

Family and Medical Leave- Employees/Covered Military

Purpose:

The Family and Medical Leave Act (hereafter FMLA) entitles employees to take unpaid leave for specified family and medical reasons. The College supports these rights and provides these procedures for implementation.

Definitions:

Eligible employee -an employee who has been employed for at least 12 months by the College and has worked 1,250 hours during the previous 12 months

Health Care Provider- a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or any other person as defined by the United States Department of Labor to be capable of providing health care services.

Key Employee - A salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the College.

Parent - a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter.

Qualified Family Member - employee's spouse, son, daughter or parent.

Reduced Leave Schedule - a leave schedule that decreases the usual number of hours per workweek, or hours per workday, of an employee.

Serious Health Condition - an illness, injury or impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. A period of incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to this same condition, that also involves continuing treatment by (or under the supervision of) a healthcare provider; or
3. Periods of incapacity or continuing treatment by (or under the supervision of) a health care provider for a chronic, permanent or long-term health condition; or

4. Absences for multiple treatments associated with restorative surgery or absences for treatments that if not received would likely result in more than three consecutive days of absence; or

5. Absences for prenatal care.

Son or Daughter- a biological, adopted or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

Spouse- a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

Twelve-Month Period -Use of leave is calculated over a rolling 12-month period. Any leave taken under FMLA in the prior twelve months will be subtracted from the total of 12 weeks available.

Procedures:

A. Leave Eligibility

Employees are entitled to a total of 12 workweeks of leave for:

1. The birth of a child and/or to bond with the child within one year of birth.
2. The placement of a child with the employee for adoption or foster care and/or to bond with the child, within one year of placement.
3. To care for a spouse, child, or parent of the employee with a serious health condition.
4. A serious health condition that makes the employee unable to perform his or her job.
5. Any qualifying exigency arising out of the employee's spouse, son, daughter, or parent on covered activity duty.
6. Twenty-six weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness when the eligible employee is the service member's spouse, son, daughter, parent or next of kin. The term

"next of kin" refers to the nearest blood relative of a covered service member. Such leave is covered as Military Caregiver Leave.

B. Benefits for the Employee

Eligible employees taking approved leave are able to return to the same job or a job with equivalent status and pay.

The College will continue the employee's health benefits at the same level and conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the employee is obligated to repay the premium that the College paid for the employee's and dependents' health coverage during the unpaid portion of leave.

C. Expiration of Entitlement

The entitlement to leave for a birth, adoption, or foster care placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth, adoption, or foster care placement.

When an employee provides affirmative notice of their desire not to return from FMLA leave, the obligation of job reinstatement and the continuation of benefits cease, as FMLA ends.

If certification is not received within the appropriate timeframe, FMLA coverage may be delayed, denied or cease.

D. Leave Taken Intermittently or on a Reduced Leave Schedule

Leave associated with bonding for the birth or placement of a child within the first year, may be taken by an employee intermittently or on a reduced leave schedule if approved by the College. Such decision will be evaluated based on the approval of the employee's supervisor, assurances that the work is able to be completed, and with the understanding that the arrangement can be revoked if the needs of the department require the full-time presence of the employee.

The law allows for intermittent leave or leave on a reduced leave schedule when there is a medical need for leave (as distinguished from voluntary treatments and procedures) and when such medical need can be best accommodated through an intermittent or reduced leave schedule.

Employees needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the College's operations.

In addition, the College may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

An alternative position for these purposes does not have to have equivalent duties.

E. Scheduling Requirement

Employees are ordinarily expected to consult with their supervisor prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee.

When planning medical treatment, the employee should consult with their supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt the department's operations.

In any event, when notice is given of the need for leave, the College may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the ability of the health care provider to reschedule the treatment and the approval of the health care provider as to any modification of the treatment schedule.

F. Classification of Leave Family Medical Leave – Paid/Unpaid

Family and Medical leave is a benefit of unpaid leave that may consist of paid time off, dependent upon leave available to the employee. All accrued paid leave shall be used for the employee's absences before unpaid leave begins.

If paid leave is available for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required will be without pay.

G. Worker's Compensation

An employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. The employee's leave will be paid under approved workers' compensation benefits and the salary of the employee will be adjusted so that the total of the workers' compensation (excluding medical expenses) and salary from the College will not exceed the employee's regular salary.

H. Designation of Leave

An employee's absence from work for a period of more than three consecutive days or any other period of leave that is associated with a serious health condition will be designated as Family and Medical Leave.

The Department of Labor has indicated that employers should always designate leave when there is enough information even if the employee may request otherwise.¹

Human Resources is responsible for designating leave as Family and Medical Leave when adequate information is provided.

When information is submitted, if there is not sufficient information about the reason for the employee's use of leave, Human Resources will request the information from the employee which is to be provided within 10 work days.

Human Resources may ask an employee requesting leave to explain the reasons for the leave so that a determination may be made if the leave qualifies as Family and Medical Leave.

If the employee was absent for an FMLA reason and the supervisor did not learn the reason for the absence until the employee's return, the College may, upon the employee's return to work, promptly (within 2 work days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee.

Although employees are not to work during the approved leave period and access to email is restricted, employees are required to comply with the leave and absence reporting procedures. Human Resources will communicate with the employee by phone or personal email if applicable.

Failure to comply with requests for documentation or proper notice of absences may result in disciplinary action and FMLA leave may be denied.

I. Spouses Employed by the College

If both parents eligible for leave are employed by the College, they may take a combined total of 12 weeks of leave for the birth, adoption or foster care placement of a child.

J. Request for Leave

¹ WH-382 Opinion Letter, June 2020

An employee must provide the College at least 30 days' advance notice before Family and Medical Leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member.

If 30 days' notice is not practicable because of a change in circumstances or medical emergency, notice must be given as soon as an employee has knowledge of the need for leave.

To submit a request for FMLA review, employees will use the following process:

For foreseeable leave, the employee should contact human resources to submit necessary paperwork. A Request for Family or Medical Leave form is to be completed by the employee and submitted to Human Resources. The form is found through the Kronos portal under the "My time" tab, leave request.

<https://secure6.saashr.com/ta/6160104.login>

For leave that is unforeseeable, the employee is asked to provide notice of a potential serious health condition to human resources. This should occur as soon as the employee has knowledge of the need for leave followed by the submittal of a Request for Family and Medical Leave form.

Requests for leave under FMLA shall be followed up by medical certification. After the designation of FMLA, any absences taken that are related to the original FMLA occurrence, must be clearly stated as being related. This is noted on the Leave Request Form by selecting the FMLA box or by specifically communicating this relationship to human resources when circumstances prevent a Leave Request Form from being completed.

The Leave Requests Forms for related absences are sent to Human Resources.

K. Military Caregiver Leave and Qualifying Exigency Leave

The employee must submit either a Medical Certification of Health Care Provider Form, or WH-384 [WH-384.pdf](#) Certification of Qualifying Exigency for Military Family Leave or WH-385 [WH-385.pdf](#) Certification for Serious Injury or Illness of Covered Service member for Military Family Leave along with appropriate supporting documentation.

The health care provider does not have to specify a diagnosis.

L. Certification Requirements

The College requires that a request for family or employee serious health leave be supported by a medical certification statement issued by the health care provider of the eligible employee or qualified family member. The employee shall provide, within 15 calendar days of request, a copy of such certification to the Human Resources.

Certification shall include:

1. The date on which the serious health condition commenced;
2. The probable duration of the condition;
3. The appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. A statement that the employee is unable to perform the functions of the position of the employee; or
5. A statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent;
6. In the case of certification for intermittent leave, leave on a reduced leave schedule, or for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment; and a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule.

The Certification of Health Care form is available through Kronos by contacting Human Resources.

M. Second Opinion

The College may seek a second medical opinion, at the College's expense, if necessary.

N. Third Opinion

If the opinions of the employee's and the College's designated health care professionals disagree in their medical assessments, a third opinion may be sought for resolution.

O. Periodic Reporting

Employees on leave are required to report regularly on their status and intent to return. Human Resources will establish the reporting schedule. Depending on the nature of the leave, the reporting requirement may be every week but no less than once a month.

During leave, the College also may require that an employee recertify the medical condition that caused the employee to take leave:

1. When the College obtains information that casts doubt on the continuing validity of the employee's original certification;
2. When the employee requests an extension of leave; or
3. When circumstances have changed.

P. Employment and Benefits Protection

Restoration to Position - an employee eligible for Family and Medical Leave (with the exception of employees designated as "key employees") will be restored to his or her former position or to a position with equivalent pay, benefits, and other terms and conditions of employment

An attempt will be made to restore an employee returning from Family and Medical Leave to his or her original position. If an employee's original position is unavailable, the employee will be placed in an "equivalent position", determined by the Human Resources Department. The law provides, however, that an employee has no right to return to the same position.

No Loss of benefits - The taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

Q. Return to Work Release - As a condition of restoration for an employee who has taken leave for medical purposes, or is returning to work from childbirth, the College requires each employee to receive certification from the health care provider that the employee is able to resume work.

R. Exemption Concerning Key Employees

Denial of restoration – The College may deny restoration to any eligible employee designated as a Key Employee if:

- a. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the College

b. The College notifies the employee of the intent of the College to deny restoration on such basis at which time the College determines that such injury would occur; and

c. In any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

Note: Although an affected employee may be denied restoration, the employee is still entitled to leave.

S. Maintenance of Health Benefits

Coverage – the College shall maintain health and dental coverage under any "group health plan" for the duration of such leave at the level the employee had before the leave. If the employee is paid during this time period, premium contributions will be made on a payroll deduction basis. If the employee is unpaid, any required premium contributions may be billed to the employee.

T. Failure to return from leave

Employees who fail to return to work after FMLA will be considered to have voluntarily resigned.

The College may recover the premium that the employer paid for maintaining coverage for the employee, and, if applicable, for the employee's dependents under such group health plan during any period of unpaid leave if the employee fails to return to work for a reason other than:

- a. The continuation, recurrence, or onset of a serious health condition that entitles the employee to leave; or
- b. Other circumstances beyond the control of the employee.

If the employee fails to make the required payment, the College reserves the right to discontinue health and dental coverage. Prior to taking such action the employee will be notified and Human Resources will work with the employee to evaluate options for payment.

U. Retirement Benefits

Employees who participate in the Maryland State Retirement System are responsible for filing a leave of absence form with the Maryland State Retirement Agency (MSRA) through Human Resources. Unpaid leaves for purposes not approved under the MSRA policies may result in a break in service. Employees are

responsible for communicating with the MSRA regarding continuation of benefits. The telephone number is 800.492.5909.

V. Other Benefits/Accrual of Leave

Other insurance benefits normally provided to an employee shall be continued for the employee only if permitted by the plan document governing the provision of benefits, in accordance with the provisions of the written document, and if the employee makes any required premium payments. Employees will continue to earn annual leave and sick leave while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will earn annual and sick leave, which are applied toward the FLMA.

W. COBRA

When an employee notifies the College that he or she is not returning from leave, the College shall terminate the employee's health insurance benefits and the employee shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health insurance benefits at his or her expense in accordance with the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and the provisions of the health plan

X. Confidentiality

FMLA documentation and medical certifications contain protected health information and will be kept confidential and retained by Human Resources in a separate employee file in compliance with the Health Insurance Portability and Accountability Act (HIPPA).

Y. Record keeping

Human Resources will manage the Family and Medical Leave record keeping system and notify the employee of approval and requests for information if applicable

Policy Reference:

Board Policy 5042 Family and Medical Leave.