

## Policy 5.18

### Family Medical Leave Policy

The Family and Medical Leave Act of 1993 (FMLA) was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men. Eligible employees can take up to 12 weeks of unpaid leave in a 12-month period for certain medical and family reason. Please contact human resources for additional information and forms related to Family and Medical Leave.

### Amount of Leave and Qualifying Reasons

FMLA leave may be granted for the following reasons:

An eligible employee is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12-month period:

Note: This leave is provided for both spouses even if employed in the same agency.

- for the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth, or

Note: An expectant mother may also take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work, or requires a reduced work schedule.

- for the placement of or 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 placement, or

Note: FMLA leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.

- for the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition, or
- because the employee has a serious health condition that prevents the employee from performing one or more essential functions of the position, or
- because of any qualifying exigency that may arise when the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. For the purposes of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a child of any age.

## Policy

**Military Caregiver Leave**– An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a single 12-month period.

### **Leave Charges Policy**

It is the responsibility of the college to designate leave, paid or unpaid, as FMLA leave, based on information provided by the employee. This process will be done before leave starts, or before an extension of leave is granted if the employee is already on leave. If an employee on paid leave has not provided information sufficient to determine whether it is to be designated as FMLA leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish an FMLA-qualifying reason for the needed leave. This does not preclude the college from requesting the information sooner, at any time an extension is requested.

If an employee takes paid leave and is not designated by the employee or employer as FMLA leave, the leave taken does not count against the employee's entitlement.

The employee has the following options for charging leave:

- **Birth** – for the birth of a child, the employee may choose to exhaust available annual and/or sick leave, or any portion, or go on leave without pay; except that sick leave may be used only during the period of disability. This applies to both parents.
- **Adoption** – for the adoption of a child, the employee may choose to exhaust available annual leave, or any portion, or go on leave without pay.
- **Illness of Child, Spouse, Parent** – for the illness of an employee's child, spouse, or parent, the employee may choose to exhaust available sick and/or annual leave, or any portion, or go on leave without pay.
- **Employee's Illness** – for the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available annual leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.
- **Qualifying Exigency** - An eligible employee may choose to use paid vacation/bonus leave, or any portion, or go on leave without pay when necessitated by one of the qualifying exigency reasons. Sick leave cannot be used during qualifying exigency leave.
- **Military Caregiver** - An employee may choose to exhaust available sick leave and/or vacation/bonus leave, or any portion, or go on leave without pay to care for an injured family member.

Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the FMLA entitlement. This includes leave taken under the Voluntary Shared Leave Policy.

### **Intermittent Leave or Reduced Work Schedule**

Pursuant to this policy, the employee may not take leave intermittently or on a reduced work schedule for child birth and birth related child care or for adoption unless the employee and agency agree otherwise; however, when medically necessary, the employee may take leave intermittently or on a reduced schedule to care for employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition.

If such leave is foreseeable, based on planned medical treatment, the college may require an employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

Only the time actually taken as leave may be counted toward the leave entitlement. (For example, an employee normally works 40 hours each week. The employee is on a reduced work schedule of 20 hours per week. The FMLA leave may continue for up to 24 calendar weeks.)

If an employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule, the employee may earn pay and leave at a reduced rate.

### **Employee Responsibility**

An employee must give at least 30 days notice before an FMLA leave is to begin if the reason for the leave is reasonably foreseeable. If the need for the leave is not reasonably foreseeable, the employee must give notice as soon as practical.

### **Employer Responsibility**

When an employee requests FMLA leave, or when the College knows that an employee's leave may be for an FMLA-qualifying reason, the employee must be notified of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible. Notification of eligibility may be oral or in writing.

If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed the agency must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

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The agency shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

- That the leave may be designated and counted against the employee's annual FMLA leave entitlement;
- Requirements for the employee to furnish certifications;
- The employee's right to substitute paid leave;
- Requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments;
- The employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;
- The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and
- The employee's potential liability for payment of health insurance premiums paid by the agency during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

### **Certification Requirement**

If the requested leave is to care for a family member with a serious health condition or an employee's own disabling serious health condition, the college will require a medical certification form.

The failure to provide a medical certification form in a timely manner may result in a delay of or a delay in the continuance of the requested leave. If a medical certification is never produced, the leave will not be an FMLA leave, the absences may be considered unapproved and disciplinary action up to and including termination of employment may result.

For Qualifying Exigency Leave, the College may require an employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation, and the dates of the covered military member's active duty service. The employee may be required to complete a Certification of Qualifying Exigency for Military Family Leave Form.

For Military Caregiver Leave, the following certifications are required:

- **For Covered Service members** – The College requires that leave to care for a covered service member be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family. Employees may be required to complete the

Certification for Serious Injury or Illness of a Current Service Member for Military Family Leave Form.

- **For Covered Veterans** – The College requires that leave to care for a veteran be supported by a certification completed by an authorized health care provider. An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers to certify that the veteran has a serious injury or illness. This documentation is sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may be required to complete the Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave Form.

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**Qualifying Exigency Leave Covered Active Duty:**

Eligible employees may take FMLA leave for a qualifying exigency while the military member is on covered active duty, call to covered active duty status, or has been notified of an impending call or order to active duty.

For members of the Regular Armed Forces, covered active duty is during deployment of the member with the Armed Forces to a foreign country.

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

The term “contingency operation” means a military operation that:

- 1) is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- 2) results in the call or order to, or retention on, active duty of members of the Armed Forces during a war or during a national emergency declared by the President or Congress

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**Qualifying Exigency Categories/Reasons for Leave**

If the military service member is on covered active duty, the employee may take FMLA leave for the following qualifying exigencies:

- 1) Issues arising from the military member’s **short notice deployment** (i.e., deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short-notice deployment.

- 2) Attending **military events and related activities**, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member's deployment.
- 3) Certain **childcare and related activities** arising from the military member's covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility. **Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's child. However, the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and the child must be the child of the military member (including a child to whom the military member stands in loco parentis).
- 4) Certain activities arising from the military member's covered active duty related to **care of the military member's parent** who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers. **Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).
- 5) Making or updating **financial and legal arrangements** to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.
- 6) Attending **counseling** for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
- 7) Taking up to 15 calendar days of leave to spend time with the military member who is on short-term, temporary **Rest and Recuperation** leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation Leave.
- 8) Certain **post-deployment activities** within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies,

reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.

- 9) **Additional activities** where the College and employee agree to the leave to address other events which arise out of the covered military member's active duty or call to active duty status provided the agency and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of leave.

## **Military Caregiver Leave**

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### **Definitions**

**Covered Service member** – The term “covered service member” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

**Covered Veteran** – A veteran is covered if he or she was a member of the Armed Forces (including a member of the National Guard or Reserves); was discharged or released under conditions other than dishonorable; and was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

**Outpatient Status** – The term “outpatient status” means, with respect to a covered servicemember who is a currently member of the Armed forces, the status of member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Serious Injury or Illness of a Covered Service Member** – The term “serious injury or illness” related to military caregiver leave is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

**Serious Injury or Illness of a Covered Veteran** – The term “serious injury or illness” means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran’s active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or
2. a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or
3. a physical or mental condition that substantially impairs the veteran’s ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
4. an injury that is the basis for the veteran’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any one of these definitions meets the FMLA’s definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

**Next of Kin** – The term “next of kin” for a current servicemember or covered veteran is the nearest blood relative, other than the current servicemember’s or veteran’s spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated in writing by the servicemember or veteran as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember or veteran
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

Note: When a servicemember or veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember’s or veteran’s only FMLA next of kin. When a current servicemember or veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember or veteran, all such family members are considered the servicemember’s or veteran’s next of kin and may take FMLA leave to provide care to the servicemember or veteran.

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### **Military Caregiver Benefits and Options**

Employees on military caregiver leave receive up to 26 workweeks of paid or unpaid leave during any single 12-month period; health insurance coverage, and reinstatement rights.

## Policy

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established for other FMLA (regular and qualifying exigency) leave reasons.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered service member or covered veteran during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember or covered veteran is forfeited.

Military caregiver leave is available to an eligible employee once per service member/veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same service member/veteran if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember/veteran who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember/veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current service member/veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current service member and when the family member is a veteran.

An employee may choose to exhaust available sick leave and/or vacation/bonus leave, or any portion, or go on leave without pay to care for an injured family member.

Leave may be taken intermittently or on a reduced work schedule.

## Policy

### References

**Legal References:** *1C SBCCC 200.94*

**SACSCOC References:** *Enter SACSCOC references here*

### Cross References:

- [Time Sheet Procedure](#)
- [Leave Policy](#)
- [Absence Report Procedure](#)
- [Annual Leave Procedure](#)
- [Bonus Leave Policy](#)
- [Civil Leave Policy](#)
- [Community Service Child Involvement Leave Policy](#)
- [Compensatory Leave Policy](#)
- [Educational Leave with Pay Policy](#)
- [Family Medical Leave Policy](#)
- [Leave Without Pay Policy](#)
- [Maternity Leave Policy](#)
- [Military Leave Policy](#)
- [Personal Leave Policy](#)
- [Sick Leave Policy](#)
- [Voluntary Shared Leave Program Policy](#)

### History

**Senior Staff Review/Approval Dates:** *11/6/13*

**Board of Trustees Review/Approval Dates:** *11/6/13*

**Implementation Dates:** *Enter date(s) here*