

Date: August 2, 2010 Code: TECHNICAL LETTER
HR/Benefits 2010-08

To: Human Resources Directors Reference: HR 2009-11; HR 99-05;
Benefits Representatives HR 2008-04; and HR/
Benefits 2005 -24

From: Evelyn Nazario 
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Human Resources Management

Subject: Restatement of CSU FML Policy and Update regarding recent Department of Labor (DOL) Administrative Interpretation of "Son and Daughter"

Overview

Audience: Human Resources Directors, Benefits Representatives, or other staff responsible for CSU Leave administration.

Action Items: Update Family Medical Leave forms, as appropriate

Affected Employee Groups/Units: Eligible employees

Summary

This technical letter readdresses the designation of a leave as Family Medical Leave (FML) and the usage of appropriate leave credits when an absence is deemed FML in accordance with the CSU FML Policy.

In addition, on June 22, 2010, the Department of Labor (DOL) released an Administrator's Interpretation Letter No. 2010-3, that provides clarification regarding the definition of "son and daughter" under Section 101(12) of the Family and Medical Leave Act (FMLA). This clarification provides a broader definition of "son or daughter" as it applies to an employee standing "in loco parentis," and allows an employee who assumes the role of caring for a child to be eligible for FMLA, regardless of the legal and/or biological relationship.

Campus designees responsible for CSU Leave Administration should review the remaining portions of the technical letter for the purposes of FML administration.

Restatement of CSU Family Medical Leave (FML) Policy and Leave Credits Usage

In order to assist campuses in administering the CSU FML entitlement (which incorporates the California Family Rights Act entitlement provisions), Human Resources Management is providing additional information to ensure campus practices are in compliance with CSU policy, applicable collective bargaining agreements (CBAs) and implemented consistently across the CSU system.

Employee Use of CSU FML for his/her Own Illness or Injury

If an employee's absence consists of either three (3) or five (5) consecutive days or more pursuant to CSU policy or a collective bargaining agreement (CBA), the campus **must**:

Distribution:

CSU Presidents
Vice Chancellor, Human Resources
Campus Vice Presidents

Associate Vice Presidents, Deans of Faculty
Payroll Managers

1. Determine if CSU FML is applicable to the absence, including Nonindustrial Disability Leave (NDI), Industrial Disability Leave (IDL), Maternity/Paternity (or Parental) Leave, Organ Donor Leave or other eligible absence.
 - a. If CSU FML is applicable, provide notification to the employee; and
 - b. Place the employee on CSU FML.
2. Track required usage of applicable leave credits, including Personal Holiday and Compensatory Time Off (CTO), unless excluded by a CBA, against the CSU FML entitlement.
 - a. If appropriate leave credits are exhausted, retain the employee on any remaining portion of CSU FML in unpaid status.

As a reminder, **with the exception of Unit 4 employees, it is the responsibility of the campus to designate and place an employee on CSU FML.** For Unit 4 employees, the employee must request placement on CSU FML; the campus may not designate the absence as CSU FML without the concurrence of the Unit 4 employee (please see HR/Benefits 2005-24).

CSU Policy (please see HR 1999-05 and HR 2010-05) requires that when an employee is placed on CSU Family Medical Leave (FML) for his/her own illness or injury, the employee must use his/her sick leave, vacation credits, Personal Holiday, and CTO (unless specifically excluded by CBA) prior to going on any unpaid portion of CSU FML. *CSU FML runs concurrently with sick leave, vacation credits, Personal Holiday and CTO (as appropriate) or other paid leaves and is not counted separately from the CSU FML period, unless the employee is on Pregnancy Disability Leave (PDL).*

Please note: CSU FML begins when the leave is actually designated as CSU FML and the employee is provided notification. CSU FML then applies to both paid and unpaid periods of the leave. If an employee does not have ample sick and/or vacation credits to cover the duration of the CSU FML, then the unpaid portion of CSU FML begins once those credits have been exhausted, and should not extend the CSU FML entitlement beyond the 12-week designation.

Employee Use of CSU FML for eligible family member's illness or injury

When an employee requests CSU FML to care for an eligible family member who suffers an illness or injury that meets the criteria for CSU FML, the employee must be notified and placed on CSU FML. The employee is required to use eligible sick leave, vacation credits, Personal Holiday and CTO (unless excluded by a CBA) prior to going on any unpaid portion of CSU FML. For represented employees, please refer to the appropriate CBA to determine any restrictions on leave credit usage. For non-represented employees, leave credit usage is approved by the appropriate administrator based on campus practice.

CSU FML runs concurrently with any eligible sick leave, vacation credits, Personal Holiday, and CTO used to care for the family member, and the unpaid portion of CSU FML begins once the eligible leave credits have been applied to the leave. Appropriately applying both paid and unpaid portions of the leave to CSU FML must not extend the FML entitlement beyond the 12-week designation.

Clarification of the definition of "son or daughter" under the Family Medical Leave Act (FMLA)

Under FMLA, an employee is eligible for up to 12 weeks of leave for the birth or placement for a son or daughter, to bond with a newborn or newly placed son or daughter, or to care for a son or daughter with a serious health condition. The FMLA defines a "son or daughter" as a "biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing 'in loco parentis,' (Latin for "in place of a parent," or "instead of a parent") who is either under 18 years of age, or 18 years or older and incapable of self-care because of a mental or physical disability."

On June 22, 2010, the Department of Labor (DOL) released an Administrator's Interpretation Letter No. 2010-3, that provides clarification regarding the definition of "son and daughter" under Section 101(12) of the Family and Medical Leave Act (FMLA) as it applies to an employee standing "in loco parentis" to a child. This clarification expands FMLA entitlement to an employee who assumes parental obligations to a "son or daughter," as defined by FMLA, despite the absence of a legal and/or biological relationship.

Under the FMLA regulations "in loco parentis," includes individuals with day-to-day responsibilities to care for and/or financially support a child. Please note: FMLA regulations do not limit the number of "parents" that a child has.

Therefore, the presence of biological parent(s) in or outside of the child's home does not restrict an employee from being eligible for such leave to care for a "son or daughter" in loco parentis. The following examples are excerpts from Administrator's Interpretation No. 2010-3 and explain how the DOL interpretation applies:

"For example, where an employee provides day-to-day care for his or her unmarried partner's child (with whom there is no legal or biological relationship) but does not financially support the child, the employee could be considered to stand in loco parentis to the child and therefore be entitled to FMLA leave to care for the child if the child had a serious health condition. The same principles apply to leave for the birth of a child and to bond with a child within the first 12 months following birth or placement. For instance, an employee who will share equally in the raising of a child with the child's biological parent would be entitled to leave for the child's birth because he or she will stand in loco parentis to the child. Similarly, an employee who will share equally in the raising of an adopted child with a same sex partner, but who does not have a legal relationship with the child, would be entitled to leave to bond with the child following placement, or to care for the child if the child had a serious health condition, because the employee stands in loco parentis to the child.

Examples of situations in which an in loco parentis relationship may be found include where a grandparent takes in a grandchild and assumes ongoing responsibility for raising the child because the parents are incapable of providing care, or where an aunt assumes responsibility for raising a child after the death of the child's parents. Such situations may, or may not, ultimately lead to a legal relationship with the child (adoption or legal ward), but no such relationship is required to find in loco parentis status.

In contrast, an employee who cares for a child while the child's parents are on vacation would not be considered to be in loco parentis to the child."

If a campus has questions about whether an employee's relationship to a child is covered under FMLA, the campus may require the employee to provide reasonable documentation or statement of the family relationship. According to DOL, "A simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship."

Common Management Systems (CMS) Processing Instructions

The "Managing FMLA Plans" module is not delivered as core in Oracle/PeopleSoft. Therefore, there is no impact to CMS Baseline.

Questions regarding this Technical Letter may be directed to Human Resources Management at (562) 951-4411. This document is also available on the Human Resources Management Web site at:

<http://www.calstate.edu/HRAdm/memos.shtml>.

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