

Title: Family Medical Leave Act (FMLA)	Number: 6.18	Page 1 of 7
Legal Citation (if Applicable) Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA), C.R.S. §13-30-1131, Title 10 U.S.C. §101(a)(13)(B)	Related Procedure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Board Approval/Revision: 18 June 2014	

Family Medical Leave Act

The College will fully comply with the Family and Medical Leave Act (FMLA) in implementing regulations. The College posts the mandatory FMLA notice and upon hiring provides all new employees with notices required by the U.S. Department of Labor (DOL) on employee rights and responsibilities under the FMLA.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

Employees having any questions, concerns, or disputes with this policy should contact the Chief Human Resources Officer in writing.

General Provisions

Under this policy, the College will grant up to twelve weeks (or up to twenty-six weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a twelve month period to eligible employees. 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.

Eligibility

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

- The employee must have worked for the College for twelve months or fifty-two weeks, which need not be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- The employee must have worked at least 1,250 hours during the twelve-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- The employee must work in a work site where fifty or more employees are employed by the College within seventy-five miles of that office or work site. The distance is to be calculated by using available transportation by the most direct route.

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Types of Leave Covered

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

- The birth of a child and in order to care for that child.
- The placement of a child for adoption or foster care and to care for a newly placed child.
- To care for a spouse, child or parent with a serious health condition (described below).
- A serious health condition (described below) of the employee. An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

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 as a condition that requires continuing care by a licensed health care provider.

This policy 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 thirty 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.

Employees with questions about what illnesses are covered under this FMLA policy or under the College's sick leave policy are encouraged to consult with the Human Resources Department.

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

- Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to twelve weeks of leave for reasons related to or affected by the family member's call-up for service.

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The qualifying exigency must be one of the following:

- short-notice deployment,
- military events and activities,
- childcare and school activities,
- financial and legal arrangements,
- counseling,
- rest and recuperation,
- post-deployment activities, or
- additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Covered active duty means:

- In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country.
- In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Title 10 U.S.C. §101(a)(13)(B).

The leave may commence as soon as the individual receives the call-up notice. (A 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 twelve-week maximum of FMLA leave in a twelve-month period.

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

An employee whose son, daughter, parent, or next of kin is a covered service member may take up to twenty-six weeks in a single twelve-month period to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term 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, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*.
- A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

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* The term serious injury or illness means:

- In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Amount of Leave

An eligible employee may take up to twelve weeks for the first five FMLA circumstances above (under heading “Types of Leave Covered”) under this policy during any twelve-month period. The College will measure the twelve-month period as a rolling twelve-month measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the College will compute the amount of leave the employee has taken under this policy in the last twelve months and subtract it from the twelve weeks of available leave, and the balance remaining is the amount of time the employee is entitled to take at that time.

An eligible employee can take up to twenty-six weeks for the FMLA military caregiver leave circumstance above during a single twelve-month period. For this military caregiver leave, the College will measure the twelve-month period as a rolling twelve-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of twenty-six weeks available.

If a husband and wife both work for the College and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent-in-law) with a serious health condition, the husband and wife may only take a combined total of twelve weeks of leave. If a husband and wife both work for the College and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of twenty-six weeks of leave.

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.

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Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from a health care provider.

Use of Paid and Unpaid Leave

All paid vacation, personal, and sick leave runs concurrently with FMLA leave.

Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.

Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in twelve consecutive weeks, 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 twelve workweeks (or twenty-six workweeks to care for an injured or ill service member over a twelve-month period).

Certification for the Employee's Serious Health Condition

The College requires certification for the employee's serious health condition. The employee must respond to such a request within fifteen days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

Certification for the Family Member's Serious Health Condition

The College requires certification for the family member's serious health condition. The employee must respond to such a request within fifteen days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

Certification of Qualifying Exigency for Military Family Leave

The College requires certification of the qualifying exigency for military family leave. The employee must respond to such a request within fifteen days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave

The College requires certification for the serious injury or illness of the covered service member. The employee must respond to such a request within fifteen days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

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Recertification

The College may request recertification for the serious health condition of the employee or the employee’s family member when circumstances have changed significantly, or if the employer 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.

Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide the Chief Human Resources Officer with verbal or written notice of the need for the leave. Within five business days after the employee has provided this notice, the Chief Human Resources Officer will provide the employee with the Department of Labor (DOL) Notice of Eligibility and Rights. When the need for the leave is foreseeable, the employee must provide the employer with at least thirty days’ notice. When an employee becomes aware of a need for FMLA leave less than thirty 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 comply with the College’s usual and customary notice and procedural requirements for requesting leave.

Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the Chief Human Resources Officer will provide the employee with a written response to the employee’s request for FMLA leave.

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.

Time Off for Military Spouses

If an employee works, on average, at least twenty hours per week and the employee’s spouse is a qualified member of the United States Armed Forces, the National Guard, or the Reserves, the employee is eligible to take leave for a period of up to ten days while his or her spouse is home during a qualified leave period. Where an employee is also eligible for military family member exigency leave, leave under this policy shall also count toward an employee’s FMLA leave entitlement where the time off meets the definition of FMLA military exigency leave.

Within two business days of receiving official notice that the employee’s spouse will be on leave, the employee must provide notice to the College of his or her intent to take military spouse leave. The employee must submit written documentation to the College certifying that during his or her requested time off, the employee’s spouse will be on leave from deployment during a period of military conflict.

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Leave granted under this policy is unpaid. However, employees may substitute accrued, unused vacation time, and/or paid time off for any period of unpaid military spouse leave.

Definitions

For the purposes of this policy, the following definitions apply:

“Qualified Member” means any of the following:

- A member of the U.S. Armed Forces who is deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States;
- A member of the National Guard who is deployed during a period of military conflict; or
- A member of the Reserves who is deployed during a period of military conflict.
 - “Period of Military Conflict” means any of the following:
 - A period of war declared by the U.S. Congress; or
 - A period of deployment for which members of the Reserves are ordered to active duty.

“Qualified Leave Period” means the period during which the qualified member is on leave from deployment during a period of military conflict.