

**FAMILY AND MEDICAL LEAVE**

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**FAMILY AND MEDICAL LEAVE**

**Notice of Leave**

Employees have the obligation to provide timely notice to Human Resources and their supervisors about the need for FMLA-qualifying leave. Where the need for leave is foreseeable, such as for an expected birth, adoption or foster care placement, or planned medical treatment, thirty (30) days' notice should be provided to Human Resources and the supervisor before the leave is to begin. If thirty (30) days' notice is not feasible, then notice should be given as soon as practicable. The employee advises Human Resources and their supervisor as practicable if the dates of a scheduled leave change, are extended or become unknown. The employee will provide notice by completing a Family and Medical Leave (FMLA) Request Form. The Family and Medical Leave (FMLA) Request Form is available on the College's website or in the Human Resources Office.

An employee planning medical treatment should consult with the supervisor prior to scheduling to develop a time, which best meets the needs of the employee and the work unit. If an employee fails to consult with their supervisor regarding scheduling, the responsible supervisor may require the employee attempt to make different arrangements subject to health care provider approval.

Where the need for leave is unforeseeable, an employee provides notice to Human Resources and their supervisor as soon as practicable under the facts and circumstances of the particular situation.

**Designation of Leave**

When requesting leave under the Family and Medical Leave Act, or when the College knows that an employee's leave may be for an FMLA-qualifying reason, the employee will be notified of their eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances.

It is the College's responsibility to determine that leave requested is for a FMLA qualifying reason, and designate the leave, whether paid or unpaid, as FMLA leave even when an employee would rather not use any of their FMLA entitlement. The key in designating FMLA leave is the qualifying reason(s), not the employee's election or reluctance to use FMLA leave or to use all, some or none of the accrued leave. The College's designation will be based on information obtained from the employee or an employee's representative. If the College determines that the leave will not be designated as FMLA-qualifying, the College will notify the employee of that determination.

The College will not designate leave that has already been taken as FMLA leave after the employee returns to work, with two exceptions:

- If an employee is out for a reason that qualifies for FMLA leave and the College does not learn of the reason for the leave until the employee returns to work, the College may designate the leave as FMLA leave within two business days of the employee's return; or
- If the College has provisionally designated the leave under FMLA leave and is awaiting receipt of documentation from the employee.

### **Medical Certification**

The employee shall provide certification in accordance with the provisions listed below. If the employee does not provide medical certification, any leave taken may not be protected by FMLA. For purposes of complying with the Family and Medical Leave Act, the College abides by the U.S. Department of Labor's definition of "serious health condition."

The College will request medical certification within a reasonable timeframe after the employee provides notice of the need for FMLA leave. The employee, along with the health care provider, is to complete and submit to Human Resources the U.S. Department of Labor's form WH-380-E or WH-380-F. The employee is required to provide the medical certification within fifteen (15) calendar days unless it is not practicable under the particular circumstances to do so. If the College deems a medical certification to be incomplete or insufficient, the College will specify in writing what information is lacking, and give the employee seven (7) calendar days to correct the deficiency.

The Human Resources department may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification. In no case is the employee's direct supervisor to contact the employee's health care provider.

If the College has reason to doubt the validity of a medical certification, the employee may be required to obtain a second opinion. The College will bear the expense related to the second opinion and will designate the health care provider to furnish the second opinion. Pending receipt of the second opinion, the employee will be provisionally entitled to FMLA leave.

If the opinions of the employee's and the College's designated health care providers differ, the College may require the employee to obtain certification from a third health care provider. The third opinion will be at the College's expense and shall be considered to be final and binding. The third health care provider will be designated or approved jointly by the College and the employee.

### **Other Certifications**

Separate certifications are required for military caregiver leave or qualifying exigencies leave. In the case of military caregiver leave, the U.S. Department of Labor's form WH-385 or WH-385-V, as appropriate, must be completed and submitted to Human Resources. In the case of qualifying exigency leave, the U.S. Department of Labor's form WH-384 must be completed and submitted to Human Resources.

## **Recertification of Medical Conditions**

The College may request recertification no more than every thirty (30) days when circumstances described by the previous medical certification have changed significantly, the College receives information that casts doubt upon the employee's stated reason for the absence or if the employee seeks an extension of their leave. Otherwise, the College may request recertification for the serious health condition of the employee or the employee's family member every six (6) months in connection with an FMLA absence. The College may provide the employee's healthcare provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

The employee shall provide the requested recertification within fifteen (15) calendar days after the College's request, unless it is not practicable under the particular circumstances. Any recertification requested shall be at the employee's expense. Second and third opinions on a recertification are not permitted.

The College may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

## **How FMLA Leave May Be Taken**

A FMLA eligible employee may take up to twelve (12) weeks of FMLA per a 12-month period, (with the exception of the Military Caregiver Leave which is up to 26 weeks) in the following forms:

- As twelve (12) consecutive weeks;
- On an intermittent basis when medically necessary in increments no less than a quarter-hour. The employee must attempt to schedule intermittent leave so as to not disrupt normal College operations; or
- On a part-time work schedule when medically necessary or when mutually agreed upon by the College and the employee for the birth, adoption or placement of a child.

## **Employee's Responsibilities Under FMLA Leave**

- The employee is responsible for making certain that all required medical certifications and other documentation as described in this procedure are completed and have been received by Human Resources. The employee must also adhere to the policies and procedures of the College and the terms of their employment contract, if a contract exists.
- If the employee is responsible for paying a share of the cost of their health insurance premiums, the employee will be responsible for maintaining those payments while they are on FMLA leave.
  - Paid FMLA Leave – the College will continue to deduct the employee's share of health premiums, dependent premiums and/or elected benefits from their paycheck, in the same manner as if the employee were still working.
  - Unpaid FMLA Leave – the employee is required to contact the Payroll Office to make arrangements for paying their share of their premiums while on leave.

- If the premium payment for the employee's share is more than 30 days late, the College may cease maintaining health insurance coverage (after providing fifteen (15) days' written notice that payment has not been received), or may pay the employee's share and recover the amount paid from the employee. If the fifteen (15) day notice is provided and the employee fails to pay his or her share of the premium prior to the specified date on which coverage will be dropped, the employee's health insurance may be terminated as of the end of the thirty (30) day grace period.
- Traveling out of town/state while on approved FMLA is prohibited unless the employee notifies the Human Resources Office prior to the travel with supporting documentation from their certifying-event health care provider approving the travel including the timeframe for the travel.

### **Concurrent Leave**

The following concurrent leave conditions apply:

- Workers' Compensation will run concurrently with the twelve (12) week FMLA entitlement if a work-related injury meets the FMLA "serious health condition" requirement.
- Any leave of absence where an employee utilizes Short Term Disability Insurance benefits will run concurrently with the twelve (12) week FMLA entitlement if the employee is eligible and otherwise meets the FMLA "serious health condition" requirement.

### **Returning to Work Following FMLA Leave**

Before an employee returns to work from FMLA leave for reasons of their own serious health condition, the employee is required to provide the Human Resources Office a Fitness for Duty Certification documenting they are medically able to return to work.

For intermittent leaves, if job safety or ability to perform the essential functions of the job concerns exist, the College may require a Fitness for Duty Certification before the employee may return to work.

The College will comply with FMLA requirements regarding an employee's reinstatement either to the same position they held when their FMLA leave began or to a position with equivalent pay, benefits and other terms and conditions of employment. Under this FMLA procedure, the College cannot guarantee that an employee will be returned to their original job. In cases where an employee cannot be returned to their former position, the determination as to whether a position is an "equivalent position" will be made by the College.

An employee is entitled to return to work from an FMLA leave prior to the original date they requested for the leave to end. To do so, the employee must provide written notification of intent to return to work and a Fitness for Duty Certification if applicable, a minimum of two (2) business days prior to returning.

An employee on FMLA leave who fails to provide timely notification or supporting documentation such as Fitness for Duty Certification, if applicable, will be prohibited from returning to work until it is provided. An employee, who fails to provide a Fitness for Duty Certification when applicable, may be disciplined or terminated.

## **Failure to Return from FMLA Leave**

Voluntary termination of employment may result under the following conditions:

- In the event an employee is unable to return to work following the expiration of an approved FMLA leave;
- An employee otherwise fails to return to work upon expiration of FMLA leave or fails to provide a completed Fitness for Duty form within an appropriate timeframe;
- Failure to apply for an extension prior to the expiration of the original FMLA leave accompanied by satisfactory medical documentation; or
- Acceptance of other employment during a FMLA leave.

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