

Article 9

LEAVES OF ABSENCE

A. GENERAL CONDITIONS

1. A regular employee may request, pursuant to the conditions required for each leave, a leave of absence. Unless otherwise specifically stated in this Agreement, all leaves of absence and all extensions, whether paid or unpaid, will be requested and approved in advance and granted solely at the discretion of the University.
2. The Union will be notified of any leave of absence without pay of more than five (5) work days which has been requested by an employee and granted to the employee. Except as provided under the Family Medical Leave Act (FMLA), the Pregnancy Disability Leave Law (PDL) and the California Family Rights Act (CFRA), during a leave of absence without pay, an employee will not earn vacation or sick leave nor be eligible for any payments for time off work.
3. Prior to beginning a leave of absence without pay, unless otherwise requested by the employee and approved by the University, an employee's accrued vacation shall be used first, except that an employee shall not be required to exhaust accrued vacation prior to a leave without pay granted pursuant to Section D, Military Leave, and Section E, Pregnancy Disability Leave.
4. Regulations of the retirement system(s) will continue to determine the effect of leave without pay on retirement benefits. Regulations governing the insured benefit programs of the University will continue to determine an employee's status in each benefit program during a leave without pay.
5. During any time in which other employees are granted leave with pay under this Article, an employee who is
 - a. required to work,
 - b. on another type of leave with or without pay, or
 - c. not scheduled for workis not eligible for additional pay.
6. Payments for leave with pay shall not exceed the number of hours in the employee's regular shift or regular work week.
7. Any employee who requests and/or obtains a leave of absence under false pretense or uses the leave for purposes other than that for which it was obtained shall be subject to immediate disciplinary action up to and including discharge.
8. Any time an employee is absent and not in an authorized paid leave status, the employee will be considered on a leave of absence. Such absence may be approved or unapproved at the discretion of the University.

B. LEAVES WITHOUT PAY

1. Personal Leave

- a. A personal leave of no longer than six (6) continuous calendar months may be granted, at the sole discretion of the University, for such reasons as education which

will directly increase an employee's job effectiveness. Employees ineligible for FMLA or who have exhausted their FMLA leave may request personal leave for the reasons cited in section F in this Article.

- b. The University may grant an extension of a personal leave when requested, provided such request is made no later than fourteen (14) calendar days prior to the expiration of the leave. A personal leave plus extensions may not total more than twelve (12) continuous months. Extensions may be granted solely at the discretion of the University. The Union will be notified of such extension.

2. Work-Incurred Disability Leave

- a. An employee who is receiving temporary disability payments under the Worker's Compensation Act shall be granted a leave without pay for all or part of the period during which temporary disability payments are received except that such a leave shall not extend beyond any pre-determined date of separation. Employees on such leave shall be considered on pay status for all purposes, except in the calculation of time counted towards the completion of a probationary period.
- b. An employee who is granted work-incurred disability leave, and who is entitled to family and medical leave, shall have that time counted against the 12-workweek entitlement, as provided below, if the work-incurred injury qualifies as a serious health condition.

C. LEAVES WITH PAY

1. Jury Duty and Grand Jury Duty

An employee shall be granted regular pay for time lost due to jury service and a reasonable amount of related travel time to leave from or return to work.

2. Administrative or Legal Proceedings as a Witness

An employee, when served with a subpoena which compels the employee's presence as a witness in an administrative or legal proceeding, shall receive his/her regular pay for the time lost serving as a witness and a reasonable amount of related travel time to leave from and/or return to work. An employee does not qualify for pay under this Section when the employee is the plaintiff or defendant in a proceeding, is called or subpoenaed as a paid expert witness not on behalf of the University, or is called or subpoenaed because of duties for another employer. Time lost under these conditions will be considered a scheduled day off for the employee, provided the employee has notified his/her supervisor of the need to be absent from work in accordance with the rules of his/her work location.

3. Voting Privileges

An employee shall be granted up to a maximum of two (2) hours with pay, for voting in a statewide primary or general election, if the employee is scheduled to work a full shift or more on that day and the employee does not have time to vote outside of working hours.

4. Blood Donation

An employee may be granted up to a maximum of two (2) hours with pay for donating blood in a University or Union sponsored blood drive during the employee's regularly scheduled hours of work.

5. Bereavement Leave

- a. A leave of absence with pay of up to three (3) days may be granted in the event of a death in the immediate family of an employee. The immediate family shall include an employee's parents, spouse, siblings, children, or any other person residing in the household of the employee.
- b. In the event of a personal obligation regarding funeral attendance/bereavement for any other person, an employee shall be granted one (1) day bereavement leave and permitted to use not more than two (2) days of accrued sick leave per calendar year. The employee shall provide notice to his/her immediate supervisor.

D. **MILITARY LEAVE**

>Military Leave shall be provided to bargaining unit employees to the same extent it is made available to unrepresented Berkeley Campus employees who are not managerial, supervisory or confidential.

E. **PREGNANCY DISABILITY LEAVE**

>An employee disabled from working because of pregnancy, childbirth, or related medical conditions is eligible for and, upon request of the employee, shall be granted a leave of absence for up to four months during the period of disability, except that any leave which is granted shall not extend beyond a predetermined date of separation.

1. Coordination with Other Leaves

a. Sick Leave

Accrued sick leave shall be used first before leave without pay during a pregnancy disability leave.

b. An employee may elect to use vacation before leave without pay during a pregnancy disability leave.

c. Family and Medical Leave

If an employee on approved pregnancy disability leave is also eligible for family and medical leave under Section F below, up to 12 workweeks of pregnancy disability leave shall run concurrently with family and medical leave under Federal law. Upon termination of a pregnancy disability leave that runs concurrently with Federal family and medical leave, an employee if eligible, is also entitled to up to 12 workweeks of State family and medical leave for any covered reason except pregnancy or related medical conditions, provided the combined pregnancy disability leave and family and medical leave do not exceed seven months in the leave year.

2. Reinstatement

An employee who has been granted a pregnancy disability leave shall be reinstated to the same position provided that the employee returns to work within four months and immediately following termination of the leave. If the employee would have been laid off or released had the employee remained on pay status during the period of leave, the employee shall be reinstated to a similar job at the same location. If a similar job is not available, the employee shall be afforded the same considerations which would have been afforded had she been on pay status when the position was affected by layoff.

3. Less Strenuous or Hazardous Position

- a. As an alternative to or in addition to pregnancy disability leave, the University shall temporarily transfer a pregnant employee to a less strenuous or hazardous position upon request of the employee and with the written certification of the employee's health care provider, if the transfer can be reasonably accommodated. For the purpose of this Section and Section E.3.b., a temporary transfer includes a temporary modification of the employee's own position to make it less strenuous or hazardous. A temporary transfer under this section shall not be counted toward an employee's entitlement of up to four months of pregnancy disability leave, unless the employee is also on a reduced work schedule or an intermittent leave schedule.
- b. When medically necessary, and supported by medical certification, the University shall grant an employee Pregnancy Disability Leave on a reduced work schedule or on an intermittent basis including absences of less than one day. Only the time actually spent on the intermittent or reduced leave schedule shall be counted towards the employee's entitlement of four months in any twelve-month period.
- c. An employee who is temporarily transferred to another position because of pregnancy or a pregnancy-related condition shall be reinstated as provided in Section E.2. A temporary transfer to a less strenuous or hazardous position shall not be counted toward an employee's entitlement of up to four months pregnancy disability leave.

F. FAMILY LEAVE AND MEDICAL LEAVE

Family and medical leave is provided for an eligible employee's serious health condition, the serious health condition of the employee's child, spouse, or parent, or to care for the employee's newborn, adopted, or foster care child, in accordance with State and Federal law in effect at the time the leave is granted.

An employee's own serious health condition is defined as an illness, injury, impairment, physical or mental condition that makes an employee unable to perform any one or all of the essential assigned functions of his/her position and involves the following:

-inpatient care in a hospital, hospice, or residential medical care facility, or
-continuing treatment by a health care provider for: a period of incapacity of more than three consecutive calendar days; or any period of incapacity or treatment due to a chronic serious health condition; or any
period of incapacity which is permanent or long-term due to a condition for which treatment may effective.

A serious health condition for the purposes of family illness leave is an illness, injury, impairment, physical or mental condition, as defined directly above of the employee's child, parent or spouse which warrants the participation of a family member to provide supervision or care during a period of the treatment or normal incapacity including psychological comfort.

Leave granted to care for the employee's newborn, adopted, or foster care child shall be initiated and concluded during the 12 months following the child's birth or placement for adoption or foster care. Family and medical leave granted to an eligible employee shall not extend beyond a predetermined date of separation.

1. Duration and Eligibility

An employee is entitled to up to 12 workweeks of family and medical leave in the leave year that begins on the date leave is first taken, provided that:

- a. the employee has at least 12 cumulative months of University service (all prior University service, including service with the Department of Energy Laboratories, shall be used to calculate the 12-month service requirement); and
- b. the employee has actually worked at least 1,250 hours during the 12 months immediately preceding the commencement date of the leave.

- c. In the event University policy and/or State or Federal law result in a different date of commencement for this twelve-month period, the commencement period for employees in this bargaining unit shall conform to the commencement date generally applicable to other University employees.

2. Notification

An employee shall provide at least 30 days advance notice for an expected birth, placement of an adopted or foster care child, or planned medical treatment. If 30 days notice is not practicable, notice shall be given as soon as practicable. Failure to comply with applicable notice requirements may result in postponement of family and medical leave.

3. Certification

- a. When leave is requested for the employee's own serious health condition, the University shall require that an employee's request for leave be supported by a written certification from the employee's health care provider. Such requirement shall be submitted to the employee in writing. If additional leave is requested upon expiration of the leave granted, the University shall require the employee to obtain recertification. The certification may be on a form provided by the University but shall, regardless of the format, in addition to certifying that the employee has a serious health condition, include:
 1. a statement as to whether the employee is unable to perform any one or more of the essential assigned functions of the position including a statement of the function(s) the employee is unable to perform, and
 2. the date, if known, on which the employee's serious health condition began, the probable duration of the condition and the employee's probable date of return, and
 3. whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule, and if so, the schedule and the probable duration of such schedule, and
 4. if the condition is chronic and the employee is presently incapacitated, the duration and frequency of episodes of incapacity.
- b. When the leave of absence is requested for the serious health condition of the employee's family member, the University shall require that an employee's request be supported by written certification issued by the family member's health provider. Such requirement shall be submitted to the employee in writing. Certification may be provided by the employee on a form provided by the University and shall, regardless of format, in addition to certifying that the employee's family member has a serious health condition, include:
 1. a statement that the family member's serious health condition warrants participation of the employee to provide supervision or care during a period of the treatment or incapacity or to provide psychological comfort, and
 2. whether the employee's family member will need care intermittently or on a reduced schedule (the reduced schedule, if necessary) and the probable duration that the employee is needed to provide care.
In addition, the employee will be required to certify either on the form or separately the care she/he will provide the family member and the estimated duration of the period of care.
- c. When the leave is for the employee's own serious health condition, the University may, at its discretion, require the employee to obtain a second medical opinion from a health care provider selected by the University. Should the second medical opinion

differ from the employee's own health care provider, the University may require a third medical opinion from a health care provider jointly approved by the University and the employee. The University shall bear the cost of the second and third opinions and the third opinion shall be final.

- d. The employee shall return the certification and/or recertification within 15 calendar days of the University's request, where practicable. Failure to provide certification for a foreseeable leave within the requested time may result in the denial of the leave until the required certification is received. Failure to provide certification for an unforeseeable leave within the requested time period may result in the discontinuance of the leave until the required certification is provided. If the employee fails to provide the required certification and the leave has not begun, the request for family and/or medical leave will be denied. If the leave has begun, the leave may, at the University's discretion, be discontinued; however, any leave taken is not FMLA leave.
- e. The University shall require that an employee's return to work be supported by medical certification releasing the employee to perform the essential assigned functions of his/her job. Failure to provide such a release may result in the denial of reinstatement until after the employee submits the required medical release certification.

4. Coordination with Other Leaves

Family and medical leave is unpaid leave, except under the following circumstances:

- a. Accrued sick leave shall be used first during a family and medical leave granted for an employee's own serious health condition in accordance with the University's disability plan, and to the extent permitted by Article 19, Sick Leave, Section C.3., during a family and medical leave granted to care for a child, spouse, or parent with a serious health condition. An employee who is not eligible for the University disability benefits and who is on non-work-incurred disability leave shall use all accrued sick leave prior to leave without pay.
 - b. Accrued vacation shall be used for any family medical leave purpose pursuant to Section A.3. above.
 - c. Any portion of a work-incurred disability leave shall be counted towards the 12-week entitlement if the work-incurred injury qualifies as a serious health condition.
5. The University shall designate all paid and unpaid leaves as family and medical leave if the leave meets the requirements set forth in Sections F.1. - F.6 and shall notify the employee in writing.

6. Intermittent Leave and Reduced Work Schedule

When medically necessary, an employee may take family and medical leave on a reduced work schedule or on an intermittent basis including absences of less than one day. Only the time spent on such leave shall be counted towards the employees entitlement. The University may require an employee on a reduced work schedule or intermittent leave to transfer temporarily to an alternative position if the alternative position better accommodates the required work schedule than the employee's regular position. Such transfer shall have equivalent pay and terms and conditions of employment but does not have to have equivalent duties.

7. Reinstatement

An employee who has been granted a family and medical leave shall be reinstated to the same position, or at the University's discretion, an equivalent position with the equivalent employment benefits, pay, and other terms and conditions of employment provided that the employee returns to work immediately following termination of the leave. If the employee would have been laid off or released had the employee remained on pay status during the period of the leave, the employee

shall be afforded the same considerations afforded to other employees scheduled for temporary or indefinite layoff. The date of reinstatement is determined when the leave is granted unless an extension is granted and a new reinstatement date determined.

8. Benefits

An employee on an approved family and medical leave shall be entitled to continue participation in health plan coverages (medical, dental and optical) as if on pay status for a period of up to 12 workweeks in the leave year except that an employee who exhausts her entitlement to health plan coverage while on an approved pregnancy disability leave that runs concurrently with Federal family and medical leave shall not be entitled to an additional 12 workweeks of health plan coverage under State family and medical leave.

Other group insurance coverage and retirement benefits shall be continued in accordance with the provisions of the applicable group insurance and retirement system regulations.