VII-7.50-UC – UMUC POLICY ON FAMILY AND MEDICAL LEAVE FOR STAFF AND FACULTY EMPLOYEES

(Approved USM BOR on April 21, 2017; UMUC President on July 1, 2017)

I. PURPOSE AND APPLICABILITY

The purpose of this Policy is to implement the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2611 et. seq. and subsequent amendments to applicable Federal and State laws. This Policy applies to all eligible University of Maryland University College (UMUC) Nonexempt, Exempt, and Overseas Staff employees on Regular Status or Contingent Status and to all eligible faculty who are covered by the provisions of BOR Policy II-1.00 on Appointment, Rank, and Tenure of Faculty, except staff and faculty employees located in Overseas locations under the CENTCOM contract.

Nonexempt Staff employees who are included in the representation of the collective bargaining unit are subject to the Memorandum of Understanding (MOU) and applicable UMUC HR Policies; where there is a conflict between the two, the MOU will prevail.

II. TERMS AND DEFINITIONS

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

A. **Accrued or Acquired Time Off** - Earned and unused Vacation Time Off, Holiday Time Off, Sick Time Off, Accident Time Off, Compensatory Time Off, Personal Time Off, and time off taken from the Leave Reserve Fund.

B. **Alternative Position** - A position to which an employee 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 employee 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 employee for a Covered Servicemember who has become ill or injured as a result of service in the military when the employee is the Spouse, Parent, Child (of any age), or if none of the above is available, the Next Of Kin of the Covered Servicemember.

E. **Child (except for military FML requests under Section VI)** - A person who is the son or daughter of an employee and who is under eighteen (18) years of age or eighteen (18) years of age or older and incapable of self-care because of
a mental or physical disability at the time FML commences. The son and/or
daughter may be the biological, adopted, step or foster child of the employee. The
term “child” shall also include someone who is the legal ward of the employee or
someone for whom the employee has provided sufficient, notarized affidavit(s)
and proof of financial dependence that he/she is standing In Loco Parentis.

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 in support of a
contingency operation.

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,
recovery, 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, recovery, 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
discharge at any time during the five (5) year period prior to the first date
the employee takes FMLA leave to Care for the covered veteran.

H. Employee - A UMUC employee who is eligible to take FMLA leave by
meeting the following criteria:

1. Staff Employee

   a. The employee has been employed for a total of at least twelve (12)
      months as an employee of UMUC, another USM institution or the
      State of Maryland; and

   b. The employee has worked for at least one thousand two hundred
      and fifty (1,250) hours during the twelve (12) month period
      immediately prior to the beginning date of the leave as an
      employee of UMUC, another USM institution or the State of
      Maryland.
c. For part-time employees on at least a 50% FTE, the minimum number of hours required for eligibility shall be prorated.

2. Faculty Employee

a. The employee has been employed for a total of at least twelve (12) months as an employee of UMUC, another USM institution or the State of Maryland; and

b. The employee whose employment during the twelve (12) month immediately preceding the beginning date of the FML was at least fifty percent (50%) or more FTE under a nine month or longer contract, or who has worked for at least one thousand two hundred and fifty (1,250) hours during the twelve (12) month period immediately prior to the beginning date of the leave as an employee of UMUC, another USM institution or the State of Maryland.

c. For part-time employees on at least a 50% FTE, the minimum number of hours required for eligibility shall be prorated.

I. Equivalent Position: A position at UMUC within an Employee's current Division (Stateside, Europe or Asia) to which an Employee 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 Employee took leave.

J. Exigency: An Exigency includes the following:

1. Issues arising from a Military Member's short notice deployment (call to Covered Active Duty on seven (7) or fewer 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, the child must meet the definition of “Child” 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’s absence or act as his/her representative 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 must meet the definition of “Child” in Section II.E of this Policy), the need for which arose from the Covered Active Duty or call to Covered Active Duty of the Military Member;

6. Spending up to fifteen (15) days to spend with a Military Member who is on short-term, temporary, rest and recuperation leave (for each instance of such leave short-term temporary leave rest and recuperation during a deployment);

7. Attending post-deployment activities (including arrival ceremonies, reintegration briefings and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the Military Member’s Covered Active Duty status, and issues arising from the death of a Military Member);

8. Providing Parental Care necessitated by the Covered Active Duty status of a Military Member whose parent is incapable of self-care; or

9. Additional activities (provided that UMUC and Employee agree that such activities shall qualify as an exigency and agree to both the timing and duration of leave).

K. FML - Leave taken by an Employee pursuant to FMLA.

L. Health Care Providers - Doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioners and nurse midwives, clinical social workers and physician assistants who are authorized to practice by the State or country in which the Health Care Provider is practicing, licensed clinical
professional counselors, and Christian Science practitioners listed with the First Church of Christ Scientist in Boston.

M. **Immediate Family Member** - The Employee’s Parent, Spouse, or Child.

N. **Incapacity** – inability to work, attend school or perform other regular daily activities due to the Serious Health Condition, treatment therefore or recovery therefrom.

O. **In Loco Parentis** - In the place of a parent; instead of a parent; charged, factitiously, with a parent’s rights, duties and responsibilities. Any Employee claiming an *in loco parentis* relationship with a child, or any Employee claiming to be the child in an *in loco parentis* relationship, may be requested to provide documentation of such relationship.

P. **Key Employee** - A salaried Employee who is among the highest paid ten (10) percent of all the employees employed by UMUC within seventy-five (75) miles of the employee’s workplace at the time the Employee gives notice of the need for leave. A faculty Employee must hold a concurrent administrative appointment under USM BOR Policy II- 1.03 in order to have the status of Key Employee.

Q. **Military Member** - An Employee’s Spouse, Child (of any age), or Parent who is on Covered Active Duty.

R. **Next of Kin** - The nearest blood relative other than the Covered Servicemember’s Spouse, Parent or Child (of any age) in the following order of priority:

1. A blood relative whom the Covered Servicemember has specifically designated in writing as his or her nearest blood relative for purposes of military caregiver leave under the FMLA;

2. Blood relatives who have been granted legal custody of the Covered Servicemember by court decree or statutory provision;

3. Brothers and sisters;

4. Grandparents;

5. Aunts and uncles; and

6. First cousins.
S. Parent - The Employee’s biological, adoptive, step or foster mother or father, or someone who stood *In Loco Parentis* to the Employee when the Employee was a child. This term does not include parents “in law.”

T. Parental Care - Care provided to the Military Member’s Parent, who is incapable of self-care and is the Military Member’s biological, adoptive, step or foster father or mother, or any other individual who stood *In Loco Parentis* to the Military Member when the member was under eighteen (18) years of age.

U. Restore(d) or Restoration: For Employees other than Key Employees, a return to the position held by the Employee when FML commenced or to an Equivalent Position. For Key Employees, a return to the position held when FML commenced, if required under the terms of this Policy.

V. Serious Health Condition - An illness, injury, impairment, or physical or mental condition of the Employee or an Immediate Family Member that involves:

1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

2. A period of incapacity requiring absence of more than three (3) consecutive days from work or other regular daily activities that also involves continuing treatment by (or under the supervision of) a Health Care Provider;

3. Any period of incapacity due to pregnancy or for prenatal care;

4. Any period of incapacity (or treatment therefore) due to a chronic condition that requires periodic visits for treatment, continue over an extended period of time, and may cause episodic incapacity, such as asthma, diabetes, epilepsy, etc.;

5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective and for which the Employee or Immediate Family Member is under the continuing supervision of a Health Care Provider (e.g., Alzheimer’s, stroke, terminal diseases, etc.);

6. Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a Health Care Provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy,
dialysis, etc.) or for a restorative surgery after an accident or other injury; or

8. Any absences due to the employee being unable to perform any one of the essential functions of his/her position.

W. Serious Injury or Illness

1. In the case of a current member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

2. In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

X. Spouse - A husband or wife as defined or recognized under state law for purposes of marriage in the state where the Employee resides, including common law marriage and same sex marriage.

Y. 12-Month Period:

1. A rolling twelve (12) month period measured backward from the date an Employee uses any FML leave. Each time an Employee takes FMLA leave, the remaining leave entitlement is the balance of the twelve (12) weeks which has not been used during the immediately preceding twelve (12) months.

2. With regard to Care for a Covered Servicemember, for which an Employee 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 12-Month Period, the 12-Month Period shall be measured forward, beginning on the first day the Employee takes FML to Care for a Covered Servicemember and ending twelve (12) months after that date.
III. REASONS FOR LEAVE

A. An Employee is entitled to take FML for the following reasons:

1. The birth of the Employee's Child;

2. The placement of a Child with the Employee for adoption or foster care;

3. The need to take Care of the Employee's Child within a 12-Month period from birth or placement;

4. The need to take Care of the Employee's Immediate Family Member who has a Serious Health Condition;

5. The Serious Health Condition of the Employee that makes the Employee unable to perform any one of the essential functions of the Employee's job;

6. The need to take Care of a Covered Servicemember's Serious Injury or Illness; and

7. Exigencies arising out of the Covered Active Duty and call-up to Covered Active Duty of a Military Member [the Employee's Spouse, Child (of any age), or Parent].

IV. COMPENSATION DURING LEAVE

The FMLA provides Employees with job-protected leave for the qualifying reasons listed under Section III of this Policy. The FMLA allows for the FML to be unpaid, paid through the concurrent use of Accrued or Acquired Time Off, or a combination of both. UMUC requires Employees to use concurrently with FML paid Accrued or Acquired Time Off in the following order: (1) Accrued or Acquired Time Off; and (2) paid Parental Time Off under VII-7.49-UC – UMUC Policy on Parental Time Off and Other Family Support For Staff Employees. Any remaining FML will be unpaid.

V. FAMILY AND MEDICAL LEAVE ENTITLEMENT

A. An Employee is entitled to a maximum of twelve (12) workweeks (i.e. 480 hours) of FML, based on the Employee's normal workweek within a 12-Month Period. FML can be taken continuously or, per Section VII of this Policy, intermittently or under a reduced work schedule, over the course of a 12-Month Period. FML entitlement shall not be carried over from a 12-Month Period to the subsequent 12-Month Period.
B. The actual FML entitlement shall be based on the employee’s percentage of full time work for the 12-Month Period immediately prior to the beginning date of the FML and shall be combined with the amount of other FML taken during the 12-Month Period within which the FML is to begin.

C. Whether a period of FML is paid or unpaid will be determined by Section IV of this Policy. An Employee who regularly works full-time is entitled to a maximum of twelve (12) workweeks (i.e. 480 hours) of FML in a 12-Month Period based on the Employee’s normal workweek. An Employee who works part-time (less than 40 hours per week) for at least a 50% FTE is entitled to a pro rata or proportional share of the twelve (12) workweek (i.e. 480 hours) maximum.

VI. MILITARY FML ENTITLEMENT

A. Military Caregiver Leave - An Employee 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 12-Month Period to Care for a Covered Servicemember with a Serious Injury or Illness. The 12-Month Period described in this paragraph shall begin on the first day the Employee takes FML to Care for a Covered Servicemember and ends twelve (12) months after that date.

B. Exigency Leave - An Employee 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 any Exigency.

VII. INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE

A. Intermittent leave is FML taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is FML that reduces an Employee’s usual number of working hours per workweek or workday for a period of time.

B. An Employee may take intermittent or reduced schedule leave for purposes of the Employee’s or the Immediate Family Member’s Serious Health Condition, the Serious Injury or Illness of a Covered Servicemember, or for an Exigency. There must be a medical need for leave and it must be that such medical need can be best accommodated through intermittent or reduced schedule leave.

C. The Employee shall make a reasonable effort to schedule intermittent or reduced schedule leave for planned medical treatment so as not to unduly disrupt the operations of the Employee’s applicable unit. If the Employee neglects to consult with UMUC to make a reasonable effort to arrange the schedule of treatments so
as not to unduly disrupt UMUC's operations, UMUC may initiate discussions with the Employee and require the Employee to make a reasonable effort to make such arrangements, subject to the approval of the Health Care Provider.

D. The CHRO or designee may agree to grant intermittent or reduced schedule leave for reasons of child birth, placement with the Employee of a child for adoption or foster care, or Care for a newborn Child.

E. The CHRO or designee may temporarily reassign an Employee on intermittent or a reduced schedule leave to an Alternative Position for which the Employee is qualified and which better accommodates intermittent or reduced schedule leave than does the Employee's regular position. Such reassignment may occur only where the Employee foreseeably needs intermittent or reduced schedule leave or where the CHRO or designee agrees to permit such leave under this Section. The Alternative Position must have equivalent pay and benefits but need not have equivalent duties and may not constitute a hardship on the Employee or discourage the Employee from taking leave. When the Employee no longer needs leave, he or she must be placed in the position they held when FML commenced or in an Equivalent Position.

VIII. JOB RIGHTS AND PROTECTIONS

A. Except as provided in VIII. B., C., D., and F., an Employee returning to work at the conclusion of FML shall be Restored to the position they held when FML commenced or to an Equivalent Position with the pay, benefits, and other terms and conditions of employment that the Employee enjoyed immediately prior to the FML.

B. An Employee is not entitled to Restoration if the CHRO or designee determines that the Employee had been hired for a specific term or only to perform work on a specific project defined in writing and the term or project is over and UMUC would not otherwise have continued to employ the Employee.

C. If at any point prior to or during the FML the CHRO or designee determines that the Employee's position held when FML commenced cannot be held available for the duration of the leave, the CHRO or designee, at the conclusion of the leave, shall Restore the Employee to an Equivalent Position.

D. If it is determined that the position held when FML commenced is not available, the CHRO or designee shall immediately notify the Employee in writing of details associated with the decision and the details of the Equivalent Position to which the Employee will be Restored. The Employee shall have the right to return to
work within fifteen (15) working days from receipt of such notice to keep the position held by the Employee when FML commenced.

E. If there is a layoff while the Employee is on FML and he/she would have lost his/her position had he/she not been on leave, then UMUC has no obligation to Restore the Employee to the position held by the Employee when FML commenced or to an Equivalent Position.

F. Employees on FML are subject to generally applicable changes in compensation, benefits, or other terms or conditions of employment.

G. Restoration of Key Employees

1. If it is necessary to prevent substantial and grievous economic injury to UMUC’s operations, the CHRO or designee may deny Restoration to a Key Employee.

2. If the CHRO or designee believes that Restoration may be denied to a Key Employee, then at the time the FML is requested (or commences, if earlier), or as soon as practicable thereafter if notice cannot be given immediately because of the need to determine whether the employee is a Key Employee, the CHRO or designee shall provide the Key Employee with written notification, including at least the following: a) notification of the fact that the Employee qualifies as a Key Employee; and b) potential consequences with respect to Restoration and maintenance of health benefits.

3. As soon as the CHRO or designee makes a good faith determination, based on the facts available, that substantial and grievous economic injury to UMUC’s operations will result if the Key Employee who has requested or who is using FML is Restored, UMUC shall give written notice to the Key Employee either in person or by certified mail of the following: a) that FML cannot be denied; b) that the CHRO or designee intends to deny Restoration upon completion of the FML; c) an explanation of the basis for the CHRO’s or designee’s finding that Restoration will result in substantial and grievous economic injury; and d) if FML has commenced, a reasonable time in which the Employee may return to work taking into account circumstances such as the length of the FML and the urgency of the need for the Employee to return to work.

4. If a Key Employee does not return to work in response to UMUC’s notification of intent to deny Restoration, then the Employee shall continue to be entitled to maintenance of health benefits through the
scheduled leave, and UMUC may not recover its share of premiums unless and until the Employee gives notice that he/she does not wish to return to work or UMUC actually denies Restoration at the conclusion of the FML period.

5. After notice to a Key Employee has been given that substantial and grievous economic injury will result if the Employee is Restored to employment, an Employee is still entitled to request Restoration at the end of the leave period even if the Employee did not return to work in response to the CHRO's or designee's notice. Based on the facts at that time, the CHRO or designee must again determine whether there will be substantial and grievous economic injury from Restoration. If it is determined that substantial and grievous economic injury will result, the CHRO or designee shall notify the Employee in writing (in person or by certified mail) of the denial of Restoration.

IX. STATUS OF BENEFITS WHILE ON FML

A. An Employee on FML under this Policy shall continue to be eligible for all employment benefits that he/she enjoyed immediately prior to the FML, including group life insurance, health insurance, disability insurance, Sick Time Off, Vacation Time Off, educational benefits, and retirement benefits, unless otherwise elected by the Employee and subject to any applicable changes in benefit levels that may have taken place during the period of FML.

B. An Employee on FML may elect to continue employer-subsidized health care benefits during the period of leave. The CHRO or designee shall, in accordance with Section X.1.B of this Policy, provide advance written notice to the Employee of the terms and conditions under which premium payments are to be made by the Employee, which shall include the following:

1. If paid Accrued or Acquired Time Off or paid Parental Time Off is being used concurrently during the FML period, the Employee's share of premiums must be paid by the method normally used during any paid leave.

2. If the FML period is unpaid, the Employee shall pay his/her share of premium payments in the manner required by the State of Maryland Department of Budget and Management.

3. If an Employee gives notice that he/she will not return to work, the Employee will not be eligible to continue participating in employer health benefit plans, except to the extent eligible as a retiree or under COBRA.
C. UMUC shall recover its share of health premiums during a period of unpaid FML if the Employee fails to return to work within thirty (30) days after the FML has been exhausted or expires, unless the reason for not returning is due to the continuation, recurrence, or onset of a Serious Health Condition of the Employee or Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, or other circumstances beyond the Employee’s control.

D. When an Employee fails to return to work because of the continuation, recurrence, or onset of either a Serious Health Condition of the Employee or Employee’s Immediate Family Member, or a Serious Injury or Illness of a Covered Servicemember, thereby precluding UMUC from recovering its share of health benefit premium payments made on the Employee’s behalf during a period of unpaid FML, UMUC may require medical certification of the Employee’s or the Employee’s Immediate Family Member’s Serious Health Condition or the Covered Servicemember’s Serious Injury or Illness. If UMUC requires such certification, the Employee must provide the certification within thirty (30) days of UMUC’s request. If the Employee does not provide requested certification within thirty (30) days, or the reason for not returning to work does not involve circumstances beyond the Employee’s control, UMUC may recover one hundred percent (100%) of the health benefit premiums it paid during the unpaid FML.

E. Except as noted in Section VIII, Job Rights and Protections, upon return from FML an Employee shall be Restored all the rights, benefits, and privileges enjoyed prior to the leave.

F. While on any unpaid portion of FML, an Employee shall not earn or accrue any additional leave or creditable service for retirement.

G. An Employee may elect to purchase service credit at the time of retirement for prior leave without pay that is qualified by the Maryland State Retirement and Pension Systems. Upon approval of a leave without pay, an Employee shall follow UMUC’s procedure to assure that this option may be exercised. Service credits are not applicable to the Optional Retirement Program.

X. EMPLOYEE NOTICE REQUIREMENTS

A. Timing

An Employee shall give at least thirty (30) days’ written notice (or if not practicable, as soon as practicable, generally within two (2) working days) before FML is to begin for leave based on an expected birth, placement for adoption or foster care, planned medical treatment for a Serious Health Condition of the
Employee or an Immediate Family Member, or planned medical treatment for a Serious Injury or Illness of a Covered Servicemember. For leave due to an Exigency, notice must be provided as soon as practicable. The Employee shall advise UMUC as soon as practicable if dates of scheduled leave change or are extended, regardless of whether FML is to be continuous or is to be taken intermittently or on a reduced schedule basis.

B. Content

The Employee’s notice shall be sufficient to make UMUC aware that the Employee needs FML and shall include the anticipated timing and duration of the leave, if foreseeable.

C. Notice by Spokesperson

Notice may be given by the Employee’s spokesperson (e.g., Spouse, adult family member, or other responsible party) if the Employee is unable to do so personally.

XII. EMPLOYER NOTICE REQUIREMENTS

A. Eligibility Notice

When an Employee requests FML, or when UMUC acquires knowledge that an Employee’s leave may be for an FML-qualifying reason, UMUC shall notify the Employee of the Employee’s eligibility to take FML within five (5) working days, absent extenuating circumstances. UMUC shall provide this eligibility notice in writing using the template form issued by the Department of Labor, Wage and Hour Division or a comparable form adapted therefrom.

B. Rights and Responsibilities Notice

UMUC shall provide written notice detailing the specific expectations and obligations of the Employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the Employee each time the eligibility notice is provided and may be contained within the same form. UMUC may use the template form issued by the Department of Labor, Wage and Hour Division or a comparable form adapted therefrom that includes:

1. A statement that the leave may be designated and counted against the Employee’s annual FML entitlement if qualifying and the applicable 12-Month Period as implemented under this Policy;
2. Any requirement for the Employee to furnish certification of a Serious Health Condition, Serious Injury or Illness or an Exigency arising out of Covered Active Duty or call to Covered Active Duty status, and the consequences of failure to do so;

3. A statement that UMUC will require the substitution of paid leave in accordance with this Policy, the conditions related to any substitution, and the Employee’s entitlement to take unpaid FML if the Employee does not meet the conditions for paid leave;

4. Any requirement for the Employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

5. If applicable, a statement of the Employee’s status as a Key Employee and the potential consequence that Restoration may be denied following FML, explaining the conditions required for such denial;

6. A statement of the Employee’s rights to maintain his/her 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 Employee’s potential liability for payment of health insurance premiums paid by UMUC during the Employee’s unpaid FML if the Employee fails to return to work after taking FML.

C. Designation Notice

1. When UMUC has enough information to determine whether the leave is being taken for an FML-qualifying reason (e.g., after receiving a certification, if requested), UMUC shall notify the Employee in writing whether the leave will be designated and will be counted as FML, within five (5) working days absent extenuating circumstances. If UMUC has sufficient information to designate the leave as FML immediately after receiving notice of the Employee’s need for leave, UMUC shall provide the Employee with the designation notice at that time. This notice shall be provided using the template form issued by the Department of Labor, Wage and Hour Division or a comparable form adopted therefrom that meets the requirements set forth in this Policy.
2. UMUC shall inform the Employee in the written notice that UMUC is requiring the Employee to use paid leave concurrently in the order set forth in this Policy.

3. If UMUC will require the Employee to present a fitness-for-duty certification to be Restored to employment, UMUC must provide notice of such requirement with the designation notice. If UMUC will require that the fitness-for-duty certification address the Employee’s ability to perform the essential functions of the Employee’s position for the Employee to be Restored to employment, UMUC shall provide notice of this requirement in the designation notice and include a list of the essential functions of the Employee’s position.

4. If the information provided by UMUC to the Employee in the designation notice changes, UMUC shall provide written notice of the change within five (5) working days of receipt of the Employee’s first notice of need for leave subsequent to any change.

5. If UMUC does not designate leave as FML, UMUC may retroactively designate leave as FML with appropriate notice to the Employee provided that UMUC’s failure to timely designate leave does not cause harm or injury to the Employee.

XII. MEDICAL CERTIFICATION

A. Medical Certification for Serious Health Conditions of Employee or Immediate Family Member

1. For FML related to a Serious Health Condition, the Employee shall provide medical certification(s) from the Employee’s or Immediate Family Member’s Health Care Provider. UMUC may use the Department of Labor’s template forms for certification of the Serious Health Condition of an Employee or Immediate family member or comparable forms that include the same information. The Employee shall have fifteen (15) days to obtain the medical certification unless not practicable to do so despite the Employee’s diligent good faith efforts. UMUC shall require only the following information in the certification:

a. The name, address, telephone number, and fax number of the Health Care Provider and type of medical practice/specialization;

b. A diagnosis of the nature and extent of the condition giving rise to the use of FML;
c. The approximate date the condition commenced and its probable duration;

d. A statement or description of appropriate medical facts regarding the patient’s health condition for which FML is requested, including a regimen of continuing treatment to be prescribed;

c. In the case of an Employee’s Serious Health Condition, certification that the Employee is unable to perform the essential functions of his/her position and prognosis of the Employee’s ability to return to his/her position;

f. In the case of an Immediate Family Member’s Serious Health Condition, information sufficient to establish that the Immediate Family Member is in need of Care and an estimate of the frequency and duration of the leave required to Care for the Immediate Family Member; and

g. In cases of a request for intermittent or reduced schedule leave, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave, and (1) an estimate of the frequency and duration of treatments and periods of recovery if the leave is for foreseeable planned medical treatment; or (2) an estimate of the frequency and duration of episodes of incapacity if the Serious Health Condition may result in unforeseeable episodes of incapacity.

2. If an Employee submits a complete and sufficient certification signed by the Health Care Provider, UMUC may not request additional information from the Health Care Provider. However, UMUC may contact the Health Care Provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after UMUC has given the Employee an opportunity to cure any deficiencies under this Policy. UMUC shall designate a Health Care Provider, a human resources professional, a leave administrator, or a management official to contact the Employee’s Health Care Provider. Under no circumstances, however, may the Employee’s direct supervisor contact the Health Care Provider.

3. The CHRO or designee may require a second medical opinion at UMUC’s expense if UMUC has reason to doubt the validity of a medical certification provided by the Employee’s Health Care Provider. UMUC
may designate the Health Care Provider who is to furnish the second opinion. In the case of conflicting opinions, the opinion of a third Health Care Provider, agreed upon by both Employee and the CHRO or designee and obtained at UMUC’s expense, shall be final and binding. The second and third opinions shall not be provided by individuals who are employed on a regular basis by UMUC.

4. The CHRO or designee may require reasonable recertiﬁcation as the FML continues. Recertiﬁcation shall not be requested more often than every thirty (30) days unless the Employee requests an extension of FML, circumstances described by the previous certiﬁcation have changed signiﬁcantly, or UMUC receives information that casts doubt upon the continuing validity of the most recent certiﬁcation. UMUC shall allow at least ﬁfteen (15) days for the Employee to provide the requested recertiﬁcation.

5. UMUC may ask for the same information on recertiﬁcation as the original certiﬁcation. As part of the information allowed to be obtained on recertiﬁcation for leave taken because of a Serious Health Condition, UMUC may provide the Health Care Provider with a record of the Employee’s absence pattern and ask the Health Care Provider if the Serious Health Condition and need for leave is consistent with such a pattern.

B. Medical Certification for a Covered Servicemember

1. When leave is taken to Care for a Covered Servicemember with a Serious Injury or Illness, UMUC may require the employee to obtain a certification completed by an authorized health care provider of the Covered Servicemember. In addition to Health Care Providers defined in this Policy, Health Care Providers for purposes of this Section include health care providers from the U.S. Department of Defense (DOD), the U.S. Department of Veterans Affairs (VA), DOD TRICARE Network and DOD non-network TRICARE (collectively, Military Health Care Providers). An Employee may use the appropriate template form issued by the Department of Labor’s Wage and Hour Division or a comparable form requiring the same information (including invitational travel order (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his/her bedside). UMUC may require additional information per 29 C.F.R. § 825.310.

2. If the Health Care Provider is a Military Health Care Provider, UMUC may not seek a second or third opinion. If the Health Care Provider meets
the definition of this Policy but is not a Military Health Care Provider, UMUC may seek a second or third opinion. 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. Medical Certification for Leave Taken Because of a Exigency

1. The first time an Employee requests leave because of an Exigency arising out of the Covered Active Duty or call to Covered Active Duty status (or notification of an impending call or order to Covered Active Duty) of a Military Member, UMUC may require the Employee to provide a copy of the Military Member’s active duty orders or other documentation issued by the military which indicates that the Military Member is on Covered Active Duty or call to Covered Active Duty status, and the dates of the Military Member’s Covered Active Duty service.

2. MUC may additionally require that leave under this paragraph be supported by a certification setting forth the information listed in 29 C.F.R. § 825.309. UMUC may use the appropriate template form issued by the Department of Labor’s Wage and Hour Division or a comparable form requiring the same information. UMUC may not require information in addition to the information required by this paragraph.

D. The Employee must provide a complete and sufficient certification to UMUC. UMUC shall advise the Employee if UMUC finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if UMUC receives a certification but one or more of the applicable entries have not been completed. A certification is considered insufficient if UMUC receives a complete certification but the information provided is vague, ambiguous, or nonresponsive. UMUC must provide the employee with seven (7) days, unless not practicable, to cure any such deficiency.

E. Consistent with the FMLA and other applicable laws, all medical-related documentation will be kept confidential and maintained in a file separate from the Employee’s official personnel file.

XIII. DOCUMENTATION OF CERTAIN RELATIONSHIPS

If an Employee takes FML under this Policy, including, but not limited to, for the birth of the Employee’s Child, the placement of a Child with the Employee for adoption or foster care, or the need to take care of the Employee’s Child within a 12-month period after birth or placement, UMUC may require the Employee giving notice of the need for leave
to provide reasonable documentation to confirm the family relationship. This
documentation may take the form of, but is not limited to, a simple statement from the
Employee, a Child's birth certificate, an adoption certification, or a court document.
UMUC is entitled to examine the documentation, but the Employee is entitled to the
return of an official document submitted for this purpose.

XIV. SCHEDULING OF TREATMENT

A. When planning medical treatment, the Employee must consult with UMUC and
make a reasonable effort to schedule the treatment so as not to disrupt unduly the
operations of the applicable unit, subject to the approval of the Health Care
Provider. Employees are ordinarily expected to consult with UMUC prior to the
scheduling of treatment in order to work out a treatment schedule which best suits
the needs of both UMUC and the Employee.

B. If an Employee fails to consult with UMUC to make a reasonable effort to arrange
the schedule of treatments so as not to unduly disrupt UMUC's operations, the
CHRO or designee may initiate discussions with the Employee, require the
Employee to make a reasonable effort to make such arrangements, and request the
Employee to provide certification from the appropriate Health Care Provider of
the unavailability of treatment during non-work time, or at times that are less
disruptive to the operations of the Employee's unit.

XV. PROVIDING INFORMATION ABOUT FML

Regardless of the reason for FML, an Employee shall provide complete, accurate and
timely information related to a request for, continuation of, modification(s) to, and return
from FML.

XVI. ABUSE OF FML

The CHRO or designee shall review, investigate and resolve suspected cases of bad faith,
fraud or abuse of the FML program. Cases of bad faith, falsification of documents, or
fraudulent information related to FML provided to UMUC, or other abuses of FML, may
result in actions by UMUC, including, but not limited to, revocation of the leave, denial
of a request to restore the Employee to his/her position or an Equivalent Position,
recovery of UMUC's costs for paid time off and insurance benefits premiums, and
disciplinary action up to and including termination.

XVII. EARLY RETURN FROM LEAVE

An Employee may discover after beginning FML that the circumstances have changed
and the amount of leave originally anticipated is no longer necessary. An Employee may
not be required to take more FML than necessary to resolve the circumstance that precipitated the need for leave. UMUC may require the Employee to provide UMUC reasonable notice (i.e. within two working days) of the changed circumstances where foreseeable.

XVIII. EXTENSIONS OF LEAVE

An Employee may request an extension of the date of return from FML to the extent the Employee has remaining FML available. Regardless of whether the FML is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the Employee shall advise UMUC as soon as practicable if dates of scheduled FML are extended and provide recertification, if requested.

XIX. FAILURE TO RETURN FROM LEAVE

A. An Employee who will not be returning to UMUC at the conclusion of FML shall notify the CHRO or designee in writing as soon as practicable. In the absence of written notification or other extenuating circumstances, failure to return from leave shall be generally interpreted as a resignation. However, UMUC shall make reasonable effort to communicate with the Employee to confirm the Employee’s intent to not return to work before interpreting a failure to return to work as a resignation.

B. If applicable, any benefit entitlement based upon length of service shall be calculated as of the Employee’s last paid day.

XX. SPOUSES EMPLOYED BY UMUC

A. Where Spouses both work at UMUC, each Spouse shall be entitled to a separate, individual, maximum FML eligibility amount.

B. The amount of leave for which one Spouse may be eligible, or the amount of leave used by one Spouse, shall not limit or enhance the leave amount or the leave usage of the other Spouse.

C. Spouses shall be entitled to take leave simultaneously or in succession and in any portion of their respective individual maximum FML eligibility amount.

XXI. MISCELLANEOUS

A. The CHRO or designee is under no obligation to immediately restore an Employee whose return from FML does not coincide with the normal operating schedule of UMUC or the normal work schedule of the Employee’s unit, or
Restore an Employee whose return date is inconsistent with the terms and conditions of the Employee’s appointment.

B. Entitlement to begin FML for reasons of childbirth, placement with the Employee of a Child for adoption or foster care, or Care for a newborn Child expires by no later than the 364th day after the date of birth or placement. Any such FML must be concluded within this one-year period.

C. When FML is taken by an Employee on probation status, the probationary period shall be adjusted upon the return of the Employee by the length of time used for FML.

D. Either the Employee or UMUC may initiate a period of FML.

IMPLEMENTATION PROCEDURES

The UMUC President has designated the Chief Human Resources Officer (CHRO) to administer this policy; to develop procedures as necessary to implement this policy; to communicate this policy to the UMUC community; and to post the policy and applicable procedures on the UMUC website.

REFERENCE:


Replacement for:
USM BORVII - 7.50 – Policy on Family and Medical Leave for Nonexempt and Exempt Staff Employees
UMUC OS 21.00 – Policy on Family and Medical Leave