

FAMILY AND MEDICAL LEAVE (FMLA)

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This policy statement is a summary of the Family and Medical Leave Act (FMLA) of 1993. The Act is specific in its scope of coverage and will be the determining factor in final interpretation of leave provisions. An employee should contact the Human Resources Office for information about specific situations.

Faculty and staff who have been employed for at least one year for 1250 hours or more over the twelve months preceding the events which are listed below are entitled to receive a combined unpaid medical and/or family leave for a maximum of 12 weeks for each 12 month period beginning from the first date of approved leave. FMLA also entitles an eligible employee to a maximum of twenty-six (26) workweeks (defined by the employee's normal workweek) of military caregiver leave to care for a covered service member with a serious injury or illness during a single 12-month period.

This leave is intended to run concurrent with the provisions of College sick leave, vacation time, and personal business leave policies, New York State Disability Insurance, Worker's Compensation Insurance, Long Term Disability Insurance, and, for less than 12 month employees, any unpaid period including summer and winter breaks. The provisions of this policy apply only to family, medical, and military family leave circumstances covered by the federal law. The provisions for personal leave of absence under existing policy are not changed and cannot be substituted for the provisions covered by the Federal Law.

Employees who are receiving workers' compensation or disability benefits may elect to use accrued vacation, sick and personal days to bring them to no more than 100% compensation. All other employees are expected to use all accrued, unused vacation, sick and personal days during the leave period. An employee may choose which leave time to use, and must comply with the College's normal paid leave policies. Once such benefits are exhausted, the balance of the leave will be without pay. An employee who does not wish to use all accrued, unused vacation, sick and/or personal days must notify Human Resources of this at the time of his/her leave.

All group health benefits (e.g., major medical, hospitalization, and dental insurance) will continue during the leave provided the employee continues to make regular contributions to these plans. Coverage will cease if payments are not made within a 30 calendar day grace period of the due date. Other benefits (such as pension, retirement, life insurance, and long-term disability) will be governed by the terms of each benefit plan. All benefits that operate on an accrual basis (e.g., vacation, sick and personal days) will cease to accrue during any period of FMLA leave that is unpaid.

Basic Leave Entitlements:

An eligible employee will receive FMLA-qualifying leave under the following circumstances:

- A. For birth of a son or daughter, and to care for the newborn child;
- B. For placement of a son or daughter for adoption or foster care.

Entitlement to leave to care for the employee's child after birth, or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of birth or placement. FMLA leave for the birth or placement of a child for adoption or foster care with the employee may not usually be taken on an intermittent or reduced leave schedule basis.

C. To care for the employee's spouse, domestic partner, son, daughter, or parent with a serious health condition;

D. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

Since the need for family leave is typically foreseeable, an employee must notify his/her immediate supervisor and/or Department Head of the intention to request the leave at least 30 days in advance so that provisions can be made to have duties carried out during the leave. If the date of the birth or placement requires leave to begin in less than 30 days, the employee must provide notice as soon as practicable.

For purposes of this policy, a "serious health condition" generally means an illness, injury, impairment, or physical or mental condition that involves either (1) an overnight stay in a medical care facility (i.e., hospital, hospice, or residential medical care facility), or , (2) 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 days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

An employee who has questions concerning qualifying for leave under the FMLA because of a serious health condition are advised to consult with Human Resources.

Military Family Leave Entitlement:

An eligible employee with a spouse, domestic partner, son, daughter, or parent on active duty or called to active duty status in any branch of the Armed Forces and who was deployed or called to active duty in a foreign country, may use his/her 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events and related activities, short notice deployment, arranging for alternative childcare or emergency child care, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post-deployment reintegration briefings, leave to spend time with a covered military member who is on short-term temporary rest and recuperation leave during a period of deployment; and leave for post-deployment activities, such as an arrival ceremony.

FMLA also includes a special leave entitlement that permits an eligible employee to take up to 26 weeks of leave to care for a covered service member during a single 12-month period if the employee is the spouse, domestic partner, son, daughter, parent, or next of kin of a service member and the service member is receiving treatment, recuperation, or therapy, for a serious injury or illness, within 5 years of being in the military or 5 years from the date of treatment, recuperation, or therapy. A covered service member is a current member 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 on active duty that may render the service member medically unfit to perform his/her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. The definition of a serious injury or illness has been expanded to include the aggravation of an existing or pre-existing injury of an active duty service member in the Armed Forces.

Use of Leave

Medical leave for an employee's own serious health condition or a serious health condition of an employee's immediate family member may in some cases be taken on an intermittent or reduced schedule basis when medically necessary for the leave (as distinguished from voluntary treatments and procedures) and if it is determined that the employee's medical needs can best be accommodated through an intermittent or reduced leave schedule. Certification from an employee's health care provider of the medical necessity of intermittent leave or leave on a reduced leave schedule will be required. An employee needing intermittent FMLA leave or leave on a reduced leave schedule must make reasonable efforts to schedule the leave for planned medical treatment so as not to unduly disrupt the College's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

Spouses who both work for the College will be allowed a combined maximum of twelve workweeks of leave for the birth or care of a newborn child, adoption or foster care of a child and to care for such newly placed child, or the serious health condition of a parent, during any twelve month period. However, if the child has a serious health condition then both parents can take twelve weeks. Spouses who both work for the College will similarly be allowed a combined maximum of 26 workweeks of leave during a single 12-month period if the leave is taken to care for a covered service member with a serious injury or illness.

Job and Benefit Protection:

Upon return to active work, from an approved FMLA leave, an employee will be restored to his/her former position or, if his/her former position has been filled or is no longer available, to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

Medical, dental, vision, life, and long-term disability benefits will remain in effect during the leave on the same basis and premium sharing/payments as if not on leave. College contributions to the pension plan will not be made during the leave period unless pay has continued under an approved paid leave category. Accrual of benefits or eligibility for benefits based upon time worked or length of employment will not continue during the unpaid leave.

Use of FMLA benefits will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Procedure for Securing Leave:

When the need for a leave is foreseeable, an employee should submit a written leave request to his/her immediate supervisor and/or Department Head at least 30 days in advance. When the need is not foreseeable, the employee must promptly (typically the same or next business day as the employee becomes aware of a need for FMLA leave) provide notification. Unless on an approved extended leave, employees on FMLA leave are expected to comply with the College's normal call-in procedures. An employee must provide sufficient information for the College to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information includes: information on the medical condition or other qualifying reason for absence, the anticipated duration of the absence, if employee is unable to perform job functions, family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. An employee must inform the College if the requested leave is for a reason for which FMLA leave was previously

taken or certified. In the case of leave for an employee's serious health condition or for a family member's serious health condition, an employee will be required to provide a health care provider certification, periodic recertification supporting the need for the leave, and a fitness-for-duty certification to address the employee's ability to perform the essential functions of his/her job. An employee who is taking intermittent or reduced schedule leave may also be required to submit a fitness-for-duty certification before the employee is allowed to return to work. The College, at its expense, may request a second opinion through its own health professionals. If the second opinion conflicts with the first, the College, at its expense, may request a third and final opinion by a neutral health professional. Leave because of a qualifying exigency or to care for a covered service member with a serious injury or illness must also be supported by a certification. An employee must provide any required certification to the College within 15 calendar days after the College's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Failure to submit a complete and sufficient certification may result in denial of FMLA leave.

A request for FMLA leave will be reviewed and responded to by Human Resources within 5 days. The requesting employee will receive a written response indicating FMLA leave eligibility and any specific conditions or need for additional documentation. If documentation for approving FMLA leave is deemed insufficient, the employee is required to provide required documentation within 7 days. Within 5 business days after the employee has submitted the appropriate documentation, Human Resources will provide the employee with a written response to the employee's request for FMLA leave.

Additional Information

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA and/or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against any employer. 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.