

5430 Family and Medical Leave

I. Family and Medical Leave Act

The College's Family and Medical Leave policy complies with the Family and Medical Leave Act 29 U.S. Code Chapter 28 – Family and Medical Leave. The Family and Medical Leave Act (FMLA) entitles eligible employees to take twelve (12) workweeks of unpaid, job-protected leave in a twelve (12) month period for the following reasons:

- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- twenty-six (26) workweeks of leave during a single 12 month qualifying period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent or next of kin (military caregiver leave).

II. FMLA and Spousal Combined Leave Limitations

Spouses employed by the same employer may be limited to a combined total of 12 workweeks of Family and Medical Leave (FML) in a 12 month period if the leave is taken for:

- the birth and care of a newborn child;
- the placement of a child for adoption or foster care;
- to care for a parent who has a serious health condition; **or**
- a combination of the above.

For military caregiver leave, the spouses may be limited to a combined total of 26 workweeks of leave to care for a covered service member with a serious injury or illness.

III. FMLA and Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty (Armed Forces, National Guard, or Reserves) or call to covered active duty status may use their 12 week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees who include spouse, son, daughter, parent or next of kin* of a covered service member to take up to 26 weeks to care for a covered service member during a single 12 month period. A covered service member is: (1) a current 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**; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness**.

***Next of Kin:** Next of kin of a covered service member means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted

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legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

**The FMLA definitions of "serious injury or illness" for current service members and veterans are distinct from the FMLA definition of "serious health condition".

IV. FMLA Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees are restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

V. FMLA Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1250 hours of service in the previous 12 months and if at least 50 employees are employed by the employer within 75 miles.

VI. FMLA Definition of a Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical 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 requirement 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.

VII. FMLA and Use of Leave

The maximum time required by the FMLA is either 12 weeks in the 12 month period as defined by the employer, or 26 weeks for military family leave entitlement. For faculty FML requests, the College has provisions which are specific to faculty (see policy 3410 "[Leaves of Absence](#)," Section IV.). An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. If FML is for birth and care of a newborn child, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

VIII. FMLA and Employee Responsibilities

Employees must provide 30 days' advance notice of the need to take FMLA leave when the need is foreseeable. Except when leave is not foreseeable, all employees requesting leave under this policy should submit the request in writing to the Human

Resources Director. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures. Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection 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 also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave. An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) for initial certifications. A fitness-for-duty report is required to return to work. If notification and appropriate certification are not provided in a timely manner, approval for leave may be denied.

IX. FMLA and Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility. Covered employers must inform employees if leave shall be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under the FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

X. FMLA and Use of Accrued Sick Leave and Annual Leave

The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified by this policy.

A. Full-time Classified, Professional and Administrative employees

A full-time employee who is taking leave shall use whatever sick leave and/or compensatory time they have accrued, up to a maximum of 30 days (240 hours). Once all sick leave and/or compensatory time is expended or the maximum utilization is reached, the College shall pay for up to an additional 30 working/duty days (240 hours) of leave at the employee's salary/rate of pay. If any FML remains, the employee may use any annual leave or the leave may be unpaid.

B. Less than full-time Classified, Professional and Administrative employees

For those employees who are less than full time, the amount of sick and/or compensatory time they use shall be prorated based on their FTE. For example, an employee who works half time shall use up to 15 days (120 hours). Once all sick leave and/or compensatory time is expended or the maximum utilization is reached, the College shall pay for up to 15 days (120 hours). If any FML remains, the employee may use any annual leave or the leave may be unpaid.

C. Faculty

For specifics on how Faculty is paid during FML, see policy [3410 "Leaves of Absence,"](#) Section IV.

XI. FMLA and Employee Benefits during Leave

The College contributions to employee's health, life, dental, and retirement benefits shall continue during FML at the same cost as if the employee had continued to work and the employee shall be responsible for the payment of his/her portion.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the College shall require the employee to reimburse the College the same amount it paid for the employee's insurance during the leave.

Employees whose FML runs concurrently with paid leave shall continue to have premiums deducted from their paycheck. Benefit premiums due during unpaid FML time shall be billed to the employee. If payment is not received from the employee by the College, the benefits shall cease.

If the College is closed for one or more weeks (e.g., winter break), the holidays shall not count against the employee's FML leave entitlement.

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