

## **FAMILY AND MEDICAL LEAVE PROCEDURES**

The College understands the importance of family issues to today's work force. The College also recognizes that more of its employees than ever before face conflicting demands of family obligations and work. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions, and in order to comply with FMLA, the College hereby establishes its family and medical leave procedures.

The following procedures dealing with the FMLA are in addition to those leaves described in the College's Policies and Procedures Manual and are meant to complement those existing leaves.

### **I. General**

#### **A. Covered Leave**

The College will grant an eligible employee **family and medical leave** for up to 12 work weeks during a 12-month period, if the procedures are followed and leave is requested for any of the following reasons:

1. The birth or adoption of a child, or the foster care placement of a child;
2. To care for a "family member" of the employee if that individual has a serious health condition; or
3. A serious health condition of the employee that renders the employee unable to perform his or her job functions.

Employees are limited to a maximum of 12 weeks' leave for any combination of 1, 2, or 3 listed above. If leave is for birth, adoption, or foster care placement, the leave must be completed within 12 months of the date of birth or placement.

#### **B. The 12-Month Period**

Available leave will be calculated by determining the amount of leave used by an employee for the 12 months prior to each day for which leave is requested and subtracting that number from the total of days equal to 12 work weeks. This is referred to as the "rolling" method of calculation. Employees will be advised when requesting leave of the amount of FMLA leave they have available.

C. Spousal Exception

If a husband and wife both work for the College, and are eligible for leave, they are only entitled to a combined 12 work weeks of leave taken for birth, adoption, foster care, and to care for a parent. The 12 weeks will be calculated in the same manner as leave for an individual employee.

D. State Law

Some employees are covered by state leave laws that are different than the federal FMLA. The College will comply with both laws. Leave under state law will run concurrently with leave under this policy procedure.

E. Intermittent Leave

An employee taking leave for personal illness or to care for a sick family member need not take such leave continuously and may take it on an intermittent basis, or by reducing the employee's scheduled work hours, if the employee provides certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner. If leave is not taken continuously, it will be deducted from the employee's entitlement to leave, i.e., 12 weeks during a 12-month period.

F. Part-time Leave for Birth, Adoption, or Foster Care Placement Requests for intermittent or reduced schedule (part-time) leave after the birth, adoption, or foster care placement of a child will not be considered.

II. Definitions

A. "Family Member"

"Family member" is defined in the FMLA and the procedures to include the employee's spouse, son, daughter or parent (but not a parent "in-law"). A "son" or "daughter" is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible. A "son" or "daughter" is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day-to-day and financial responsibility for employee when the employee was a child. The College will not permit leave under this procedure to care for individuals who are not "family members," unless state law requires otherwise.

B. "Serious Health Condition"

"Serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three days' absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic

or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable; or pre-natal care.

C. "Health Care Provider"

A "health care provider" is any doctor of medicine or osteopathy, podiatrist, optometrist, and nurse practitioner, or nurse midwife performing within the scope of their practice as defined under state law. Christian Science practitioners and Chiropractors are health care providers to the extent defined under regulations issued by the U.S. Department of Labor.

III. Eligibility

A. Minimum Eligibility Requirements

1. An employee is eligible if the employee has been employed for at least 12 months (or 52 weeks) by the College and has worked at least 1,250 hours during the 12-month period to the time leave would begin under this procedure. The College will make the determination at the time of the leave request.
2. Hours are calculated based upon actual hours that the employee worked, including over-time.

The College will use its records of hours worked for all hourly employees. In the case of exempt employees, the College will assume that any employee employed full-time for seven and one-half months and/or meets the 1,250-hours requirement. Exempt employees who have 12 months' prior service, but less than seven and one-half month's fulltime continuous service at the time leave is requested, should include documentation of hours worked with their request.

B. Leave for Serious Health Conditions

Employees should recognize that this procedure and FMLA are only intended to cover serious health conditions--generally those which involve three or more days incapacity from work or school, or chronic, long-term, incurable conditions. Employees who wish to take leave to care for family members with non-serious health conditions are not covered by this policy. Employees can use their vacation or personal leave for non-serious health conditions, subject to all restrictions in those procedures, including scheduling and increments of leave.

IV. Procedures for Requesting Leave

A. Requests for Leave

1. Procedure

All requests for family or medical leave should ordinarily be initiated by contacting your immediate supervisor. This will assist the College in working out appropriate schedules. If for any reason you do not wish to inform your supervisor

of the reason for the leave, or if you have any questions about your supervisor's response, please contact the Human Resources Office.

2. Foreseeable Leaves

If the need for family or medical leave is foreseeable, the employee must provide notice to the College of **not less than 30 days**. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may designate leave to start 30 days after notice is given.

Failure to report to work when FMLA leave has been denied will be treated as an unexcused absence.

3. Scheduling

If the leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.

4. Unforeseeable Leaves

If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. Employees are expected to promptly notify their supervisor as soon as they learn of the need for leave. If the employee's supervisor is unavailable, contact the next highest supervisor or the Human Resource Office. Except in the case of medical emergencies, employees are expected to call to advise their supervisor as soon as they know of the need for an expected duration of leave. In emergencies, the employee or a family member should contact the College and give the same information and a number where they can be reached. Requests for leave should then be submitted in writing as soon as practicable. [Absent good cause or medical emergencies, written requests for leave should be submitted within three (3) business days after oral request is made.]

5. Additional Information

After receiving a request for leave, the College will provide additional information regarding the procedures for obtaining leave, including any additional documents that may be required.

B. Proof

1. Medical Certification

The College may require proof of necessity for family or medical leave by a health care provider on forms provided by the College. The information required shall include:

- The date on which the serious health condition commenced;
- The probable duration of the condition;
- Appropriate sufficient medical facts within the knowledge of the health care provider that would entitle the employee to take family or medical leave;
- An estimate of the amount of time that the employee is needed to care for a family member, or a statement that the employee is unable to perform the functions of the position of the employee; and
- In cases of medical leave, an explanation of the extent to which the employee is unable to perform the function of the employee's position.
- The college will only accept certifications on the appropriate college form.

Certifications must be submitted within 15 days of the date requested by the College.

## 2. Second Opinions

The college has the option of requiring the employee to get a second opinion from an independent medical provider selected by the College. The College will pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by the College and the employee which shall be considered final and binding. The College will pay for the third opinion.

## C. Leave is Contingent on Eligibility

All employee requests for FMLA leave are contingent upon a determination by the College that the employee is eligible for FMLA leave. This includes a determination of eligibility and provision of medical certification. Leave is also contingent on any second or third opinions that may be required. Because these procedures may take time, it is possible that a final determination may **not** be made until after the employee is on leave or has returned to work.

## D. Transfer to Alternative Position

In all cases of intermittent and reduced schedule leaves, the employer reserves the right to require the employee to transfer to another position that better accommodates the employee's need for leave and/or the employer's operations. This decision is in the sole discretion of the College.

The College reserves the right to transfer an employee to another position whenever an employee's use of leave for one or more qualifying reasons is so frequent and intermittent that it is impossible to predict and schedule for coverage.

E. Confidentiality

The College will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this procedure. **Supervisors** must submit all records to the Human Resources Office and **will not** retain any copies in their files.

V. Substitution of Sick Leave, Personal Leave, and Vacation Time

A. Substitution

FMLA leave will be unpaid except to the extent that an employee has accumulated paid leave under other applicable leave provisions of these policies. Paid leave will be applied based upon the reason for the FMLA leave in accordance with the following provisions:

1. If an employee takes FMLA leave due to actually giving birth, the employee's accrued sick leave will be applied during the FMLA leave in the following order: sick leave, vacation leave, and personal leave.
2. If an employee takes FMLA leave due to the employee's spouse giving birth or the employee adopts a child, the employee's accrued sick leave will be applied during the FMLA leave in the following order: adoption leave, vacation leave, personal leave.
3. If an employee takes FMLA leave due to his or her own serious health condition, the employee's accrued leave will be applied during the FMLA leave in the following order: sick leave, vacation leave, and personal leave.
4. If an employee takes FMLA leave due to a family member's health condition, the employee's accrued leave will be applied during the FMLA leave in the following order: emergency leave and vacation leave

In determining whether leave has been accrued or earned, the college will apply the provisions of the respective policy and procedures, including any restrictions.

B. Unpaid Leave

When an employee has exhausted all paid leave, all remaining FMLA leave will be unpaid.

VI. Benefits

A. Health Benefits

During the leave, the college will maintain the employee's coverage for health benefits as follows: The employee is required to continue to pay employee's portion of any health insurance premiums normally deducted from employee's paycheck, by tendering a check payable to the College and forwarding it to the College Business Office.

If the employee fails to make the required payments for health coverage within 30 days of the date that such payments are due, health coverage will be discontinued.

B. Other Benefits

Other benefits normally provided to an employee shall be provided to the employee only if permitted by the plan document governing the provision of benefits, in accordance with the provisions of the written document, and the employee makes any required co-payments. In accordance with existing College policies on unpaid leave, employees will not earn any vacation pay, while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will continue to earn vacation.

C. Reinstatement

The College has the right, upon the employee's return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for the College's employees.

VII. Reinstatement

A. General

An employee taking leave under this policy will be returned to the employee's same position or to an equivalent position, at the election of the College unless the employee would have been terminated in the absence of any leave (e.g., layoff, downsizing, or termination of a temporary job). Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period, except that if the employee is unable to use vacation time because of policy restriction, the College has the option of setting a new deadline for use of accrued vacation.

B. Key Employee Exception

If an employee has gross income that is within the top 10 percent of the College's employees within 75 miles of the College's primary work site during the calendar year in which leave is taken, the College reserves the right not to restore the employee to his or her prior position with the College if the College will suffer substantial and grievous harm because of the restoration. At the time that leave is granted under this procedure, the College will inform the employee that the employee is within the top 10 percent and also explain the possible consequence that restoration may be denied.

If the College determines during the employee's leave that the employee is not to be restored to employment, the employee will be notified immediately and given the opportunity to return from leave and be restored to his or her position. If the employee does not return from leave, the employee can petition for reinstatement at the end of the leave period and will be notified, by certified mail, whether the employee will not be restored because doing so would cause the College substantial and grievous harm.

C. Periodic Reporting

Employees on leave are required to report every two weeks on their status and intent to return. During leave, the College also may require that an employee recertify the medical condition that caused the employee to take leave when the College obtains information that casts doubt on the continuing validity of the employee's original certification, when the employee requests an extension of leave or when circumstances have changed.

D. COBRA

When an employee notifies the College that he or she is not returning from leave, the College shall terminate the employee's health benefits and he or she shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and the provisions of the health plan provided, however, that any period of continued health benefits shall commence from the day leave commenced.

E. Repayment of Premiums

Employees who return to work will meet with the Human Resource Office to work out an appropriate repayment schedule for any employee premiums or co-payments made by the College during leave which occurred during this leave.

Upon receiving notice that the employee is not returning to employment with the College, or should the employee simply fail to return or return to employment with the College for less than 30 days after leave has ended, the employee shall owe the College the cost of any benefits provided during leave. No such amount shall be owed if there is a recurrence or onset of a serious health condition, or in the opinion of the college, there is a change of circumstances beyond the employee's control. The benefits of a key employee who is not restored shall not be terminated prior to the end of leave and the employee shall not be responsible to the college for such benefits other than the normal employee contribution.

If an employee does not return to work under circumstances where repayment can be required, the employee must repay all premiums within 30 days after receiving notice from the College of the amount owed. After that time, the matter will be turned over to collections as a debt, which could result in legal action.

F. Failure to Return to Work

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment.

## VIII. General Provisions

## A. Administrator

The College is the sole administrator of this procedure and, as such, is the exclusive interpreter of its terms. All provisions of this procedure shall be interpreted consistent with the Family and Medical Leave Act of 1993.

## B. Changes

The College reserves the right to modify or terminate this procedure at any time.

## C. No Employment Rights

This procedure does not create any employment rights to any individual other than specifically stated in this procedure.

## D. Limitations

Except as otherwise stated, this policy is not intended to create any rights greater than that conferred on employees by the Family and Medical Leave Act of 1993.

## E. Rights and Obligations

Employees and the College have various rights and obligations under FMLA. For further information, contact the Human Resources Office.

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