most recent medical certification.

VII. Time Provisions of FMLP Leave

A. Up to Twelve Weeks
An employee is eligible for up to twelve weeks of leave under this policy during any twelve-month period. UNL will measure the twelve months as a rolling twelve-month period, measured backward from the date an employee uses any leave under this policy (except that such measure may not extend back before August 5, 1993).

B. Prenatal Care
An expectant mother is not required to wait until the actual birth of the child to qualify for FMLP leave, provided it is medically necessary for her to be away from work.

C. Care of Child
Any FMLP leave for a birth or adoption or for foster care placement in the employee's home must be concluded within the twelve-month period beginning on the date of the birth or placement.
FMLP leave may begin before the actual placement of an adopted or foster care child in the home of the employee. For example, the employee may be required to attend counseling sessions, appear in court, or consult with an attorney or doctor.

D. Husband and Wife Working for the Same Employer
If a husband and wife both work for UNL and are both eligible for FMLP leave, they are each eligible for twelve weeks of FMLP leave in any twelve-month period as defined in Section A.

VIII. Intermittent and Reduced Schedule Leave

A. Definitions
"Intermittent Leave" is defined as leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods as short as four minutes (the shortest time increment manageable under the UNL payroll system) to more than several weeks. Medical appointments and chemotherapy are examples of the need for intermittent leave.

"Reduced Leave Schedule" is defined as a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. An employee recovering from a serious health condition, who is not strong enough to work a full-time schedule, is an example of the need for a reduced leave schedule.

An example of intermittent or reduced leave schedule authorized under FMLP is to care for a family member in a situation where the family member's serious medical condition itself is intermittent and a situation where, although the family member's medical condition is constantly serious, the employee is needed only intermittently to care for that family member.

B. Medical Justification
UNL may request from the employee's health care provider a medical certification that intermittent leave or a reduced work schedule is medically necessary. An employee needing intermittent leave or leave on a reduced leave schedule must attempt to schedule the leave so as not to disrupt the employer's operations.

C. Birth and Adoption/Foster Placement
Where leave is taken because of a birth or placement of a child for adoption or foster care in the employee's home, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. This is unlike leave taken intermittently or on a reduced leave schedule to care for a sick family member or for an employee's own serious health condition, which may be taken when medically necessary.

D. Minimum Leave Increment
The minimum leave increment for intermittent leave is four minutes, the shortest time increment manageable under the UNL payroll system.

E. Alternate Position
If an employee requests foreseeable intermittent leave or a reduced work schedule for planned
medical treatment for the employee or a family member, UNL may temporarily transfer the employee to an available alternate position with equivalent pay and benefits. The employee must be qualified for this alternate position, and the position must better accommodate the recurring periods of leave than the employee's current job. UNL does not need to seek agreement from the employee for the transfer to the alternate position to occur. When the employee has requested a reduced work schedule, the employee could be transferred to a part-time position. However, the employee must receive equivalent pay and benefits in the new position. Benefits which are earned such as vacation and sick leave, for example, will be proportionately reduced to reflect the employee's reduced working time.

F. Calculating FMLP Leave Time on Intermittent or Reduced Leave Schedule
Only the time actually taken as FMLP leave may be charged against the employee's twelve-week entitlement when leave is taken intermittently or on a reduced leave schedule.

EXAMPLE 1 - If an employee takes FMLP leave intermittently one day per week, that employee would use one-fifth of a week of FMLP leave each workweek. Such an employee could follow this schedule (if medically necessary) for an entire year, and still not exhaust all of the FMLP leave entitlement.

EXAMPLE 2 - An employee who normally works eight-hour days is given a reduced leave schedule of four hours of work per day. This employee would exhaust one-half week of FMLP leave each workweek, and would be entitled (if medically necessary) to a total of 24 weeks of FMLP leave.

Where an employee normally works a part-time schedule or variable hours, the amount of leave to which that employee is entitled is determined on a proportional basis by comparing the new schedule with the employee's normal schedule.

EXAMPLE 3 - A normal 30-hour per week employee who takes ten hours of FMLP leave each week would use one-third week of FMLP leave entitlement each workweek. The employee could continue this schedule (if medically necessary) for 36 weeks before exhausting FMLP leave.

G. Salary Reductions for Intermittent Leave or Reduced Leave Schedule
The employee's salary will be reduced according to the number of hours taken as intermittent or reduced FMLP leave.

IX. Relationship of Paid and Unpaid Leave

A. Substituting Paid Leave for Unpaid FMLP Leave
Employees may choose to take any available paid leave balance for all or part of the unpaid FMLP leave under certain circumstances.

1. Where an employee has accrued paid vacation, the employee may elect to substitute accrued vacation leave for all or part of any FMLP leave.
2. An employee may request to substitute paid sick leave to care for a family member's serious health condition, if such paid leave would otherwise be granted based on the reason for the absence.

3. An employee may substitute paid sick leave for the employee's own serious health condition, if such paid leave would otherwise be granted based on the reason for the absence.

4. Any form of paid leave (vacation, sick, or funeral) of five days or more that is substituted for otherwise unpaid FMLP leave will count toward the twelve weeks of FMLP leave. Paid leave used for circumstances which do not qualify as FMLP leave will not count against the twelve weeks of FMLP leave entitlement.

5. If accrued vacation or sick leave is not used in conjunction with unpaid FMLP leave, either because the UNL policies will not permit paid leave to be used for that purpose or condition or because the employee does not elect it, the employee will retain the accrued balance of paid leave.

6. If paid leave is used instead of unpaid FMLP leave, the employee is required to satisfy only UNL's policy to take such paid leave and not the stricter FMLP requirements such as the 30-day notice and medical certification unless such requirements are otherwise a part of the policy for paid leave. However, if the period of paid leave is in conjunction with a period of unpaid FMLP leave, then the FMLP notice and certification requirements may be imposed (see Sections V and VI).

X. Benefits During FMLP Leave

While an employee is on FMLP leave, the University will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Under current University policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid FMLP leave, the employee must continue to make this payment, either in person or by mail. If the payment is more than 30 days late, the employer's obligation to continue group health benefits ceases. However, the employee is still entitled to unconditional reinstatement of the group health plan benefits upon returning to work. The University will provide employees with the terms and conditions under which payments must be made. For further assistance about continued benefits and the terms and conditions for payment of premiums, please contact the Benefits Office.

If the employee contributes to the University's life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid FMLP leave, the employee must continue to make those payments, along with the health insurance payments. If the employee does not continue these payments, the University may discontinue coverage during the leave period.
XI. Returning to Work After FMLP Leave

An employee is entitled to reinstatement to the same position or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment when returning from FMLP leave. There is no right to return to the same position, only a right to have an equivalent position.

A. Definition of an Equivalent Position

An equivalent position has equivalent status, pay, and benefits. The duties and responsibilities must entail substantially equivalent skill, effort, responsibility, and authority.

Questions about other limitations on the employer's obligation to reinstate employees following an FMLP leave should be directed to Human Resources.

Addendum No. I

Unpaid FMLP in Progress During Holidays

If an employee is on unpaid FMLP leave the scheduled work day before and the scheduled work day after the holiday, the employee will not be entitled to receive holiday pay. This will include the following holidays:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving Day
6. The day after Thanksgiving Day
7. Christmas Day

It will also include the additional five days announced each year.

Addendum No. II

FMLA Record-Keeping Requirements

Each campus is required to keep records related to compliance with the Act and must comply with Section 11(c) of the Fair Labor Standards Act (FLSA).

Records must be kept for no less than three years and made available for inspection, copying, and transcription by representatives of the Department of Labor upon request.

Items required:

- Basic payroll and employee data;
- Dates FMLP leave is taken by employees (e.g., available from time records and requests for leave). Leave must be designated in records as FMLP;
• Hours of leave, if taken in increments of less than one full day;
• Copies of leave requests from employees and copies of all general and specific FMLP notices given to employees;
• Documents describing the University of Nebraska employee benefit policies and practices;
• Premium payments of employee benefits; and
• Records of any disputes regarding FMLP leave. This will include any written statement from the employer or employee of the reasons for the FMLP and for the disagreement.

If employees are not subject to FLSA's record-keeping regulations for purposes of minimum wage or overtime compliance (i.e., exempt from FLSA), campuses need not keep a record of actual hours worked provided that:

1. Eligibility for FMLP is assumed for any employee who has been employed for at least twelve months, and
2. For employees who take FMLP leave intermittently or on a reduced leave schedule, the employer and employee agree in writing on the employee's normal schedule or average hours worked each week.

Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, must be maintained in separate files. These are to be treated as confidential medical records, except that:

1. Supervisors may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
3. Government officials investigating compliance with FMLA may be provided relevant information upon request.