

Policy Type: All Staff

Policy Title: Family Medical Leave Act (FMLA) Policy

Whom Does This Policy Affect: All District Staff

Purpose: The purpose of this policy is to provide employees with a general description of their FMLA rights.

Policy Statement

In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. The College posts the mandatory FMLA Notice, and upon hire, provides all new employees with notices required by the U.S. Department of Labor (DOL).

A. General Provisions

Under this policy, Monroe County Community College will grant up to 12 weeks during a 12-month period to eligible employees, or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness. For purposes of determining when leave is available, the FMLA leave year is a rolling 12-month period measured backwards from the date that the leave is first used. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. All benefits that operate on an accrual basis (e.g., vacation and sick days) will cease to accrue during any period of the leave that is unpaid.

B. Eligibility

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the College for 12 months or 52 weeks;
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence; and
- 3) The employee must work in a worksite where 50 or more employees are employed by the College within 75 miles of that office or worksite.

The 12 months of service need not be consecutive. Employment prior to a break in service of seven years or more will not be counted, unless the break in service was caused by the

employee's active duty with the National Guard or reserve, or there was a written agreement that the College intended to rehire the employee after the break in service.

C. Type of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and/or in order to care for that child.

An employee may be granted a leave for childbirth and/or to care for a child in the first 12 months after childbirth. This leave must be taken as a continuous block of time. During this period, an employee may use sick days if available in his/her sick bank balance and as long as medical certification is provided. Any absence beyond the period stated by the physician is considered unpaid leave. To avoid an unpaid leave, the employee may provide written authorization to use accrued vacation time.

- 2) The placement of a child for adoption or foster care and to care for the newly placed child.

An employee may be granted a leave for the placement of a child with the employee for adoption or foster care within the first 12 months of placement. This leave must be taken as a continuous block of time. Sick leave is not available for this type of leave.

- 3) To care for a spouse, child or parent with a serious health condition, as defined under number (4).

An employee may elect to use five days a year from his/her sick bank to care for a spouse, child, or parent. When tracking one's use of these five days, only whole days need be counted not quarter days or half days (these are reported as regular sick time). In cases where additional absence is required, an employee may request use of vacation days, or he/she may request the approval of an unpaid leave of absence.

- 4) The serious health condition (as defined below) of the employee.

An employee may be granted FMLA leave for the employee's own serious health condition. The employee may use sick days in his/her sick bank balance if medical certification is provided. Any absence beyond the period stated by the physician is considered unpaid leave. The employee may use vacation time, if applicable, by giving written authorization to their supervisor. Sick leave will run concurrently with FMLA leave.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the College

will designate all of the related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

A serious health condition is defined as 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.

A serious health condition covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of 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 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

If the leave is for a planned medical treatment, the employee is expected to schedule the treatment so as to create a minimum disruption to the work schedule.

- 5) Qualifying exigency leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty in the National Guard and Reserves in support of a contingency operation may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on the timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period. Sick leave is not available for this type of leave.

- 6) Military caregiver leave to care for an ill or injured service member (also known as covered service member leave).

This leave may extend up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin of the covered service member with a

serious illness or injury incurred in the line of duty on active duty. Next of kin is defined as the closest blood relative of the injured or recovering service member.

An employee may elect to use up to five days a year from their sick bank to care for a service member. When tracking one's use of these five days, only whole days need be counted not quarter days or half days (these are reported as regular sick time.) In cases where additional absence is required, the employee may request use of vacation days, if applicable, or the approval of an unpaid leave of absence.

D. Injured Service Member Family Medical Leave

During a single 12-month period, an eligible employee will be entitled to a combined total of 26-work weeks (130 work days) of leave for military service member family leave and all other kinds of family medical leave. This combined total during the single 12-month period when service member family leave is used will have no effect on the availability of family medical leave for any qualifying reason during any other 12-month period.

Each time an employee is absent because of a military service member family leave, that absence is counted against the employee's 26-weeks of family medical leave in a single 12-month period. The leave may be taken on an intermittent or reduced-schedule basis, but all 26 weeks must be used during a single 12-month period. One hour is the shortest period of time that is charged.

When the College employs both the husband and wife, they are entitled to a combined total of 26 weeks of leave during a single 12-month period for a military service member family leave or for a combination of service member family leave and all other kinds of family medical leave during a single 12-month period.

E. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks. In addition, if it is medically necessary, an employee may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

An employee using this type of leave for planned medical treatment must make a reasonable effort to schedule treatment in a way that will not disrupt the College's operations.

The College may, when necessary, temporarily transfer an employee to an available alternative position for which the employee is qualified and which better accommodates the intermittent or the reduced work schedule. When this occurs, the position will be the same or one which is equivalent in terms of pay, benefits and working conditions.

F. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Director of Human Resources. An employee must provide sufficient information for the College to determine if the leave may qualify for the FMLA time off and the anticipated timing and duration of the leave. Within five business days after the employee has provided this notice, the Director of Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights & Responsibilities. After an FMLA leave has been approved, an employee using FMLA time must specifically reference the qualifying reason or state FMLA time when requesting such time off.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day.

When the need for FMLA leave is not foreseeable, the employee must notify the College of the need for an unforeseeable leave as soon as practicable, which normally means the same business day that the employee learns of the need for the leave or the next day. In addition, the employee must follow their respective department/division normal call-in procedures to report an unforeseeable absence. Calling in sick without providing more information is not sufficient notice of a need for FMLA leave on an unforeseeable basis.

These procedures for requesting leaves apply to requests for military caregiver and qualifying exigency leaves as well.

G. Medical Certification

The College will require medical certification for an FMLA leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide medical certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider. The employee must also provide a Leave of Absence Request Form. Both forms are available in the Human Resources Office.

The Director of Human Resources or designee may directly contact the employee's health care provider for verification or clarification purposes. The College will not use the employee's direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College will obtain the employee's permission for clarification of individually identifiable health information. If the employee does not provide appropriate authorization and does not otherwise clarify the certification, the College may deny the FMLA leave.

The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee to get a certification from a second doctor, which the College will select. The College may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will mutually select the third doctor, and the College will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

H. Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate DOL Certification of Health Care Provider form and the College's Leave of Absence Request Form, the Director of Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice. The College must inform the employee if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

I. Employee Status and Benefits During Leave

While an employee is on leave, the College will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. During an unpaid leave of absence due to illness or injury, the District will pay up to 12 months of insurance premiums for health, dental, vision, and life insurance if such coverage is not provided by any other benefit. If the employee pays a portion of the premium, he/she must continue to do so.

J. Medical Recertification

The College may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the College receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the College may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The College may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

K. Intent to Return to Work from FMLA Leave

The College may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

The employee must provide fitness-for-duty certification upon return to work. The fitness for duty certification must contain an assessment of the employee's ability to perform the functions of the job. This requirement will be included in the employer's response to the FMLA request.

An employee who fails to timely return from an FMLA approved leave, without a College approved extension of the leave of absence, will be subject to termination.

L. Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms.

M. Extension of FMLA Leave

The College will not permit an employee who has exhausted the maximum twelve-week FMLA leave period to extend the FMLA leave beyond the twelve week maximum. An employee who has exhausted the twelve weeks of FMLA leave may be eligible for an extension of the time off, which is not FMLA leave, under another College Leave policy.

N. Other Employment and Activities

An employee is not allowed to engage in any other employment during any type of FMLA absence except as approved by the College. Participation in non-work-related activities inconsistent with the qualifying reason for the leave or conduct that abuses the granting of a FMLA leave of absence may result in loss of leave approval and may subject the employee to discipline and/or discharge.

Employees with questions about this FMLA policy or the College's sick leave policy for his/her employee group should consult with the College's Director of Human Resources.