

## **Article 23 UNPAID LEAVE**

- A. Eligibility. Unit employees shall have the right to request a leave of absence without pay in accordance with the provisions of this Article after the successful completion of their probationary period (2,080 hours), except as otherwise provided in Section E below.
- B. Request Procedure. Any request for a leave of absence without pay shall be submitted in writing by the unit employee to the unit employee's immediate supervisor at least, except under emergency circumstances, thirty (30) calendar days in advance of the proposed commencement date for the leave. A request for a medical leave of absence may be submitted directly to the Appointing Authority. The request shall state the reason for and the length of the leave of absence being requested.

The immediate supervisor shall consult with the Appointing Authority and furnish a written response within twenty (20) calendar days of the request. If a request for a medical leave of absence is submitted directly to the Appointing Authority, a written response will be furnished by the Appointing Authority within twenty (20) calendar days of the request.

- C. Approval. Except as otherwise provided in this Agreement, unit employees may be granted a leave of absence without pay at the discretion of the Appointing Authority for a period up to six (6) months. The Appointing Authority shall consider its operational needs, the unit employee's length of service, performance record and leave of absence history in reviewing requests for a leave of absence. Appointing Authority determinations under this Section shall not be arbitrary, discriminatory or capricious. Only under bona fide mitigating circumstances may a leave of absence be extended beyond six (6) months. A unit employee may elect to carry a balance of annual leave not to exceed eighty (80) hours during a leave of absence. An annual leave balance in excess of eighty (80) hours up to a maximum of two hundred forty (240) hours may be carried with the written approval of the Appointing Authority. Such leave balances shall be made available to the unit employee upon return from a leave of absence but may be utilized only with prior approval of the Appointing Authority.

Payment for annual leave due a unit employee who fails to return from a leave of absence shall be at the unit employee's last rate of pay.

- D. Educational Leave of Absence. The Appointing Authority may approve an individual unit employee's written request for a full-time educational leave of absence without pay for an initial period of time up to one (1) year if the unit employee fulfills the following criteria.

To qualify for such an educational leave, the unit employee must be admitted as a full-time student as determined by the established requirements of the educational institution relating to full-time status. Before the leave of absence can become effective, a curriculum plan and proof of enrollment must be submitted by the unit employee to his/her Appointing Authority. At the request of the Appointing Authority, the unit employee shall provide evidence of continuous successful full-time enrollment in such curriculum plan in order to remain on or renew such leave. Such education shall be directly related to the unit employee's field of employment. Such unit employee may return early from such a leave upon approval by the Appointing Authority. The Appointing Authority shall approve or deny the request for leave of absence without undue delay. Any denial shall include written explanation of the denial, if requested by the unit employee.

E. Medical Leave of Absence.

1. Approval. Upon completion of the equivalent of at least six (6) months of full-time employment, and depletion of accrued sick leave credits, a unit employee upon request may be granted a leave of absence for a period of up to six (6) months upon providing required medical information for personal illness, injury or temporary disability necessitating his/her absence from work, if that unit employee is in satisfactory employment status. The unit employee's request shall include a written statement from the unit employee's physician indicating the specific diagnosis and prognosis necessitating the unit employee's absence from work and the expected return to work date.

A request to extend a medical leave of absence for an additional six (6) months may be granted at the sole discretion of the Appointing Authority. The Appointing Authority, in considering requests for extension, will consider verifiable medical information that the unit employee can return to work at the end of the extension period with the ability to fully perform the job.

The Appointing Authority reserves the right to have the unit employee examined by a physician selected and paid by the Appointing Authority for the unit employee's initial request, extension and/or return to work.

2. Medical Layoff. When a unit employee with five (5) or more years of continuous service is denied a medical leave of absence or an extension, at the unit employee's request, a medical layoff shall be entered into the unit employee's employment history rather than a separation for denial of medical leave. The appointing authority shall notify the unit employee in writing of his/her departmental recall rights in accordance with Article 12, Section L(1) and (2) upon providing medical certification within two (2) years from the date of denial of the medical leave of absence or its extension, that the unit employee is able to return to his/her regular job responsibilities. If the unit employee is unable to return to work at the end of the two (2) year period, the unit employee will resign or request a waived rights leave of absence.

This option may only be exercised once in a career. Unit employees recalled under this provision shall not have such time treated as a break in service.

- F. Military Leave. Whenever a unit employee enters into the active military service of the United States, the unit employee shall be granted a military leave of absence as provided under Civil Service Rules and Regulations, as amended throughout the term of this Agreement, and applicable statutes.
- G. Waived Rights Leave of Absence. An employee who terminates State employment may be granted a waived rights leave of absence of up to one year. This type of leave of absence is granted to protect the employee's continuous service, seniority, and any benefits connected with length of service. Unit employees do not have the right to return to State service at the end of a waived rights leave of absence but will have the continuous nature of their service protected, provided they return to work prior to the expiration of such leave. All requests for a waived rights leave of absence must be made to the unit employee's Appointing Authority in writing. A unit employee granted a waived rights leave of absence may not carry any annual leave balance during such leave.
- H. Layoff. Employees on a leave of absence who would be laid off if they were in active employment status shall not be exempt from layoff by virtue of being on a leave of absence.
- I. Maternity/Paternity Leave. Upon written request, a unit employee shall, after the birth of his/her child, or adoption of a child, be granted maternity/paternity leave for up to six (6) months. Maternity/paternity leave may begin upon conclusion of any paid sick leave to which the parent is entitled under Article 22 of this Agreement; however, such leave must conclude for each parent within twelve months after the birth or adoption of the child. In those instances where both parents are covered by this provision, maternity/paternity leaves may be taken either concurrently or consecutively. The Employer may grant an extension of such leave upon request of the employee based on operational needs of the Employer.

Upon the birth of their child, or adoption of a newborn or special needs child, an employee may certify the need to use up to two (2) weeks of sick leave prior to the beginning of a maternity/paternity leave. The Employer shall consider requests for annual leave immediately prior or subsequent to maternity/paternity leaves in the same manner as requests for annual leave at other times.

- J. Benefit Continuation. Unit employees who are granted a leave of absence may elect to continue enrollment in the Group Basic and Major Medical Plan (or alternative plan) at the time the leave begins. Such unit employees shall be eligible for continued enrollment during the leave of absence by paying the full amount (100%) of the premium. This provision shall be administered in conjunction with the LTD provisions of Article 24, Section E. Such unit employees may likewise elect to

continue enrollment in the Group Dental Plan and/or Group Vision Plan for up to eighteen (18) months by paying the full amount of the premium.

K. Family and Medical Leave Act Implementation. Except as otherwise provided by specific further agreement between the Union and the Office of the State Employer, the following provisions reflect the parties' agreement on implementation of the rights and obligations of employees and the Employer under the terms of the Family and Medical Leave Act ("FMLA" or "Act"), as may be amended and its implementing Regulations ("FMLA" or "Act") which takes effect for the Scientific and Engineering bargaining unit on February 5, 1994.

1. Employee Rights. Rights provided to employees under the terms of the collective bargaining agreement are not intended to be diminished by this Section. Contractually guaranteed leaves of absence shall not be reduced by virtue of implementation of the provisions of the Act.
2. Employer Rights. The rights vested in the Employer under the Act must be exercised in accordance with the Act unless modified by the provisions of the applicable collective bargaining agreement.
3. Computation of the "Twelve Month Period". The parties agree that an eligible employee is entitled to a total of twelve work weeks of FMLA leave during the twelve month period beginning on the first date the employee's parental, family care, or medical leave is taken; the next twelve month period begins the first time leave is taken after completion of any twelve month period.
4. Qualifying Purpose. The Act provides for leave with pay using applicable leave credits or without pay for a total of twelve work weeks during a twelve month period for one or more of the following reasons:
  - a. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter ("parental leave");
  - b. Because of the placement of a son or daughter with the employee for adoption or foster care ("parental leave");
  - c. In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter or parent has a serious health condition as defined in the Act ("family care leave");
  - d. Because of a serious health condition, as defined in the Act, that makes the employee unable to perform the functions of the position of the employee ("medical leave").

- e. Because of certain military family leaves related to a qualifying exigency resulting from a call to active military duty, and care needs resulting from serious injury or illness incurred during active duty.
5. Department of Labor Final Regulations and Court Decisions. The parties recognize that the U.S. Department of Labor has issued its revised final regulations implementing the Act effective January 16, 2009. However, the Employer may make changes necessitated by any amendments to the Act and regulations or subsequent court decisions. The Employer shall provide timely notice to the Union and opportunity for the Union to meet to discuss the planned changes. Such discussions shall not serve to delay implementation of any changes mandated by law.
  6. Complaints. Employee complaints alleging that the Employer has violated rights conferred upon the employee by the FMLA are not grievances under the collective bargaining agreement(s) between the Union and the Employer. Any such complaints may be filed by an employee directly with the employee's Appointing Authority. The Union may, but is not obligated to, assist the employee in resolving the employee's complaint with the employee's Appointing Authority. Complaints involving the application or interpretation of the FMLA or its Regulations shall not be subject to arbitration under the collective bargaining agreement(s) between the undersigned Union and the Employer.
  7. Eligible Employee. For purposes of FMLA Family Care Leave, eligible employees are those employees who have been employed by the Employer for at least twelve months and have worked at least 1,250 hours in the previous twelve months. An employee's eligibility for contractual leaves of absence remain unaffected by this Section, however, such leaves will count towards the employee's FMLA leave entitlement after the employee has been employed by the Employer for at least 12 months and has worked 1,250 hours during the previous twelve month period. Where the term "employee" is used in this Section, it means, "eligible employee". For purposes of FMLA leave eligibility "employed by the Employer" means "employed by the State of Michigan".
  8. Twelve Work Weeks During a Twelve Month Period. An eligible employee is entitled under the Act to a combined total of twelve work weeks of FMLA leave during a twelve month period.
  9. General Provisions.
    - a. Time off from work for a qualifying purpose under the Act ("FMLA leave") will count towards the employee's unpaid leave of absence guaranteed as provided by an applicable collective bargaining agreement. Time off for family care leave will be as provided under the Act.

- b. Employees may request and shall be allowed to use accrued annual, personal leave, compensatory time, and banked leave time to substitute for any unpaid FMLA leave.
  - c. The Employer may designate a Leave of Absence under Plan C of the Voluntary Work Schedule Adjustment Program ("VWSAP") as an FMLA leave if the employee provides information to the Employer that the leave is for a qualifying purpose under the Act, prior to the end of the leave. A Plan A reduced work schedule under the VWSAP may be designated by the Employer as an FMLA leave if the employee provides information to the Employer that the leave is for a qualifying purpose under the Act.
  - d. Employees may request to use accrued sick leave to substitute for unpaid FMLA leave for the employee's own serious health condition or serious health condition of the employee's spouse, child, or parent.
  - e. The Employer may temporarily reassign an employee to an alternative position at the same classification and level in accordance with the Collective Bargaining Agreement when it is necessary to accommodate an intermittent leave or reduced work schedule in accordance with the Act. Such temporary reassignment may occur when the intermittent leave or reduced work schedule is intended to last longer than a total of ten workdays, whether consecutive or cumulative. Whenever possible, the Employer shall make reasonable efforts to reassign employees within their current work location. For purposes of Layoff and Recall, employees shall be considered to be in the layoff unit applicable to the employee's permanent position. Upon completion of an FMLA leave, employees shall be returned to their original positions in accordance with the Act.
  - f. Second or third medical opinions, at the Employer's expense, may be required from health care providers where the leave is designated as counting against an employee's FMLA leave entitlement in accordance with the Act.
  - g. Return to work from an FMLA leave will be in accordance with the provisions of the Act and the collective bargaining agreement.
10. Insurance Continuation. Health Plan benefits will continue in accordance with the Act.
11. Medical Leave. Up to twelve work weeks of paid or unpaid medical leave during a twelve month period, granted pursuant to the collective bargaining agreement, may count towards an eligible employee's FMLA leave entitlement.
12. Annual Leave. When an employee requests to use annual or personal leave, and it is determined, based on information provided to the Employer by the employee or the employee's spokesperson (in the event the employee is

incapacitated or otherwise designates a point of contact) that the time is for a qualifying purpose under the Act, the Employer may designate the time as FMLA leave and it will be counted against the employee's 12 work week FMLA leave entitlement if the time is either:

- a. To substitute for an unpaid intermittent or reduced work schedule; or
- b. When the absence from work is intended to be for five or more work days.

13. Sick Leave. An employee may request to use sick leave to substitute for unpaid leave taken for a qualifying purpose under the Act. Contractual requirements that employees exhaust sick leave before a medical leave commences shall continue. In addition, employees will be required to exhaust sick leave credits down to 80 hours before a FMLA Family Care leave commences. If it is determined, based on information provided to the Employer by the employee or the employee's spokesperson (in the event the employee is incapacitated or otherwise designates a point of contact) that the time is for a qualifying purpose under the Act, the Employer may designate the time as FMLA leave and it will be counted against the employee's 12 work week FMLA leave entitlement if the time is either:

- a. To substitute for an unpaid intermittent or reduced work schedule; or
- b. When the absence from work is intended to be for five or more work days. Annual leave or personal leave used in lieu of sick leave may be likewise counted.

14. Parental Leave. Except as specifically provided herein, contractual parental leave guarantees are unaffected by implementation of FMLA. An employee's entitlement to parental leave will expire and must conclude within twelve months after the birth, adoption, or foster care placement of a child. However, in accordance with the Act, an eligible employee is only entitled to twelve work weeks of leave for foster care placement of a child. Contractual parental leave extensions beyond twelve months shall be administered as provided in an applicable collective bargaining agreement. Up to twelve work weeks of leave will be counted towards the FMLA leave entitlement. An employee may request to substitute annual or personal leave for any portion of the unpaid parental leave. Intermittent or reduced work schedules may only be taken with the Employer's approval.

L. Disaster Response. A leave of absence without pay to provide disaster or emergency relief assistance in this state may be granted to a bargaining unit employee who is skilled in emergency relief assistance and certified as a disaster service volunteer by the American Red Cross.

A leave of absence with pay to provide disaster or emergency relief assistance may be granted to a bargaining unit employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross if the President or Governor has declared the disaster, and the American Red Cross has requested the services of the employee. The Governor must approve the paid leave of absence as provided in MCL 30.411a if the services are to be rendered outside this state; the Employer must approve the paid leave of absence if the services are to be rendered inside this state.

Denial of a bargaining unit employee's request for a disaster response leave of absence, with or without pay, shall not be grievable.