

for a Covered Servicemember with a Serious Injury or Illness. FML may be unpaid, paid through the concurrent use of leave accrued or acquired under an a combination of both as set forth in Section IV of this Policy. If applicable law is modified, abrogated, superseded, or added to, this Policy shall be interpreted in accordance with the new legal framework.

II. TERMS AND DEFINITIONS

The following terms and definitions shall apply for purposes of this Policy:

- A. **Accrued or Acquired Paid Leave:** Annual and personal leave available for use under USM BOR policy II-2.40 – Policy on Annual Leave for Faculty, holiday leave for holidays observed during FML, sick leave available for use under USM BOR policy II-2.30 – Policy on Sick Leave for Faculty Members, and accident leave.
- B. **Alternative Position:** A position to which an Eligible Faculty Member may be reassigned temporarily during a period of intermittent or reduced schedule FML. The alternative position shall have equivalent benefits and pay to the position from which the Eligible Faculty Member was reassigned.
- C. **Care:** To take care of or to care for. The term care is intended to be read broadly to include both physical and psychological care. The language applies to the period of inpatient care and home care as well.
- D. **Care for a Covered Servicemember:** Care by an Eligible Faculty Member, for a Covered Servicemember who becomes ill or injured as a result of service in the

F. **Covered Active Duty:** In the case of a member of a Regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and in the case of a member of a Reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

G. **Covered Servicemember:**

1. A current 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 outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness; or
2. A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a Serious Injury or Illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the Eligible Faculty Member takes FML to Care for the covered veteran.

H. **Eligible Faculty Member:** An employee who is covered under the provisions of USM BOR policy II-1.00 University System Policy on Appointment, Rank, and Tenure of Faculty; and

1. Has been employed for a total of at least twelve (12) months as a USM or State of Maryland employee; and
2. Whose employment during the twelve- (12-) month period immediately prior to the beginning date of the FML was at least 50 percent or greater of full-time under a nine- (9-) month or longer contract, or who has worked for at least 1,040 hours during the twelve- (12-) month period immediately prior to the beginning date of the FML as a USM or State of Maryland employee.

If a faculty member holds a concurrent administrative appointment under USM BOR policy II-1.03 Policy on Concurrent Faculty and Administrative Appointments, FML shall be governed by USM BOR policy VII-7.50 Policy on Family and Medical Leave for Nonexempt and Exempt Staff Employees. However, application of the Staff FMLA Policy shall not result in any loss of rights applicable to the concurrent faculty appointment, including the right to postpone mandatory tenure review under Section VIII.A of this Policy.

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I. **Equivalent Position:** A position at the Institution to which a Faculty Member may be Restored upon the completion of the FML. The equivalent position shall have the same benefits, pay, and other terms and conditions of employment as the position from which the Faculty Member took leave.

J. **Exigency:**

1. Issues arising from a Military M (call to Covered Active Duty on seven (7) or fewer calendar days notice prior to the date of deployment);
2. Military events and related activities (official ceremonies, programs or events sponsored by the military), or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the Covered Active Duty or call to Covered Active Duty of a Military Member;
3. Childcare and related activities arising from the Covered Active Duty or call to Covered Active Duty status of a Military Member (including but not limited to arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attendance at certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the Covered Active Duty or call to Covered Active Duty of a Military Member). For purposes of this Paragraph, in Section II.E of this Policy;
4. Financial and legal arrangements (to make or update legal and/or financial arrangements for the Military Member before a government agency);
5. Attending counseling provided by someone other than a Health Care Provider for oneself, for the Military Member, or for a child of the Military Member (who

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3. Each Institution shall indicate in its implementation procedures that its Twelve-

can be taken continuously or, per Section VII of this Policy, intermittently or under a reduced work schedule, over the course of a Twelve- (12-) Month Period. FML entitlement shall not be carried over from a Twelve- (12-) Month Period to the subsequent Twelve- (12-) Month Period.

B. For example:

1. If a Faculty Member normally works forty (40) hours per week and takes three (3) weeks of FML continuously, then the Faculty Member's three (3) weeks of leave will constitute three (3) weeks of FML.
2. If a Faculty Member normally works thirty-two (32) hours per week and takes twenty-four (24) hours of FML, then the Faculty Member's twenty-four (24) hours of leave will constitute three-fourths (3/4) of a week of FML.
3. If a Faculty Member normally works forty (40) hours per week and works twenty (20) hours under a reduced schedule, then the Faculty Member's twenty (20) hours of leave will constitute one-half (1/2) of a week of FML for each week the Faculty Member works under the reduced schedule.
4. If a Faculty Member normally works thirty (30) hours per week and works twenty (20) hours per week under a reduced schedule, then the Faculty Member's twenty (20) hours of leave will constitute one-third (1/3) of a week of FML for each week the Faculty Member works under the reduced schedule.

C. Whether a period of FML is paid or unpaid will be determined by Section IV of this Policy.

VI. MILITARY FML ENTITLEMENT

A. Military Caregiver Leave

A Faculty Member who is the Spouse, child (of any age), Parent, or Next of Kin of a Covered Servicemember may use up to twenty-six (26) workweeks of leave in a single Twelve- (12-) Month Period to Care for a Covered Servicemember with a Serious Injury or Illness. The Twelve- (12-) Month Period described in this Paragraph shall be measured forward, beginning on the first day the Faculty Member takes FML to Care for a Covered Servicemember and ending twelve (12) months after that date.

B. Exigency Leave

A Faculty Member with a Spouse, child (of any age), or Parent who is a Military Member on Covered Active Duty or notified of an impending call or order to Covered Active Duty status may use up to twelve (12) workweeks of leave to address a qualifying Exigency arising out of the fact that the Faculty Member's Spouse, child,

and subject to any generally applicable changes in benefits eligibility or terms that may have taken place during the period of FML.

- B. A Faculty Member on FML may continue employer-subsidized health care benefits during the period of leave. The President or designee shall, in accordance with Section XI.B of this Policy, provide advance written notice to the Faculty Member of the terms and conditions under which premium payments are to be made by the Faculty Member, which shall include the following:
1. If Accrued or Acquired Paid Leave or paid parental leave is being used concurrently during the FML period, the Faculty Member's share of premiums shall be paid by the method normally used during any paid leave; and
 2. If the FML period is unpaid, the Institution shall require the Faculty Member to pay his or her share of premium payments in the manner required by the State of Maryland Department of Budget and Management.

If a Faculty Member gives notice that he/she will not return to work, the Faculty Member will not be eligible to continue participating in employer health benefit plans, except to the extent eligible as a retiree or under COBRA.

- C. The Institution shall recover its share of health premiums during a period of unpaid FML if the Faculty Member fails to return to work (does not work for at least thirty (30) calendar days) after the FML has been exhausted or the Faculty Member's eligibility expires, unless the reason for not returning is due to the continuation, recurrence, or onset of a Serious Health Condition of the Faculty Member or Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, or other circumstances beyond the faculty member's control.

When a Faculty Member fails to return to work because of the continuation, recurrence, or onset of either a Serious Health Condition of the Faculty Member or Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, thereby precluding the Institution from recovering its (share of) health benefit premium payments made on the Faculty Member's behalf during a period of unpaid FML, the Institution shall require medical certification of the Faculty Member's or the Immediate Family Member's Serious Health Condition or the Covered Servicemember's Serious Injury or Illness. If the Institution requires such certification, the Faculty Member must provide the certification within thirty (30)

Faculty Member does not provide requested certification within thirty (30) days, or the reason for not returning to work does not involve circumstances beyond the Faculty Member's control, the Institution may recover s

6. A statement of the Faculty Member's rights to maintenance of benefits during FML and Restoration to the position held when FML commenced or an Equivalent Position upon return from FML; and
7. A statement of the Faculty Member's potential liability for payment of health insurance premiums paid by the Institution during the Faculty Member's unpaid FML if the Faculty Member fails to return to work after taking FML.

C. Designation Notice

1. When the Institution has enough information to determine whether the leave is being taken for an FML-qualifying reason (e.g., after receiving a certification, if requested), the Institution shall notify the Faculty Member in writing whether the leave will be designated and will be counted as FML, within five (5) business days absent extenuating circumstances. If the Institution has sufficient information to designate the leave as FML immediately after receiving notice of the Faculty Member _____ Institution shall provide the Faculty Member with the designation notice at that time. This notice shall be provided using the prototype form issued by the Department of Labor, Wage and Hour Division, which shall meet the requirements below in Section XI.C.2 .4.
2. The Institution shall inform the Faculty Member in this written notice that the Institution is requiring the Faculty Member to use paid leave concurrently in the order set forth in Section IV of this Policy.
3. If the Institution will require the Faculty Member to present a fitness-for-duty certification to be Restored to employment, the Institution shall provide notice of such requirement with the designation notice. If the Institution will require that the fitness-for-duty certification address the Faculty Member's ability to perform the essential functions of the Faculty Member's position, the Institution shall so indicate in the designation notice, and shall include a list of the essential functions of the Faculty Member's position.
4. If the information provided by the Institution to the Faculty Member in the designation notice changes, the Institution shall provide written notice of the change within five (5) business days of receipt of the Faculty Member's first notice of need for leave subsequent to any change.
5. If an Institution does not designate leave as indicated in Section XI.C.1 .4, the Institution may retroactively designate leave as FML with appropriate notice to the Faculty Member provided that the Institution _____ leave does not cause harm or injury to the Faculty Member.

this purpose, the Department of Defense (DOD) health care providers, a health care provider from the U.S. Department of Veterans Affairs (VA), DOD TRICARE Network and DOD non-network TRICARE authorized health care providers, and any Health Care Provider listed in Section II.K of this Policy authorized health A Faculty Member may use the appropriate prototype form

requiring the same information (including invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside). An Institution may require additional information per 29 C.F.R. § 825.310 or other applicable law.

Second or third opinions are not permitted if the health care provider is from DOD, the VA, or DOD-authorized private health care providers, but are permitted if the health care provider otherwise meets the definition of Section II.K of this Policy. Recertifications are never permitted for leave to Care for a Covered Servicemember. Should an extension of leave be required, additional certification may be requested.

C. Certification for Leave Taken Because of a

provide the Faculty Member seven (7) calendar days (unless not practicable) to cure any such deficiency.

E. Confidentiality

Consistent with the FMLA and other applicable laws, all medical-related documentation will be kept confidential and maintained in a file separate from the Faculty Member official institutional personnel file.

XIII. DOCUMENTATION OF CERTAIN RELATIONSHIPS

If a Faculty Member takes FML under this Policy, including, but not limited to, for the birth of the Faculty Member's Child, the placement of a Child with the Faculty Member for adoption or foster care, or the need to take care of the Faculty Member's Child within a Twelve- (12-) Month Period after birth or placement, the Institution may require the Faculty Member giving notice of the need for leave to provide reasonable documentation or a statement of family relationship for purposes of confirming the family relationship. This documentation may take the form of, but is not limited to, a simple statement from the Faculty Member, a Child's birth certificate, an adoption certification, or a court document. The Institution is entitled to examine documentation, but the Faculty Member is entitled to the return of an official document submitted for this purpose.

XIV. SCHEDULING OF TREATMENT

- A. When planning medical treatment, the Faculty Member must consult with the Institution and make a reasonable effort to schedule the treatment so as not to disrupt unduly the academic program or unit of which the Faculty Member is a part, subject to the approval of the Health Care Provider. Faculty Members are ordinarily expected to consult with their Institution prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the Institution and the Faculty Member.

- B. If a Faculty Member fails to consult with the Institution to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the Institution's operations, the President or designee may initiate discussions with the Faculty Member, require the Faculty Member to make a reasonable effort to make such arrangements, and request the Faculty Member to provide certification from the appropriate Health Care Provider of the

periodically on their status and intent to return to work procedures
regarding such reports are nondiscriminatory and take into account all of the relevant
facts a leave situation.

XVI. ABUSE OF

