

## SUMMARY OF MATERIAL MODIFICATIONS No. 5

This modification is made as of the 28<sup>th</sup> day of January, 2008, by Drake University to the Drake University Point of Service Health Plan.

The Drake University Point of Service Health Plan is hereby modified and the attached text may be printed on a revision page for insertion into the Drake University Point of Service Health Plan.

Please check the following that apply:

- \_\_\_\_\_ Drake University will print the attached amendment for distribution.
- \_\_\_\_\_ First Administrators, Inc. will print \_\_\_\_\_ copies of the attached amendment for distribution.
- \_\_\_\_\_ Drake University will notify Participants of the changes in some other manner.
- \_\_\_\_\_ Other: \_\_\_\_\_

This modification is made as of the 28<sup>th</sup> day of January, 2008, by Drake University to Drake University Point of Service Health Plan. All other terms and provisions of the Plan remain unaltered and in effect.

The following text replaces the "Family and Medical Leave Act of 1993" section of the Plan Book.

### FAMILY AND MEDICAL LEAVE ACT OF 1993

This section only applies to employers required to comply with the Federal Family and Medical Leave Act.

#### ENTITLEMENT TO LEAVE

This Act requires an employer which employs fifty (50) or more employees (within a seventy-five (75) mile radius) to allow an employee who has been employed for twelve (12) months or more and accumulated hours of service in excess of 1,250 hours from the date of employment or the end of the last qualified leave, to take a total of twelve (12) weeks of leave during any twelve (12) month period, as defined by the employer, for:

- (A) the birth of a son or daughter of the employee and in order to care for such son or daughter;
- (B) placement of a son or daughter with the employee for adoption or foster care;
- (C) care for a spouse, son, daughter, or parent of the employee, if such spouse, son,

daughter, or parent has a serious health condition;

- (D) a serious health condition that makes the employee unable to perform the functions of the position of such employee; or
- (E) a qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

#### EXPIRATION OF ENTITLEMENT

The entitlement to leave under subparagraphs (A) and (B) of Entitlement of Leave for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

#### SERVICEMEMBER FAMILY LEAVE

An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember shall be entitled to a total of twenty-six (26) workweeks of leave during a single 12-month period to care for the

servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

### **COMBINED TOTAL LEAVE**

During the single 12-month period as described in Servicemember Family Leave, an eligible employee shall be entitled to a combined total of twenty-six (26) workweeks of leave under Entitlement to Leave and Servicemember Family Leave. Nothing in this paragraph shall be construed to limit the availability of leave under Entitlement to Leave during any other 12-month period.

Any employee taking a leave shall be entitled to continue to use his/her benefits during the duration of the leave if he/she participates in a "group health plan" as defined in §5000(b)(1) of the Internal Revenue Code of 1986. The employer must continue the benefits at the level and under the conditions of coverage that would have been provided if the employee had remained employed. If the employee who is responsible for payment misses a premium payment during the leave of absence, the employer may terminate coverage

provided that the employee has been given notification of termination and a grace period as defined by the FMLA. If the benefits are terminated during the leave, the employee is entitled to be fully reinstated upon returning to work. If the employee for any reason fails to return from the leave, the employer may recover from the employee the premium or portion of the premium that the employer paid, provided the employee fails to return to work for any reason other than the recurrence of the health condition or circumstances beyond the control of the employee.

Leave taken under the Act does not constitute a "qualifying event" so as to trigger COBRA rights. However, a qualifying event triggering COBRA coverage may occur when it becomes known that the employee is not returning to work. Therefore, if an employee does not return at the end of twelve (12) weeks Family and Medical Leave, the COBRA qualifying event occurs at that time.

This is only a summary of the Family and Medical Leave Act of 1993. Please contact the employer for more information.

The following definitions "**Active Duty**", "**Contingency Operation**", "**Covered Servicemember**" and "**Next of Kin**" are added in the "**Definitions**" section of the Plan book.

"**ACTIVE DUTY**" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

"**CONTINGENCY OPERATION**" means designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or

hostilities against an enemy of the United States or against an opposing military force.

"**COVERED SERVICEMEMBER**" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

"**NEXT OF KIN**" means the nearest blood relative of an individual.