

**FAMILY AND MEDICAL LEAVES OF ABSENCE**  
*Revised and restated: February 15, 2018*

**PART A. Employees Who Qualify for a Leave Under the Family and  
Medical Leave Act of 1993**

The College will grant a leave of absence to regular full-time and regular part-time employees (who meet the requirements described below) for:

- the care of a child after birth or placement with the employee for adoption or foster care;
- the care of a family member (spouse, child, or parent) with a serious health condition;
- an employee's own serious health condition that makes the employee unable to perform the functions of the employee's job, or incapacity due to the employee's pregnancy or prenatal medical care;
- any qualifying exigency (as defined below) arising out of the fact that a family member (spouse, son, daughter or parent) is serving in any branch of the Armed Forces, including a member of the National Guard or Reserves on active duty or has been notified of an impending call or order to active duty; or
- the care of a service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the service member.

Leaves will be granted for a period of up to twelve weeks (or up to 26 weeks in the case of care for a service member, as discussed below) in any twelve-month period. Except in the case of leave to care for a covered service member with a serious illness or injury, the twelve-month period is a rolling period, measured backward from the date any qualifying leave is taken. In the case of leave to care for a covered service member with a serious illness or injury, the twelve-month period is measured forward beginning on the date the employee first takes FMLA leave.

An employee must have completed at least twelve months of service with the College *and* have worked a minimum of 1,250 hours in the twelve-month period preceding the leave to be eligible for such leave. All periods of absence from work due to or necessitated by USERRA-covered service is counted in determining an employee's eligibility for FMLA leave. An employee must also be employed at a worksite where 50 or more employees are employed by the College within a 75 mile radius of that worksite. Service prior to a break in service of less than seven years will be counted in determining whether the employee has completed at least twelve months of service with the College. Service prior to a break in service lasting seven years or more will be counted only when

the break in service has been caused by the fulfillment of USERRA-covered service obligations.

Employees who do not meet these requirements may apply for a leave of absence subject to the conditions described in Part B of this policy.

#### *Scope of Child/Family Care/ Military Exigency Leave*

You may request a leave of absence to care for a child after birth, or placement in your home for adoption or foster care. An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of a 12-month period beginning on the date of birth or placement.

You may also request a leave of absence to care for a covered family member with a serious health condition (as defined below). A covered family member is a spouse; a biological, adoptive, step or foster parent, but not an "in law"; a biological, adoptive, step or foster child, or legal ward who is under age 18, or who is 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

You may also request a leave of absence because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is a member of any branch of the Armed Forces, including a member of the National Guard or Reserves on covered active duty in a foreign country (or has been notified of an impending call or order to covered active duty in a foreign country) in support of a contingency operation. A qualifying military exigency means: (a) short-notice deployment (up to seven days of leave if the military member receives seven or less days' notice of a call to active duty); (b) military events and related activities; (c) certain temporary or alternative childcare arrangements and school activities (excluding ongoing regular childcare); (d) making or updating financial and legal arrangements to address the service member's absence resulting from active duty status; (e) counseling by a non-medical counselor, such as a member of the clergy, arising from the active duty or call to active duty; (f) rest and recuperation (up to fifteen days of leave when the military member is on short-term, temporary rest and recuperation leave); (g) parental care leave for a military member's parent who is incapable of self-care when the change in care is necessitated by the member's covered active duty and/or (h) post-deployment military activities.

#### *Leave for Employee's Serious Health Condition*

You may request a leave of absence in the event that your own serious health condition renders you unable to perform the functions of your position. An employee is unable to perform the functions of his or her position when the employee either cannot work at all or is unable to perform any one of the essential functions of his or her position within the meaning of the Americans with Disabilities Act. An employee who must be

absent to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

### Serious Health Condition Defined

The Family & Medical Leave Act broadly describes a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

The term "continuing treatment" is defined in the Department of Labor regulations as including five different scenarios:

- A period of incapacity of more than three full consecutive calendar days involving two or more treatments within 30 days of the first day of incapacity (absent extenuating circumstances), by or under the orders of a health care provider, ***or*** treatment by a health care provider on at least one occasion that results in a supervised regimen of continuing treatment (for example, prescription medications or specialized therapy). Treatment by a health care provider requires an in-person visit with the health care provider, the first (or only) in-person treatment visit taking place within seven days of the first day of incapacity;
- Pregnancy (including severe morning sickness) and time needed for prenatal visits;
- A chronic health condition, such as asthma, diabetes, or epilepsy, which require at least two visits for treatment by a healthcare provider per year;
- A long-term condition such as Alzheimer's, a severe stroke, or the terminal stages of a disease, for which treatment may not be effective; and
- Restorative surgery after an accident or other injury, or a condition that is likely to result in a period of incapacity of more than three full consecutive calendar days if left untreated, such as physical therapy for severe arthritis or chemotherapy for cancer.

(Note: any period of incapacity that is the result of pregnancy or a chronic serious health condition, such as morning sickness or an asthma attack, qualifies for FMLA leave even if the employee does not receive treatment from a health care provider or the absence does not last more than three full, consecutive days.)

### Service Member Family Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (usually, the nearest blood relative) of a covered service member shall be entitled to a total of 26 work weeks of leave during a twelve (12) month period to care for the service member. The leave described in this paragraph shall be available only during a single 12-month period, measured from the date the employee's first FMLA leave to care for the covered service member begins. 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 otherwise on the temporary disability retired list, for a serious illness or injury, which either existed prior to the beginning of the member's active duty and was aggravated by service in the line or duty or was incurred in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating for which the service member is undergoing medical treatment, recuperation, or therapy.

A "covered service member" also includes a veteran who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or who is otherwise on the permanent disability retired list, and who was formerly a member of the Armed Forces, including a former member of the National Guard or Reserves, at any time during the period of 5 years preceding the date on which the veteran undergoes the medical treatment, recuperation or therapy. For purposes of this paragraph only, the term "serious illness or injury" means:

- (a) An injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or that pre-existed active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; or
- (b) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 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
- (c) 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
- (d) 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

This leave entitlement is applied on a per-covered-service-member, per-injury basis.

#### Leave Entitlement and Schedule

Eligible employees are entitled to leave for up to twelve weeks (or up to 26 weeks in the case of care for a service member as discussed above) in any twelve-month period (or longer if required by applicable state or local law or, in the case of a leave for an employee's serious health condition, where a leave extension is requested and approved).

Leave taken to care for a child after birth or placement in your home for adoption or foster care must be taken in consecutive workweeks. Leave taken for the

employee's or a covered family member's (or nearest blood relative in the case of service member leave) serious health condition may be taken consecutively, intermittently, or on a reduced work/leave schedule based on certified medical necessity.

To accommodate an intermittent or reduced schedule FMLA leave when the leave is foreseeable based on planned medical treatment for the employee or a covered family member, the employee may be transferred on a temporary basis to an alternative position for which the employee is qualified. The alternative position will have equivalent pay, benefits, and terms and conditions of employment.

#### Combined Leave Total

If an eligible employee qualifies in the applicable 12 month period for leave to care for a service member and leave for one of the other purposes described above, that employee shall be entitled to a combined total of 26 work weeks of leave. If both spouses are employed by the College and are eligible for service member family leave, then they are entitled to take only a combined total of 26 work weeks of leave during the single 12-month period.

When eligible spouses are both employed by the College, and are not eligible for service member family leave, they may take only a combined total of 12 weeks during the applicable twelve month period if the leave is taken (1) for the birth of a child and to care for such child; (2) for the placement of a child for adoption or foster care and to care for such child; or (3) to care for his/her own parent (not an "in-law") with a serious health condition.

#### Conditions of Leave

- 1. Notification Requirements.** If the leave is planned in advance, you must provide us with at least thirty (30) days' notice prior to the anticipated leave date, using the College's official Leave-of-Absence Request Form. In the case of leave arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) of the armed forces in support of a contingency operation, the employee shall provide such notice to the College as is reasonable and practical. Verbal notice of the need for leave is sufficient, but it is preferred that you provide notice by filing the College's official Leave-of-Absence Request Form

If the leave is unexpected, you should notify your supervisor and the Human Resources Department as far in advance of the anticipated leave date as is practicable. (Normally, this should be the same day or the next business day after you become aware of your need for the leave.) Verbal notice of the need for leave is sufficient, but it is preferred that you provide notice by filing the College's official Leave-of-Absence Request Form.

2. ***Designation of Leave as FMLA-qualifying.*** The College will provide a written notice to the employee designating the leave as “FMLA-qualifying” within five (5) business days after the College has enough information to determine whether the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances. The College may delay final leave designation until a required medical certification form has been returned.
3. ***Certification of the Need for Leave.*** The College will require you to provide certification of the need for leave as follows:
  - Employees requesting a leave to care for a child after birth or after placement in your home for adoption or foster care must provide documentation to support the leave request.
  - Employees requesting a leave to care for a covered family member (including as a next of kin in the case of service member leave, as discussed above) with a serious health condition (or serious injury or illness, in the case of service member leave) will be required to provide medical certification from the family or service member's physician attesting to the nature of the serious health condition, probable length of time treatment will be required, and the reasons that the employee is required to care for this family or service member.
  - Employees requesting a leave due to his or her own serious health condition will be required to provide medical certification from his or her health care provider attesting to the nature of the serious health condition, probable length of time leave will be required, and the inability of the employee to perform the functions of his or her position due to the serious health condition.
  - Employees requesting leave due to a military exigency will be required to provide certification that the covered family member is a member of the Armed Forces, including a member of the National Guard or Reserves who is on active duty or called to active duty in support of a contingency operation in a foreign country. The employee will also be required to provide a statement, including available written support documentation, about the nature and details of the specific exigency, the amount of leave needed and the employee’s relationship to the military member.

Employees are required to provide the requested certification within fifteen (15) calendar days of the College’s request for certification. If the

College fails to receive the certification, FMLA leave may be denied. If the College receives incomplete, vague, ambiguous or non-responsive medical certifications, the College will notify you of the problems with the certification and provide you seven (7) days to cure any deficiency unless not practicable under the circumstances. If the deficiencies are not cured within that time frame, the College may contact the health care provider directly for clarification or authentication purposes or the FMLA leave may be denied.

If the College determines that a second medical opinion is required, the College may, at its own expense, require you to obtain a second opinion from a health care provider designated by the College. If the first and second opinions do not agree, the College may, at its own expense, require you to obtain a third opinion from a health care provider agreed upon by both you and the College. The opinion of the third health care provider is final. However, in the case of certification of a serious injury or illness for military caregiver leave, second opinions may be required only if the initial certification was not made by an authorized DOD/VA affiliated healthcare provider.

4. ***Recertification.*** While on leave under this policy, the College may request recertification of medical necessity every thirty (30) days, or if the medical certification indicates the minimum duration of the condition is more than 30 days, then at the end of the minimum duration. You may also be requested to provide recertification in less than 30 days if you request a leave extension, the circumstances described by the earlier certification have changed substantially, or the College receives information that casts doubt upon the employee's stated reason for the absence. The College may also require periodic reports on your status and intent to return to work. Where a serious health condition of either an employee or that of a family member lasts beyond a single leave year, the College may require employees to provide a new medical certification each subsequent leave year.
5. ***Substitution of Paid Leave.*** You will be required to use all accrued, unused vacation days, sick days, and personal days during the leave period. When leave is taken on an intermittent or reduced leave schedule, the minimum increment of substituted paid leave used will not be greater than one hour, and your FMLA leave entitlement will not be reduced by more than the amount of leave actually taken. Once such benefits are exhausted, the balance of the leave will be without pay. FMLA leave because of an employee's own serious health condition will run concurrently with worker's compensation leave, when applicable.
6. ***Continuation of Benefits.*** All College benefits that operate on an accrual basis (e.g., vacation and personal days) will cease to accrue during the leave period. All group health benefits (e.g., major medical,



hospitalization, and dental insurance) will continue during the leave provided you continue regular employee contributions to these plans. (Other benefits will be governed in accordance with the terms of each benefits plan.)

### Reinstatement Rights

Eligible employees are entitled on return from leave to be reinstated to their former position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Exceptions to this provision may apply if business circumstances have changed (e.g., if the employee's position is no longer available due to a job elimination). In addition, employees on a leave extension are not guaranteed reinstatement.

Before you will be permitted to return from medical leave, you will be required to present the College with a note from your physician indicating that you are capable of returning to work and performing the essential functions of your position with or without reasonable accommodation. Where required, the College will consider making reasonable accommodation for any disability you may have in accordance with applicable laws.

Under limited circumstances, where restoration to employment will cause substantial and grievous economic injury to the operations of the College, the College may refuse to reinstate certain “key” employees after using FMLA leave. These employees will be made aware of their status as “key” employees prior to any denial of job restoration and will have a reasonable opportunity to return to work from FMLA leave upon this notice.

### Non-Discrimination

The College will not interfere with, restrain, or deny an employee the opportunity to exercise any right provided under FMLA. The College will not discharge or discriminate against any employee for opposing any practice made unlawful by FMLA or because of an employee's involvement proceeding under or related to FMLA.

### Confidentiality

The College will also keep any medical information it obtains in complying with the FMLA confidential, pursuant to this statute, as well as the Genetic Information Non-Discrimination Act (GINA).

### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer to enforce the employee's rights under the FMLA. The FMLA does not affect any Federal or State law prohibiting

discrimination, or supersede any State or local law or collective bargaining agreement that provides greater family or medical leave rights.

### **PART B. Leaves for Employees Who Do Not Meet the Minimum Service Requirements**

Full-time regular and part-time regular employees who have less than twelve months of service and/or who have not worked a minimum of 1,250 hours during the twelve-month period prior to their leave may request leaves of absence due to disabilities resulting from the employee's pregnancy, miscarriage, legal abortion, childbirth, or recovery therefrom, subject to the following terms and conditions:

1. Leave requests must be made at least thirty (30) days in advance of the date the employee would like the leave to begin or, in emergency situations, with as much advance notice as is practicable, using the College's official Leave-of Absence Request Form. (Normally, this should be the same day or the next business day after you become aware of your need for the leave). This request must be submitted to the employee's supervisor and the Human Resources Department.
2. The certification requirements and the conditions for required use of accrued time off, benefits accrual, and continuation of group health insurance during leave set forth in Part A apply to all leave requests.
3. All leaves due to disabilities resulting from the employee's pregnancy, miscarriage, legal abortion, childbirth, or recovery therefrom will be granted for the period of disability or eight weeks, whichever is less, and which may be taken intermittently.
4. Eligible employees are entitled on return from leave to be reinstated to their former position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Exceptions to this provision may apply if business circumstances have changed (e.g., if the employee's position is no longer available due to a job elimination).

All questions regarding leaves of absence and requests for applicable forms should be directed to the Human Resources Department.