

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
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## I. OVERVIEW

Pursuant to the Family and Medical Leave Act of 1993 ("FMLA"), any eligible employee may be granted up to a total of twelve (12), or in some cases twenty six (26), weeks of unpaid, job-protected family and medical leave in any twelve month period or one or more of the following reasons:

1. For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth;
2. For the employee to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption;
3. For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition;
4. Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position;
5. Because of any qualifying exigency where the employee's spouse, child of any age or parent is a military service member under a call or order to federal active duty in support of a contingency operation; or
6. Because of the need to care for a family member or next of kin who has been injured while serving in the armed forces. For this provision, the amount of FMLA is up to twenty six (26) weeks within a 12-month period.

## II. DEFINITIONS

The following definitions shall apply to this policy:

1. "Eligible employee" means an employee who has been employed: (a) for at least twelve (12) months by the College; and (b) for at least 1250 hours of service with the College during the previous 12-month period.
2. "Health care provider" means:
  - a. Doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State in which the doctor practices; or
  - b. Any of the following individuals as long as they are authorized to practice medicine in the State and are performing within the scope of their practice as defined under state law:
    - i. Podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife and clinical social worker;

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

- ii. A health care provider from whom the College's group health plan's benefit manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
  - iii. A health care provider listed above who is authorized to practice in accordance with the laws of that country and who is performing within the scope of his/her practice as defined under those laws.
- 3. "Serious health condition" means an illness, injury impairment or physical or mental condition that involved one of the following:
  - a. inpatient care in a hospital, hospice or residential medical care facility;
  - b. a period of incapacity of more than three (3) consecutive days that also involves continuing treatment by a health care provider; continuing treatment means one in-person visit to a health care provider within the first seven (7) days of incapacity and either a second visit within the first thirty (30) days or a regiment of continuing treatment under the supervision of a health care provider;
  - c. any period of incapacity due to pregnancy or for pre-natal care;
  - d. chronic conditions requiring treatment;
  - e. permanent/long-term conditions requiring supervision; or
  - f. multiple treatments for non-chronic conditions.
- 4. Family Definitions
  - a. "Son or daughter" includes a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: (1) under eighteen (18) years of age; or (2) eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
  - b. "Spouse" means **a husband or wife under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.** ~~a husband or wife defined or recognized under State law.~~

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

- c. "Parent" means the biological parent or an individual who stands in loco parentis to an employee when the employee was a son or daughter. This term does not include parents "in-law".

5. Military Service Member Definitions

- a. "Next of kin" of a covered service member means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions; brothers and sisters, grandparents, aunts and uncles and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of FMLA military caregiver leave. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.
- b. "Military service member" means a current 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 injury or illness incurred in the line of duty on active duty.
- c. "Qualifying exigency" means short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and additional activities.
- d. "Active duty or call to active duty" means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to Sections 688, 12301(a), 12302, 12304, 12305, and 12406 of Title 10 of the United States Code, Chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

### III. PROCEDURE

#### A. Paid/Unpaid Leave

When applicable, all eligible employees are required to substitute appropriate accrued paid leave (i.e., vacation, bonus, compensatory and sick leave) for any portion of FMLA leave. All benefits accrue during any period of paid leave; however, no benefits or seniority will be accrued during a period of unpaid FMLA leave. Any use of paid leave runs concurrent with FMLA leave.

#### B. Intermittent Leave or Reduced Work Schedule

Under certain circumstances, FMLA leave may be taken intermittently or on a reduced leave schedule, which reduces the regular workday or workweek. If the employee's request for intermittent leave or leave on a reduced work schedule is foreseeable because of a planned medical treatment, the College may transfer the employee temporarily to another position for which the employee is qualified and which better accommodates recurring periods of leave. The alternative position must have equivalent pay and benefits. There is no limit on the size of an increment of leave when intermittent or reduced leave is taken. The College may limit leave increments to the shortest period of time that the payroll system uses to account for absences or leave, provided it is one (1) hour or less. An employee may not be required to take more FMLA leave than necessary to address the circumstances that precipitated the need for the leave.

#### C. Notices

##### 1. Notice to Employer

In all instances where the employee is required to provide the College notice of requested FMLA leave, the employee shall inform the Human Resources office and his/her immediate supervisor. It is the responsibility of the employee to explain the reasons for FMLA leave in sufficient detail as to allow the College to determine that the leave qualifies under the FMLA. If the employee fails to adequately explain or document FMLA qualifying reasons for the leave after a request by the College, leave may be denied. Where the necessity for FMLA leave for the birth or placement of a child is foreseeable, the employee shall notify the College at least thirty (30) days before the date the leave is to begin or the employee's

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

intention to take such leave. In other cases, the employee shall provide such notice as soon as practicable. For foreseeable leave where it is not possible to give as much as thirty (30) days notice, "as soon as practicable" means at least verbal notification within one (1) or two (2) business days of when the need for leave becomes known to the employee. An employee shall provide at least verbal notice sufficient to make the College aware that the employee needs FMLA leave and the anticipated timing and duration of the leave. The College may also require an employee to comply with the College's usual and customary notice and procedural requirements for requesting leave. If the employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the College may delay the taking of FMLA leave until thirty (30) days after the date the employee provides notice to the College of the need for FMLA leave. An employee may not be entitled to FMLA leave if he or she fails to provide adequate notice of the leave and certification of the medical condition as provided within this policy and the law.

## **2. Notice to Employee**

Within five (5) business days of the employee notifying the College of the need for FMLA leave, the College shall give the employee a written notice detailing the specific rights, expectations and obligations of the employee on FMLA leave. The College shall use the U.S. Department of Labor model notice form. Within five (5) business days after receiving sufficient information to determine whether the need for leave is FMLA qualifying, the College shall give the employee notice that informs the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. The College shall use the U.S. Department of Labor model designation form.

## **D. Medical Certification**

Any request for FMLA leave for a serious health condition shall be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee as appropriate. Such medical certification should be attached to the employee's request for FMLA leave, or in the case of unforeseen leave, generally within two (2) business days after the leave begins. In the case of foreseeable leave, the College may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the College to furnish such certification (within fifteen (15) calendar

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

days, if practicable) until the required certification is provided. In the case of unforeseeable leave, if the employee does not provide the medical certification within a reasonable time under the pertinent circumstance, the College may delay the continuation of FMLA leave. If the employee never produces the required medical certification, or if the certification does not confirm the existence of a serious health condition as defined under FMLA, then the leave is not FMLA leave. In any case in which the College has reason to question the appropriateness of the leave or its duration, the College may request certification at some later date. If the College has reason to doubt the validity of the certification provided, the College may require, at its expense, that the eligible employee obtain the opinion of a second (or third) health care provider. Second and third opinions are not permitted for the military caregiver leave.

If the College deems a medical certification to be incomplete or insufficient, the College must specify in writing what information is lacking and give the employee seven (7) calendar days to cure the deficiency.

The College may not ask for recertification any more frequently than every thirty (30) days. If the initial certification is for more than thirty (30) days, the College must wait for the initial leave period set forth in the certification to run before asking for recertification. Recertification may only be required when employees are taking leave for their own serious health conditions. Under the qualified exigency leave, the College may not request recertification of the covered service member's active duty or call to active duty orders. Also, recertification is not permitted for the military caregiver leave.

The College's representative contacting the health care provider must be a health care provider, human resource professional, a leave administrator or a management official, but in no case may it be the employee's direct supervisor. Further, the College may not ask health care providers for additional information beyond that required by the medical certification form.

#### **E. Confidentiality**

All records and documents relating to medical certifications, recertification or medical histories of an employee or an employee's family members shall be maintained in a separate medical file from the employee's personnel file and shall be treated as confidential medical records in accordance with the Americans with Disabilities Act of 1990 ("ADA").

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

**F. Fitness-for-Duty/Notice of Intent to Return to Work**

The College may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The College shall require that the employee provide reasonable notice within two (2) business days, where foreseeable, of a change in circumstances or duration of FMLA leave. As a condition of restoration for any employee who has taken FMLA leave for the employee's own serious health condition (except for intermittent leave), the College shall require each such employee obtain (at the employee's expense) and present certification from the employee's health care provider, with regard to the particular health condition that caused the employee's need for FMLA leave, that the employee is able to resume work, if such certification is job-related and consistent with business necessity. The College may delay restoration to employment until an employee submits a required fitness-for-duty certification. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

**G. Restoration to Work**

Except as provided below under "Exemption" below, any eligible employee who takes approved FMLA leave shall be entitled upon return from such leave:

1. to be restored by the College to the same position of employment held by the employee when the leave commenced; or
2. to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the College will review such situations on a case-by-case basis under the ADA.

**Exemption:**

If the eligible employee is a salaried FMLA-eligible employee who is among the highest paid ten percent (10%) of all College employees (i.e., a "key employee"), the College may deny restoration of such employee if the denial is necessary to prevent substantial and grievous economic injury to the operations of the College, and after notification to the employee to that effect, the employee elects not to return to employment.

SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
-----------------------------------	---	-------------------

Taking FMLA leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, an employee is not entitled to the accrual of any seniority or employment benefits during unpaid FMLA leave.

#### **H. Group Health Coverage**

The College shall maintain the employee's coverage under any group health plan (as defined in the FMLA regulations) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire FMLA leave period. However, the College may recover the premium that it paid for maintaining such group health plan coverage for the employee under certain circumstances set forth in the Notice provided to employees when they request FMLA leave. The College's obligation to maintain health insurance coverage ceases under FMLA if an employee's premium payment is more than thirty (30) days late, after the College has provided written notice to the employee, mailed at least fifteen (15) days before coverage is to cease, that the payment has not been received.

#### **I. Miscellaneous**

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave shall be determined by the College's policy regarding benefits for other types of leave (paid or unpaid, as appropriate). Maintenance of health insurance policies that are not a part of the College's group health plan (where no contributions are made by the College) is the sole responsibility of the employee.

The College shall not interfere with an eligible employee's rights under the FMLA, shall not discharge or otherwise discriminate against employees who exercise such rights, and shall not retaliate against employees who file, initiate or otherwise assist in charges or investigations against the College.

#### **J. Posting and Requirements**

The Director of Human Resources or designee shall ensure that notices of FMLA provisions and information on procedures for filing complaints are posted in places that are readily accessible to employees and applicants.



SOUTHWESTERN COMMUNITY COLLEGE	HUMAN RESOURCES/INFORMATION TECHNOLOGY <b>FAMILY AND MEDICAL LEAVE ACT</b>	Policy 4.02.12
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Legal Citations: Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*; Family and Medical Leave Act of 1993, 29 U.S.C. 2601, *et seq.*, 29 C.F.R. pt. 825

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**April 28, 2015**