2421A – FMLA Leave for Military Service Members' Families

If you are an employee who is otherwise eligible to take leave under the Family and Medical Leave Act (FMLA), you may be eligible for military family leave for any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Armed Forces, or to care for a service member with a serious injury or illness if the employee is the service member's spouse, son, daughter, parent or next of kin. There are two types of leave available.

Qualifying Exigency Leave

Under the "active duty" leave, the College will grant you leave for up to 12 weeks per year for qualifying exigencies that arise when your spouse, son, daughter or parent is on covered active duty, or has been notified of an impending call or order to covered active duty.

Covered active duty means:

- for members of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
- for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member of the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country includes deployment to international waters.

Military Caregiver Leave

Under the "military caregiver" provisions, the College will grant military caregiver leave for up to 26 weeks in a single 12-month period to an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member, who is recovering from a serious illness or injury sustained in the line of duty on active duty, in order to care for the service member. "Next of kin" is defined as "the nearest blood relative" of the service member.

A covered service member is either:

- a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or
- a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of covered service member.

The term "serious illness or injury" is defined as one that renders the service member medically unfit to perform the duties of the member's military position. For a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform their military duties, or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work. For veterans, it includes injuries or

illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty. You are entitled to this military caregiver leave intermittently or continuously, but only during "a single 12-month period." If you take this military caregiver leave, any leave you have used of your 12-weeks allotment for other FMLA leave will be deducted from the 26-week period.

Application and Notice

If you desire a leave pursuant to these military leave provisions of the FMLA, you must follow similar procedures for application and notice of leave as are used for other FMLA leave.

When the request is for "active duty leave" because of a qualifying exigency, you must submit an application advising why the leave is needed and you should provide notice as soon as reasonable and practicable.

If a request is for military caregiver leave and the leave is foreseeable, such as for a planned medical treatment, you must submit the application for leave not less than 30 days before the date the leave is to begin. You should attempt to schedule your leave so as not to disrupt business operations. When the need for leave is not foreseeable, you must submit the application as far in advance of the date the leave is to begin as is practicable.

A leave pursuant to the military family leave provisions may be taken on an intermittent (rather than on a uninterrupted) basis or on a reduced schedule if medically necessary because of the health condition of the service member who is your spouse, child, parent or next of kin.

Qualifying Exigency

The College will regard the following activities as eligible for active duty leave:

- Issues arising from the military member's short notice deployment (i.e., deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short-notice deployment.

- Attending military events and related activities, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member's deployment.

- Certain childcare and related activities arising from the military member's covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility.

  Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent

of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

- Certain activities arising from the military member's covered active duty related to care of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

  Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

- Making or updating financial and legal arrangements to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.

- Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.

- Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.

- Certain post-deployment activities within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.

- Any other event that the employee and employer agree is a qualifying exigency.

Verification or Certification

When the application for leave is because of a qualifying exigency due to the service member's active duty, the application should state the nature of the relationship of the employee to the service member and you should attach to your application for leave verification of the service member's call-up or active duty and the reason for the request. If not immediately available, you should provide the verification as soon as practicable. If you are unable to provide verification, the College may deny FMLA designation for the leave. However, the College retains the right, in its sole discretion, to designate any leave as FMLA leave retroactively upon receipt of verification.

When the application for leave is for military caregiver leave, the application should state the nature of the relationship of the employee to the service member and must have attached to it a written certification from the health care provider, including but not limited to the Department of Defense, for the injured service member. If not immediately available, the College may, in its sole discretion, permit you, as an eligible employee, to commence an FMLA leave; however, you must provide the required certification within 5 business days or the College may deny FMLA designation to the leave. However, the College retains the right, in its sole discretion, to designate any leave as FMLA leave retroactively upon receipt of certification.

As with current certifications for other medical leave under the FMLA, the written certification should state: 1) the date on which the serious health condition commenced; 2) the probable duration of the condition; 3) the appropriate medical facts regarding the condition and its duration; and 4) that the covered service member is medically unfit to perform the duties of the member's office, grade, rank or rating.

Conditions

Any conditions applicable to current FMLA leave, such as potential transfers to alternative positions, are applicable to military family leave.

If you and your spouse are both employed by the College, and both of you are taking leave because of a qualifying exigency and any of the other FMLA leave, both of you are entitled to a combined total of 12 weeks of leave, rather than 12 weeks each.

If you and your spouse are both employed by the College, and both of you are taking military caregiver leave and any other FMLA leave, both of you are entitled to a combined total of 26 weeks of leave, rather than 26 weeks each. Limitations of 12 weeks for any leave other than military caregiver leave are still valid.

Your health insurance benefit will be continued under the same terms as they are offered when you are at work. The College will pay all premiums due if you are unable to do so during your FMLA leave; however, such premiums must be re-paid to the College once you have returned to work[1]. If, during the military FMLA leave, you indicate that you do not intend to return to work, or if after completion of the leave you do not return to work, you will be required to reimburse the College for the cost of payments made to maintain your benefits during any <u>unpaid</u> leave period.

Paid leave, if available, must be used during military FMLA leave under the same terms and conditions as for any FMLA leave. If paid leave is unavailable, military FMLA leave is still available to an eligible employee. If you have no available college leave and are not authorized to take FMLA leave, yet you still choose to take leave, you may be regarded as absent under the College's current policies and procedures.

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[1] An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

Contact(s): Director of Human Resources

Related Form(s): Please contact Human Resources for the applicable forms.

References: Fact Sheet #28M: The Military Family Leave Provisions under the Family and Medical Leave Act; Fact Sheet #28M(c): Qualifying Exigency Leave under the Family and Medical Leave Act

Relevant Policy or Procedure(s): 1410 – Employee Leave

Approved by: President

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