

## **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

### **1. General**

The College provides eligible employees with job-protected leave under the provisions of this policy. Up to twelve (12) weeks of unpaid, job-protected leave is provided within a twelve (12) month period for eligible family and personal medical reasons. The College defines the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave. Leave may include intermittent leave including a reduced leave schedule - reduced hours per day or hours per week- or requests for leave that may require one or more work days per week but not an entire week. The College requests 30 days advance notice or notice as soon as practicable. The time missed while taking FMLA leave is considered as leave without pay.

For qualifying exigencies arising out of a military member's covered active duty or an impending call or order to active duty, up to twenty-six (26) weeks of unpaid, job-protected leave is provided.

Eligible employees who are family members of a covered service member including covered veterans are eligible for up to twenty-six (26) weeks of unpaid, job-protected leave.

Job protected leave means that the employee's department will reinstate the employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions

### **2. Eligible Employees**

To be eligible for FMLA leave, an employee must have:

- Been employed at the College for at least twelve (12) months in total in the last seven (7) years; and,
- Worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period preceding the start of the leave; and
- Worked at a location where the employer employs at least fifty (50) employees within seventy-five (75) miles.

### **3. Available Leave Time**

Family and Medical Leave (FMLA) may be used only when accrued sick leave, annual leave, and comp time have been exhausted. FMLA leave is not designed for minor health problems.

Eligible employees may take FMLA leave up to a total of twelve (12) weeks within a twelve (12) month period.

Board Approval Date: April 18, 2016

Effective Date: April 19, 2016

Final Revision Date: February 11, 2016

Policy Manual Review Committee – February 11, 2016

For any qualifying exigency arising out of the fact that a spouse-including domestic partners, son, daughter, or parent is a military member on covered active duty or call to covered active duty status, an eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness.

#### **4. Events Eligible for FMLA Leave**

##### **Birth, Adoption, or Foster Care**

Eligible employees may take FMLA leave to care for a child upon birth or to care for a child placed with the employee for adoption or foster care. FMLA leave must conclude within twelve (12) months of the birth or placement. If both parents or caretakers are employees of the College, FMLA leave taken to care for a child upon birth or to care for a child placed with the employees for adoption or foster care is limited to a combined total of twelve (12) weeks. FMLA leave taken for the serious health condition of an employee or child would not be subject to the combined limit.

##### **FMLA Leave for Family Medical Conditions**

Eligible employees may take FMLA leave to care for an immediate family member. Family members are described in Section 7. Up to 12 weeks of leave will be provided.

##### **FMLA Leave for Employees' Medical Conditions**

Eligible employees may take FMLA leave when they are unable to perform the functions of their positions because of a serious health condition. A serious health condition is described in Section 5. Up to 12 weeks of leave will be provided.

##### **Military Family Leave for Qualifying Exigencies**

Eligible employees are entitled to FMLA leave because of any qualifying exigency arising out of the fact that the spouse or domestic partner, son, daughter, or parent of the employees is on covered active duty, or has been notified of an impending call to active duty status, in support of a contingency operation requiring deployment to a foreign country or to international waters. This includes members of the National Guard, Reserves, and Regular Armed Forces. Up to 26 weeks will be provided.

Categories of qualifying exigencies are:

- Short-notice deployment (after semester start date).

Board Approval Date: April 18, 2016

Effective Date: April 19, 2016

Final Revision Date: February 11, 2016

Policy Manual Review Committee – February 11, 2016

- Military events and related activities.
- Childcare and school activities.
- Financial and legal arrangements.
- Counseling.
- Rest and recuperation for a maximum of fifteen (15) calendar days.
- Additional activities not encompassed in the other categories, but agreed to by the supervisor and employee.

### **Military Family Medical Leave**

Eligible employees who are family members of covered service members, including covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness, will be able to take up to twenty-six (26) weeks of FMLA leave in a single twelve (12) month period to care for a covered service member:

- Who is unable to perform daily activities, or
- Who has a serious illness or injury obtained in the line of active duty, or
- Who has a serious illness or injury that existed before the beginning of active duty that was aggravated by service in the line of active duty.

A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. Eligible family members include the spouse or domestic partner, parent, or children.

The twenty-six (26) weeks allowed for Military Family Medical Leave will be reduced for any FMLA leave taken for events previously listed within this section.

### **5. Serious Health Conditions**

Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in § 825.114 or continuing treatment by a health care provider as defined in § 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths is a serious health condition provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of § 825.113 are met.

(United States Government Publishing Office, Electronic Code of Federal Regulations, Title 29, Subtitle B, Chapter V, Subchapter C, Part 825. [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rgn=div5&view=text&node=29:3.1.1.3.54&idno=29#\\_top](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rgn=div5&view=text&node=29:3.1.1.3.54&idno=29#_top))

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## **6. Non-Serious Health Conditions**

Treatment for serious health conditions does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches, routine dental or orthodontia problems, and periodontal disease, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

## **7. Immediate Family Members**

“An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).” (United States Department of Labor. Wage and Hour Division [WHD]. Family and Medical Leave Act. <http://www.dol.gov/whd/regs/compliance/1421.htm> ).

Immediate family for purposes of this policy is defined to include spouse or domestic partner, child, mother, father, sister, brother, mother-in-law, father-in-law, grandchildren, and grandparents. A child includes a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in *loco parentis*.

## **8. Requests for FMLA Leave**

When the need is foreseeable, such as the birth or adoption of a child or planned medical treatment, employees should advise their supervisors thirty (30) days before the start of the leave period. Appropriate FMLA documentation will be submitted to Human Resources for approval. To the extent possible, employees should make every effort to schedule leave so as not to disrupt College operations. When thirty (30) days advance notice is not possible, the employee must provide notice as soon as practicable.

## **9. Notices to Employees**

Within five (5) workdays of an employee's initial request for FMLA leave, the Human Resources Office must provide the employee with a completed Designation Notice form. The employee has fifteen (15) calendar days to provide appropriate documentation in

Board Approval Date: April 18, 2016

Effective Date: April 19, 2016

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support of FMLA leave. If supporting documentation is not sufficient, Human Resources may request further documentation from the employee before approving or denying FMLA leave. The employee must provide this documentation within seven (7) calendar days of the request for further documentation. After receiving the requested documentation, Human Resources will confirm or deny the FMLA leave within five (5) workdays. All forms are available in the Human Resources Office.

## **10. Medical Certification**

The College will require a medical certification to support a request for FMLA leave for medical reasons. The College may require a second medical opinion at the College's expense and a doctor chosen by the College after an individual has submitted an initial medical certification.

Second opinions may be required for military caregiver leave certifications that are completed by healthcare providers who are not affiliated with the Department of Defense, Veterans Administration, or TRICARE.

There may also be a requirement for periodic re-certifications. In cases of illness, employees will be required to report periodically, as instructed by their supervisors, on their leave status and intentions to return to work.

Leave certifications are required for caregiver petitions for FMLA leave to care for family members.

### **Employees' Health**

For employees' own medical leave, the medical certification must include a statement that the employees are unable to perform the functions of their positions.

### **Family Health**

For leave to care for a seriously ill family member, the medical certification must include an estimate of the amount of time the employee is needed to provide care.

### **Intermittent Leave and Reduced Work Schedule Leave**

If medically necessary for a serious health condition of employees or their family members, leave may be taken on an intermittent or reduced work schedule basis. It is recommended the employee's supervisor be consulted first so there is no confusion regarding the requested intermittent leave.

If the leave is foreseeable based on planned medical treatment, or if a supervisor agrees to permit intermittent leave or leave based on a reduced work schedule

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for the birth of a child or for placement of a child for adoption or foster care, the College may require the employee to transfer temporarily. The transfer would occur during the period that the intermittent or reduced work schedule is required and be to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position, provided that the position has equivalent pay and benefits.

The medical certification for intermittent leave, or leave on a reduced work schedule for planned medical treatment, must include the dates on which treatment is expected to be given and the duration of such treatment. The supervisor and employee must agree on the employee's normal schedule or average hours worked each week and document the agreement in writing.

The employee is not required to take more leave than is necessary to address the circumstances that precipitated the need for the leave.

### **11. Return to Work**

An employee returning to work following a leave of absence due to his or her own serious health condition must submit a physician's statement certifying that the employee can return to work and can perform the essential functions of the job, with or without reasonable accommodations.

### **12. Reinstatement of Employees**

Upon return from FMLA, the employee has a right to the job held prior to the leave or a position with comparable duties. However, an employee on FMLA leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period

### **13. Failure to Return**

If an employee fails to return within three (3) workdays after an approved leave (including any approved extensions), the employee will be considered to have resigned.

### **14. Health Insurance Benefits**

The College will continue the employee's group insurance benefits during the period that the employee is on FMLA leave. If the leave is unpaid, the College will bill the employee for that portion of the premium normally withheld from the employee's paycheck.

### **15. Annual and Sick Leave**

The employee will not accrue annual and sick leave during the period that the employee is on unpaid FMLA leave.

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## **16. Holidays**

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as FMLA leave has no effect; the week is counted as a full week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one (1) week, the holiday will not count against the employee's entitlement unless the employee was otherwise scheduled and expected to work during the holiday. During the Winter or Spring Break when the College is closed for one (1) week or more, the time will not count against the employee's entitlement unless the employee would otherwise have been scheduled and expected to work during the Winter or Spring Break. Employees on unpaid FMLA leave are not eligible for holiday pay.

## **17. Dependent Tuition Benefit**

Dependents of employees who were participants in the College Tuition Benefit before the employees began FMLA leave can continue in the program while the employee is on FMLA leave as long as the dependents remain eligible.

## **18. Record Keeping Requirements**

Human Resources is required to keep all documentation pertaining to FMLA leave requests for three (3) years. The documentation must include the following:

- Dates of FMLA leave taken by employees. Leave must be designated in records as FMLA leave. If FMLA leave is taken in increments of less than one (1) full day, the hours of the leave must be recorded.
- Copies of employee notices of leave furnished to the employer under FMLA and copies of all required general and specific written notices given to employees.
- Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave.

## **19. Confidentiality of Medical Records**

The records should be treated as confidential medical information and kept in separate files from the employees' personnel files in a locked drawer. This confidential medical information will be disclosed only to those with a need to know or as required by law.

Online References for FMLA

<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>

<http://www.dol.gov/whd/regs/compliance/1421.htm>

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[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rqn=div5&view=text&node=29:3.1.1.3.54&idno=29#\\_top](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rqn=div5&view=text&node=29:3.1.1.3.54&idno=29#_top)

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