

Section: LEAVE  
Subject: Family and Medical Leave (FMLA)  
Number: HR 3720

I. Institutional Regulations

- A. Regular Administrative/Professional, IES Administrative/Professional, Confidential Clerical, Support Staff, IES Administrative Support, and Trail Point Support employees who have worked for the College for at least 12 months and have worked at least 1,250 hours in the preceding 12 months shall be eligible for up to 12 workweeks of unpaid Family and Medical Leave during each twelve-month period measured forward from the day the employee's first FMLA leave begins. Regular faculty who have worked for the College for at least 12 months and have worked at least 1,250 hours in the preceding 12 months shall be entitled to up to 12 workweeks of unpaid Family and Medical Leave each fiscal year. Employees shall be required to use any available paid leave concurrently with Family and Medical Leave.
- B. FMLA may be used for an employee's serious health condition; for the serious health condition of a spouse, child, qualifying adult son or daughter, or parent; or for the birth of a child and the care of the newborn or of a newly adopted child or newly placed foster child. Eligible employees are entitled to up to 12 workweeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status in the armed forces, in support of a contingency operation.
- C. FMLA entitles an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member or qualified veteran who is recovering from a serious illness of injury sustained in the line of duty on active duty to up to 26 weeks of leave in a single 12-month period to care for the service member. This Military Caregiver Leave is available during "a single 12-month period" during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave.
- D. If both spouses work for the College, they may each have 12 workweeks for his/her own serious health condition, the serious health condition of his/her spouse or child, or for any qualifying exigency as described in I.B. above. For the serious health condition of a parent or the birth, adoption, or newly placed foster child, they may only use a total of 12 workweeks between them. If the leave qualifies for Military Caregiver Leave, they may only use 26 workweeks between them.
- E. An exception to the leave maximum may be made for Teaching Faculty in order to, whenever possible, match the leave taken with the instructional term in which the leave is taken.

II. Procedures

- A. Definition of Terms Used for This Procedure:
  - 1. Serious Health Condition – A condition that requires inpatient care or continuing treatment by a healthcare provider.
  - 2. Child – Biological, adopted and foster children under 18; anybody under 18 who is treated as the employee's child; disabled children of any age.
  - 3. Qualifying Adult Son or Daughter – the adult son or daughter must meet the following four requirements before the employee may take FMLA leave to provide care: 1) have a mental or physical disability as defined under the Americans with Disability Act (ADA), 2) be incapable of caring for him/herself because of the disability, 3) have a serious health condition, and 4) be in need of care because of the serious health condition.
  - 4. Parent – Anybody who treated the employee as a son or daughter when the employee was under 18.
  - 5. Spouse – Husband or wife; someone legally recognized as husband or wife.
  - 6. Workweek of Leave – The average number of hours the employee is regularly scheduled to work between 12:01 a.m. Sunday through midnight Saturday.
  - 7. Active Duty – Duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.
  - 8. Covered Service member – A current member of the Armed Forces, including a member of the National Guard or Reserves, or a qualified veteran who is undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

9. Qualified Veteran – a veteran of the Armed Forces, including a member of the National Guard or Reserves, discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.
10. Serious Injury or Illness – In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed forces that may render the member medically unfit to perform his or her military duties. In the case of a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform his or her military duties, or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work. For veterans, this includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty.

#### B. Leave Usage

1. It is the employer's responsibility to designate leave and to give notice of the designation to the employee. Employees will be required to supplement their FMLA leave with any available paid leave. When on FMLA leave, employees shall be required to exhaust all accrued Sick Leave, Personal Business Leave, and Vacation Leave in that order, before taking unpaid leave.
2. An employee taking paid FMLA leave for the birth of a child may use paid Sick Leave only for the healing of the body and until released by their doctor. After that date, Vacation or Personal Business must be used for the remainder of the paid FMLA leave. If the employee is not eligible for or has exhausted all Personal Business and Vacation, the remainder of the FMLA shall be without pay.
3. FMLA leave may be taken on a continuous, intermittent, or reduced schedule basis in the case of the employee's spouse, parent, child, or qualifying adult son or daughter's serious health condition or in the case of the serious illness or injury of a covered service member who is the spouse, son, daughter, parent, or next of kin of the employee. The leave may be taken on a continuous basis in the case of birth, adoption or the new placement of a foster child, and if approved by the supervisor and Human Resources, on an intermittent or reduced schedule basis.
4. Employees may use unpaid FMLA leave in hour, half-day, or full-day increments. If FMLA leave is used on an intermittent basis, the hours may be spread over more than 12 workweeks. For example, a full-time employee who requests 4 hours of leave per day could take FMLA leave over 24 weeks. When taking intermittent leave, part-time Regular employees who work at least 1,250 hours in the preceding 12 months are eligible for a pro-rated number of hours of leave based on his/her FTE.

#### C. Impact of Unpaid FMLA on Leave Accruals/Benefits

1. An employee taking continuous unpaid FMLA leave shall not accrue leave in any month in which an employee is on leave for  $\frac{1}{2}$  of the month or more (i.e. from the 15<sup>th</sup> of the month on or through the 15<sup>th</sup> of the month). If the employee goes on unpaid FMLA and returns in the same month, leaves shall not accrue if the employee is on FMLA for 10 or more work days in the month.
2. An employee on continuous unpaid FMLA leave shall be responsible for paying his/her share of the insurance premiums, including any optional coverages.
3. An employee taking unpaid FMLA leave on a reduced schedule basis for more than 90 calendar days shall accrue a prorated share of leaves based upon his/her new FTE. Contributions toward insurance premiums shall also be prorated in this instance.
4. Unpaid FMLA leave before or after a Holiday shall not impact an employee's eligibility for Holiday pay.

5. Use of unpaid FMLA leave shall not affect an employee's seniority date nor constitute a break in service. For early retirement purposes, unpaid leave could, however, affect the calculation of the early retirement bonus which is currently based on quarters of service as defined under Chapter 94 of the Code of Iowa.
6. An employee who has exhausted all FMLA leave, no longer meets eligibility for the active benefit plan group. An employee no longer eligible for the active benefit plan group will be issued a COBRA notice due to reduction in hours of employment and transferred from the active group to the COBRA group for any applicable coverages. Payroll deductions may continue for employee insurance contributions, but on a Post-tax basis. The college will continue to subsidize the employer portion until the employee has been absent longer than 90 days on leave without pay.

#### D. Leave Approval

1. The employee must submit notice of FMLA leave on a Request for Leave form (P-21) to his/her immediate supervisor 30 days prior to the start of the leave unless circumstances warrant a shorter notification period. A memo explaining the reason for the leave must be attached to the P-21 or submitted to the supervisor before the absence.
2. If an employee has not requested FMLA leave but the College finds that a leave qualifies, the College shall designate the applicable period as FMLA leave.
3. If FMLA leave is being requested on an intermittent or reduced schedule basis for birth, adoption or the new placement of a foster child, the leave must be approved by both the supervisor and Human Resources.
4. Employees may be required to submit certification from a healthcare provider if the FMLA leave is being taken for a serious health condition of the employee, spouse, parent, child, or qualifying adult son or daughter. Recertification from a healthcare provider during the FMLA leave period may also be required.
5. Employees may be required to submit certification from a healthcare provider if the FMLA leave is being taken for serious illness or injury of a covered service member who is the spouse, son, daughter, parent, or next of kin of the employee. Recertification from a healthcare provider during the FMLA leave period may also be required.
6. Certification and/or recertification information provided in 4 and 5 above shall not include genetic information except as allowed by the Genetic Information Nondiscrimination Act of 2008 (GINA).
7. Employees may be required to submit certification if the FMLA leave is taken as a result of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status in the armed forces, in support of a contingency operation.
8. The employee shall keep his/her supervisor advised as to the possible return to work date.

#### E. Return From Leave

1. FMLA leave taken due to an employee's serious health condition shall require a Fitness for Duty form from the healthcare provider upon the employee's return.
  - a. If an employee returns to work and is actively working no less than .5 FTE, applicable coverages will be transferred from the COBRA group back to the active group.
2. An employee shall be returned to the position s/he held when the FMLA began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

- a. If there are reductions in force while an employee is on leave and the employee would have lost his/her job had s/he remained, s/he loses the right of return under the FMLA.
  - b. In the case of an employee covered by a collective bargaining agreement, the reduction in force language in the bargaining agreement shall be applied as if the employee were not on leave.
3. If an employee is unable to return to work at the end of FMLA leave and has exhausted all applicable paid leave, s/he may request a Leave Without Pay (see HR3765) HR 3720, Page 4.
  4. If an employee fails to return to work for reasons other than the continuation, recurrence, or onset of a serious health condition or circumstances outside the employee's control, the College has the right to recover Medical and/or Dental premiums it has paid during unpaid FMLA.

APPROVED: *Sandy Inoué*  
Executive Director, Human Resources

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