

# FAMILY AND MEDICAL LEAVE- BP 2.35

*Legal Authority: 29 U.S.C. § 2615 et seq.; NCGS 115D-20*

*Approval: April 19, 2011*

*Revision:*

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## **Family and Medical Leave Act**

In addition to regular sick leave, eligible employees are protected by the Family and Medical Leave Act of 1993, as amended (FMLA). In an effort to provide eligible employees with assurance that the need to take leave for certain family and medical reasons will not result in the loss of their job or insurance benefits, the Board hereby adopts this policy with respect to the types of family and medical leave available.

## **Eligible Employees**

In order to be eligible for FMLA leave, an employee must:

- A. Have worked for the College for at least 12 months (which need not be consecutive months) before the leave request as a part-time or full-time employee.
- B. Have worked for the College at least 1,250 hours during the 12-month period immediately preceding the commencement of the employee's FMLA leave.
- C. Be employed at a worksite where 50 or more employees are employed by the College within 75 surface miles of that worksite at the time the employee requests FMLA leave.

Full-time and part-time regular temporary employees who meet these requirements are eligible for FMLA leave, subject to the conditions described in this policy.

## **Types of FMLA Leave Available**

If eligible under this policy, an employee is entitled to up to 12 weeks of job protected leave, with or without pay, during any 12-month period for any of the following reasons:

- A. Leave for the birth of a son or daughter, and to care for the newborn child;
- B. Leave for placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
- C. Leave to care for the employee's spouse, son, daughter, or parent with a serious health condition;

- D. Leave because of a serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of his or her position; and,
- E. Leave because of any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("qualifying exigency leave").
- F. Furthermore, subject to the certification requirements described below, 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 26 workweeks of leave during a 12-month period to care for the covered servicemember ("servicemember family leave"). The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described above, an eligible employee shall be entitled to a combined total of 26 workweeks of FMLA leave. Nothing in this paragraph shall be construed to limit the availability of any other FMLA leave during any other 12-month period.

### **Employment and Benefits Protection**

- A. The employee shall be reinstated to the same position held when the FMLA leave began or to an equivalent position with equivalent pay, benefits, and other conditions of employment. Certain salaried highly paid "key" employees may be denied reinstatement following their FMLA leave if necessary to prevent substantial and grievous economic injury to the College's operations. The College may require the employee to report at reasonable intervals his/her status and intention to return to work.
- B. The employee shall be reinstated without loss of benefits accrued when his or her FMLA leave began (except to the extent that annual leave and sick leave are applied toward an FMLA absence). All benefits will continue to accrue during any period of paid FMLA leave; however, no benefits will be accrued during any period of FMLA leave without pay. The resumption of an employee's benefits upon his/her return from FMLA leave will be subject to any College-wide changes in benefit levels that have taken place during the period of FMLA leave. Any benefits lost as a result of nonpayment of insurance premiums will be restored upon the employee's return to work, without any requalification requirements.
- C. The College shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued working. The employee still is required to pay his/her share of health coverage cost while on FMLA leave to the same extent as it would have been paid or deducted from the employee's paycheck if he/she were still at work.

- D. The College may recover health insurance premiums paid on behalf of the employee during any unpaid portion of his/her FMLA leave if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition, or other circumstances beyond the employee's control. If the employee fails to return to work because of the continuation, recurrence, or onset of a serious condition, the College may require medical certification of the employee's or family member's serious health condition.
- E. It is expected that following an FMLA absence, an employee will return to work. Employees will not be considered to have returned to work unless they are back at work for at least 30 calendar days following their FMLA leave.

### **Interference with Rights**

- F. It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.
- G. It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:
  - 1. Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this policy;
  - 2. Gives, or is about to give, any information in connection with any inquiry provided by this policy;
  - 3. Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy.

The President is authorized to implement those Administrative Rules necessary for the implementation of this policy and compliance with FMLA.

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