

Employee Rights and Responsibilities Under the Family and Medical Leave Act

Employees may request a copy of the notice below at any time.



Category

POLICY: 2-30 FMLA

Approval

LT Approved:
Effective Date: 07/01/2022
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Responsible Party: Vice President, People & Culture

Family and Medical Leave Act Provision

Policy Statement

It is the policy of the College to grant eligible employees extended leaves of absence under certain circumstances covered by the federal Family and Medical Leave Act of 1993 ("FMLA"). The College complies with all applicable requirements of the FMLA. Nothing in this policy provides employees with any greater rights or protections than those provided by the FMLA, or limits or waives the College's rights or employees' obligations under the FMLA.

Eligibility Requirements

Employees generally are eligible for FMLA leave if they have worked for the College for at least one year, for at least 1,250 hours over the 12-month period immediately preceding the commencement of leave, and work at a College facility with at least 50 employees within 75 miles of that facility.

Basic Leave Entitlement

An eligible employee may be granted leave for up to 12 weeks of unpaid, job-protected leave during any 12-month period, based on a rolling 12-month period, for any of the following reasons:

- Birth of a child and to care for the newborn child, within one year of birth;
- Placement of a child with the employee for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent, who has a serious health condition; or

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- For a serious health condition that makes the employee unable to perform the essential functions of the employee's job, including incapacity due to pregnancy, prenatal medical care, or child birth;
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent is a covered military member on "covered active duty", or

Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is a service member's spouse, son, daughter, parent, or next of kin (military caregiver leave)

An employee's entitlement to leave for the birth or placement for adoption or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement. If two employees are married, they are entitled to a collective total of 12 weeks of leave for the birth or placement of a child, rather than 12 weeks each.

On February 23, 2015, the U.S. Department of Labor's Wage and Hour Division announced a Final Rule to revise the definition of spouse under the Family and Medical Leave Act of 1993 in light of the United States Supreme Court's decision in *United States v. Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. More information is available at the Wage and Hour Division's [FMLA Final Rule Website](#).

Definition of 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 three 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.

Military Family Leave Entitlements

An eligible employee with a spouse, son or daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use some or all of the 12-week leave entitlement to address certain "qualifying exigencies," which 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. This leave does not apply to a spouse, son or daughter, or parent who is already an active member of the regular armed forces.

An eligible employee who is the spouse, son or daughter, parent, or next of kin of a covered service member are permitted to take up to 26 weeks of unpaid, job-protected leave to care for a covered service member. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred

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in the line of active duty, as determined by the U.S. Department of Defense, that may render the service member medically unfit to perform the roles of the service member's duties, and for which the service member is undergoing medical treatment, recuperation, or therapy, or is in outpatient treatment, or is on the "temporary disability retired list." The 26 weeks may only be taken during the single 12-month period following the beginning of the leave.

Use of Leave

If leave is being taken due to the serious health condition of the employee, to care for a covered family member with a serious health condition, or to care for a covered family member who has sustained a serious injury or illness in the line of military duty, the leave may be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make a reasonable effort to schedule leave for planned medical treatment so as not to unduly disrupt the College's operations.

If leave is being taken due to a "qualifying exigency," the leave may be taken intermittently as required to take care of the "qualifying exigency."

If leave is being taken due to the care of a newborn child or the care of a child placed for adoption or foster care, the leave cannot be taken intermittently or on a reduced leave schedule unless the employee's department head agrees.

The employee's department head reserves the right to temporarily transfer an employee who requests intermittent leave or a reduced leave schedule to an alternative position with equivalent pay and benefits if the alternative position supports the business needs of the College.

Substitution of Paid Leave for Unpaid Leave:

The College requires employees to use accrued PTO (Paid Time Off) hours, Sick Time, or EB Bank hours while taking FMLA leave. PTO will run concurrently with the FMLA leave. Once all accrued PTO, Sick Time, and EB Bank hours have been used, any remaining FMLA leave will be unpaid. The entire leave period (both paid and unpaid) will be counted towards the employee's FMLA entitlement.

Employee Responsibilities:

Employees must provide at least 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30-day notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the College's normal absence reporting procedures.

Employees must provide sufficient information for the College's Executive Director, Human Resources 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 Executive Director, Human Resources if the requested leave is for a reason for which FMLA leave was previously taken or certified.

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Employees may be required to provide a certification and periodic recertification supporting the need for leave.

Certification:

If an employee requests leave due to his or her own serious health condition, or to care for a family member with a serious health condition, the College will require a certification issued by the employee's or family member's health care provider.

If an employee requests leave because of a qualifying exigency, the Executive Director, Human Resources may require a certification from the employee to support the request for leave.

If an employee requests leave to care for a covered service member rendered injured or seriously ill in the line of active military duty, the Executive Director, Human Resources may require a certification completed by an authorized health care provider of the covered service member or an authorized representative of the Department of Defense.

When FMLA leave is occasioned by the employee's own serious health condition, the College requires a certification from the employee's health care provider that the employee is able to resume work.

Medical certifications will be kept confidential in accordance with applicable state and federal law.

Employer Responsibilities:

The Executive Director, Human Resources must inform an employee requesting leave whether he or she is eligible under FMLA. If the employee is eligible, the notice must specify any additional information required, as well as the employee's rights and responsibilities. If the employee is not eligible, the Executive Director, Human Resources must provide a reason for the ineligibility.

The Executive Director, Human Resource must inform an employee if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the Executive Director, Human Resources determines that the leave is not FMLA-protected, he or she must notify the employee.

Benefits and Protections:

During FMLA leave, the College must maintain the employee's health coverage under any group health plan on the same terms as if the employee had continued to work.

During FMLA leave, life insurance, disability insurance, and other types of benefits for which the employee typically pays will be treated in accordance with the College's established policies and practices for such benefits for other instances of leave.

Upon return from FMLA leave, employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. However, if an employee would not otherwise have been employed at the time reinstatement is requested, such as because of a layoff, the College is not obligated to reinstate the employee. The College may also deny job restoration to a "key employee" if necessary to prevent substantial and grievous economic injury to the College's operations.

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Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. However, an employee is not entitled to accrue additional benefits or seniority during the period of time the employee is on unpaid leave.

Failure to Return to Work:

If an employee fails to return to work at the conclusion of an approved leave of absence, including any extension of such leave, the employee may be considered to have voluntarily terminated employment. The College may seek reimbursement from the employee for any of its costs of insurance premiums during the employee's unpaid leave, unless the employee's reason for not returning to work is due to the continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave; the continuation, recurrence, or onset of a covered service member's serious injury or illness that would entitle the employee to FMLA leave; or other circumstances beyond the employee's control.

Fraudulent Request or Use of FMLA Leave:

If an employee fraudulently requests or obtains FMLA leave, the employee is not protected by the FMLA's job restoration or maintenance of health benefits provisions. An employee who fraudulently requests or obtains FMLA leave is subject to disciplinary action, up to and including termination.

Unlawful Acts and Enforcement:

The FMLA makes it unlawful for any employer to: interfere with, restrain, or deny the exercise of any right provided under the FMLA; or discharge or discriminate against any person for opposing any practice made unlawful by the 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. The 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.

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EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation 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 to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

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 must be 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.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of 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.

Use of Leave

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. 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.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. 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.

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 will 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.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- 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.

Enforcement

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation: 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

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