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## POLICY AND PROCEDURE

### Resident and Subspecialty Resident Family Medical Leave

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All duly appointed residents within a UNC Hospitals' graduate medical education program who are scheduled to work at least 20 hours each week are eligible for Family Medical Leave for a total of 12 weeks during any 12 month period for one or more of the reasons listed below. A maximum of 6 of the 12 weeks may be paid leave, as follows: the resident must first exhaust any accumulated paid time off ("PTO"), after which up to three additional weeks of leave will be paid leave. In other words, if the resident has already exhausted all PTO, then the resident is only eligible for 3 weeks of paid leave. The Residency Program Director must also approve the request that part of the leave be paid leave in accordance with the above terms.

If extended Family Medical Leave is taken, **residency training may need to be extended, contingent upon specialty or subspecialty board requirements and RRC requirements. See also Leave of Absence Policy.**

Except in case of emergency (defined below), prior to the beginning of the leave under this Policy all required documentation must be submitted in accordance with the Procedure outlined below, reviewed by the Program Director and delivered to the Office of Graduate Medical Education.

Relation of leave granted under this Policy to Family and Medical Leave Act (FMLA): Residents who have been employed in an ACGME program for which UNC Hospitals is the sponsoring institution for at least twelve months and who, during the previous twelve months, have worked for at least 1040 hours are eligible, under the federal Family and Medical Leave Act, for a total of twelve weeks of unpaid leave in a fifty-two week period for serious illness or major disability, or for parental purposes. For these residents, the leave defined by this Policy shall constitute the leave for which they are eligible under FMLA. In other words, if a resident meets the service requirements described above, then any paid leave taken under this Policy for serious illness, major disability, or parental purposes shall count towards the twelve weeks of leave guaranteed under the federal Family and Medical Leave Act.

If a resident does not meet the service requirements described above, the resident shall still be eligible for PTO, but such leave shall not count as leave under the federal Family and Medical Leave Act.

A resident is prohibited from moonlighting while on Family Medical Leave.

#### Reasons for Leave

The following are all justifications for taking Family Medical Leave:

- For the birth of a child and to care for the child after birth, provided the leave is taken within a 12 month period following birth;
- For the resident to care for a child placed with the resident for adoption or foster care, provided the leave is taken within a 12 month period following adoption;
- For the resident to care for his or her child/spouse/domestic partner/parent when that child/spouse/domestic partner/parent has a serious health condition;
- The resident has a serious health condition that makes him or her unable to perform the essential functions of his or her position.

**Note: Intermittent leave is not permitted for taking care of a child after birth or adoption, unless the leave is for the purpose of caring for a child with a serious medical illness.**

#### Definitions

**Parent:** A biological or adoptive parent, or an individual who stood in *loco parentis* to a resident when the resident was a child.

**Child:** A son or daughter who is under 18 years of age, or is 18 years of age or older and incapable of self-care because of mental or physical disability, who is:

- a biological child;
- an adopted child;
- a foster child (a child for whom the resident performs the duties of a parent as if it were the resident's child);
- a step-child (a child of the resident's spouse from a former marriage);
- a legal ward (a minor child placed by the court under the care of a guardian); or
- a child of a resident standing in *loco parentis*.

**Spouse:** A husband or wife.

**Domestic Partners:** Two individuals (regardless of gender) who have reached the age of maturity, who live together in the same residence in a long term relationship of indefinite duration with an exclusive mutual commitment, who are not married or related to the other by blood or marriage, and who are responsible for each other's welfare and share financial obligations, as evidenced by the following types of documentation, at least two of which should be provided upon request: (a) joint mortgage or lease; (b) designation of domestic partner as beneficiary for life insurance; (c) designation in will of domestic partner as primary beneficiary upon death; (d) domestic partnership agreement; (e) powers of attorney for property and health care; and (f) joint ownership of a motor vehicle, joint checking account or joint credit account.

#### **Serious Health Condition:**

- An illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice or residential medical care facility, or that involves continuing treatment by a health care provider;
- Any period of incapacity requiring absence from work of more than three calendar days that also involves continuing treatment by a health care provider;

- Continuing treatment by a health care provider for conditions so serious that, if not treated, would likely result in absence of more than three calendar days (prenatal care is also included);
- The period of actual physical disability associated with childbirth is considered a serious health condition and may be taken as family/medical leave. Prenatal care is also included.

**Workweek:** The number of hours a resident is regularly scheduled to work each week.

**Reduced Work Schedule:** A work schedule involving fewer hours than a resident is normally scheduled to work.

**Intermittent Work Schedule:** A work schedule in which a resident works on an irregular basis and is taking leave in separate blocks of time rather than for one continuous period of time. This leave is usually scheduled to accommodate some form of regularly scheduled medical treatment.

### **Other Provisions**

In the event of illness that extends beyond the 60-day waiting period required for short-term disability, the resident may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability or Worker's Compensation benefits) count toward the 12 work weeks for which the resident is eligible.

The leaves described in this Policy shall not accumulate nor be carried forward from year to year, shall not be allowable as terminal leave when the resident leaves the Hospitals, and shall not be used to extend years of creditable state service for retirement benefit purposes. For each resident, for the purposes of calculating leave, a "year" begins on the date of employment and then on each subsequent anniversary of employment.

### **Intermittent Leave**

When medically necessary, the resident may take leave intermittently or work on a reduced schedule in order to care for his or her child/spouse/domestic partner/parent who has a serious health condition, or because the resident has a serious health condition. There is no minimum limitation on the amount of leave taken intermittently.

Only the time actually taken as leave may be counted toward the 12 weeks of leave for which a resident is eligible under the FMLA when leave is taken intermittently or on a reduced work schedule. If leave is taken intermittently and/or on a reduced work schedule, the number of hours not worked will be summed, and the number of weeks of leave will be calculated using a minimum of 40 hours as a "full week". In other words, each 40 hours "not worked" will be counted as a week of leave under this Policy. However each Program has the discretion to consider a number greater than 40 hours as a "full week", up to a maximum of 80 hours. What constitutes a "full week" may vary from rotation to rotation within a Program, and is subject to the decision of the Program

Director. The Program Director will provide regular written documentation to the resident of the number of weeks of leave taken to date.

If a resident works a reduced or intermittent work schedule, the resident may be required to extend his or her residency in order to meet requirements for residency certification.

### **Non-Discrimination**

The Hospitals and departments will not interfere, restrain, deny any right, discharge or in any other way discriminate against any resident because he or she does any of the following:

- Files any internal appeal, civil action, or institutes or causes to be instituted any civil proceeding under or related to this Policy;
- Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Policy; or
- Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Policy.

### **Enforcement**

A violation of or denial of leave requested under the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal under the State Personnel Act. Violations can result in any or all of the following and are enforced by the U.S. Secretary of Labor:

- US Department of Labor investigations;
- Civil liability with the imposition of court costs and attorney's fees; and/or
- Administrative action by the US Department of Labor.

### **Posting Requirements**

The Hospitals will post, in a conspicuous place, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints and violations of the Act with the US Department of Labor, Wage and Hour Division. In addition, when a resident provides notice of the need for FMLA leave, the Hospitals shall provide him or her with a notice detailing his or her specific expectations and obligations and explaining the consequences of a failure to meet these obligations.

### **PROCEDURE**

The resident shall give written notice to his or her Residency Program Director for leave requested under this Policy. He or she must explain in writing the reasons for the needed leave so as to allow the Hospitals to determine that the leave qualifies under this Policy.

**Birth or Adoption:** The resident shall give the Department **30 days notice** in writing of the intent to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the resident shall provide as much notice as is feasible.

**Planned Medical Treatment:** When leave is necessary in order for the resident to care for his or her child/spouse/domestic partner/parent, or because the resident has a

serious health condition, the resident must give 30 days notice, or as many days notice as is feasible, of the intention to take leave.

**Medical Emergency:** In the case of a medical emergency requiring leave because of a resident's own serious health condition, or need to care for a family member/domestic partner with a serious health condition, advance notice is not required. The resident (or if incapacitated, his/her representative) should communicate with the residency program as soon as is feasible.

### **Certification**

A leave because of adoption or foster care must be supported by reasonable proof of adoption or foster care.

A leave because of serious illness must be supported by a doctor's certification.

### **Doctor's Certification**

A doctor's certification should include the following:

- The date on which the serious health condition began;
- The probable duration of the condition;
- The appropriate medical facts regarding the condition;
- A statement that the leave is needed to care for the child/spouse/domestic partner/parent, and an estimate of the time that is needed; or that the resident is unable to perform the functions of their position because of a serious medical condition, whichever applies; and
- Where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment.

### **Second Opinions**

Where the Hospitals have reason to doubt the validity of a certification, it may require the resident to get the opinion of a second doctor designated or approved by the Hospitals.

Where the second opinion differs from the opinion in the original certification, the Hospitals may require the resident to get the opinion of a third doctor chosen by the Hospitals and the resident.

The Hospitals may require that the resident get subsequent re-certifications on a reasonable basis. The second and third opinions, as well as the re-certifications, must be at the Hospitals' expense.

### **Reinstatement**

The resident shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment.

The Hospitals may require that the resident report, at reasonable intervals, his or her status and intention to return to work. Certification that the resident is able to return to work will also be necessary when the leave is for the resident's personal illness.

### **Failure to Return to Work**

If the resident will not return to work after the period of leave, the Hospitals should be notified in writing immediately. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered a resignation.

### **Health Benefits**

The Hospitals or Department (depending on salary funding source) shall maintain coverage for the resident under the residents' group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if the resident had continued employment.

Any share of health plan premiums which a resident had prior to leave must continue to be paid by the resident during the leave period. The obligation to maintain health insurance coverage stops if the resident's premium payment is more than 30 days late.

If the resident's failure to make the premium payments leads to a lapse in coverage, the department must restore the resident, upon return to work, to the health coverage equivalent to that he or she would have had if leave had not been taken or premium payments not missed, without any waiting period or preexisting conditions

### **Recovery of Premiums**

The Department may recover the premiums if the resident fails to return to work after the period of leave for which the resident is eligible has expired, for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the resident's control.

### **Denial of Leave and Appeals**

If leave is denied by the program director, the resident may appeal this denial to the Designated Institutional Official (DIO) in writing. This appeal must be submitted within 10 days of the denial receipt by the resident. The decision of the DIO is final.

### **FML Forms**

Any resident or subspecialty resident request for FML must complete the attached form. The form must be completed 30 days in advance of the leave, or as many days as is feasible, unless the leave is based on an emergency. The completed form *must* be provided to the GME Office.

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