2421 – Family and Medical Leave

Employees may be entitled to a leave of absence under the Family and Medical Leave Act (FMLA). This procedure provides employees information concerning FMLA entitlements and obligations employees may have during such leaves. For additional information on FMLA leave for military service members' families, please refer to the FMLA Leave for Military Service Members' Families procedure. If employees have any questions concerning FMLA leave, they should contact the Office of Human Resources.

I. Eligibility

FMLA leave is available to "eligible employees." To be an "eligible employee," an employee must: 1) have been employed by the College for at least 12 months (which need not be consecutive); 2) have been employed by the College for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave; and 3) be employed at a worksite where 50 or more employees are located within 75 miles of the worksite.

II. Entitlements

The FMLA provides eligible employees with a right to leave, health insurance benefits and, with some limited exceptions, job restoration. The FMLA also entitles employees to certain written notices concerning their potential eligibility for and designation of FMLA leave.

A. Basic FMLA Leave Entitlements

The FMLA provides eligible employees up to 12 workweeks of unpaid leave for certain family and medical reasons during a 12-month period. The 12-month period is determined on a rolling 12-month period measured backward from the date an employee uses his/her FMLA leave. Leave may be taken for any one, or for a combination, of the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse[1], son[2], daughter[2] or parent/parent-in-law[3] who has a serious health condition;
- For the employee's own serious health condition (including any period of incapacity due to pregnancy, prenatal medical care or childbirth) that makes the employee unable to perform one or more of the essential functions of the employee's job; and/or

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[1] The term "spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

[2] The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: 1) under 18 years of age; or 2) 18 years of age or older and incapable of self-care because of a mental or physical disability.

[3] The term "parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee or employee's spouse when the employee or employee's spouse was a son or daughter as defined above.

- Because of any qualifying exigency[4] arising out of the fact that an employee's spouse, son, daughter or parent is a covered military member on active duty or has been notified of an impending call or order to active duty status in the National Guard or Reserves in support of a contingency operation.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regiment of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Qualifying exigencies may include attending certain military events, arranging for alternative child-care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

B. Additional Military Family Leave Entitlement (Injured Service Member Leave)

In addition to the basic FMLA entitlement discussed above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member is entitled to take up to 26 weeks of leave during a single 12-month period to care for the service member with a serious injury or illness. Leave to care for a service member shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The singe 12-month period begins on the first day an eligible employee takes leave to care for the injured service member.

A "covered service member" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary retired list, for a serious injury or illness. A member of the Armed Forces would have a serious injury or illness if he/she has incurred any injury or illness in the line of duty while on active duty in the Armed Forces provided that the injury or illness may render the service member medically unfit to perform duties of the member's office, grade, rank or rating.

C. Intermittent Leave and Reduced Leave Schedules

FMLA leave usually will be taken for a period of consecutive days, weeks or months. However, employees also are entitled to take FMLA leave intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a covered service member.

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

D. No Work While on Leave

The taking of another job while on family/medical leave or any other authorized leave of absence is grounds for immediate termination, to the extent permitted by law.

E. Protection of Group Health Insurance Benefits

During FMLA leave, eligible employees are entitled to receive group health plan coverage on the same terms and conditions as if they had continued work.

F. Restoration of Employment and Benefits

At the end of FMLA leave, subject to some exceptions including situations where job restoration of “key employees” will cause the College substantial and grievous economic injury, employees generally have a right to return to the same or equivalent positions with equivalent pay, benefits and other employment terms. The College will notify employees if they qualify as “key employees,” if it intends to deny reinstatement, and of their rights in such instances. Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee’s FMLA leave.

G. Notice of Eligibility for, and Designation of, FMLA Leave

Employees requesting FMLA leave are entitled to receive written notice from the College telling them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not eligible. When eligible for FMLA leave, employees are entitled to receive written notice of: 1) their rights and responsibilities in connection with such leave; 2) the College’s designation of leave as FMLA-qualifying or non-qualifying, and if not FMLA-qualifying, the reasons why; and 3) the amount of leave, if known, that will be counted against the employee’s leave entitlement. 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.

The College may retroactively designate leave as FMLA leave with appropriate written notice to employees provided the College’s failure to designate leave as FMLA-qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, the College and employee can mutually agree that leave be retroactively designated as FMLA leave.

III. Employee FMLA Leave Obligations

A. Provide Notice of the Need for Leave

Employees who take FMLA leave must timely notify the College of their need for FMLA leave. The following describes the content and timing of such employee notices.

1. Content of Employee Notice

To trigger FMLA leave protections, employees must inform the Office of Human Resources of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically, or explaining the reasons for leave so as to allow the College to determine that the leave is FMLA-qualifying. For example, employees might explain that:

- A medical condition renders them unable to perform the functions of their job;
- They are pregnant or have been hospitalized overnight;
- They or a covered family member are under the continuing care of a health care provider;
- The leave is due to a qualifying exigency caused by a covered military member being on active duty or called to active duty status; or
- If the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a covered service member with a serious injury or illness.

Calling in "sick," without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy. Employees must respond to the College's questions to determine if absences are potentially FMLA-qualifying.

If employees fail to explain the reasons for FMLA leave, the leave may be denied. When employees seek leave due to FMLA-qualifying reasons for which the College has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

2. Time of Employee Notice

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide the College notice of the need for leave as soon as practicable under the facts and circumstances of the particular case. Employees, who fail to give 30 days notice for foreseeable leave without a reasonable excuse for the delay, or otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

B. Cooperate in the Scheduling of Planned Medical Treatment (Including Accepting Transfers to Alternative Positions) and Intermittent Leave or Reduced Leave Schedules

When planning medical treatment, employees must consult with the College and make a reasonable effort to schedule treatment so as not to unduly disrupt the College's operations, subject to the approval of an employee's health care provider. Employees must consult with the College prior to the schedule of treatment to work out a treatment schedule that best

suits the needs of both the College and the employees, subject to the approval of an employee's health care provider. If employees providing notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglect to fulfill this obligation, the College may require employees to attempt to make such arrangements, subject to the approval of the employee's health care provider.

When employees take intermittent or reduced work schedule leave for foreseeable planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition or to care for a covered service member, the College may temporarily transfer employees, during the period that the intermittent or reduced leave schedules are required, to alternative positions with equivalent pay and benefits for which the employees are qualified and which better accommodate recurring periods of leave.

When employees seek intermittent leave or a reduced leave schedule for reasons unrelated to the planning of medical treatment, upon request, employees must advise the College of the reason why such leave is medically necessary. In such instances, the College and employee shall attempt to work out a leave schedule that meets the employee's needs without unduly disrupting the College's operations, subject to the approval of the employee's health care provider.

C. Submit Medical Certifications Supporting Need for FMLA Leave (Unrelated to Requests for Military Family Leave)

Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications supporting their need for FMLA-qualifying leave. As described below, there generally are three types of FMLA medical certifications: an initial certification, a recertification, and a return to work/fitness for duty certification.

It is the employee's responsibility to provide the College with timely, complete and sufficient medical certifications. Whenever the College requests employees to provide FMLA medical certifications, employees must provide the requested certifications within 15 calendar days after the College's request, unless it is not practicable to do so despite an employee's diligent, good faith efforts. The College shall inform employees if submitted medical certifications are incomplete or insufficient and provide employees at least 7 calendar days to cure deficiencies. The College will deny FMLA leave to employees who fail to timely cure deficiencies or otherwise fail to timely submit requested medical certifications.

With the employee's permission, the College (through individuals other than an employee's direct supervisor) may contact the employee's health care provider to authenticate or clarify completed and sufficient medical certifications. If employees choose not to provide the College with authorization allowing it to clarify or authenticate certifications with health care providers, the College may deny FMLA leave if certifications are unclear.

1. Initial Medical Certifications

Employees requesting leave because of their own, or a covered relation's, serious health condition, or to care for a covered service member, must supply medical certification supporting the need for such leave from their health care provider or, if applicable, the health care provider of their covered family or service member. If employees provide at least 30 days notice of medical leave, they should submit the medical certification before leave begins. A new initial medical certification will be required on an annual basis for serious medical conditions lasting beyond a single leave year.

If the College has reason to doubt initial medical certifications, it may require employees to obtain a second opinion at the College's expense. If the opinions of the initial and second health care providers differ, the College may, at its expense, require employees to obtain a third, final and binding certification from a health care provider designated or approved jointly by the College and the employee.

2. Medical Recertification

Depending on the circumstances and duration of FMLA leave, the College may require employees to provide recertification of medical conditions giving rise to the need for leave. The College will notify employees if recertification is required and will give employees at least 15 calendar days to provide medical recertification.

3. Return to Work/Fitness for Duty Medical Certifications

Unless notified that providing such certifications is not necessary, employees returning to work from FMLA leaves that were taken because of their own serious health conditions that made them unable to perform their jobs must provide the College medical certification confirming they are able to return to work and the employees' ability to perform the essential functions of the employees' position, with or without reasonable accommodation. The College may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.

D. Submit Certifications Supporting Need for Military Family Leave

Upon request, the first time employees seek leave due to qualifying exigencies arising out of the active duty or call to active duty status of a covered military member, the College may require employees to provide: 1) a copy of the covered service member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or call to active duty status and the dates of the covered military member's active duty service; and 2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of new active duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies arising out of a different active duty or call to active duty status of the same or a different covered military member.

When leave is taken to care for a covered service member with a serious injury or illness, the College may require employees to obtain certifications completed by an authorized health care provider of the covered service member. In addition, and in accordance with the

FMLA regulations, the College may request that the certification submitted by employees set forth additional information provided by the employee and/or the covered service member confirming entitlement to such leave.

E. Substitute Paid Leave for Unpaid FMLA Leave

Employees must use any accrued paid time while taking unpaid FMLA leave under any of the FMLA leave entitlements, including Sick Leave, Vacation Leave, and/or Personal Leave.

The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave and the paid time will run concurrently with an employee's FMLA entitlement.

Leaves of absence taken in connection with a worker's compensation injury/illness shall run concurrently with any FMLA leave entitlement.

Upon written request, the College will allow employees to use any eligible accrued paid time to supplement (such is the case where worker's compensation only provides replacement income for two-thirds of an employee's salary) any paid worker's compensation benefits.

F. Pay Employee's Share of Health Insurance Premiums

During FMLA leave, employees are entitled to continued group health plan coverage under the same conditions as if they had continued to work. Unless the College notifies employees of other arrangements, whenever employees are receiving pay from the College during FMLA leave, the College will deduct the employee portion of the group health plan premium from the employee's paycheck in the same manner as if the employee was actively working.

If FMLA leave is unpaid, employees must pay their portion of the group health premium through a method determined by the College upon leave.

The College's obligation to maintain health care coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the College will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date. If employees do not return to work[5] within 30 calendar days at the end of the leave period (unless employees cannot return to work because of a serious health condition or other circumstances beyond their control), they will be required to reimburse the College for the cost of the premiums the College paid for maintaining coverage during their <u>unpaid</u> FMLA leave.

IV. Coordination of FMLA Leave with Other Leave Policies

The FMLA does not affect any Federal, State or local law prohibiting discrimination, or supersede any State or local law, which provides greater family or medical leave rights. For

[5] 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.

additional information concerning leave entitlements and obligations that might arise when FMLA leave is either not available or exhausted, please consult the College's other leave policies or contact the Office of Human Resources.

V. Questions and/or Complaints about FMLA Leave

If you have questions regarding this FMLA procedure, please contact the Office of Human Resources. The College is committed to complying with the FMLA and, whenever necessary, shall interpret and apply this procedure in a manner consistent with the FMLA.

The FMLA makes it unlawful for employers to: 1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; 2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or involvement in any proceeding under or relating to the FMLA. If employees believe their FMLA rights have been violated, they should contact the Office of Human Resources immediately. The College will investigate any FMLA complaints and take prompt and appropriate remedial action to address and/or remedy any FMLA violation. Employees also may file FMLA complaints with the United States Department of Labor or may bring private lawsuits alleging FMLA violations.

VI. Exemption for Highly Compensated Employees

The College may choose not to return highly compensated employees (highest paid 10% of employees at a worksite or within 75 miles of that worksite) to their former or equivalent positions following a leave if restoration of employment will cause substantial economic injury to the College. (This fact-specific determination will be made by the College on a case-by-case basis.) The College will notify you if you qualify as a "highly compensated" employee, if the College intends to deny reinstatement, and of your rights in such instances.

(Based on policy 1410; revised and approved by President on 9/28/10)