**POLICY NUMBER: IV M**

**SUBJECT: FAMILY & MEDICAL LEAVE**

**APPLIES TO: FACULTY AND STAFF**

**EFFECTIVE DATE: January 16, 2009**

**REVISED FROM: July 1, 1993**

**FAMILY & MEDICAL LEAVE**

Effective August 5, 1993, the Family and Medical Leave act requires Murray State University to grant up to twelve weeks of unpaid leave per year to employees who need to care for family members and for other qualifying reasons. The University's policy (already in place prior to the passage of FMLA) is in general more generous than the FMLA and grants up to six months (26 workweeks) of unpaid leave per year.

A faculty or staff member may be granted up to six months (26 workweeks) unpaid, job-secured leave following childbirth or adoption; for the serious illness of the employee; for the purpose of caring for a seriously ill parent, spouse, child, or covered servicemember; or for a qualifying exigency, if the faculty or staff member has exhausted his/her vacation and sick leave.

1. **To be eligible for FMLA benefits, an employee must:**

a. have worked for Murray State University for a total of at least 12 months;

b. have worked at least 1,250 hours over the previous 12 months; and

c. work at a location where at least 50 employees are employed by the Murray State University within 75 miles.

2. **Covered employees at Murray State University are entitled to take up to six months (26 workweeks) of unpaid leave per calendar year for**:

a. The birth of the employee's child (within 12 months of birth), not to exceed a total of six months if both parents are Murray State employees;

b. Placement of a child with the employee for adoption or foster care (within 12 months), not to exceed a total of six months if both parents are Murray State employees;

c. Care for the employee's spouse, child or parent with a serious health condition;

d. A serious health condition rendering the employee unable to perform his or her job;

e. Care for a covered servicemember with a serious injury or illness incurred in the line of duty on active duty if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember; or

f. A qualifying exigency leave while a covered military member (the employee's spouse, son, daughter, or parent) is on active duty or call to active duty status in support of a contingency operation as defined by regulation.

Qualifying exigencies are:

i. Short-notice deployment
ii. Military events and related activities
iii. Childcare and school activities
iv. Financial and legal arrangements
v. Counseling
vi. Rest and recuperation
vii. Post-deployment activities
viii. Additional activities not encompassed in the other categories, but agreed to by the employee and Murray State University.

The leave entitlement under paragraphs e. and f. is 26 workweeks within a single 12-month period, exclusive of any other type of leave taken, including Family and Medical Leave taken for other reasons

g. The employee may take leave intermittently or work a reduced schedule when medically necessary due to the employee's or a family member's serious health condition, the serious injury or illness of a covered servicemember, or with the University's agreement for the birth or placement of a child. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt MSU's operations. In addition, leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

3. **Requesting Leave**

a. Under foreseeable circumstances, the employee is required to provide 30 days notice of the need for leave; otherwise, and in situations involving foreseeable leave due to a qualifying exigency, the employee is required to provide notice as soon as practicable and it typically should be practicable for an employee to provide notice of the need for leave either the same day or the next business day after the employee becomes aware of the need for family and medical leave. The employee generally must comply with MSU's normal notification procedures.

Employees must provide sufficient information for MSU to determine if the leave may qualify as family and medical leave and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees must also inform MSU if the requested leave is for a reason for which family and medical leave was previously taken or certified.

A serious health condition is an illness, injury, impairment or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirements may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

b. The leave will be designated as family leave when all accumulated sick and vacation leave has been exhausted except in the case of pregnancy. The normal period of absence which can be charged against sick leave is established at six (6) weeks for childbirth or adoption. Absences beyond the six (6) week period following childbirth may be charged to sick leave when supported by a statement from the attending physician indicating that the additional time is a medical necessity. If any accrued sick leave remains, it will held until the end of the family leave time.

c. Spouses who are eligible for family and medical leave and are both employed by MSU may under certain circumstances be limited to a combined total of 26 workweeks of leave.

4. **Certification Requirements**

a. Murray State University may require medical certification that the leave is needed due to the employee's own serious health condition or that of a family member or covered servicemember.

b. Murray State University may also, at University expense, require a second medical opinion. If the first and second opinions differ, Murray State University may request a third opinion at their expense. The third opinion is then binding.

c. Murray State University may request recertification at any reasonable interval, but in general not more than every 30 days unless the employee requests an extension of leave, circumstances described by the original certification have changed significantly, or the employer has information that casts doubt upon the continuing validity of the need for the family leave.

d. Murray State University may ask for certification for leave taken for a qualifying exigency.

5. **Allowing Leave**

a. Upon receiving a request for leave, MSU will inform the employee whether or not he or she is approved for family and medical leave. If eligible, a notice will specify any additional information required, the employees' rights and responsibilities, and the amount of leave to be counted against the employee's leave entitlement. If ineligible, MSU will provide a reason for the ineligibility.

6. **Continuation of Benefits**

a. Murray State University will continue the employee's health insurance under the same conditions as if the employee were working. Under this circumstance, the employee will continue to be required to pay his or her share of the premium.

b. If an employee gives notice of his or her intent not to return to work, Murray State University is not obligated under FMLA to maintain health benefits, but may be required to offer benefits under COBRA. The University may also drop the health insurance coverage 30 days later if an employee on leave elects coverage but then misses a premium.

c. Leave under the Act is not a "qualifying" event under COBRA.

d. An employee's use of the leave is not allowed to result in the loss of any employment benefits that accrued prior to the start of the employee's leave. However, Murray State is not required by law to accrue the employee's seniority or employment benefits during the leave time.

7. **Job Reinstatement**

a. The law, except for a situation such as downsizing or layoffs, also requires Murray State to restore the employee to the position held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

b. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions. The position must involve the same or similar duties and responsibilities, skill, and authority.

8. **Implementation**

a. Human Resources will establish procedures for implementing this policy.

9. **Employee protection**

a. MSU will not interfere with, restrain, or deny the exercise of any right provided under law regarding family and medical leave, or discharge or discriminate against any person for opposing any practice made unlawful by law.

b. Complaints may be directed to the United States Department of Labor or pursued privately.

c. The Family and Medical Leave Act does not affect any Federal or State law prohibiting discrimination, or supersede any State law which provides greater family or medical leave rights.