

# **ADM 192 – Family and Medical Leave Act (FMLA) Leave of Absence Policy**

## **I. Purpose**

The intent of this Policy is to allow employees to be absent from work in conformity with the Family and Medical Leave Act (FMLA) of 1993 as amended in 2008 and all interpretations shall comply with that intent.

## **II. Policy**

1. Child birth, pregnancy or prenatal medical care;
2. Placement of a child with the employee for adoption or foster care and in order to care for such child;
3. To care for a spouse, son, daughter or parent with a serious health condition as described below;
4. When the employee's own serious health condition, as described below, makes the employee unable to perform the functions of his or her position (A serious health condition is defined by this policy in section IV. Definitions G);
5. For a qualifying exigency, and/or covered service member leave, as described below. Eligibility and Reasons for Leave

Employees who have worked for the College for at least twelve (12) months, over the last seven (7) years (need not be consecutive), and who have been employed for at least one thousand two hundred fifty (1,250) hours of service by the College during the previous twelve (12) months, are entitled to up to twelve (12) cumulative weeks of

Family and Medical Leave (FML) per year (to be defined as a "rolling" 12-month period, except for covered service member leave which is for a single 12-month period) for any of the reasons listed below:

- B. This policy covers illnesses or conditions of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, this refers to a chronic or long-term health condition that results in a period of more than three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity, and a second visit within thirty (30) days of the incapacity. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year. This policy also covers qualifying exigency leave for eligible employees with a spouse, son, daughter, or parent on covered active duty in the Armed Forces in a foreign country, or called to covered active duty status in the National Guard or Reserves deployed to a foreign country. Eligible employees may use their twelve (12) week leave entitlement to address certain qualifying exigencies.
- C. This policy also applies to qualifying military caregiver leave to care for a covered service member with an illness or injury incurred in or aggravated by the line of covered active duty. This leave may extend up to twenty-six (26) weeks in a single twelve (12) month period for an employee to care for a spouse, son, daughter, parent, or next of kin who is a covered service member with a serious illness or injury. A covered service member is a current member of the Armed Forces or Veteran of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty that may render the service member medically unfit to perform his or her duties and is undergoing medical

treatment, recuperation, or therapy; is in outpatient status; or on the temporary disability retired list. A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. The Veteran's need for a caregiver includes medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five years preceding the date of treatment, recuperation, or therapy.

#### D. Amount of Leave

An eligible employee can take up to twelve (12) weeks of Family Medical Leave ("FML") for the circumstances noted above in Item A. 1. through Item A. 4. To determine the amount of eligible hours available to the employee, a rolling 12-month calendar timeframe will be used. This calculation measures backwards from the date of the employee's requested start date for FML leave. An eligible employee can take up to twenty-six (26) weeks of FML for the circumstances noted in item A.5. for covered service member leave during a single 12-month period with the amount of remaining leave calculated from the date leave is first used. If a husband and wife both work for the College and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or care for a parent with a serious health condition, the husband and wife may only take a combined total of twelve (12) weeks of leave. If the husband and wife both work for the College and each wishes to take leave to care for a covered injured or ill service member, a combined twenty-six (26) weeks of covered service member leave may be taken. FML eligible employees injured on the job receiving Workers' Compensation will have this leave time tracked and deducted from FML entitlement.

#### E. Types of Leave – Continuous, Intermittent or Reduced

## Work Schedules

Leave may be taken in consecutive weeks, intermittently (for example, taking a day periodically when needed over the year), or under certain circumstances, to reduce the workweek or workday, resulting in a reduced work hour schedule. In all cases, the leave may not exceed a total of twelve (12) work weeks (or twenty-six (26) work weeks to care for an injured or ill service member over a 12-month period). Leave taken for the birth or placement of a child for adoption or foster care must be taken consecutively unless otherwise authorized by the employee's department. Leave for prenatal medical appointments may be taken intermittently. When undergoing planned medical treatment, it is the employee's responsibility to coordinate the scheduling of such treatment with his/her immediate supervisor and the health care provider to minimize disruption to the College. When intermittent or reduced schedule leave is needed due to a foreseeable reason, The College may temporarily transfer an employee to an available alternative position if the alternative position would better accommodate the intermittent or reduced schedule. The alternative position will be equivalent in pay and benefits.

### F. Use of Paid and Unpaid Leave:

1. Eligible accrued sick leave, vacation or compensatory time shall be utilized first. If an employee has less than twelve (12) weeks of eligible accrued paid leave, the balance of the leave shall be taken as unpaid leave. An eligible employee will utilize sick leave, then vacation, then unused and available paid holiday such as annual birthday and then shall remain in an unpaid status for the remainder of the leave. An employee on FML may work a second job as long as the employee meets the FML standard for leave from The College.

2. Birth, placement of a child for adoption or foster care. No permanent full time or permanent part time employee shall be compelled, coerced or ordered to begin leave at any time during the period of pregnancy, unless unable to perform the essential functions of the job. Entitlement to leave for this purpose expires twelve (12) months after the birth or placement of the child.

3. FML running concurrently with worker's compensation.

When FML is used concurrently with worker's compensation, employees may supplement worker's compensation wages with sick leave, vacation or compensatory time, but are not required to do so. The employee is responsible for notifying Human Resources if they would like to supplement worker's compensation wages with sick leave, vacation, or compensatory time. The amount of sick or vacation pay used shall be the amount necessary to maintain the employee's approximate regular net payment.

#### G. Designation of Leave

Paid leave may be retroactively designated as FML by either the employee or the College if circumstances are such that the leave is unexpected or because the employee is on sick or vacation leave for an FMLA purpose and has not advised the College of said purpose. However, in no event may leave be so designated after the leave has ended, except as provided by law. The College has designated Workers' Compensation absences as FML hours.

#### H. Abuse

If the College finds intentional misuse of FML, employment may be terminated.

### III. Procedures

**Below is a summary of the basic FML procedures. This section is not an exhaustive list of all FML policy procedures.**

- A. When an employee has a foreseeable need for FML, the employee must complete the Family Medical Leave Request for Leave Form. An employee may obtain, complete, and submit this form from/to the College Human Resources. If an unforeseeable need arises the employee may verbally notify Human Resources of the request and Human Resources will provide a paper copy of the request to the employee or employee designee for completion. When the need is foreseeable, the completed form must be submitted to Human Resources at least thirty (30) days prior to the commencement of the leave. If, due to unforeseeable circumstances, it is impossible to give a full thirty (30) days notice, as much advance notice as possible is still required. Failure to comply with the above notice requirements may delay the onset of an employee's FML leave for a period of up to thirty (30) days. Human Resources will provide a written Notice of Eligibility and Rights & Responsibilities Form to the employee within five (5) business days when either 1) the Family Medical Leave Request for Leave Form is received, 2) a verbal request for FML is made by the employee, or 3) the Department acquires sufficient knowledge that an employee's absences may be for an FML qualifying reason. In cases such as those highlighted under item 3) above the department should notify HR within twenty-four (24) hours.
- B. It is the employee's responsibility to provide the appropriate Certification Form within fifteen (15) calendar days of receipt of the Notice of Eligibility and Rights & Responsibilities Form. The Certification of Health Care Provider Form is not required for the placement of a child for adoption or foster care; however documentation for the event will be required. The Certification Forms, provided with the Notice of

Eligibility and Rights & Responsibilities Form, are also available from the College Human Resources. Failure to provide a completed Certification Form within the required time period may delay the onset of FML leave or result in a denial of FML. Human Resources will notify the Department and employee whether the leave has been approved or denied with a Designation Notice form within five (5) business days of receiving sufficient information to make the FML determination. Employees may authorize a Human Resources representative to contact their health care provider to authenticate and clarify any information provided in the Certification Form (Note: Employees can choose whether or not to authorize this action through the Family Medical Leave Request for Leave Form). If deficiencies are found on an employee's Certification Form, Human Resources will contact the Employee and give them seven (7) calendar days, beginning the day after Human Resources contacts the employee, to clear any deficiencies as indicated through the provided Designation Notice. Deficiencies may include an incomplete Certification Form or the need for additional information and clarification by the employee's health care provider. In some cases where the employee has authorized Human Resources to contact their health care provider, Human Resources may contact the employee's health care provider directly to resolve any deficiencies. The College may require other medical opinions for determining eligibility under the provisions of this section. If Human Resources reasonably doubts the initial Certification Form provided by an employee, Human Resources may require an examination by a second health care provider at the College's expense. If the second health care provider's opinion conflicts with the original certification, Human Resources, again at the College's expense, may require a third, mutually agreed on, health care provider to conduct an examination and provide a final and binding

opinion. The College may require subsequent medical recertification on a reasonable basis. All medical information related to FML will be considered confidential and available only to those with a legitimate need to know.

- C. Recertification is required for intermittent leave requests of more than six (6) months of leave time per Certification Form. When an employee is aware of the continuing need for intermittent leave, he or she must submit an updated Certification Form to Human Resources prior to expiration of the current Certification Form. A Recertification may also be requested if 1) an employee requests an extension of continuous leave; 2) circumstances described by the previous Certification Form change (e.g. duration or frequency of absence, nature or severity of the illness, complications, a pattern of using unscheduled leave with scheduled days off); or 3) Human Resources receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. When asked to submit an updated Certification Form for recertification the updated Certification Form must be returned to Human Resources within fifteen (15) calendar days of the request.
- D. In addition to providing Human Resources with a new Certification Form (Recertification) every six (6) months for those intermittent leave requests of more than six (6) months, individuals approved for intermittent leave must also provide Human Resources with an Annual Certification at the anniversary of their initial request for leave date. Human Resources will be in contact with the employee prior to their recertification and annual certification deadlines and assist the employee with this portion of the process.
- E. When an employee returns from FML, the College will attempt to return the employee to the position held prior to the leave. If this is not possible, the



employee will be placed in an equivalent position with equivalent pay, benefits and other terms and conditions of employment. If there are reductions in force while the employee is on FML, and the employee would have otherwise been included in those reductions had the employee remained, the employee loses their right to return to that position.

- F. Salaried employees in the highest paid ten percent of the College's work force may be denied reinstatement in their positions if it is shown that it would cause grievous economic harm to the College.
- G. The employee will be responsible for paying his or her share of the health insurance premium for the insurance to remain in effect during a FML. If an employee chooses not to return to work from unpaid leave for reasons other than a continued serious health condition, or other circumstances beyond the employee's control, the employee will be liable for health insurance premiums paid by the College during the time of the FML.
- H. When employees return from leave due to their own serious health condition they are required to notify their department that they will be returning to work forty-eight (48) hours prior to their date of return so that proper planning may occur. Additionally, employees must provide a completed Return to Work Certification Form or provide an equivalent statement from their health care provider to Human Resources upon their return. Employees who fail to provide the Return to Work Certification form may not be permitted to resume work until this form is provided. Employees returning for all other FML events are required to provide only Section I. of the form.
- I. In some instances an employee's FML case may also be covered by the Americans with Disabilities Act (ADA). Human Resources will review these situations on a case-by-case basis. Employees should notify Human Resources with any requests for accommodations, restrictions or

reassignment and Human Resources will work with the employee, department, and Human Resources to meet employee needs.

- J. When an employee has exhausted all FML and accrued paid leave and is unable to return to work, Human Resources will work with the employee and the department for an employment status review of options which may include termination.

#### **IV. Definitions**

For the purpose of this Policy, the following definitions, unless noted otherwise apply:

- A. Rolling Calendar Year – An eligible employee is entitled to up to twelve weeks of leave per year, with year defined as a “rolling” twelve month period. Each time an employee takes FML leave the remaining leave entitlement would be any balance of the twelve (12) weeks which has not been used during the immediately preceding twelve (12) months.
- B. Department – Any college department or office including faculty.
- C. Spouse - Is defined in accordance with applicable State Law.
- D. Parent - Includes biological parents and individuals who acted as the employee’s parents.
- E. Son or Daughter - Includes biological, adopted or foster children, stepchildren, legal wards, and other persons for whom the employee acts in the capacity of a parent who are under eighteen (18) years of age. Children eighteen (18) years of age or older, but incapable of self care because of a mental or physical disability are within the meaning of the definition.
- F. In Loco Parentis – A child under the FMLA includes not only a biological or adopted child, but also a foster child, stepchild, a legal ward, or a child of a person standing in loco parentis. The FMLA regulations define

in loco parentis as including those with day-to-day responsibilities to care for and financially support a child. Employees who have no biological or legal relationship with a child may nonetheless stand in loco parentis to the child and be entitled to FML leave.

G. Serious Health Condition - Any illness, injury, impairment, physical or mental condition that involves: a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

1. Incapacity and treatment – Incapacity period of more than three (3) consecutive calendar days and subsequent treatment or incapacity related to the condition. The subsequent treatments must be needed within thirty (30) days of the first day of incapacity and an in-patient visit to a health care provider must occur within seven (7) days of the first day of incapacity, or
2. Pregnancy or prenatal care and absences due to the condition; or
3. Chronic conditions – a condition that requires periodic visits for treatment at least twice per year by a health care provider , continues over an extended period of time, and could cause episodic incapacity (e.g., asthma, diabetes, epilepsy) and absences due to the condition ; or
4. Permanent or long-term conditions – a period of incapacity due to a condition for which treatment may not be effective. (e.g., Alzheimer's, a sever stroke, or the terminal stages of a disease); or
5. Conditions requiring multiple treatments – any period of absence to receive multiple treatments by a health care provider for 1) restorative

surgery; or 2) a condition that would likely result in a period of incapacity of more than 3 consecutive days if not treated, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

- H. Health Care Provider - licensed medical doctors and osteopaths, podiatrists, dentists, clinical psychologists and clinical social workers, physician assistants, optometrists or chiropractors authorized to practice in the State, nurse practitioners and nurse-midwives authorized under State law and Christian Science practitioners.
- I. The phrase "needed to care for a family member or covered service member" encompasses: 1) physical and/or psychological care; and 2) when the employee is needed to fill in for another person providing care or to arrange for third party care of the family member or 3) intermittent or reduced schedule leave may be used because other care is normally available for the family member.
- J. The phrase "unable to perform the functions of his/her job" - means an employee is: 1) unable to work at all or 2) unable to perform any one of the essential functions of his/her position. The term "function" means "the essential job duties of the employment position" and does not include the marginal functions of the position.
- K. Serious Injury or Illness for a Covered Veteran – A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:
  - 1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade,

- rank, or rating; or
2. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of fifty (50) percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
  3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
  4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.