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 under the 2008 amendments to the law. There are two types of leave available.

Under the new "active duty" leave, the College will grant you leave for up to 12 weeks per year because of "any qualifying exigency[1]" arising out of the fact that your spouse, son, daughter or parent is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. By the terms of the statute, this provision requires the United States Department of Labor to issue regulations defining "any qualifying exigency." In the period before those regulations are issued, the College wishes to provide an opportunity for eligible employees to benefit from this leave opportunity under the terms set forth below.

Under the new "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. 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. The covered service member is one who is undergoing medical treatment, recuperation or therapy; is otherwise in outpatient status, or is otherwise on the temporary disability retired list due to the injury or illness. 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.

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[1] An urgent or required situation calling for immediate action or attention.

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:

- Attending official ceremonies or programs where the participation of the family member is requested by the military.
- Attending to farewell or arrival arrangements for a service member.
- Attending to affairs caused by the missing status or death of a service member.
- Making arrangements for child care or elder care.
- Making financial and legal arrangements to address the service member's absence.
- Other events may qualify in the College's sole discretion.

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[2]. 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 unpaid 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.

(Based on policy 1410; revised and approved by President on 4/20/09)

[2] 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.